



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3232

AGENDA

TUESDAY, OCTOBER 1, 2019
CITY COUNCIL CHAMBERS, 455 E. CALAVERAS BLVD., MILPITAS, CA
6:00 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

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

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(2) – City as Defendant

(b) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

County Sanitation District 2-3, West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, and City of Milpitas v. City of San Jose, City of Santa Clara
Santa Clara County Superior Court Case No. 18CV325480

(c) CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Pursuant to Government Code Section 54956.8

Property: Real Property – 1831-1841 Tarob Court, Milpitas APN 086-036-030

City Negotiator: Economic Development Director Alex Andrade

Negotiating Party: Geomax

Under Negotiation: Price and Terms of Payment

CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

- Proclaim October as *National Hispanic Heritage Month*
- Proclaim October as *National Bullying Prevention Month*
- Proclaim October 6-12, 2019 as *Fire Prevention Week*

PUBLIC FORUM

Those in the audience are invited to address City 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 spoken remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

APPROVAL OF AGENDA

CONSENT CALENDAR

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

C1. Receive City Council calendar for the month of October 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council Meeting Minutes of September 17, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve meeting minutes for the September 17, 2019 regular City Council meeting.

C3. Adopt a Resolution Authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for Office Supplies through a Sourcewell Cooperative Procurement Agreement for a Combined Maximum Agreement Amount of \$725,000 for 60 months (Staff Contact: Chris Schroeder, 408-586-3161)

Recommendation: Adopt a Resolution authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for office supplies through a Sourcewell Cooperative Procurement Agreement for a 60-month (5-year) combined maximum Agreement amount of \$725,000 and authorizing the Purchasing Agent to exercise option years 1 through 4 without further action by City Council, except annual appropriation of funds.

C4. Adopt a Resolution Authorizing the City Manager to Submit an Application for \$310,000 in Non-competitive Planing Grant Funding Provided Under the Building Homes and Jobs Act (SB2) and Execute the Grant Agreement and Related Documents (Staff Contact: Ned Thomas, 408-586-3273)

Recommendation: Adopt a resolution authorizing the City Manager to submit an application for \$310,000 in non-competitive grant funding, provided under the California Building Homes and Jobs Act (Senate Bill 2), and to execute the grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.

C5. Adopt a Resolution Accepting a Department of Homeland Security (FEMA) SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$2,336,284 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Six New Milpitas Firefighters, Adopt a Resolution Amending the Classification Plan to Add Six Firefighter Paramedic Positions to the City's Authorized Positions List, and Approve Related Budget Amendment (Staff Contact: Rick Frawley, 408-586-2824)

Recommendations:

- 1) Adopt a Resolution accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to City of Milpitas, and direct staff to proceed with hiring of six new firefighters no later than the start of the period of performance for the grant which is March 11, 2020.
- 2) Adopt a Resolution amending the Classification Plan to authorize adding six (6) Full Time Equivalent (FTE) Firefighter Paramedic positions to the City's Authorized Positions List.
- 3) Approve related budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City's cost for FY 2019-20.

C6. Approve a Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services for a Total Amount Not to Exceed \$341,182 for a Five-Year Period (Staff Contact: Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602)

Recommendation: Approve an Agreement with Odyssey Power Corporation for preventive generator maintenance and repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year period, subject to annual appropriation of funds.

C7. Report on Request for Proposals for an Energy and Water Savings Performance Contract and Approve and Authorize the Interim City Manager to Execute the Professional Service Agreement with Engie Services U.S. Inc. for Conducting an Investment Grade Audit of City Facilities and Land (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations:

- 1) Receive report on Request for Proposal for Energy and Water Savings performance contract to identify, engineer, install, commission, and maintain Energy Conservation Measures on City facilities and land; and
- 2) Approve and authorize the Interim City Manager to execute a Professional Service Agreement with Engie Services U.S. Inc. for the purpose of conducting an investment grade audit on City facilities and land in the maximum amount of \$150,000.

C8. Consider Request from Sunnyhills Neighborhood Association to Waive Fees for Rental of Augustine Park on October 26, 2019 for its Halloween Event (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive Fee Waiver Request from Sunnyhills Neighborhood Association and move to waive fees of \$1,112.63 for City of Milpitas costs related to the special neighborhood Halloween event at Augustine Park on October 26, 2019.

C9. Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Review a Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status

PUBLIC HEARINGS

10. TO BE CONTINUED: Conduct a Public Hearing and Consider Adoption of Resolution of the City Council Upholding the Planning Director's Appeal and Finding that the Non-Conforming Industrial Use at 1831-1841 Tarob Court was Discontinued for a Continuous Period of more than One Year, and in Accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be Replaced with a Different Non-Conforming Industrial Use (Staff Contact: Ned Thomas, 408-586-3273)

Recommendation: At the request of the property owner, this matter is requested to be continued.

- 11. Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and to Allow a Limited Deferral of TADIF for Certain Projects with Entitlements (Staff Contacts: Kevin Riley, 408-586-3292 and Ned Thomas, 408-586-3273)**

Recommendation: Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

- 12. Receive Performing Arts / Youth Theatre Study Report (Staff Contact: Renee Lorentzen, 408-586-3409)**

Recommendations:

1. Approve restructure of the youth theatre contract program and performing arts class opportunities resulting in: (a) increased availability for residents' use of the Community Center Auditorium; (b) creation of Performing Arts Brand and Marketing; and (c) expansion of performing arts opportunities including shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance;
2. Contract structure for director to go to a flat rate for each production, including a percentage of ticket sales revenue, and
3. Direct staff to develop additional recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest.

PUBLIC SAFETY

- 13. Receive Presentation of Unmanned Aircraft System (UAS) Technology and Provide the Milpitas Police Department Staff with Feedback on Policy and the Program (Staff Contact: Jared Hernandez, 408-586-2406)**

Recommendation: Receive the presentation of Unmanned Aircraft System (UAS) Technology and provide the Milpitas Police Department staff feedback on program policy and program.

LEADERSHIP AND SUPPORT SERVICES

- 14. Discuss clarifications related to the scope of the Rules Subcommittee and provide direction to staff on next steps (Staff Contacts: Steve McHarris, 408-586-3059 and Chris Diaz, 408-586-3041)**

Recommendation: Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda

- 15. Approve Updated City of Milpitas Facility Use Manual (Staff Contact: Renee Lorentzen, 408-586-3409 and Christopher Diaz, 408-586-3040)**

Recommendation: Approve the Updated City of Milpitas Facility Use Manual.

- 16. Provide direction to staff on draft Council policies for training and events (Staff Contacts: Christopher Diaz, 408-586-3040 and Ashwini Kantak, 408-586-3053)**

Recommendation: Provide direction to staff on draft Council policies for training and events.

REPORTS OF MAYOR & COUNCILMEMBERS - from the assigned Commissions, Committees and Agencies

- 17. Receive Agenda Item Request Form from Councilmembers Nuñez and Phan related to Social Media (Contact: Councilmember Nuñez, 408-586-3023)**

Recommendation: hear request item from Councilmembers Nuñez and Phan to review and develop a policy for use of social media by the Mayor and City Councilmembers.

- 18. Receive Agenda Item Request Form from Councilmembers Nuñez and Phan Related to Proclamations and Commendations Policy (Contact: Councilmember Nuñez, 408-586-3023)**

Recommendation: Hear request of Councilmembers Nuñez and Phan to review and codify policy for Milpitas proclamations and commendations.

- 19. Receive Agenda Item Request Form from Councilmembers Nuñez and Phan Related to a Main Street Museum and Park (Contact: Councilmember Nuñez, 408-586-3023)**

Recommendation: Hear request of Councilmembers Nuñez and Phan for a study on a museum and park on Main Street in partnership with a non-profit group.

- 20. Receive Agenda Item Request Form from Councilmembers Nuñez and Phan Regarding a Community Theater (Contact: Councilmember Nuñez, 408-586-3023)**

Recommendation: Hear request of Councilmembers Nuñez and Phan to request a study on building a community theater in the civic center area or school district property.

- 21. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Rename Park (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Request Form, regarding the renaming of Augustine Memorial Park to Sunnyhills Albert Augustine Jr. Memorial Park.

- 22. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Railroad Quiet Zone (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Item Request Form, to establish a "Union Pacific Railroad Quiet Zone."

- 23. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Green Bike Lanes (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Item Request Form, regarding "Green Bike Lanes (CIP)."

- 24. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano Regarding Dumpster Days (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted on Agenda Item Request Form seeking to have City-sponsored free "Dumpster Days" for Milpitas residents.

25. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Consider Renewing Sister City (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Request Form, seeking the renewal of Sister City relationship with city of Dagupan, Philippines.

NEXT AGENDA PREVIEW

26. Receive Preview List for the Next Regular City Council Meeting Scheduled for October 15, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, OCTOBER 15, 2019

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

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

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

viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

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

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

- C1. Receive City Council calendar for the month of October 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

September 2019						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Milpitas City Council Calendar

October 2019

November 2019						
S	M	T	W	T	8	S
						2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		12:00 PM -Mayors' Roundtable – hosted by Biocom (RT) 1:00 PM -City Council Housing Subcommittee (BN/CM) 6:00 PM -Closed Session 7:00 PM -City Council	10:00 AM to 2:00 PM – National Coffee with a Cop Day (Town Center Starbucks) 1:00 PM -Santa Clara VTA - Northeast Group (San Jose) (RT) 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (BN)	5:30 PM -Milpitas Chamber of Commerce Board (CM) 5:30 PM -Santa Clara VTA Board of Directors (RT)	9:00 AM -Manufacturing Day TBD -Special City Council retreat TBD -City Council Rules Subcommittee (RT/KD)	
6	7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	5:30 PM City Council Study Session	11:00 AM -VTA BBQ @ Guadalupe Division (San Jose) (RT) 4:30 PM -Special Silicon Valley Clean Energy Board of Directors Meeting (CM) 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM) 7:00 PM -Planning Commission	11:30 AM -Employees' Recognition Luncheon 4:00 PM -Treatment Plant Advisory Committee (CM) 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM -Youth Advisory Commission (AP) 7:00 PM -Cities Assoc of SCC (CM)	*2:00 PM -City Council Finance Subcommittee (RT/CM) 6:00 PM -Fall Family Night @ Civic Center Plaza	
13	9:30 AM - I-680 Sunol Express Lane JPA (RT) (Oakland) 4:30 PM -Economic Development & Trade Commission (KD)	?:00 PM -Closed Session 7:00 PM -City Council	6:00 PM -Energy and Environmental Sustainability Commission (BN)	11:30 AM -South Bay Odor Stakeholders Group	2:00 PM -VTA Safety, Security, Transit Plng & Ops Committee (RT)	
			League of California Cities Long Beach, CA (KD, BN, CM, AP)			
20	7:00 PM -Science, Technology & Innovation Commission (BN)	1:30 PM -Senior Advisory Commission (AP)	9:30 AM -Community Development Block Grant Workshop #2 12:00 PM -Santa Clara Valley Water Commission (CM) 5:30 PM -SCC Recycling & Waste Reduction Commission (San Jose) (AP) 7:00 PM -Planning Commission	12:00 PM -VTA Capital Program Committee Meeting (RT) 12:00 PM -Terrace Gardens Board of Directors 1:30 PM -Santa Clara County Library Joint Powers Authority Board (CM) 4:30 PM -Milpitas Chamber of Commerce Board w/ consultant Strategic Economics 5:30 PM -Economic Development Strategy Community Outreach Workshop	?:00 -City Council Rules Subcommittee (RT/KD)	10:00 AM -Pumpkins in the Park @ Cardoza Park
27	7:00 PM -Special Arts Commission (CM)					

**Finance Subcommittee will meet only as needed*

C2. Approve City Council Meeting Minutes of September 17, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve meeting minutes for the September 17, 2019 regular City Council meeting.

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Joint Meeting of the Milpitas City Council and Milpitas Housing Authority**
Date: **Tuesday, September 17, 2019**
Time: **5:30 PM Closed Session**
7:00 PM Open Session
Location: **Council Chambers, Milpitas City Hall,**
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the joint meeting to order at 5:30 PM. City Clerk Mary Lavelle called the roll.

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

ABSENT: None

CLOSED SESSION City Council convened in Closed Session to discuss three matters listed on the agenda.

City Council convened at the dais for the Open Session regular agenda at 7:01 PM.

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

PLEDGE Girl Scouts Troop presented the flags and led the pledge of allegiance.

INVOCATION Councilmember Montano read a prayer by Mother Teresa, from the dais.

PUBLIC FORUM Mike, a Bay Area Ridge Trail representative and speaking also on behalf of Open Space Authority, addressed the City Council. He wanted Milpitas to consider the bigger picture of the greater Bay Area and the continuing need for green space for all. His agencies were working on the trail to ring the bay.

Allysson McDonald, resident, spoke on Assembly Bill 1482 adopted the previous week for statewide rent control of no more than 5% increase for specific rental property. She was concerned about what would happen between this evening and the date it would take effect next January 1. She sought an emergency ordinance adopted locally as a stop gap measure.

Councilmember Nuñez asked the City Attorney to review recently passed laws in order to update everyone. City Attorney Diaz replied there could be no discussion on these issues due to the Brown Act. He did say that Assembly Bill 1482 was on the Governor's desk for his signature. This new law would mandate some retroactive sections when applying the tenant protections in the bill to renters.

Yolie Garcia, resident, suggested that an emergency ordinance be adopted on the next Council agenda to prevent gouging by landlords.

Barbara Curry, resident, was a Milpitas crossing guard and asked what happened to pay raises for crossing guards as adopted in the new budget. When do they get this pay raise, she asked. It was due on July 1 and guards had not been notified by any City staff or officials. She inquired about necessary back pay for the 38 crossing guards.

Councilmember Phan wanted to see to it that they got a raise and asked for Human Resources to follow up with information.

Vice Mayor Dominguez thanked the speaker for coming. She said direction was given to the City Manager on this topic, that she gave him direction on this already. Vice Mayor asked staff to let the Council know what was going on with this concern.

Councilmember Montano said this was dear to her heart. She was proud that in the past the wage was raised when she brought it to Council's attention.

Penny Alexa, resident, was a crossing guard who retired in June. They were looking for their raise in the pay checks as promised by the Mayor last June in the budget.

Councilmember Nuñez felt the City Manager needed to get this figured out, and put it in place so it doesn't happen again. Crossing guards needed their raise and had been patient.

Evelyn Chua, resident, announced the Housing Sharing Program promoted by County of Santa Clara Housing office working with Catholic Charities to make house share matches of people. Building Safety & Housing Director Sharon Goei supported what was said, expressing that the City had hosted a workshop about this program at City offices the previous week.

Michael Trujilla, a lawyer, spoke on AB 1482 explaining that some of its rules would be retroactive to March 2019, once it was implemented on January 1, 2020. There was still potential for rent gouging, so protections were needed locally.

Loretta, an organizer and advocating for people weren't here while they were working, wanted to hold City Councilmembers accountable for their votes. Milpitas needed ordinances to protect and look out for renters and homeless people in this city.

Alex Lee, grew up in Milpitas, said he could not afford to rent in this City today. He supported AB 1482 and wanted the Governor to sign it to help people. There was a great need to build more affordable housing and to enforce inclusionary zoning.

Michael, spoke about rent, concern for increases, the need for rent control and just cause eviction. He mentioned what was adopted recently in the City of Mountain View.

Rob Means, 1421 Yellowstone resident, discussed the climate emergency and recent County Board of Supervisors resolution declaring it.

Sandy Perry, from San Jose, addressed the future of Sunnyhills Apartments and wanted an update on what was going on there, for the residents who want to participate in any process about their living situation. Rent control and just cause eviction regulation was needed.

Councilmember Phan asked who Mr. Perry meant by "we." Mr. Perry replied San Jose residents on housing, as well as those people he was helping who lived at Sunnyhills.

Councilmember Nuñez remembered there would be a report out on Sunnyhills. He thought it would be brought forward to the City Council and asked for an update on the City Council agenda. City Manager Steve McHarris said staff would respond.

Han Do, from Sunnyhills Apts. in Milpitas, knew there was a meeting with the landlord behind closed doors. He was against evictions and discrimination. Rising rents meant more homeless people so rent control was needed now.

William Au, from the tenants association of Sunnyhills Apartments, had received little information from the owner or others. There were no results and no update provided about status of the land at the apartments' site.

Councilmember Montano requested at the next Housing Subcommittee meeting that the City Manager shall bring an update on Sunnyhills.

Hien La, resident of Sunnyhills Apts, thanked City Council for past action to protect their apartments. She asked for an update, and what would help the residents once the five-year time frame had gone by.

Tiffany Huang, thanked Councilmembers Nuñez and Montano for working on housing issues. There was a continuing fear of landlords evicting tenants and raising rents if people had not been in their units for a year.

Veronica Salce, resident, was concerned about rent outrage. No more time to wait for rent control and just cause eviction. Residents needed emergency rent ordinance on the Council agenda.

Michelle, resident, 1577 David Lane off Dempsey Road, complained of noise between 1–4 am daily, due to constant activity in that area. She wanted rules about noise in neighborhoods.

Councilmember Phan asked if she knew if the noise was from City workers or private. She said that it was from garbage trucks and private companies cleaning properties.

Voltaire Montemayor, resident, felt that in Milpitas, all people were lucky. Council needed to help the crossing guards to get an increase in pay.

Frank DeSmidt, of Milpitas Rotary Club and Chamber of Commerce, invited all to various events.

ANNOUNCEMENTS

Interim City Manager McHarris discussed several agenda items:

Staff reported that for item no. C3 (Tarob Ct item), the applicant (developer) requested to continue the item to October 15. On item no. C9, staff received notice of Commissioner Brahmhatt's resignation from Economic Development and Trade Commission, so there was no need to act on recommendation no. 1 (removal) on that item.

Regarding all those topics continued from the September 3 meeting, the Council would want have time for those, so the City Manager requested to defer item no. 16 (UAS technology), 19 (Facility Use Manual), 20 (Council policy on training/events), 24 (museum park on Main St.) and 25 (community theater building) to the Rules Subcommittee to place those on October 1 and 15, 2019 meeting agendas.

Mayor Tran supported the City Manager's recommendations and City Council agreed.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Mayor Tran would move item no. 23 (street re-naming request) to the front of the agenda to be heard prior to item no. 14.

The agenda would be approved with items removed, as noted above by the City Manager.

The City Attorney noted that City Council should hear public hearing items first, then it could go to the item the Mayor wished to move up (no. 23).

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

CONSENT CALENDAR

Motion: to approve the consent calendar including all agenda items no. C1 – C10, excepting item no. C3

Mayor Tran stated there were speakers who wished to speak on item no. 10 (fee waiver for Bark for Life). He would invite those persons to the podium while keeping the item on consent.

Gail, a local resident, appreciated support from the City for the American Cancer Society “Bark for Life” event upcoming. She appreciated waiving the fees for the park rental to hold the event.

Ricky Davis, a resident, spoke about family members who’d survived cancer. Bark for Life was a great community building event for ACS. He looked forward to seeing all Council there.

Councilmember Nuñez inquired, about item no. C10, regarding the reports back to the City on those fee waivers, and where were those submitted. City Clerk Mary Lavelle indicated the reports were submitted to her office following the events.

Councilmember Nuñez wanted to remove item no. C9 from consent.

Councilmember Montano wanted to remove items no. C5 and no. C7 from consent.

Mr. Nuñez inquired, regarding Economic Development and Trade Commission and the former Sister Cities Commission, that he recalled combining those two groups. He had received calls from Sister Cities Commissioners and when they would hear about the program’s status. Mayor Tran responded they did not need to pull it from consent.

Councilmember Montano asked about item no. C5 (On-Street Parking program) if there would be parking meters. City Engineer Steve Erickson replied there would be no meters, rather there would time limited parking per posted signs, enforced by the Milpitas Police.

Next, Ms. Montano asked if there would be a pedestrian crosswalk near the future hotel at 521 Alder Drive. Mr. Erickson said he would get back to the Council with a response.

Motion: with respect to agenda item no. C9, remove the first part of the recommendation, and then move to approve all items on the consent calendar, excepting item no. C3

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

C1. Council Calendars	Accepted City Council calendar for September and October 2019.
C2. Meeting Minutes	Approved meeting minutes of August 30 and September 3, 2019 City Council meetings.
C3. Findings – 2001 Tarob Ct. development project	The True Life Companies requested to continue this item, via letter sent to the City Council and City Clerk received on September 16, 2019. The action was continued to October 15, 2019.
C4. Resolution	Adopted Resolution No. 8906 to approve project plans and specifications for the Alviso Adobe Renovation (Phase V – Interior Restoration), Project No. 5055, to award a construction contract to and authorize the Interim City Manager to execute the contract with the lowest responsible bidder submitting a responsive bid, CRW Industries, Inc., in the amount of \$523,900, and to authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$160,000 for the project.
C5. Resolution	Adopted Resolution No. 8907 approving project plans and specifications, award a construction contract, and authorize the Interim City Manager to execute the contract with Chrisp Company, in the amount of \$116,130 for TASP On-Street Parking Program Project No. 2017, and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$17,420.

- | | |
|------------------------------|--|
| C6. Maintenance Agreement | Approved a five-year agreement with TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services, in the amount of \$49,050 in the first year and in a total amount not to exceed \$245,250 over the five-year period, subject to annual appropriation of funds. |
| C7. Improvement Agreement | Approved and authorized the Interim City Manager to execute the Improvement Agreement between the City of Milpitas and LD Milpitas Property, LLC, subject to any revisions deemed legally necessary by the City Attorney. |
| C8. 3 Master Plan Agreements | Approved and authorized the City Manager to execute three Professional Service Agreements with the following consultants for engineering services: <ol style="list-style-type: none"> 1) West Yost Associates for the preparation of the City's Water Master Plan in an amount not to exceed \$600,000. 2) Hydrosience Engineers, Inc. for the preparation of the City's Sewer Master Plan in an amount not to exceed \$642,000. 3) Schaaf & Wheeler, Consulting Civil Engineers for the preparation of the City's Stormwater Master Plan in an amount not to exceed \$134,629. |
| C9. Commission Appointment | To the Economic Development and Trade Commission, newly appointed Inderjit Mundra as a voting Commissioner representing the Milpitas Chamber of Commerce to a term that expires in April 2021. Also, confirmed Tina Broyles as Alternate from the Milpitas Chamber of Commerce, per Chamber Board action |
| C10. Fee Waiver Request | Per City Council's Fee Waiver & Donation Policy, moved to waive \$1,412.63 (and up to \$1,500 maximum if additional City fees were incurred) of identified City Planning and Recreation and Community Services fees charged for costs related to the American Cancer Society's Bark for Life walkathon event at Murphy Park on October 5, 2019. |

PUBLIC HEARINGS

- 11. Summary Vacation of PSUE 1646 Centre Pointe** City Engineer Steve Erickson explained the need for summary vacation of a utilities easement at 1646 Centre Pointe Drive in an approved development project in the Transit Area Specific Plan area. Utilities had been moved, and next steps in the planned development were moving ahead.

Mayor Tran then re-opened the public hearing continued from September 3, 2019.

Speakers:

Marshall Torre of Summerhill Apartment Communities said the developer had a vested right to continue with this project. A Subdivision Improvement Agreement required that the parties shall fully cooperate to move ahead on the development to be built. Vacating the easement qualified.

Voltaire Montemayor, resident, mentioned the easement and it should be allowed.

- (1) Motion: to close the public hearing, following two speakers

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

- (2) **Motion:** to adopt Resolution No. 8908 authorizing the summary vacation of an existing Public Service Utility Easement at 1646 Centre Pointe Drive

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 3
NOES: 1 (Nuñez)
ABSTAIN: 1 (Tran)

**12. CAPER Report on CDBG
FY 2018-19 funds**

Housing Administrator Robert Musallam explained what the annual Consolidated Annual Performance Evaluation Report (CAPER) on Community Development Block Grant (CDBG) funding was and what the report covered, as required by federal Department of Housing and Urban Development (HUD). The CAPER was due to that agency by September 30, 2019. He displayed a chart of accomplishments based on the funds awarded and distributed by the City to local non-profit organizations, including those related to affordable housing activity. Mr. Musallam reviewed specific projects funded and their accomplishments.

Councilmember Nuñez noted this was continued from the last meeting to allow for all Councilmembers including the Vice Mayor (who was absent on September 3) to be able to provide any comments, if desired.

Mayor Tran re-opened the public hearing, continued from the previous meeting.

Esther Deeckman of Next Door Solutions thanked the City Councilmembers for their commitment. 129 people were served with the funding from CDBG money in the prior year.

Councilmember Phan thanked her organization for the work done for residents in Milpitas. He asked about "Light the Night" fundraising event. Next Door representative said she would love to have elected officials participate and sponsor tables.

Councilmember Montano and Vice Mayor Dominguez thanked NextDoor for all the necessary work done in Milpitas.

Michelle from Senior Adults Legal Assistance (SALA) addressed the Council on legal services provided to seniors at the Barbara Lee Senior Center.

Wanda Hale of Long Term Care Ombudsman Program looked out for those seniors in long term care facilities in Milpitas.

Deann Everton, Executive Director of Rebuilding Together Silicon Valley thanked the city for ongoing support.

Teresa Johnson, Director of Meals on Wheels for the Health Trust, thanked the City for its support to her agency.

A representative of the Silicon Valley Independent Living Center for people with disabilities noted that finding affordable housing was one of SVILC's services. She thanked the City Council for continued support.

Voltaire Montemayor, resident, spoke about some of the figures presented by staff.

(1) Motion: to close the public hearing following seven speakers

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

Councilmember Nuñez complimented staff on re-focusing on the Community Development Block Grants for the upcoming year. He knew the non-profits did some great things.

(2) Motion: to approve the draft FY 2018-2019 Community Development Block Grant (CDBG)'s Consolidated Annual Performance Evaluation Report (CAPER); and, to authorize the City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2018-2019 CAPER to the Department of Housing and Urban Development (HUD) to comply with CDBG requirements

Motion/Second:

Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of:

AYES: 5

NOES: 0

13. Ordinance No. 302

City Attorney Chris Diaz introduced his colleague attorney Ethan Walsh, who focused on housing issues for BB&K firm and joined the meeting over the phone by teleconference.

Building Safety & Housing Director Sharon Goei and Housing Administrator Robert Musallam came to the podiums to give a background report explaining how the Council arrived at the proposed ordinance for a rent review program and agreement with Project Sentinel to administer the ordinance on behalf of the city at a cost of \$50,000 annually. The proposed Milpitas ordinance was modeled after the City of Fremont's program, including a requirement to form a new rent review board. Ms. Goei reported that Assembly Bill 1482 was adopted in Sacramento and would significantly affect city renters starting in the new year.

Mr. Musallam described elements of the proposed rent review ordinance (showing a powerpoint slide of information).

Attorney Ethan Walsh summarized recent housing legislation adopted by the state legislature. He compared the proposed rent review ordinance to the Assembly Bill 1482 legislation, as passed in Sacramento, explaining some differences.

Mayor Tran next asked for speakers from the audience.

A representative from the California Apartment Association was supportive of the protections in the proposed ordinance. Requirement for no discrimination toward those with Section 8 vouchers, he felt was not needed. The ordinance would ensure compliance of property owners in Milpitas.

Michael Trujillo, Law Center of Silicon Valley, wanted to help residents stay in their homes. Tenants needed assistance. He did not support the rent review ordinance, since most concerns were not met in the proposed ordinance. He sought tenant protections.

Diana, a young child, said there should be rent control for all in Milpitas. It was hard in school.

Berta Rios, resident, was concerned about retaliation being taken towards those who were active in the City. City needed to advertise a lot more on housing services available.

Chris Rios, resident for three years, thanked the City Council for listening to him. He was passionate about this issue and was familiar with the housing crisis here. He complained about large companies that owned the rental apartment units. Emergency relief won't help and there was need to assist tenants with gouging, long term.

Allysson McDonald, resident, commented on specific sections of the proposed ordinance. She remarked on more work that needed to be done.

Sandy Perry, of the Affordable Housing Network, felt this was not going to be an effective program for tenants while it might be effective for landlords.

Ana Arajo, resident, expressed a need for more than what was in the paper (ordinance). The group represented more than just the Latin community who lived in Milpitas rental units. All had the right to have justice for housing. She thanked the City Council for support.

Rob Means, 1421 Yellowstone held a sign that read "Regulate Capitalism" and spoke of a fundamentally flawed process that was going to be suggested for implementation in Milpitas. He referred to Fremont, where a similar rule was adopted, but results of their program were not known yet. There needed to be fines that exceed the corporate profits.

Samantha Salcedo, a young woman, asked for consideration to have rent control in Milpitas.

Michelle, a resident, mother/grandmother, understood many years ago how expensive rent was. She knew coworkers in the school district who had difficulty living. There was need for rent control and just cause eviction.

Michael, on a proposed rent ordinance, did not agree with the non-binding mediation component. The City needed to be firm and binding in the outcome. Ordinance should not be geared to renters, but to landlords.

Voltaire Montemayor, resident, wanted to hear both sides. He felt rent control would help.

Veronica Salce, resident, got in touch with the Vice Mayor when she was going to be evicted. She called Project Sentinel seeking help and was told she still would have to move.

Tom Valore, resident, felt this was like déjà vu. This meeting felt like a repeat of other Council meetings in the recent past. It was not a good forum for solutions.

Yolie Garcia, resident, was coming here for months and it was heartbreaking to be at these meetings. City Council needed to do something useful for the tenants.

Tiffany, a resident, suggested ways to make the rent review program stronger. Make it automatic to have mediation when a landlord proposed a rent increase. Research more what was happening elsewhere and maybe have binding mediation.

Jeff Moore felt there was a need for a just cause eviction law.

(1) Motion: to close the public hearing, following 18 speakers

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

Councilmember Nuñez asked for an explanation of just cause eviction provision in AB1482 but not in the proposed City ordinance. Staff responded. Mr. Nuñez understood that the state assembly bill would allow the City to have just cause rules when that went into effect in January.

Councilmember Nuñez said there was a need to put together both the new ordinance alongside the state legislation, to protect local tenants effectively.

Councilmember Montano already knew that rent control would be the law once the Governor signed the assembly bill. She thanked Councilmember Nuñez for his work on housing issues for the Housing Subcommittee, on which they both served. She wanted to help tenants along with additional City staff be hired to help on this issue.

Vice Mayor Dominguez thanked the Housing Subcommittee members for their work and noted that the crisis had gotten worse since May this year. She did not want a pilot program, since these were programs that families needed. She requested a friendly amendment to add an emergency just cause section into the rent review ordinance to be implemented immediately.

City Attorney Diaz responded that direction can be given to bring findings for an urgency just cause ordinance at the next meeting. Vice Mayor asked more questions on the procedure for that type of ordinance and the City Attorney responded.

Councilmember Montano stated she was not in agreement with the Vice Mayor's request. Mayor Tran noted that an item for an emergency ordinance was not on the agenda. So the Council needed time to review or consider it at another meeting.

Councilmember Phan asked about state law regulation and sought to understand the timeline of local adoption of an ordinance versus when the state legislation would go into effect. He was concerned and wanted to have more conversation.

Vice Mayor Dominguez agreed it felt like déjà vu, as mentioned. She brought a just cause ordinance to City Council multiple times but was unsuccessful with the vote.

Mayor Tran asked his colleagues to refer any items requested to the Rules Subcommittee. This was to abide by Council's direction to bring any proposal to that committee for review.

Councilmember Nuñez felt it was good that Council was pretty close on most of it. His suggestion was that since the next City Council meeting was October 8, and the Housing Subcommittee usually meets on Council meeting dates, the City Council could adjust the local regulations to be consistent with AB1482. He asked to bring all that back on Tuesday. Focus in on just cause eviction or leave it as is. He wanted to bring it back to the Housing Subcommittee to finalize language.

City Attorney Diaz sought to clarify what Mr. Nuñez wanted at a Housing Subcommittee meeting and allowing for comments on the proposed document(s).

Councilmember Montano wanted to pass the ordinance at this meeting and then to make adjustments later if needed.

Councilmember Phan asked the City Attorney to clarify the effective date of retroactive rent caps. He wanted especially to avoid rent gouging in Milpitas.

Attorney Ethan Walsh responded that the City Council could adopt an emergency ordinance with a rent cap, effective immediately, while the Costa-Hawkins restrictions (on certain units when built) would apply.

Vice Mayor Dominguez then suggested a Study Session Council meeting next Tuesday. To the Rules Committee, there could be an item by memo on emergency just cause. Then bring the rent review ordinance to City Council on October 1.

Councilmember Phan asked if that would be a study session only with one issue only. Meantime, he wanted to vote on what they had in front of them at the meeting. Mayor Tran agreed with that.

Vice Mayor Dominguez reported a known problem of "inconvenience fees" being imposed on rental units by landlords, to get around rent control caps. She asked if the Council Subcommittee had discussed that issue and the two members replied no. Ms. Dominguez wanted language about that in any ordinance so as not to allow it to happen in Milpitas.

Next, Chris Diaz read aloud the title of the Ordinance, "An Ordinance of the City Council of the City of Milpitas Adding Chapters 2 and 3 to Title XII of the Milpitas Municipal Code Relating to the Adoption of a Rent Review Program and Tenant Protections."

(2) Motion: to waive the first reading beyond title and to introduce Ordinance No. 302 to add Chapters 2 and 3 to Title XII of the Milpitas Municipal Code relating to the adoption of a rent review program and tenant protections; and to schedule a City Council Housing Subcommittee meeting next Tuesday, September 24, 2019 allowing all City Councilmembers to attend (Joint Meeting with City Council) and provide comments on just cause eviction ordinance, rent review ordinance, Assembly Bill 1482 and possible language on other fees landlords charge, that could be included in an ordinance

Motion/Second:

Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of:

AYES: 4

NOES: 1 (Montano)

(3) Motion: to approve a Budget Amendment to appropriate funds from the Affordable Housing Fund to the FY 2019-20 Housing Operating Budget for Project Sentinel to manage the Rent Review program; and, to authorize the City Manager to prepare and execute a Professional Services Agreement with Project Sentinel ending December 31, 2021 to manage the Milpitas Rent Review Program

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

At 11:25 PM, the Council moved to agenda item no. 23.

COMMUNITY DEVELOPMENT

14. Rent Relief Program This item was not heard and would carry over to the next meeting date

15. Housing Authority: By-Laws and Officers This item was not heard and would carry over to the next meeting date

PUBLIC SAFETY

16. UAS tech for Police Dept. This item was removed from the agenda and would be heard at a later date.

LEADERSHIP

17. League Conference – Designate Voting Delegate (1) Motion: to designate Councilmember Montano as the voting delegate at the League of California Cities Annual Conference in Long Beach in October 16 – 18, 2019

Motion/Second: Mayor Tran/Councilmember Phan

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

(2) Motion: to designate Councilmember Nuñez as the Alternate delegate at the League of California Cities Annual Conference in Long Beach in October 16 – 18, 2019

Motion/Second: Mayor Tran/Councilmember Phan

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

18. Resolution to hire PERS Annuitant – Contract HazMat Inspector Human Resources Director Liz Brown explained the need for this resolution, according to CalPERS when hiring a retired person.

Motion: to adopt Resolution No. 8909 authorizing an exception to the 180-day wait period in accordance with the California Government Code Section 7522.56 and 21224; and, approve and authorize the City Manager to execute an employment agreement with Valerian Catunao to serve as a part-time Hazardous Materials Inspector

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried: AYES: 5
NOES: 0

19. Facility Use Manual This item was removed from the agenda and would be heard at a later date.

20. Direction on Policy for Training and Events

This item was removed from the agenda and would be heard at a later date.

REPORTS

21, 22, 24, 25

Four agenda item request forms were not discussed and would be moved to a future agenda.

23. Rename Dixon Rd.

Councilmember Bob Nuñez spoke on this item submitted by himself and Councilmember Phan to consider renaming Dixon Road as Barack Obama Blvd, on the section only from I-880 to Milmont. He referred to the Economic Development Director's report on economic activity in the City, and he believed his recommendation would cause the least disruption. He had spoken to NAACP in discussion on this idea, since that organization had an office in Milpitas.

Mayor Tran asked for public comments.

Henry Nichols, resident, wanted to learn what was going to happen with this road name change. He wondered if it would run it into the housing track where he grew up (Sunnyhills). He heard it would stop at Milmont. He expressed mixed feelings about the possible name change.

Rob Means, resident, said he was not a great fan of Barack Obama. He did think the name change had great merit. He spoke up about the Sunnyhills neighborhood the first planned integrated neighborhood in the U.S.

A man recalled working with some Boy Scouts who worked on badges to learn about the history of the City. New roads were going in in new developments. This road had a unique history already, so the City should keep the name as it is.

A young woman liked the idea of re-naming however she had reservations about naming it as Barack Obama Blvd. She did not agree with that name since that President deported a lot of immigrants, put many in prison, and she expressed other criticisms.

Voltaire Montemayor, resident, was frequently on Dixon and Dixon Landing Road. He was a giver and receiver.

Pastor Jeff Moore (NAACP) spoke of diversity, Sunnyhills, President Barack Obama, and the significance of renaming the road entering the Sunnyhills neighborhood.

Tom Valore, resident, voted for Barack Obama twice. He felt it would be strange to memorialize someone who was still alive.

Mayor Tran felt this was the most important agenda item that had come before him in his time. He spoke about history in the Sunnyhills neighborhood when he was growing up. He supported naming a street name after Barack Obama and also naming a street after Martin Luther King. He stated his list of concerns, particularly around naming any public facility.

Councilmember Montano concurred with all of what Mayor said. She was raised since 1964 in Sunnyhills and did not agree with the proposal to rename Dixon Landing due to the need to preserve the past. She thought a lot of people would be upset if the name changed, and asked colleagues to just leave it as is.

Ms. Montano wanted to revive the City Council Subcommittee on Facilities Naming. She'd also like to add the name "Sunnyhills" back to the park that was named for Al Augustine Park.

Vice Mayor Dominguez urged being respectful of what the community wanted. But this evening, Council declined to vote on a policy that the community members had been demanding. She understood not to forget history within the city. Honoring Barack Obama was worthy, she felt. She agreed with Councilmembers Nuñez and Phan with renaming the section of the street.

Councilmember Phan made comments about history. Celebrate the journey, he urged, and the Sunnyhills name would not be changed. Celebrate what Barack Obama means.

Councilmember Nuñez made further comments about history, President Obama, and recognition for this City. City Council could also name something for Mayor Ben Gross as well, in the future.

City Attorney Diaz stated that staff would need to come back with a report on how to achieve a street renaming, including the costs, necessary actions, etc. Staff would need to bring back criteria, resident impact, impact to businesses, the minimal segment minimal, address changes, legal processes and other related tasks. City Manager Steve McHarris responded that staff would aim to bring a report to City Council by December.

Councilmember Nuñez called for the question and the Mayor asked to conduct a roll call vote.

Vice Mayor Dominguez made remarks to the Mayor prior to the vote and asked him to be respectful towards each other and not to engage in certain behavior.

Motion: to consider "Renaming of Dixon Landing Road to Barack Obama Blvd. will be the first Barack Obama Blvd. in Silicon Valley. This roadway leads into the Sunnyhills Community known as one of America's first integrated communities;" and directing City Manager to return to City Council with information on how to proceed

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 3
NOES: 2 (Montano, Tran)

NEXT AGENDA

26. Preview next agenda Received of list of agenda items for October 1, 2019 City Council meeting agenda.

ADJOURNMENT Mayor Tran adjourned the joint meeting at 12:32 AM on Wednesday, September 18, 2019.

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

- C3. Adopt a Resolution Authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for Office Supplies through a Sourcewell Cooperative Procurement Agreement for a Combined Maximum Agreement Amount of \$725,000 for 60 months (Staff Contact: Chris Schroeder, 408-586-3161)**

Recommendation: Adopt a Resolution authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for office supplies through a Sourcewell Cooperative Procurement Agreement for a 60-month (5-year) combined maximum Agreement amount of \$725,000, and authorizing the Purchasing Agent to exercise option years 1 through 4 without further action by City Council, except annual appropriation of funds.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for Office Supplies through a Sourcewell Cooperative Procurement Agreement for a Combined Maximum Agreement Amount of \$725,000 for 60 months (Staff Contact: Chris Schroeder, 408-586-3161)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Chris Schroeder, 408-586-3161
Recommendation:	Adopt a Resolution authorizing the City Manager to Execute an Agreement with Staples Contract & Commercial LLC for office supplies through a Sourcewell Cooperative Procurement Agreement for a 60 month (5 year) combined maximum Agreement amount of \$725,000, and authorizing the Purchasing Agent to exercise option years 1 through 4 without further action by City Council, except annual appropriation of funds.

Background:

The City requires office supplies for use by all City departments. The City is currently under contract with Office Depot. The contract is based on a national solicitation by Oakland County, Michigan under the “America Saves” cooperative purchasing program. The current contract with Office Depot will expire on October 31, 2019.

The City of Milpitas Municipal Code Section I-2-3.08 (“Cooperative Procurement”) specifically authorizes the Purchasing Agent to make such purchases based on an agreement or cooperative purchasing program entered into by a public agency, as defined by Government Code Section 6500, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that the underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City’s, and that the supplies or general services purchased must be the same and be offered at the same price as the supplies and general services subject to the agreement or program.

The City of Milpitas became a member of the National Joint Powers Alliance (NJPA), a cooperative purchasing organization, effective January 11, 2008. On March 18, 2015, NJPA solicited on behalf of its current and potential member agencies, and on behalf of the Lodi Unified School district, Request for Proposal (RFP) No. 010615 for “Office, School, and Other Workplace-Related Supplies and Services.” On August 1, 2015, the NJPA awarded contract No. 010615-SCC to Staples Contract and Commercial, Inc. (operating as Staples Advantage). The contract period runs from August 1, 2015 to August 1, 2020. On June 6, 2018, the NJPA changed its organization’s name to Sourcewell. All prior agreements entered into with the NJPA continue in full force and effect in accordance with their respective contract terms and conditions.

Sourcewell is a municipal contracting agency that operates as a public entity under legislative authority through Minnesota Statute 123A.21.Feb 24, 2017, which meets the definition of a public agency as defined by Government Code section 6500. Sourcewell was established with the statutory purpose to assist its members in meeting specific needs which are more effectively delivered cooperatively than by an individual entity. Sourcewell cooperative purchasing contracts are made available to its members through the Minnesota joint exercise of powers law. Sourcewell members outside of Minnesota may use its cooperative contracts under authority of joint powers or intergovernmental cooperation laws.

Although Staples' current agreement with NJPA (now Sourcewell) will expire on August 1, 2020, Staples agreed it will honor all terms and conditions of the subject Sourcewell Program Agreement with the City of Milpitas beyond the expiration date, per section 2.0, Term, of the Sourcewell Program Agreement.

Analysis:

On May 9, 2019 the City sent a Request for Information (RFI) to Office Depot and Staples, the two largest office supply dealers in the country. Purchasing compared terms and conditions, product offerings and pricing from both companies against one years' worth of actual purchases looking specifically at any item that was purchased three or more times, which represents the majority of purchases (78%) for the year. Pricing from Office Depot, equaled \$63,624. Staples pricing for the same list and quantity of items was \$59,259, or \$4,365 dollars less expensive. Over the proposed five-year contract this represents an estimated savings of \$21,825. Based on projected expenditures, the annual cost of the contract is \$145,000 with a five-year total contract amount of \$725,000. The initial term of the contract is from November 1, 2019 to October 31, 2020 with four (4) one (1) year options to renew. Staples also has the benefit of having a store located within a block from City Hall for unplanned or urgent purchases. Typically, City employees order office supplies online which are delivered within one to two business days.

The Purchasing Agent reviewed all the documentation from NJPA regarding the RFP and contract No. 010615-SCC and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City's, and that the price for the supplies is the same as that offered in the original contract.

Policy Alternative:

Alternative 1: Do not approve the Staples contract.

Pros: None.

Cons: The current Milpitas contract with Office Depot will expire on October 31, 2019, and the City will be without a contract for office supplies and forced to purchase in the open market. Without the benefit of a competitively bid national contract, the terms, conditions and pricing of office supplies could vary widely.

Reason not recommended: see Cons.

Fiscal Impact:

The annual cost of the contract is \$145,000, which will be paid from City departments' FY 2019/20 operating budgets as supplies are purchased subject to annual appropriations.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

Recommendation:

Adopt a Resolution Authorizing the City Manager to execute an Agreement with Staples Contract & Commercial LLC for office supplies through a Sourcewell Cooperative Procurement Agreement for a combined 60 months (5 years) maximum agreement amount of \$725,000, and authorizing the Purchasing Agent to exercise option years 1 through 4 without further action by City Council, except annual appropriation of funds..

Attachments:

Resolution
Sourcewell Program Agreement

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE THE SOURCEWELL PROGRAM AGREEMENT WITH STAPLES CONTRACT & COMMERCIAL, LLC, FOR OFFICE SUPPLIES THROUGH A COOPERATIVE PROCUREMENT CONTRACT WITH SOURCEWELL

WHEREAS, the City requires office supplies for the day-to-day operation of all City departments; and

WHEREAS, Municipal Code Section I-2-3.08 (“Cooperative Procurement”) specifically authorizes the Purchasing Agent to make such purchases based on an agreement or cooperative purchasing program entered into by a public agency, as defined by Government Code Section 6500, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that the underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City’s, and that the supplies or general services purchased must be the same and be offered at the same price as the supplies and general services subject to the agreement or program; and

WHEREAS, the City of Milpitas became a member of the National Joint Powers Alliance (NJPA) cooperative purchasing organization effective January 11, 2008, and is assigned member number 17931; and

WHEREAS, on March 18, 2015, the NJPA solicited on behalf of its current and potential member agencies, and on behalf of the Lodi Unified School District, Request for Proposal (RFP) No. 010615 for “Office, School, and Other Workplace-Related Supplies and Services.” As a result, on August 1, 2015, NJPA awarded contract No. 010615-SCC to Staples Contract and Commercial, Inc. (operating as Staples Business Advantage); and

WHEREAS, on June 6, 2018, the NJPA changed its organization’s name to Sourcwell, while confirming that all prior agreements entered into with NJPA continue in full force and effect in accordance with their respective contract terms and conditions; and

WHEREAS, Sourcwell is a municipal contracting agency that operates as a public entity under legislative authority through Minnesota Statute 123A.21.Feb 24, 2017, which meets the definition of a public agency as defined by California Government Code section 6500. Sourcwell was established with the statutory purpose to assist its members in meeting specific needs which are more effectively delivered cooperatively than by an individual entity. Sourcwell cooperative purchasing contracts are made available to its members through the Minnesota joint exercise of powers law. Sourcwell members outside of Minnesota may use its cooperative contracts under authority of joint powers or intergovernmental cooperation laws; and

WHEREAS, when the City enters into the Sourcwell Program Agreement (the “Agreement”) based on contract No. 010615-SCC with Staples Contract and Commercial, Inc., which runs from August 1, 2015 to August 1, 2020, the Agreement will extend beyond the termination of contract No. 010615-SCC per Section 2.0 Term, which states “Staples agrees to honor all terms and conditions set forth under the awarded contract even if at some time during the contract term Staples no longer holds a current contract with Sourcwell.”; and

WHEREAS, Sourcwell has made contract No. 010615-SCC for “Office, School, and Other Workplace-Related Supplies and Services” available through its cooperative purchasing organization to all of its public agency members; and

WHEREAS, pursuant to the Sourcwell Program Agreement between the City of Milpitas and Staples Contract and Commercial, Inc., the initial term of the Agreement is for one year from November 1, 2019 to October 31, 2020, with four (4) one (1) year options to renew thereafter, subject to annual operations. The first-year cost of the Agreement is not to exceed \$145,000.00 and the maximum 60-month (5 year) contract amount is \$725,000.00; and

WHEREAS, the Purchasing Agent has reviewed all the documentation related to RFP #010615 and contract No. 010615-SCC and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas, and that the supplies and general services purchased are the same and are offered at the same price as the supplies and general services as that offered in the original contract.

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

1. The City Council has duly considered the full record before it, which may include but is not limited to things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute the Sourcewell Program Agreement between the City of Milpitas and Staples Contract and Commercial, Inc., for the initial period of November 1, 2019 through October 31, 2020 for the not-to-exceed amount of \$145,000.00, a copy of which is attached hereto as **Exhibit A**.
3. The City Council hereby authorizes the Purchasing Agent to exercise option years 1 through 4 of the Sourcewell Program Agreement without further action by City Council, except for appropriation of funds.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

SOURCEWELL PROGRAM AGREEMENT

This Sourcewell, formerly NJPA, Program Agreement (“Program Agreement”) by and between **City of Milpitas** (“Buyer”) and **Staples Contract & Commercial LLC**, operating as Staples Business Advantage (“Staples”) is made effective as of November 1, 2019 (the Program Agreement Effective Date”) and is attached to and governed by the Sourcewell Agreement(s) of the Sourcewell Programs specifically marked and identified in Section 3.2 below (“Sourcewell Agreement(s)”) between Staples and Sourcewell. Buyer and Staples are collectively referred to herein as the “Parties”. All capitalized terms used herein shall have the meaning assigned to them in the Sourcewell Agreement unless otherwise defined herein.

WHEREAS, Buyer, a member of Sourcewell (as defined below), and Staples desire to enter into this Program Agreement pursuant to which Buyer may participate in the Sourcewell Program to purchase Products (as defined below).

NOW, THEREFORE, in consideration of the foregoing mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 Previous Program Agreement(s). The Parties acknowledge and agree that this Program Agreement shall replace and supersede any previous Program Agreement including any amendments attached thereto as of the Program Agreement Effective Date set forth above.

2.0 Term. The initial term of this Program Agreement shall be one (1) year from **November 1, 2019** to **October 31, 2020**. The Buyer reserves the right to extend this Program Agreement for four (4) one (1) year options exercisable at the Buyer’s sole discretion, not to exceed five (5) years in total. The Buyer may exercise the renewal options by written notice to Staples using **Exhibit 3 – Notice of Exercise of Option to Extend Agreement** attached hereto and incorporated herein by reference and sent no later than the last day of the current term. Staples agrees to honor all the terms and conditions as set forth under the Sourcewell Agreement even if, at some time during the current term, Staples no longer holds a current or valid contract with Sourcewell.

3.0 Definitions.

3.1 Sourcewell. Sourcewell, formerly NJPA, is public agency serving as a national government/education contracting agency. Sourcewell was created and organized under the “Service Cooperative” section of the Minnesota Statute, M.S. 123A.21. Sourcewell is governed by publicly elected officials while cooperatively serving all municipal and educational agencies nationally under the authority of the Minnesota Joint Exercise of Powers laws M.S. 471.59.

3.2 Sourcewell Supplies Program.

Office, school, and other workplace-related supplies and services offered for sale by Staples to Sourcewell members that are included in the Sourcewell national contract solution for the procurement of OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES pursuant to RFP award #010615-SCC as amended from time to time or any future equivalent IFB/RFP for office supplies awarded to Staples.

3.3 Products. All items included in the Sourcewell Program that Buyer purchases or may purchase from Staples Business Advantage.

4.0 Buyer Representations and Warranties. Buyer hereby represents and warrants that:

- 4.1 it is a governmental entity as defined in Minnesota Statute 471.59 or it is a nonpublic school administrative unit or non-profit eligible to participate in the Sourcewell Program pursuant to Minnesota Statute 123a.21;
- 4.2 it is a Sourcewell member and will maintain its Sourcewell membership during the Program Agreement Term;
- 4.3 it has the local legal ability to recognize and participate in joint exercise of powers activities under the applicable state and federal procurement laws; and
- 4.4 as a member of Sourcewell, Buyer may participate in the Sourcewell Program, provided, however, Buyer acknowledges that it (i) will be bound in all respects by the terms and conditions of the Sourcewell Agreement and terms and conditions of this Program Agreement

5.0 Prices. Prices for Products are available at the time of purchase on www.StaplesAdvantage.com or as otherwise provided by the Sourcewell Program.

6.0 Rebates.

- 6.1 Staples will pay Buyer the standard annual Sourcewell volume rebates as provided by the Sourcewell Program.
- 6.2 Payment of all discounts, incentives and/or rebates paid hereunder is contingent upon Buyer paying all invoices within the agreed-upon payment terms.

7.0 Conflict. In the event of conflict between this Program Agreement and the Sourcewell Agreement, the terms and conditions of this Program Agreement shall control.

8.0 Termination. Either Party may terminate this Program Agreement for any reason upon at least thirty (30) calendar days' prior written notice to the other Party.

9.0 Warranties. Staples warranties will be limited to Staples-branded products only, and for all other products, Staples will pass through to Buyer all manufacturer-supplied end-user warranties.

10.0 Secondary Core List Pricing. Staples agrees to supply to Buyer those office products and services as set forth in **Exhibit 1 – Secondary Core List** attached hereto at the prices set forth therein. Secondary Core List pricing will be held firm until December 31, 2019. Staples will meet with Buyer on a quarterly basis (or as otherwise necessary) during the term of this Program Agreement to review the products and services on the Secondary Core List. In addition, the products and services on the Secondary Core List, and the prices thereof, may be updated from time to time upon notification by Staples to Buyer (including via e-mail).

11.0 Terms and Conditions. Staples agrees to comply with each of the terms, conditions and obligations set forth in **Exhibit 2 – Terms and Conditions**, attached hereto and incorporated herein by this reference.

- 12.0 Compensation Maximums.** The amount paid from Buyer to Staples under this Program Agreement shall not exceed **One Hundred and Forty-Five Thousand Dollars and Zero Cents (\$145,000.00)** per year during the term of the Agreement.
- 13.0 INSURANCE** - Staples shall maintain Commercial General Liability, Automobile Liability and Workers' Compensation Insurance in accordance with Article G. CERTIFICATE OF INSURANCE section 6.21 through 6.26 of Request for Proposal #010615 attached hereto as Exhibit 4 and incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Program Agreement under seal as of the Program Agreement Effective Date.

City of Milpitas

By its authorized agent:

(Signature)

Name: _____

Title: _____

Date: _____

Address for Notices:

ATTN: _____

Telephone: _____

Facsimile: _____

Email: _____

STAPLES CONTRACT & COMMERCIAL LLC

By its authorized agent:

(Signature)

Name: Mike Guon

Title: Region Vice President

Date: Aug 28, 2019

Address for Notices:

Staples Contract & Commercial LLC
500 Staples Drive
Framingham, MA 01702

ATTN: _____

Telephone: _____

Facsimile: _____

Email: _____

with a copy to: General Counsel (Ref:)

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved As To Scope:

Walter Rossmann
Director of Finance

Approved As To Content:

Chris Schroeder
Purchasing Agent

EXHIBIT 1
Pricing

Seq Num	Item Number	Description	Min Sell Uom	Proposed Price In Staples Uom
1	492072	SPLS 8.5X11 30% REC COPY CS	CT	\$ 42.81
2	905692	HP 650A BLK CARTRIDGE	EA	\$ 213.65
3	163865	STPLS PAD PERF LTR WH 12PK	DZ	\$ 4.56
4	125328	SHARPIE FINE PERM BLACK 12/DZ	DZ	\$ 5.48
5	905693	HP 650A CYAN CARTRIDGE	EA	\$ 368.55
6	927589	HP 90A BLACK TONER CART	EA	\$ 147.27
7	1878689	HP 410A BLACK TONER CARTRIDGE	EA	\$ 76.49
8	923273	10 PK FACIAL TISSUE 100/BX	PK	\$ 13.55
9	126987	SPLS 8.5X14 COPY CS	CT	\$ 63.11
10	116657	STPLS 3TAB FF LTR MANILA 100PK	BX	\$ 4.27
11	24323890	CORRECTION TAPE MINI 6 PK ASST	PK	\$ 2.38
12	105791	STICKIES1.38X1.88RECYLW12PK	DZ	\$ 1.04
13	905712	HP 650A YELLOW CARTRIDGE	EA	\$ 368.55
14	2518072	KCUP DUNKIN DONUTS ORIG 24BX	BX	\$ 12.99
15	374812	2IN WHITE VIEW BINDER	EA	\$ 2.71
16	176511	2 1/4INX130 ADDING MACHINE RLS	DZ	\$ 2.81
17	712196	SPLS ELECTRONICS DUSTER 10OZ	EA	\$ 2.28
18	905711	HP 650A MAGENTA TONER CART	EA	\$ 368.55
19	683879	IN LINE DOCUMENT HOLDER	EA	\$ 39.77
20	377179	LABELS ADDRESS LABELWRITER-WE	BX	\$ 14.83
21	595558	P&G DAWN DISHWASH LIQUID 38OZ	EA	\$ 4.98
22	962485	BIODEGRADABLE HOT CUP 12OZ	PK	\$ 3.50
23	105825	STICKIES 3X5 REC YLW 12PK	DZ	\$ 2.81
24	486955	SIMPLY NOTES 3X3 YELLOW 18PK	PK	\$ 2.70
25	2796207	2019 DESKPAD 22X17	EA	\$ 3.18
26	830053	HP 648A TONER MAGENTA	EA	\$ 254.00
27	905709	HP 307A BLACK TONER	EA	\$ 157.55
29	658923	PILOT PRECISE RT RB BLK 12PK	DZ	\$ 15.75
30	648102	PILOT G2 RETRACT GEL BOLD BK DZ	DZ	\$ 10.99
31	686440	ALLI RUBBER BAND SIZE 64 BX10	BX	\$ 5.31
32	483018	BIC WITE-OUT CORECTION TAPE 10	PK	\$ 11.99
33	462788	WORKSAVER 5 TAB CLEAR	ST	\$ 0.85
34	502850	BIC WITE-OUT EXACT LNR TAPE 4	PK	\$ 7.68
35	867474	BATTERY AA ALKALINE 24PK	PK	\$ 13.99
36	236240	SUGAR 20 OZ 3 PK	PK	\$ 4.17
37	395200	STPLS 144CT MED.BINDER CLIPS	PK	\$ 4.96
38	125369	SHARPIE MARKER FINE RED DZ	DZ	\$ 5.38
39	472506	STAPLES JMB PPR CLP 1000CT	PK	\$ 0.53
40	187021	CLASP ENV BRN KRAFT 9X12 -100	BX	\$ 6.63
41	505263	SCISSOR STRAIGHT GENERAL 8 BK	EA	\$ 0.84
42	120741	EXPO DRY ERASE CLEANER	EA	\$ 2.22
43	817196	TAPE DSPR DESK 1 CORE BLACK EA	EA	\$ 2.40
44	382955	MOUSE PAD BLACK	EA	\$ 0.60
45	830056	HP 648A CYAN TONER CART	EA	\$ 254.00
46	830051	HP 648A YELLOW TONER CART	EA	\$ 254.00
47	1585355	HP 508A LASERJET TONR CART BLK	EA	\$ 153.81
48	24316180	HP 48A BLACK TONER	EA	\$ 49.99
49	830188	HP 647A BLACK TONER	EA	\$ 140.14
50	1440263	STRBCKS BRKFST BLEND KCUP 24/C	BX	\$ 15.99
51	808298	TISSUE FACIAL KLEENEX 2PLY	CT	\$ 41.18

52	917881	BROTHER TZE-2312PK 12MM BKWHT	PK	\$	21.47
53	1231064	PAPER MATE PROFILE 36-CT BLACK	PK	\$	24.38
54	514249	PEN GEL RT MED BLACK	DZ	\$	12.13
55	430729	PILOT G-2 RT GEL XFN BLK DZ	DZ	\$	10.99
56	425948	STPL FACIAL FLT MLTPK 48PK	CT	\$	42.22
57	559215	UNIBALL 207 GEL RT BLK DZ	DZ	\$	13.76
58	163485	STPLS PAD STENO GREGG GRN 12CT	DZ	\$	6.64
59	812295	WALL CLOCK 14 IN PLASTIC ROUND	EA	\$	12.73
60	384286	READY INDEX 8 TAB 6 PACK	PK	\$	11.39
61	496791	#65 CARDSTOCK	PK	\$	10.62
62	887317	360 CATER PACK - WHITE PS	PK	\$	7.54
63	642736	SHARPIE MKR ULTRA FN BLK DZ	DZ	\$	6.81
64	163840	STPLS PAD PERF LTR CAN 12PK	DZ	\$	6.33
65	488665	SARASA BOLD BLUE	DZ	\$	10.42
66	490948	PASTELS 8.5X11 CANARY PAPER RM	RM	\$	5.00
67	412770	N JOY 20OZ PURE CANE SUGAR	EA	\$	1.40
68	565448	STICKIES 3X3 POP BRIGHT 6PK	PK	\$	3.16
69	821596	LID DOME 12-16 OZ HOT CUP W	PK	\$	2.18
70	504308	STAPLER METAL FULL BK	EA	\$	4.56
71	504274	STAPLER DESKTOP BLACK 545	EA	\$	6.86
72	272153	EXPO ERASER EA	EA	\$	2.01
73	951059	CLAW STAPLE REMOVER	EA	\$	0.28
74	423877	HP 305A YELLOW TONER CARTRIDGE	EA	\$	102.11
75	423879	HP 305A BLACK TONER CARTRIDGE	EA	\$	71.66
76	2472422	STP REMN HP950XLBLK/951CMY 4PK	PK	\$	71.37
77	108230	HP 950XL HYBLK/951 CMY CLR 4PK	PK	\$	106.01
78	513096	SPLS 8.5X11 MULTIUSE 20/96 CS	CT	\$	47.15
79	502582	FOLDER CLASSIFICATION 6 SEC GR	BX	\$	38.55
80	683665	PROF SERIES BACK SUPPORT	EA	\$	46.31
81	806630	INKJT CD LBL MATTE WHITE 40/PK	PK	\$	10.65
82	719413	KCUP GM NANTUCKET BLEND 24BX	BX	\$	12.99
83	917889	BROTHER TZE-335 12MM WHT ON BK	EA	\$	14.29
84	2658099	SPLS ERGO TWIN DUAL MONITOR ST	EA	\$	62.99
85	268713	ADESSO IMOUSEG2IC WRLS MOUSE	EA	\$	25.78
86	116657	STPLS 3TAB FF LTR MANILA 100PK	BX	\$	4.27
87	639712	PENTEL ENERGEL RTX .7MM	DZ	\$	19.95
88	479609	DISC CDR 52X 80MIN 100SP	EA	\$	15.65
89	875429	SPLS 3TAB FLDR LTR ASST 100	BX	\$	10.26
90	910546	CREAMER FRENCH VANILLA 180BX	BX	\$	19.99
91	164208	LYSOL DISFT WIPES LMN/LM80-3PK	PK	\$	13.23
92	385581	LABEL ADDRESS WHT 2 ROLLS/130	BX	\$	7.35
93	827999	PAD STENO PTMAN RULD 6X9	EA	\$	1.98
94	24345785	2020 AAG WALL CAL ERAS 24 X 36	EA	\$	32.37
95	2715970	STAMP DATER ECON SI	EA	\$	14.69
96	374815	1 IN WHITE BASIC BINDER	EA	\$	1.80
97	938392	PLUSH TOUCH MOUSEPAD WRISTREST	EA	\$	10.18
98	609710	ZEBRA Z-GRIP RT BP MED BLK 24	PK	\$	7.74
99	844290	POST-IT .5IN SIGN HERE AST 4PK	PK	\$	4.52
100	318865	POST-IT PURPLE TAPE FLAGS 2PK	PK	\$	3.57
101	2072175	HYPE TANK CHISEL ASST 12PK	PK	\$	2.36
102	385323	POST-IT 3X3 POP SS LND CNRY 6	PK	\$	6.63
103	129957	POST-IT 1 3/8 X 1 7/8CNRY 12PK	DZ	\$	4.11
104	464682	BINDER CLIP MINI ASST COLORS	PK	\$	1.88
105	808592	STAPLES RUBBERBANDS #19/1-LB	PK	\$	1.80
106	567885	C60 TAPE DISPENSER SILVER	EA	\$	4.37
107	423878	HP 305A CYAN TONER CART	EA	\$	102.11

108	423887	HP 305A MAGENTA TONER CART	EA	\$	102.11
109	2596065	HP 410A CMY TN 3PK	PK	\$	299.52
110	1585351	HP 508A LASERJET TNR CART MAGT	EA	\$	207.99
111	1585353	HP 508A LASERJET TNR CART CYAN	EA	\$	207.99
112	1585350	HP 508A LASERJET TNR CART YELO	EA	\$	207.99
113	905708	HP 307A CYAN TONER CART	EA	\$	278.24
114	905704	HP 307A MAGENTA TONER	EA	\$	278.24
115	905706	HP 307A YELLOW TONER CART	EA	\$	278.24
116	1878760	HP 410A YELLOW TONER CARTRIDGE	EA	\$	98.79
117	2596065	HP 410A CMY TN 3PK	PK	\$	299.52
118	1142456	1/6 X 394 MONO CORRECTION TAPE	PK	\$	18.19
119	581761	SPLS 11X17 30% REC COPY CS	CT	\$	50.40
120	2516934	KCUP DUNKIN DONUTS DARK 24BX	BX	\$	12.99
121	819333	NATURALS FACIAL TISSUE	CT	\$	49.80
122	328425	ULTRA PAPER PLATES 10 1/16 INC	PK	\$	18.40
123	514469	VICTOR 1560-6 PRINTING CALC	EA	\$	206.99
124	677045	HOT SPLS LAM POUCH LTR 3MIL 50	PK	\$	2.86
125	100079	CENTON DATASTICK PRO MULTI-PK	PK	\$	59.99
126	815929	WIPE DISINFCT FRESH SCENT	CT	\$	33.14
127	515882	RUBBERBANDS PREM 1LB #64	BX	\$	2.52
128	369691	LOGITECH M510 WIRELESS MSE BLU	EA	\$	19.95
129	791403	SEB REMANHP 12A BLACK TONER	EA	\$	35.87
130	624182	VERBATIM DVD-R 4.7GB 16X	EA	\$	40.19
131	100688	KCUP STARBCKS PIKE PLACE 24BX	BX	\$	15.99
132	535039	ENV CLASP BRWN KRT 11.5X14.5	BX	\$	14.85
133	357715	6 COMP VERT. FILE BLK	EA	\$	14.39
134	738006	MAGIC REMOVE TAPE .75X1296 2PK	PK	\$	6.48
135	656503	HP 642A YELLOW TONER	EA	\$	283.16
136	656505	HP 642A MAGENTA TONER	EA	\$	283.16
137	572049	FLAGS POST-IT 1IN BLUE-12 PACK	BX	\$	26.42
138	562896	POST-IT SUPER STICKY NOTES	PK	\$	10.67
139	464050	BATTERY ALKALINE AA 36PK	PK	\$	18.19
140	074326	PHONEKLEEN	BX	\$	20.49
141	24345870	2020 PLANAMTH MTH WAL 12X27	EA	\$	21.95
142	408775	CREST CERTIFICATION HOLDERS	PK	\$	4.25
143	328422	ULTRALUX 6 7/8 INCH PAPER PLAT	PK	\$	6.81
144	512669	POST-IT 1IN FLAGS YELLOW 12PK	BX	\$	26.42
145	470833	VINYL OPEN BIFOLD WRITING PAD	EA	\$	17.79
146	599339	POST-IT(R) FLAGS	PK	\$	10.46
147	712332	SPLS ELECTRONICS DUSTER 10 2PK	PK	\$	17.59
148	676701	BROTHER 1/2 BLK/WHITE 2PK TAPE	PK	\$	16.02
149	394617	30 PIECE TOOL KIT	ST	\$	50.29
150	554359	EXPO LO CHISEL ASSORTED 12PK	PK	\$	10.03
151	867473	BATTERY AAA ALKALINE 24PK	PK	\$	13.99
152	648103	PILOT G2 RETRCT GEL BOLD BE DZ	DZ	\$	10.99
153	486330	STAPLES STD SHEET PROT-200CT	BX	\$	7.59
154	828116	FILE PKT LTR 5.25 EXP	BX	\$	22.39
155	101534	EXAM GLOVE LTX PFREE LG 100/BX	BX	\$	5.51
156	901513	STAPLER LIGHT TOUCH 2-20 SHT F	EA	\$	14.28
157	744907	OVAL PENCIL CUP MESH BK	EA	\$	11.49
158	478407	CUP HOT PERFECT TOUCH 16 OZ	PK	\$	4.96
159	572070	PEN PRECISE GRIP BOLD BLUE	DZ	\$	18.84
160	520149	SELF-INKING 20ML RED	EA	\$	3.50
161	824874	PURELL ALOE HD SNTZR 8OZ	EA	\$	3.79
162	477937	ULTRA FINE-POINT MARKERS	DZ	\$	6.81
163	2537641	SWINGLINE TOT STAPLER 12SH	EA	\$	3.99

164	424575	PILOT G2 RT FINE BLU 12	DZ	\$	10.99
165	562896	POST-IT SUPER STICKY NOTES	PK	\$	10.67
166	045998	PEN 1MM BOLD BLACK DOZEN	DZ	\$	11.56
167	683908	GEL MOUSEPAD WRISTREST/LARGE	EA	\$	18.92
168	917860	P-TOUCH TAPE 1/2IN BLK/WHT	EA	\$	9.83
169	706811	JACKET FILE HANGING 5PK	PK	\$	10.87
170	472514	STAPLES JMB PPR CLP N/S 1000CT	PK	\$	5.61
171	329399	MAGIC GREENER TAPE 3/4IN X 600	PK	\$	10.73
172	885271	POST-IT GREENER 3X3 SUN P12PK	PK	\$	13.80
173	474335	EXPO2 8 COLOR SET	PK	\$	7.28
174	480114	STAPLES SML BINDER CLP 144CT	PK	\$	1.80
175	610317	BIGELOW GREEN TEA 28/BOX	BX	\$	3.47
176	831610	STAPLES LGE BINDERCLIPS 12CT	PK	\$	0.96
177	292995	1ST POSITION LEGAL FOLDERS	BX	\$	18.04
178	154120	STPLS PAD GLUE LTR WH 12PK	DZ	\$	5.13
179	509906	FILE RUBBER BANDS 7X1/8 AST	PK	\$	3.73
180	051165	HI-LITER 25025 BROAD TIP F/YE	DZ	\$	7.58
181	2072180	REMARX CHISEL BLK 12PK	DZ	\$	6.47
182	493907	STAPLES HVY DUTY SPOON 100/BX	BX	\$	2.39
183	584878	POSTIT 1/2FLAGS AST CLRS 280PK	PK	\$	10.86
184	920274	SELF-INK RECEIVED W/DATE STAMP	EA	\$	5.56
185	480117	STAPLES 500CT PUSH PNS CLR	PK	\$	1.78
186	377022	CORRECTION PEN FINE .24 WE	EA	\$	2.50
187	1798845	FASTENER SELF ADHESIVE 2.75X2	PK	\$	4.23
188	225103	MESH PENCIL CUP BLACK	EA	\$	0.79
189	117796	SPLS 2IN TABS+INSRTS CLR 25	PK	\$	1.97
190	229690	ACME 3PK SCISSORS	PK	\$	1.93
191	187039	CLASP ENV BRN KRAFT 10X13 -100	BX	\$	8.78
192	571590	PEN GEL RT MD BK ORBITZ	DZ	\$	7.89
193	501296	HIGHLIGHTER 4009 CHISEL PNK	DZ	\$	3.92
194	815014	LETTER OPENER PLAS RZR 2PK	PK	\$	1.06
195	504712	TAPE HIGHLAND INV REF .75X1296	RL	\$	1.08
196	913154	HYGIENIC SORTKWK 1-3/4 OZ/2PK	PK	\$	5.79
197	324791	8.5X11 COPY PAPER CS IP	CT	\$	34.99

EXHIBIT 2

TERMS AND CONDITIONS

1. **PAYMENT** – Invoices will be paid within thirty days after receipt and acceptance of goods or completion and acceptance of services.
2. **PACKING AND SHIPPING** – No charges will be allowed for boxing, wrapping or cartage unless so specified in writing by the Buyer. Staples shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carrier's requirements and safeguard against damage from weather and transportation. Staples shall mark the purchase order number on each container and enclose a packing slip with the order number in an envelope on each container.
3. **TITLE AND RISK OF LOSS** – Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by the Staples to the Buyer shall pass to the Buyer at the F.O.B. point designated on the face of this order. Cost of all return shipments for

defective products shall be borne by the Staples with title and risk passing at the Buyer's facility.

4. **DELIVERY** – Time is of the essence. Delivery must be affected within the time stated on the purchase order and shall not be made later or substantially earlier than the dates shown. If items are delivered substantially in advance of scheduled delivery dates, the Buyer may return them at the Staples's expense. Unless failure to meet delivery schedule is due to causes beyond the Staples's control, the Buyer may terminate an order without liability and may purchase elsewhere.
5. **ASSIGNMENTS** – This Program Agreement shall not be assigned in any manner by either Party nor shall a subcontract be made with any other party for the furnishing of any of the completed substantially completed articles, items, spare parts, work or services covered by this Program Agreement without the Buyer's prior written consent. For the purpose of this Program Agreement, Staples, without obtaining written consent from Buyer, may subcontract duties to those subcontractors who are generally involved in the day-to-day business operations of Staples, including, but not limited to, third-party logistics vendors, delivery carriers, and customer service providers.
6. **TAXES** – All Federal, State or local taxes of any nature which are paid by the Staples and billed or passed on to the Buyer as part of the price for this Program Agreement shall be stated separately and clearly designated as such in the Staples's invoices.
7. **LIENS** – All items to be delivered hereunder shall be free and clear of any and all liens and encumbrances whatsoever.
8. **COMPLIANCE WITH LAWS** – The Staples shall in the performance of this Agreement comply with all applicable Federal, State and local laws, government orders and regulations.
9. **WAIVERS** – The failure of the Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Program Agreement, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of the Staples with respect to such future performance shall continue in full force and effect.
10. **INDEMNIFICATION** – Staples shall indemnify and hold harmless Buyer, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of Staples or sub-contractors for wages or benefits which arise in connection with the sale, delivery and/or installation of equipment or materials, except to the extent caused or resulting from the negligence or willful misconduct of Buyer. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to Buyer and Buyer's attorneys' fees incurred in such an action.

EXHIBIT 3**NOTICE OF EXERCISE OF OPTION TO EXTEND PROGRAM AGREEMENT**

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

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

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

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change upon which adjustment is based:	N/A
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Pursuant to the Terms and Conditions of the Program Agreement the Rate of Compensation is hereby adjusted as follows:

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

City of Milpitas a municipal corporation By _____ Name: Chris Schroeder Title: Purchasing Agent	Staples By _____ Name: Title:
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EXHIBIT 4

EXHIBIT 4
REQUEST FOR PROPOSAL
#010615



National Joint Powers Alliance® and the Lodi, CA Unified School District

REQUEST FOR PROPOSAL

for the procurement of OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES

RFP Opening

JANUARY 7, 2015

8:00 a.m. Central Time

At the offices of the

National Joint Powers Alliance®

202 12th Street Northeast, Staples, MN 56479

RFP #010615

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies (which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally), and the Lodi, California Unified School District, issue this Request For Proposal (RFP) to result in a national contract solution for the procurement of #010615 OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES. Details of this RFP are available beginning NOVEMBER 21, 2014. Details may be obtained by letter of request to Jonathan Yahn, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until JANUARY 6, 2015 at 4:30 p.m. Central Time at the above address and opened JANUARY 7, 2015 at 8:00 a.m. Central Time.

NOVEMBER 20, 2014

RFP Timeline

Publication of RFP in the print and online version of the Minneapolis *Star Tribune*, in the print and online version of the *USA Today*, in the print version of the *Lodi News-Sentinel*, in the print and online version of the *Salt Lake News* within the State of Utah, in the print and online version of the *Daily Journal of Commerce* within the State of Oregon (note: OR entities this pertains to: <http://www.njpacoop.org/oregon-advertising>), in the print and online version of *The State* within the State of South Carolina, the NJPA website, MERX, Noticetobidders.com, PublicPurchase.com, Biddingo, and Onvia.

DECEMBER 15, 2014 10:00 a.m. Central Time

Pre-Proposal Conference (the webcast/conference call. The connection information will be sent to all inquirers two business days before the conference).

DECEMBER 30, 2014 JANUARY 6, 2015 4:30 p.m. Central Time JANUARY 7, 2015 8:00 a.m. Central Time

Deadline for RFP questions.

Deadline for Submission of Proposals. Late responses will be returned unopened.

Public Opening of Proposals.

Direct questions regarding this RFP to: Jonathan Yahn at jonathan.yahn@njpacoop.org or (218)895-4144.

TABLE OF CONTENTS

1. DEFINITIONS	L. Shipping Requesting Pricing Changes
A. Contract	6. EVALUATION OF PROPOSALS
B. Currency	A. Proposal Evaluation Process
C. Exclusive Vendor	B. Proposer Responsiveness
D. FOB	C. Proposal Evaluation Criteria
E. Hub Partner	D. Other Consideration
F. Proposer	E. Cost Comparison
G. Request for Proposal	F. Marketing Plan
H. Sourced Goods	G. Certificate Of Insurance
I. Time	H. Order Process and/or Funds Flow
J. Total Cost of Acquisition	I. Administrative Fees
K. Vendor	J. Value Added
2. ADVERTISEMENT OF RFP\	K. Waiver of Formalities
3. INTRODUCTION	7. POST AWARD OPERATING ISSUES
A. About NJPA	A. Subsequent Agreements
B. Joint Exercise of Powers Laws	B. NJPA Member Sign-up Procedure
C. Why Respond to a National Cooperative Procurement Contract	C. Reporting of Sales Activity
D. The Intent of This RFP	D. Audits
E. Scope of This RFP	E. Hub Partner
F. Expectations for Equipment/Products and Services Being Proposed	F. Trade-Ins
G. Solutions Based Solicitation	G. Out of Stock Notification
4. INSTRUCTIONS FOR PREPARING YOUR PROPOSAL	H. Termination of a Contract resulting from this RFP
A. Inquiry Period	8. GENERAL TERMS AND CONDIITONS
B. Pre-Proposal Conference	A. Advertising a Contract Resulting From This RFP
C. Identification of Key Personnel	B. Applicable Law
D. Proposer's Exceptions to Terms and Conditions	C. Assignment of Contract
E. Proposal Format	D. List of Proposers
F. Questions & Answers About This RFP	E. Captions, Headings, and Illustrations
G. Modification or Withdrawal of a Submitted Proposal	F. Data Practices
H. Proposal Opening Procedure	G. Entire Agreement
I. NJPA's Rights Reserved	H. Force Majeure
5. PRICING	I. Gratuities
A. Line-Item Pricing	J. Hazardous Substances
B. Percentage Discount From Catalog or Category	K. Licenses
C. Cost Plus a Percentage of Cost	L. Material Suppliers and Sub-Contractors
D. Hot List Pricing	M. Non-Wavier of Rights
E. Ceiling Price	N. Protests of Awards Made
F. Volume Price Discounts/ Additional Quantities	O. Suspension or Disbarment Status
G. Total Cost of Acquisition	P. Affirmative Action and Immigration Status Certification
H. Sourced Equipment/Products/ Open Market Items	Q. Severability
I. Price and Product Changes	R. Relationship of Parties
J. Payment Terms	9. FORMS
K. Sales Tax	10. PRE-SUBMISSION CHECKLIST
	11. PRICE & PRODUCT CHANGE REQUEST FORM
	12. APPENDIX A

1 DEFINITIONS

A. CONTRACT

“Contract” as used herein shall consist of: this RFP, pricing, fully executed forms C, D, F & P from the Proposer’s response pursuant to this RFP, and a fully executed form E (“Acceptance and Award”) with final terms and conditions. Form E will be executed on or after award and will provide final clarification of terms and conditions of the award.

B. CURRENCY

All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

C. EXCLUSIVE VENDOR

A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members nationally. A Proposer that exhibits and demonstrates the ability to offer and execute an outstanding overall program, demonstrates the ability and willingness to serve NJPA current and qualifying Members in all 50 states and comply with all other requirements of this RFP, is preferred.

D. FOB

FOB stands for “Freight On Board” and defines the point at which responsibility for loss and damage of product/equipment purchased is transferred from Seller to Buyer. “FOB Destination” defines that transfer of responsibility for loss is transferred from Seller to Buyer at the Buyer’s designated delivery point. FOB does not identify who is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

E. HUB PARTNER

An organization that a member requests to be served through with an Awarded Vendor for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction.

F. PROPOSER

A company, person, or entity delivering a timely response to this RFP.

G. REQUEST FOR PROPOSAL

Herein referred to as RFP.

H. SOURCED GOODS

A Sourced Good or Open Market Item is a product within the RFP’s scope - generally deemed incidental to the total transaction or purchase of contract items - which a member wants to buy under contract from an Awarded Vendor that is not currently available under the Vendor’s NJPA contract.

I. TIME

Periods of time, stated as number of days, shall be in calendar days.

J. TOTAL COST OF ACQUISITION

The Total Cost of Acquisition for the equipment/products and related services being proposed is the cost of the proposed equipment/products and related services delivered and operational for its intended purpose in the end-user’s location.

K. VENDOR

A Proposer whose response has been awarded a contract pursuant to this RFP.

2 ADVERTISEMENT OF RFP

2.1 NJPA shall advertise this solicitation: 1) for two consecutive weeks in both the hard copy print and on-line editions of the *Minneapolis Star Tribune*; 2) once each in Oregon's *Daily Journal of Commerce*, South Carolina's *The State* and Utah's *Salt Lake Tribune*; 3) on NJPA's website; 4) in the hard copy print and online editions of the *USA Today*; 5) in the hard copy print edition of the *Lodi News-Sentinel*, and 6) on other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia, PublicPurchase.com, MERX and Biddingo.

2.2 NJPA also notifies and provides solicitation documentation to each State level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

3 INTRODUCTION

A. ABOUT NJPA

3.1 The National Joint Powers Alliance® (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.

3.2 Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at www.njpacoop.org.

3.3 NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors calls for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.

3.3.1 Subject to Approval of the NJPA Board: NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.

3.4 NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

B. JOINT EXERCISE OF POWERS LAWS

3.5 NJPA cooperatively shares those contracts with its Members nationwide through various Joint Exercise of Powers Laws or Cooperative Purchasing Statutes established in Minnesota, other States and Canadian Provinces. The Minnesota Joint Exercise of Powers Law is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/national-cooperative-contract-solutions/legal-authority/>.

C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

3.6 National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:

3.6.1 National cooperative contracts potentially save the time and effort of Municipal and Public Agencies who would have been otherwise charged with soliciting vendor responses to individual RFP's, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond to each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same equipment/products/services that might have been otherwise advertised by individual NJPA member agencies.

3.6.2 NJPA contracts offer our Members nationally leveraged volume purchasing discounts. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

3.7 State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

3.8 The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

3.9 NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

D. THE INTENT OF THIS RFP

3.10. National contract awarded by the NJPA Board of Directors: NJPA seeks the most responsive and responsible Vendor relationship(s) to reflect the best interests of NJPA and its Member agencies. Through a competitive proposal and evaluation process, the NJPA Proposal Evaluation Committee reviews and recommends vendors for to award a national contract by the action of the NJPA Board of Directors. NJPA's primary intent is to establish and provide a national cooperative procurement contract which offer opportunities for NJPA and our Member agencies to procure quality product/equipment and services as desired and needed. The contracts will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

3.11 Beyond our primary intent, NJPA further desires to:

3.11.1 Award a four year term contract with a fifth year contract option resulting from this RFP;

3.11.2 Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP

3.11.3 Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";

3.11.4 Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.

3.11.5 Award an exclusive contract to the most responsive and responsible vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies

3.12 Exclusive or Multiple Awards: Based on the goals and scope of this RFP, NJPA is requesting responders to demonstrate their ability to serve the needs of NJPA's national membership. It is NJPA's intent and desire to award a contract to a single exclusive Vendor to serve our membership's needs. To meet the goals of this RFP, NJPA reserves the right to award a Contract to multiple Proposers where the result justifies a multiple award and multiple contracts are deemed to be in the best interests of NJPA Member agencies.

3.13 Non-Manufacturer Awards: NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

3.14 Manufacturer as a Proposer: If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer's authorized Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

3.15 Dealer/Re-seller as a Proposer: If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer's authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

E. SCOPE OF THIS RFP

3.16 Scope: The scope of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive and responsible through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES.

3.17 Additional Scope Definitions: For purposes of the scope of this solicitation:

3.17.1 In addition to OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES, **this solicitation should be read to INCLUDE:**

3.17.1.1 OFFICE SUPPLIES, CLASSROOM SUPPLIES, BREAKROOM SUPPLIES, AND TRANSACTIONAL FURNITURE.

3.17.2 NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

3.17.2.1 This solicitation should be read to **EXCLUDE CONTRACT FURNITURE.**

3.18 Overlap of Scope: When considering equipment/products/services, or groups of equipment/products/services submitted as a part of your response, and whether inclusion of such will fall within a “Scope of Proposal,” please consider the validity of an inverse statement.

3.18.1 For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.

3.18.2 In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.

3.18.3 In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original “Scope” as intended by NJPA.

3.19 Best and Most Responsive – Responsible Proposer: It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer’s Response has been submitted in accordance with the requirements of this RFP. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP.

3.20 Sealed Proposals: NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

3.21 Use of Contract: Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like equipment/products and services solely from this contract or from another contract source of their choice or from a contract resulting from their own procurement process.

3.22 Awarded Vendor’s interest in a contract resulting from this RFP: Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as “contract compliant,” products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

3.23 Sole Source of Responsibility- NJPA desires a “Sole Source of Responsibility” Vendor. This means the Vendor will take sole responsibility for the performance of delivered equipment/products/ services. NJPA also desires sole responsibility with regard to:

3.23.1 Scope of Equipment/Products/Services: NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

3.23.2 Vendor use of sub-contractors in sourcing or delivering equipment/product/services: NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the equipment/products/services being proposed. Vendor assumes all responsibility for the equipment/products/services and actions of any such Sub-Contractor. Suggested Solutions Options include:

3.24.1 Multiple solutions to the needs of NJPA and NJPA Members are possible. Examples include:

3.24.1.1 Equipment/Products Only Solution: Equipment/Products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

3.24.1.2 Turn-Key Solutions: A Turn-Key Solution is a combination of equipment/products and services which provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

3.24.1.3 Good, Better, Best: Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Members' needs.

3.24.1.4 Proven – Accepted – Leading Edge Technology: Where appropriate and properly identified, Proposers are invited to provide an appropriate identified spectrum of technology solutions to compliment or enhance the functionality of the proposed solutions to NJPA and NJPA Members' needs both now and into the future.

3.24.2 If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

3.25 Geographic Area to be Proposed: This RFP invites proposals to provide OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.

3.26 Contract Term: At NJPA's option a contract resulting from this RFP will become effective either the date awarded by the NJPA Board of Directors or the day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

3.26.1 NJPA is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. However, one additional one-year renewal/extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members. NJPA reserves the right to conduct periodic business reviews throughout the term of the contract.

3.27 Minimum Contract Value: NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract. During the past year the purchase volume under this category award exceeded \$200,000,000.

3.28 Estimated Contract Volume: Estimated quantities and sales volume are based on potential us NJPA and NJPA Member agencies nationally.

3.29 Contract Availability: This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

3.30 Proposer's Commitment Period: In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

3.31 Industry Standards: Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

3.31.1 Deviations from industry standards must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

3.31.2 Technical Descriptions/Specifications. Excessive technical descriptions and specifications which, in the opinion of NJPA unduly enlarge the proposal response may reduce evaluation points awarded on Form G. Proposers must supply sufficient information to:

3.31.2.1 demonstrate the Proposer's knowledge of industry standards;

3.31.2.2 identify the equipment/products and services being proposed; and

3.31.2.3 differentiate equipment/products and services from others.

3.32 New Current Model Equipment/Products: Proposals submitted shall be for new, current model equipment/products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

3.33 Compliance with laws and standards: All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

3.34 Delivered and operational: Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

3.35 Warranty: The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

3.36 Additional Warrants: The Proposer warrants all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the ordinary use for which they are intended.

G. SOLUTIONS BASED SOLICITATION

3.37 NJPA solicitations and contract process will not offer specific specifications for proposers to meet or base your response on. This RFP is a “Solutions Based Solicitation.” This means the proposers are asked to understand and anticipate the current and future needs of NJPA and the nationally located NJPA membership base, within the scope of this RFP, and including specifications commonly desired or required by law or industry standards. Your proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

3.38 NJPA does not typically provide product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested product/equipment and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer’s “Solution” to NJPA and NJPA Members’ needs.

4 INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

A. INQUIRY PERIOD

4.1 The inquiry period shall begin at the date of first advertisement and continue to the “Deadline for Requests.” RFP packages shall be distributed to Potential Bidders during the inquiry period. The purpose for the defined “Inquiry Period” is to ensure proposers have enough time to complete and deliver the proposal to our office.

B. PRE-PROPOSAL CONFERENCE

4.2 A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP and hear answers to their own questions and the questions of other Potential Proposers. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.

C. IDENTIFICATION OF KEY PERSONNEL

4.3 Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

4.4 Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

D. PROPOSER’S EXCEPTIONS TO TERMS AND CONDITIONS

4.5 Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

4.6 Exceptions, deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

E. PROPOSAL FORMAT

4.7 It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

4.8 All proposals must be properly labeled and sent to "The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479."

4.9 Format for proposal response: All proposals must be physically delivered to NJPA at the above address in the following form and with all required hard copy documents and signature forms/pages inserted as loose pages at the front of the Vendor's response:

4.9.1 Hard copy original signed, completed, and dated forms C, D, F and hard copy signed signature page only from forms A and P from this RFP;

4.9.2 Hard copies of all addenda issued for the RFP with original counter signed by the Proposer;

4.9.3 Hard copy of Certificate of Insurance verifying the coverage identified in this RFP; and

4.9.4 A complete copy of your response on a CD (Compact Disc) or flash drive. The copy shall contain completed Forms A, B, C, D, F & P, your statement of products and pricing (including apparent discount) together with all appropriate attachments. Everything you send with your hard copy should also be included in the electronic copy. As a public agency, NJPA proposals, responses and awarded contracts are a matter of public record, except for that data included in the proposals, responses and awarded contracts that is classified as nonpublic; thus, pursuant to statute, NJPA policies and RFP terms and conditions, all documentation, except for that data which is nonpublic is available for review by the public through a public records request. If you wish to request that certain information that falls within Minnesota Statute §13.37 be redacted, such request must be made within thirty-days of award/non-award.

4.10 All Proposal forms must be submitted in English and be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

4.11 Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the Proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.

4.12 It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

4.12.1 Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message "**Hold for Proposal Opening**", and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

4.13 Corrections, erasures, and interlineations on a Proposer's Response must be initialed by the authorized signer in original ink on all copies to be considered.

4.14 Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums RFP.

4.14.1 Proposer's are responsible for checking directly with the NJPA website for addendums to this RFP.

4.14.2 Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

F. QUESTIONS AND ANSWERS ABOUT THIS RFP

4.15 Upon examination of this RFP document, Proposer shall promptly notify NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

4.16 Submit all questions about this RFP, in writing, referencing OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES to Jonathan Yahn, NJPA 202 12th Street NE, Staples, MN 56479 or RFP@njpacoop.org. Those not having access to the Internet may call Jonathan Yahn at (218) 895-4144. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Jonathan Yahn. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7th) calendar day prior to proposal due-date cannot be answered; however, communications permitted include: NJPA issued addenda or potential Vendor withdrawal of their response prior to RFP submission deadline.

4.17 If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

4.18 If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

4.19 As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

4.20 Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at www.njpacoop.org by clicking on "Current and Pending Solicitations" and from the NJPA offices. No questions will be accepted by NJPA later than seven (7) days prior to the deadline for receipt of proposals, except Each Potential Proposer shall ascertain prior to submitting a Proposal that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

4.21 An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the time specified for opening of all proposals.

G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

4.22 A submitted proposal may not be modified, withdrawn or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened. Prior to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Contracts and Compliance Manager. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically

returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

4.23 Examples of Value Added Attributes: Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be “Value Added Services” for products where a typical buyer may not have the ability to perform these functions. The opportunity to indicate value added dimensions and such advancements will be available in the Proposer’s Questionnaire and Proposer’s product and service submittal.

4.24 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES and advances to provide equipment/products/services or supplies meeting and/or exceeding today’s industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products/services and training. Value added could include areas of equipment, product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

4.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation: It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase equipment/products and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide “Credits” to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. NJPA is committed to facilitating the realization of such “Credits” through certain structuring techniques for transactions resulting from this RFP.

4.26 Environmentally Preferred Purchasing Opportunities: There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. “Green” characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any Green characteristics of the equipment/products and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as “green” and by which certifying agency.

4.27 On-Line Requisitioning systems: When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

4.28 Financing: The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

H. PROPOSAL OPENING PROCEDURE

4.29 Sealed and properly identified Proposer’s Responses for this RFP entitled OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES will be received by Jonathan Yahn, Contracts and Compliance Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and proposal opening identified on page one of this RFP. **We document the receipt by using an atomic clock; an NJPA employee electronically time and date stamps all Proposals**

immediately upon receipt. The NJPA Director of Contracts and Marketing, or Representative from NJPA Proposal Evaluation Committee, will then read the Proposer's names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Jonathan Yahn 202 12th Street Northeast Staples, MN 56479 or RFP@njpacoop.org to receive a complete copy of this RFP. Method of delivery needs to be indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES. To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

I. NJPA'S RIGHTS RESERVED

4.30.1 Reject any and all Proposals received in response to this RFP;

4.30.2 Disqualify any Proposer whose conduct or Proposal fails to conform to the requirements of this RFP;

4.30.3 Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;

4.30.4 Consider a late modification of a Proposal if the Proposal itself was submitted on time and if the modifications were requested by NJPA and the modifications make the terms of the Proposal more favorable to NJPA, and accept such Proposal as modified;

4.30.5 At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;

4.30.6 Extend the Contract, in increments determined by NJPA, not to exceed a total contract term of five years; and

4.30.7 Cancel the Request for Proposal at any time and for any reason with no cost or penalty to NJPA.

4.30.8 Correct or amend the RFP at any time with no cost or penalty to NJPA. If NJPA should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Awarded Vendor, all Proposers will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. NJPA will not be liable for any errors in the RFP or other responses related to the RFP.

4.30.9 Extend proposal due dates.

5 **PRICING**

5.1 NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

5.2 RFP is an Indefinite Quantity Equipment/Products and Related Service Price and Program Request with potential national sales distribution and service. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD or thumb drive along with other requested information as a part of a Proposer's Response.

5.3 Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with the purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

5.4 All Proposers will be required to submit “Primary Pricing” in the form of either “Line-Item Pricing,” or “Percentage Discount from Catalog Pricing,” or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies such as but not limited to “Hot List,” “Sourced Product/Equipment” and “Volume Discounts,” as well as financing options such as leasing. All pricing documents should include an effective date, preferably in the top right corner of the first page of each pricing document.

A. LINE-ITEM PRICING

5.5 A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products/equipment and/or related services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products/equipment and prices are individually identified however, Proposers with a large number of products/equipment to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and increase the clarity of the contract pricing format.

5.6 All Line-Item Pricing items must be numbered, organized, sectioned, including SKU’s (when applicable) and easily understood by the Evaluation Committee and members.

5.7 Submit Line-Item Pricing items in an Excel spreadsheet format and include all appropriate identification information necessary to discern the line item from other line items in each Responder’s proposal.

5.8 The purpose for a searchable excel spreadsheet format for Line-Item Pricing is to be able to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products/equipment and related services.

5.9 All products/equipment and related services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

5.10 Proposers are asked to provide both a published “List” price as well as a “Proposed Contract Price” in their pricing matrix. Published List price will be the standard “quantity of one” price currently available to government and educational customers excluding cooperative and volume discounts.

B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

5.11 A specific percentage discount from a Catalog or List price” defined as a published Manufacturer’s Suggested Retail Price (MSRP) for the products/equipment or related services being proposed.

5.12 Individualized percentage discounts can be applied to any number of defined product groupings.

5.13 A Percentage Discount from MSRP may be applied to all elements identified in MSRP including all Manufacturer Options applicable to the equipment/products or related services.

5.14 When a Proposer elects to use “Percentage Discount from Catalog or Category,” Proposer will be responsible for providing and maintaining current published MSRP with NJPA and must be included in their proposal and provided throughout the term of any Contract resulting from this RFP.

C. COST PLUS A PERCENTAGE OF COST

5.15 Cost plus a percentage of cost as a primary pricing mechanism is not desirable.

D. HOT LIST PRICING

5.16 Where applicable, a Vendor may opt to offer a specific selection of products/services, defined as Hot List pricing at greater discounts or related advantages than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Equipment/products and related services may be added or removed from the “Hot List” at any time through an NJPA Price and Product Change Form.

5.17 Hot List program and pricing when applicable may also be used to discount and liquidate close-out and discontinued equipment/products and related services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

E. CEILING PRICE

5.18 Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

5.19 Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

F. VOLUME PRICE DISCOUNTS / ADDITIONAL QUANTITIES

5.20 Proposers are free to offer volume commitment discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

5.21 Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations, competitively situations and provided the same manufacturer support is available to the Vendor.

5.22 All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor’s suppliers.

5.23 The contract awarded vendor will accept orders for additional quantities at the same prices, terms and conditions, providing the NJPA Member exercises the option before a specific date, mutually agreed upon between member and contract awarded vendor at time of original purchase order. Any extension(s) of pricing beyond the specific date shall be upon mutual consent between the NJPA Member and the contract awarded vendor.

G. TOTAL COST OF ACQUISITION

5.24 The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party is the cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user’s location. For example, if you are proposing equipment/products FOB Proposer’s dock., your proposal should identify your deviation from the “Total Cost of Acquisition” of contracted

equipment/products. The Proposal should reflect that the “contract does not provide for delivery b
Proposer’s dock, nor any set-up activities or costs associated with those delivery or set-up activities.” In contrast, proposed terms including all costs for product/equipment and services delivered and operational at to the end-user’s location would require a disclosure of “None.”

H. SOURCED PRODUCT/EQUIPMENT / OPEN MARKET ITEMS

5.25 A Sourced Good or an Open Market Item is a product that a member wants to buy under contract that is not currently available under the Vendor’s NJPA contract. This method of procurement can be satisfied through a contract sourcing process. Sourcing options serve to provide a more complete contract solution to meet our members’ needs. Sourced items are generally deemed incidental to the total transaction or purchase of contract items.

5.26 NJPA or NJPA Members may request product/equipment and/or related services that are within the related scope of this RFP, which are not included in an awarded Vendor’s line-item product/equipment and related service list or catalog. These items are known as Sourced Product/Equipment or Open Market Items.

5.27 An awarded Vendor resulting from this RFP may “Source” equipment/products and related services for NJPA or an NJPA Member to the extent they:

5.27.1 Identify all such equipment, products and services as “Sourced Products/Equipment ” or “Open Market Items” on any quotation issued in reference to an NJPA awarded contract, and provided to either NJPA or an NJPA Member; and

5.27.2 Follow all applicable acquisition regulations pertaining to the purchase of such equipment, products and services, as defined by NJPA or NJPA Member receiving quotation from Vendor; and

5.27.3 Ensure NJPA or the NJPA Member has determined the prices as quoted by the Vendor for such equipment, products and services are deemed to be fair and reasonable and are acceptable to the member/buyer; and

5.27.4 Identify all product/equipment sourced as a part of an NJPA contract purchase with all required NJPA reporting and fees applying.

5.28 Cost plus a percentage is an option in pricing of sourced goods.

I. PRODUCT & PRICE CHANGES

5.29 Requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing the NJPA Price and Product Change Request Form (located at the end of this RFP and on the NJPA website) and signature of an authorized Vendor employee. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager and PandP@njpacoop.org.

5.30 NJPA’s due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the “Best Interests of NJPA and NJPA Members.” A signed Price and Product Change form will be returned to vendor contact via email.

5.31 Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA

product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date), for example, "COMPANY 012411-CPY eff 02-12-2013."

5.32 New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

5.33 ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP. New equipment/products and related services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and related services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and related services generally include new updated models of equipment/products and related services and or enhanced services previously offered which could reflect new technology and improved functionality.

5.34 DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

5.35 PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

5.35.1 *Price decreases:* NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

5.35.2 *Price increases:* Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/product or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed. Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases. Price increases will not exceed industry standard.

5.36 Submit the following documentation to request a pricing change:

5.36.1 Signed NJPA Price and Product Change Form

5.36.2 Single Statement of Pricing Excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each complete pricing list will be identified by its "Effective Date." Each successive price listing identified by its "Effective Date" will create a "Product and Price History" for the Contract. Each subsequent pricing update will be saved using the naming convention of "(Vendor Name) pricing effective XX/XX/XXXX."

5.36.2.1 Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:

5.36.2.1.1 Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.

5.36.2.1.2 Create a historical record of pricing.

5.37 NJPA reserves the right to review additional catalogs being proposed as additions or replacements to determine if the represented products and services reflect and relate to the scope of this RFP. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience.

5.38 Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

5.39 Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

5.40 All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each "Pricing" sheet created as a result of each request for product, service, or pricing change.

5.41 Each subsequent "Single Statement of Product and Pricing" will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a "Single Statement of Product/Equipment and Related Services Contract Price Update". This pricing update is required at a minimum of once per contract year.

J. PAYMENT TERMS

5.42 Payment terms will be defined by the Proposer in the Proposer's Response. Proposers are encouraged to offer payment terms through P Card services if applicable.

5.43 If applicable, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used and should identify:

5.43.1 General leasing terms such as:

5.43.1.1 The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and

5.43.1.2 The index rate being adjusted; and

5.43.1.3 The "Purchase Option" at lease maturity (\$1, or fair market value); and

5.43.1.4 The available term in months of lease(s) available.

5.43.2 Leasing company information such as:

5.43.2.1 The name and address of the leasing company; and

5.43.2.2 Any ownership, common ownership, or control between the Proposer and the Leasing Company.

K. SALES TAX

5.44 Sales and other taxes shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each

NJPA Member is responsible for providing verification of tax exempt status to the Vendor. When ordered, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

L. SHIPPING

5.45 NJPA desires an attractive freight program. A shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of equipment/products. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. COD orders will be accepted if both parties agree. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order.

5.46 Selection of a carrier for shipment or expedited shipping will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the party who requested.

5.47 Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

5.48 All shipping and re-stocking fees must be identified in the price program. Certain industries providing made to order product/equipment may not allow returns. Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects.

5.49 Proposer agrees shipping errors will be at the expense of the Vendor.

5.50 Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

5.51 Delivered products/equipment must be properly packaged. Damaged equipment/products will not be accepted, or if the damage is not readily apparent at the time of delivery, the equipment/products shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the equipment/products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the equipment/products at the time of delivery.

5.52 Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA or the NJPA Member.

5.53 NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior equipment/products which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of non-conforming equipment/products, NJPA Member will notify the Vendor as soon as possible and the Vendor will replace non-conforming equipment/products with conforming equipment/products acceptable to the NJPA member.

5.54 Throughout the term of the Contract, Proposer agrees to pay for return shipment on equipment/products that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged equipment/products.

5.55 Vendor may not substitute equipment/products unless agreed to by both parties.

5.56 Unless contrary to other parts of this solicitation, if the product/equipment or the tender of do fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

6 EVALUATION OF PROPOSALS

A. PROPOSAL EVALUATION PROCESS

6.1 The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee establishes both the evaluation criteria and designates the relative importance of those criteria by assigning possible scores for each category on Form G of this RFP.

6.2 NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities. Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

6.3 Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under "Proposer Responsiveness."

B. PROPOSER RESPONSIVENESS

6.4 All responses are evaluated for level one and level two responsiveness. If a response does not reasonably and substantially conform to all the terms and conditions in the solicitation or it requests unreasonable exceptions, it may be considered non-responsive.

6.5 All proposals must contain answers or responses to the information requested in the proposal forms. The following items constitute the test for "Level One Responsiveness" and are determined on the proposal opening date. If these are not received, your response may be disqualified as non-responsive.

6.6 Level One Responsiveness includes:

- 6.6.1** received prior to the deadline for submission or it will be returned unopened;
- 6.6.2** properly addressed and identified as a sealed proposal with a specific opening date and time;
- 6.6.3** pricing document (with apparent discounts), sample certificate of liability insurance and all forms fully completed even if "not applicable" is the answer;
- 6.6.4** original signed, completed and dated RFP forms C, D, and F hard copy signed signature page Only from forms A and P from this RFP and if applicable, all counter signed addenda issued in relation to this RFP;
- 6.6.5** an electronic copy (CD or flash drive) of the entire response; and
- 6.6.6** falls within the scope as determined by the NJPAs Proposal Evaluation Committee.

6.7 "Level Two" responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance and each item may encompass multiple areas of information requested. Any questions not answered will result in a loss

of points from relevant Form G criteria and may lead to non-award if too many areas are unanswered, resulting in the inability for evaluation team to effectively review your response.

C. PROPOSAL EVALUATION CRITERIA

6.8 Evaluation Criteria: Forms A and P includes a series of questions encompassing, but not limited to, the following categories:

- 6.8.1** Company Information & Financial Strength
- 6.8.2** Industry Requirements & Marketplace Success
- 6.8.3** Ability to Sell & Deliver Service Nationwide
- 6.8.4** Marketing Plan
- 6.8.5** Other Cooperative Procurement Contracts
- 6.8.6** Value Added Attributes
- 6.8.7** Payment Terms & Financing Options
- 6.8.8** Warranty
- 6.8.9** Equipment/Products/Services
- 6.8.10** Pricing & Delivery
- 6.8.11** Industry Specific Items

6.9 Evaluation of each Proposer's Response will take into consideration as a minimum response but not necessarily limited to these items.

D. OTHER CONSIDERATION

6.10 The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the equipment/products and/or related services.

6.11 NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

6.12 If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

6.13 NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

6.14 Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

6.15 NJPA shall reserve the right to reject any or all proposals.

E. COST COMPARISON

6.16 NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

6.17 This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A “Market Basket” of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit cost will be used as a basis for determining the point value. The “Market Basket” will be selected by NJPA from all product categories as determined appropriate by NJPA.

F. MARKETING PLAN

6.18 A key element of an NJPA awarded a contract will be based on your marketing response to this solicitation. An awarded Vendor’s sales force will be the primary source of communication to the customers and NJPA members directly relating to the contract success. Success in marketing is dependent on delivery of messaging and communication relating to the contract value, knowledge of contract, proper use and the delivery of contracted equipment/products and related services to the end user. Much of the success and sales reward is a direct result of the commitment to the Contract by the vendor and sales teams. NJPA reserves the right to deem a proposer non-responsive or to not award based on an unacceptable or incomplete marketing plan

6.19 NJPA marketing expectations include:

6.19.1 Vendors ability to demonstrate the leveraging of a national sales force and/or dealer network. Vendors must demonstrate the ability to sell, service and deliver products and equipment through acceptable distribution channels to customers and NJPA members in all 50 states. Demonstrate fully the sales and service capabilities of your company through your response; outline Vendor’s national sales force network in terms of numbers and geographic location and method of distribution of the equipment/products and related services. Service may be independent of the equipment/product sales pricing but is encouraged to be a part of your response and contract.

6.19.2 Vendor is invited to demonstrate the ability to successfully market, promote and communicate the opportunity of an NJPA contract to current and potential members nationwide. NJPA desires a marketing plan that communicates the value of the contract to members.

6.19.3 Vendor is expected to be receptive to NJPA sales trainings. Vendor shall provide a venue for appropriate personnel from both management and the sales force who will be trained. NJPA commits to providing contract sales training and awareness regarding all aspects of communicating the value of the contract itself including: the authority of NJPA to offer the contract to its Members, value and utility the contract delivers to NJPA Members, scope of NJPA Membership, authority of NJPA Members to utilize NJPA procurement contracts, marketing and sales methods, and overall vertical strategies.

6.19.4 Vendor is expected to demonstrate the intent to a commit to full embracement of the NJPA contract. Identify the appropriate levels of sales management and sales force that will need to understand the value of and the internal procedures necessary, to deliver the NJPA contract solution and message to NJPA and NJPA Members. NJPA shall provide a general schedule and a variety of methods surrounding when and how those individuals will be trained.

6.19.5 Vendor will outline their proposed involvement in the promotion of a contract resulting from this RFP through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows.

6.19.6 Vendor must exhibit the willingness and ability to actively market and develop specific marketing materials including, but not limited to:

6.19.6.1 Complete Marketing Plan. Proposer shall submit a marketing plan outlining how the Vendor will launch the NJPA contract to current and potential NJPA Members. NJPA requires the Awarded Vendors to embrace and actively promote the Contract in cooperation with the NJPA.

6.19.6.2 Printed Marketing Materials. Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logo and contact information to be used in the NJPA directory and other approved marketing publications.

6.19.6.3 Contract announcements and advertisements. Proposer will outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals and other direct or indirect marketing activities promoting the awarded NJPA contract.

6.19.6.4 Proposer's Website. Proposer will identify how an Awarded Contract will be displayed and linked on the Proposer's website. An on-line shopping experience for NJPA Members is desired when applicable.

6.19.7 An NJPA Vendor Contract Launch will be scheduled during a reasonable time frame after the award and held at the NJPA office in Staples, MN.

6.20 Proposer shall identify their commitment to develop a sales/communication process to facilitate NJPA membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA.

G. CERTIFICATE OF INSURANCE

6.21 Vendors shall provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance or an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of a Certificate of Insurance identifying the coverage required below and identifying NJPA as a "Certificate Holder." Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

6.22 Any exceptions and/or assumptions to the insurance requirements *must* be identified on *Attachment C*. Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, NJPA will not consider any additional exceptions and/or assumptions during negotiations. Upon contract award, the successful vendor *must* provide the Certificate of Insurance identifying the coverage as specified.

6.23 Insurance Liability Limits: The awarded vendor must maintain, for the duration of its contract, \$1.5 million in General Liability insurance coverage or General Liability insurance in conjunction with an Umbrella for a total combined coverage of \$1.5 million. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

6.23.1 Minimum Scope and Limits of Insurance: Vendor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy

may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

6.23.1.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

6.23.1.2 Each Occurrence

\$1,500,000

6.24 Insurance Requirements: The limits listed herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. NJPA in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.

6.25 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an “A.M. Best” rating of not less than A- VII. NJPA in no way warrants that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

6.26 Subcontractors: Vendors’ certificate(s) shall include all subcontractors as additional insureds under its policies or Vendor shall furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

H. ORDER PROCESS AND/OR FUNDS FLOW

6.27 Please propose an order process and funds flow. The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP. Administrative fees may also be used for purposes as allowed by Minnesota State Law and approved by the Board of Directors.

6.28 Additional Terms and Conditions can be added at the PO level if both Vendor and Member agree.

I. ADMINISTRATIVE FEES

6.29 Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

6.29.1 Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction; and

6.29.2 Included in, and not added to, the pricing included in Proposer’s Response to the RFP; and

6.29.3 Designed to offset the anticipated costs of NJPA’s involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP. Administrative fees may also be used for other purposes as allowed by Minnesota law. Administrative fees may also be used for other purposes as allowed by Minnesota law.

6.29.4 Typical administrative fees for a B-TO-G order process and funds flow is 2.0%. NJPA does not mandate a specific fee percentage, we merely state that 2% is a typical fee across our contracts. The administrative fee percent varies among vendors, industries and responses.

6.29.5 NJPA awarded contract holder is responsible for the Administrative Fee and reporting.

6.30 The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire Form P.

J. VALUE ADDED

6.31 Examples of Value Added Attributes: Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be "Value Added Services" for products where a typical buyer may not have the ability to perform these functions.

6.32 Where to document Value Added Attributes: The opportunity to indicate value added dimensions and such advancements will be available in the Proposer's Questionnaire and Proposer's product and service submittal.

6.33 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES and advances to provide products/services, supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

6.34 Minority, Small Business, and Women Business Enterprise (WMBE) participation: It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. NJPA is committed to facilitating the realization of such "Credits" through certain structuring techniques for transactions resulting from this RFP.

6.35 Environmentally Preferred Purchasing Opportunities: There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. "Green" characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as "green" and by which certifying agency.

6.36 On-Line Requisitioning systems: When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

6.37 Financing: The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

6.38 Technology: Technological advances, increased efficiencies, expanded service and other improvements beyond today's NJPA member's needs and applicable standards.

K. WAIVER OF FORMALITIES

6.39 NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

7 POST AWARD OPERATING ISSUES

A. SUBSEQUENT AGREEMENTS

7.1 Purchase Order. Purchase Orders for equipment/products and/or related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor's sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase Orders that "This purchase order is issued pursuant to NJPA procurement contract #XXXXXX." A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

7.2 Governing Law. Purchase Orders shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

7.3 Additional Terms and Conditions. Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

7.4 Specialized Service Requirements. In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

7.5 Performance Bond. At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

B. NJPA MEMBER SIGN-UP PROCEDURE

7.6 Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the Member or the Vendor.

C. REPORTING OF SALES ACTIVITY

7.7 A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will be provided by NJPA to include, but not limited to, name and address of purchasing agency, member number, amount of purchase, and a description of the items purchased.

7.7.1 Zero sales reports: Awarded Vendors are responsible for providing a quarterly sales report of contract sales every quarter regardless of the existence or amount of sales.

D. AUDITS

7.8 No more than once per calendar year during the Contract term, Vendor may be required to make available to NJPA the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract. NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged under of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

E. HUB PARTNER

7.9 Hub Partner: NJPA Members may request to be served through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits or other considerations.

7.10 Hub Partner Fees: Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and to the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is "Executed for the Benefit of [NJPA Member Name]."

F. TRADE-INS

7.11 The value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified "Trade-In" value shall be viewed as a down payment and credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration.

G. OUT OF STOCK NOTIFICATION

7.12 Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock item(s) occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s). The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order. Under no circumstance is Proposer permitted to make unauthorized substitutions. Unfilled or substituted item(s) shall be indicated on the packing list.

H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

7.13 NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure. Some examples of material breach include, but are not limited to:

- 7.13.1** The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;
- 7.13.2** The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;
- 7.13.3** NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance and Vendor fails to respond;
- 7.13.4** The Vendor fails to observe any of the material terms and conditions of the Contract;
- 7.13.5** The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- 7.13.6** The Vendor fails to report quarterly sales;
- 7.13.7** The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.
- 7.13.8** In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

7.14 Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section. If the issue is not resolved within sixty (60) days, contract will be terminated.

7.15 Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

7.16 NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Awarded Vendor will be responsible for disclosing to NJPA any litigation, bankruptcy or suspensions/disbarments that occur during the contract period. Failure to disclose may result in an immediate termination of the contract.

7.17 NJPA may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

7.18 NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

7.19 Events of Automatic termination to include, but not limited to:

7.19.1 Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,

7.19.2 Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

8 GENERAL TERMS AND CONDITIONS

A. ADVERTISING A CONTRACT RESULTING FROM THIS RFP

8.1 Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

B. APPLICABLE LAW

8.2 NJPA's interest in a contract resulting from this RFP: Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

8.3 NJPA Compliance with Minnesota Procurement Law: NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

8.4 Governing Law with respect to delivery and acceptance: All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

8.5 Jurisdiction: Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota unless otherwise agreed to.

8.5.1 Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

8.6 Vendor Compliance with applicable law: Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

8.7 Other Laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

8.8 Indemnity: Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

8.9 Prevailing Wage: It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

8.10 Patent and Copyright Infringement: If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and hold harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

C. ASSIGNMENT OF CONTRACT

8.11 No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. NJPA shall notify members by posting approved assignments on the NJPA website (www.njpacoop.org) within 15 days of NJPA's approval.

8.12 If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

D. LIST OF PROPOSERS

8.13 NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

8.14 The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

F. DATA PRACTICES

8.15 All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be nonpublic

information, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.32, and the Respondent must:

8.15.1 make the request within thirty days of award/non-award, and include the appropriate statutory justification. Pricing is generally not redactable. The NJPA Legal Department shall review the statement to determine whether the information shall be withheld. If the NJPA determines to disclose the information, the Bids & Contracts department of the NJPA shall inform the Proposer, in writing, of such determination; and

8.15.2 defend any action seeking release of the materials it believes to be nonpublic information, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

8.16 This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the confidential information is in possession of the NJPA. When the situation warrants, Proposer may be able redact additional nonpublic information after the evaluation process if legal justification is provided and accepted by NJPA.

G. ENTIRE AGREEMENT

8.17 The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract. A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award & Acceptance document (Form E).

H. FORCE MAJEURE

8.18 Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

I. GRATUITIES

8.19 NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA.

J. HAZARDOUS SUBSTANCES

8.20 Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

K. LICENSES

8.21 Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

8.22 All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

L. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

8.23 The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

M. NON-WAIVER OF RIGHTS

8.24 No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

N. PROTESTS OF AWARDS MADE

8.25 Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. A protest must include:

8.25.1 The name, address and telephone number of the protester;

8.25.2 The original signature of the protester or its representative (you must document the authority of the Representative);

8.25.3 Identification of the solicitation by RFP number;

8.25.4 Identification of the statute or procedure that is alleged to have been violated;

8.25.5 A precise statement of the relevant facts;

8.25.6 Identification of the issues to be resolved;

8.25.7 The aggrieved party's argument and supporting documentation;

8.25.8 The aggrieved party's statement of potential financial damages; and

8.25.9 A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

O. SUSPENSION OR DISBARMENT STATUS

8.26 If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

P. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

8.27 An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

8.28 Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

Q. SEVERABILITY

8.29 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

R. RELATIONSHIP OF PARTIES

8.30 No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

9 FORMS

[THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.]

PROPOSER QUESTIONNAIRE- General Business Information
*(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)*

Proposer Name: _____ Questionnaire completed by: _____

Please identify the person NJPA should correspond with from now through the Award process:

Name: _____ E-Mail address: _____

Provide an answer to all questions directly below each question (do not leave blank, mark NA if not applicable) and address all requests made in this RFP. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators. ***Please use the Microsoft Word document version of this questionnaire to respond to the questions contained herein.***

Company Information & Financial Strength

- 1) Why did you respond to this RFP?
- 2) What are your company's expectations in the event of an award?
- 3) Provide the full legal name, address, tax identifications number, and telephone number for your business.
- 4) Demonstrate your financial strength and stability.
- 5) Are you now, or have you ever been the subject of a bankruptcy action? Please explain.
- 6) Provide a brief history of your company that includes your company's core values and business philosophy.
- 7) How long has your company been in the OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES industry?
- 8) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?
 - a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
 - b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.
 - c) Are these individuals your employees, or the employees of a third party?
 - d) If applicable, is the Dealer Network independent or company owned?
- 9) Please provide your bond rating, and/or a credit reference from your bank.
- 10) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.
- 11) Provide a detailed explanation outlining licenses and certifications both required to be held, and actually held, by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
- 12) Provide all "Suspension or Disbarment" information as defined and required herein.
- 13) In addition to the \$1.5 million in General Liability and/or in conjunction with umbrella insurance coverage, what level of automobile and workers compensation insurance does your organization currently have? If none, please explain.
- 14) Within the RFP category there is potential to be several different sub-categories of solutions; list sub category title/s that best describe your equipment/products, services and supplies.

Industry Requirements & Marketplace Success

- 15) List and document recent industry awards and recognition.
- 16) Supply three references/testimonials from customers of like status to NJPA Members to include Government and Education agencies. Please include the customer's name, contact, and phone number.

- 17) Provide a list of your top 5 Government and/or Education customers (entity name is optional) including: entity name, the state the entity is located in, scope of the project/s, size of transaction/s and dollar volumes from the past 3 fiscal years.
- 18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually.

Proposer's Ability to Sell and Deliver Service Nationwide

- 19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?
- 20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?
- 21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?
- 22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?
- 23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.
- 24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.
- 25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)
- 26) Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

Marketing Plan

- 27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.
- 28) Describe how you would market/promote an NJPA Contract nationally to ensure success.
- 29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. Please send a few representative samples of your marketing materials in electronic format.
- 30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness.
- 31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
- 32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
- 33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract
- 34) Do you view your products/equipment applicable to an E-procurement ordering process?
☐ Yes ☐ No
 - a) If yes, describe examples of E-procurement system/s or electronic marketplace solutions that your products/equipment was available through. Demonstrate the success of government and educations customers to ordering through E-procurement.
- 35) Please describe how you will communicate your NJPA pricing and pricing strategy to your sales force nationally?

Other Cooperative Procurement Contracts

- 36) Describe your level of experience with national, state and local cooperative contracts.
- 37) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question.

- 38) Identify any GSA Contracts held or utilized by the Proposer.
- 39) What is the annual combined dollar sales volume for each of these contracts?
- 40) N/A. (This question has been removed from this RFP for this category.)
- 41) How would you leverage an NJPA awarded contract in your sales process?
- 42) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

Value Added

- 43) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? ____ Yes ____ No
- 44) Is this training standard as a part of a purchase or optional?
- 45) Describe current technological advances your proposed equipment/products and related services offer.
- 46) Describe your "Green" program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).
- 47) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.
- 48) Identify any other unique or custom value added attributes of your company or your products/equipment or related services. What makes your proposed solutions unique in your industry as it applies to NJPA members?
- 49) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition?
- 50) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.
- 51) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.
- 52) Describe any unique distribution and/or delivery methods or options offered in your proposal.

NOTE: Questions regarding Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, and Industry Specific Items are addressed on Form P.

Signature: _____ Date: _____

PROPOSER INFORMATION

Company Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Toll Free Number: _____ E-mail: _____

Web site: _____

Voids sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

COMPANY PERSONNEL CONTACTS**Authorized Signer for your organization*:**

Name: _____

Email: _____ Phone: _____

* By executing Form F, the "Proposer's Assurance of Compliance," you are certifying this person identified here has their authorization to sign on behalf of your organization:

Author of your proposal response

Name: _____ Title: _____

Email: _____ Phone: _____

Your Primary Contact person regarding your proposal:

Name: _____ Title: _____

Email: _____ Phone: _____

Other important contact information:

Name: _____ Title: _____

Email: _____ Phone: _____

Name: _____ Title: _____

Email: _____ Phone: _____

**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS
AND SOLUTIONS REQUEST**



Company Name: _____

Note: **Original must be signed** and inserted in the inside front cover pouch.

Any exceptions to the Terms, Conditions, Specifications, or Proposal Forms contained herein shall be noted in writing and included with the proposal submittal. Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA and may or may not be included in the final contract. NJPA may clarify exceptions listed here and document the results of those clarifications in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	NJPA ACCEPTS

Proposer's Signature: _____ Date: _____

NJPA's clarification on exception/s listed above:



FORM D

Formal Offering of Proposal
(To be completed Only by Proposer)

OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES

In compliance with the Request for Proposal (RFP) for OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: _____ Date: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____ Title: _____

Authorized Signature (ink only): _____
(Name printed or typed)

**Form F****PROPOSER ASSURANCE OF COMPLIANCE****Proposal Affidavit Signature Page****PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any equipment/products and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract; and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition of the Contract sought for by this RFP; and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract; and
4. Neither the Proposer nor any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985; and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal; and
6. If awarded a contract, the Proposer will provide the equipment/products and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation; and
7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract; and
8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed; and

9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP; and
10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders; and
11. The Proposer understands that submitted proposals which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “nonpublic” **will not** be accepted by NJPA. Pursuant to Minnesota Statute §13.37 only specific parts of the proposal may be labeled a “trade secret.” All proposals are nonpublic until the contract is awarded; at which time, both successful and unsuccessful vendors’ proposals become public information.
12. The Proposer understands and agrees that NJPA will not be responsible for any information contained within the proposal.
13. By signing below, the Proposer understands it is his or her responsibility as the Vendor to act in protection of labeled information and agree to defend and indemnify NJPA for honoring such designation. Proposer duly realizes failure to so act will constitute a complete waiver and all submitted information will become public information; additionally failure to label any information that is released by NJPA shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: _____

Contact Person for Questions: _____

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Authorized Signature: _____

Authorized Name (typed): _____

Title: _____

Date: _____

Notarized

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public in and for the County of _____ State of _____

My commission expires: _____

Signature: _____

**Form G****OVERALL EVALUATION AND CRITERIA**

For the Proposed Subject OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES

Conformance to Terms & Conditions	50	
Financial, Industry Requirements & Marketplace Success	75	
Proposer's Ability to Sell and Deliver Service Nationwide	100	
Proposer's Marketing Plan	50	
Value Added Attributes	75	
Warranty	50	
Equipment/Products and Related Services	200	
Pricing	400	
TOTAL POINTS	1000	

Reviewed by: _____ Its _____

_____ Its _____

Form P

PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, Industry Specific Items

Proposer Name: _____

Questionnaire completed by: _____

Payment Terms and Financing Options

- 1) Identify your payment terms if applicable. (Net 30, etc.)
- 2) Identify any applicable leasing or other financing options as defined herein.
- 3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
 - a. Please specify if you will be including your dealer network in this proposal. If so, please specify how involved they will be. (For example, will the Dealer accept the P.O.?), and how are we to verify the specific dealer is part of your network?
- 4) Do you accept the P-card procurement and payment process?

Warranty

- 5) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.
- 6) Do all warranties cover all products/equipment parts and labor?
- 7) Do warranties impose usage limit restrictions?
- 8) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?
- 9) Please list any other limitations or circumstances that would not be covered under your warranty.
- 10) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?

Equipment/Product/Services, Pricing, and Delivery

- 11) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.
- 12) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).
- 13) N/A. (This question has been removed from this RFP for this category.)
- 14) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.
- 15) Propose a strategy, process, and specific method of facilitating "Sourced Equipment/Products and/or related Services" (AKA, "Open Market" items or "Non-Standard Options").
- 16) Describe your NJPA customer volume rebate programs, as applicable.
- 17) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.
- 18) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

19) As an important part of the evaluation of your offer, indicate the level of pricing you are offering.

Prices offered in this proposal are:

- ☐ a. Pricing is the same as typically offered to an individual municipality, Higher Ed or school district.
- ☐ b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
- ☐ c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
- ☐ d. Other; please describe.

20) Do you offer quantity or volume discounts?

☐ YES ☐ NO Outline guidelines and program.

21) Describe in detail your proposed exchange and return program(s) and policy(s).

22) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services

23) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NJPA. Please be as specific as possible.

Industry Specific Items

n/a

Signature: _____ Date: _____



10 PRE-SUBMISSION CHECKLIST

Check when Completed	Contents of Your Bid Proposal	Hard Copy Required Signed and Dated	Electronic Copy Required - CD or Flash Drive
	Form A: Proposer Questionnaire with all questions answered completely	X - signature page only	X
	Form B: Proposer Information		X
	Form C: Exceptions to Proposal, Terms, Conditions, and Solutions Request	X	X
	Form D: Formal Offering of Proposal	X	X
	Form E. Contract Acceptance and Award		X
	Form F: Proposers Assurance of Compliance	X	X
	Form P: Proposer Questionnaire with all questions answered completely	X-signature page only	X
	Certificate of Insurance with \$1.5 million coverage	X	X
	Copy of all RFP Addendums issued by NJPA	X	X
	Pricing for all Products/Equipment/Services within the RFP being proposed		X
	Entire Proposal submittal including signed documents and forms.		X
	All forms in the Hard Copy Required Signed and Dated should be inserted in the front of the submitted response, unbound.		
	Package containing your proposal labeled and sealed with the following language: "Competitive Proposal Enclosed, Hold for Public Opening XX-XX-XXXX"		
	Response Package mailed and delivered prior to deadline to: NJPA, 202 12th St NE, Staples, MN 56479		

11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 1. Instructions For Vendor

Pursuant the NJPA RFP, requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing sections 2, 3 and 4 of the NJPA Price and Product Change Request Form and signature of an authorized Vendor employee in section 5. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager **AND: PandP@njpacoop.org**.

NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

NOTE: New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP.

DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

Price decreases: NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

Price increases: Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/products or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed. Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases.

Refer to section 4 of the RFP for complete "Pricing" details.

Section 2. Vendor Name and Type of Change Request

AWARDED
VENDOR NAME:

NJPA
CONTRACT
NUMBER:

CHECK ALL CHANGES THAT APPLY:

- ☐ Adding Equipment/ Products /Services
- ☐ Deleting/Discontinuing Equipment/Products/Services
- ☐ Price Increase
- ☐ Price Decrease

11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 3. Detailed Explanation of Need for Changes

List equipment/products and/or services that are changing, being added or deleted from previous contract price list along with the percentage change for each item or category. (Attach a separate, detailed document if more than 10 items.)

Provide a general statement and documentation explaining the reasons for these price and/or equipment/product/service changes.

SAMPLES: 1-All paper equipment/products and services increased 5% in price due to transportation and fuel costs (see attached documentation of raw materials increase). 2-The 6400 series floor polisher is added to the product list as a new model replacing the 5400 series. The 6400 series 3% increase reflects technological improvements made that improve the rate of efficiency and useful life. The 5400 series is now included in the "Hot List" at a 20% discount from previous pricing until remaining inventory is liquidated.

If adding equipment/products/services, provide a general statement how these are in the scope.

If changing prices and/or adding equipment/products/services, provide a general statement that the pricing or equipment/products/services is consistent with existing NJPA contract pricing.



11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing including all new and existing equipment/products and services is attached and/or has been emailed to PandP@njpacoop.org.

☐ Yes

☐ No

Section 5. Signatures

Vendor Authorized Signature

Date

Print Name and Title of Authorized Signer

NJPA Executive Director Signature

Date



Appendix A

NJPA The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, Tribal Government, and all other Public Agencies located nationally in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/Local_Government/Cities.shtml
<http://nces.ed.gov/globallocator/>
<https://harvester.census.gov/imls/search/index.asp>
<http://nccsweb.urban.org/PubApps/search.php>
<http://www.usa.gov/Government/Tribal-Sites/index.shtml>
<http://www.usa.gov/Agencies/State-and-Territories.shtml>
<http://www.nreca.coop/about-electric-cooperatives/member-directory/>
[Oregon](#)
[Hawaii](#)
[Washington](#)



ADDENDUM ONE (1)
To that certain
NJPA RFP #010615
Issued by
National Joint Powers Alliance®
For the procurement of

OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES

Consider the following to be part of the above titled RFP:

- 1) The paragraph on the first page of the RFP should read:

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies (which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally), and the **Lodi Unified School District**, issue this Request For Proposal (RFP) to result in a national contract solution for the procurement of #010615 OFFICE, SCHOOL, AND OTHER WORKPLACE-RELATED SUPPLIES AND SERVICES. Details of this RFP are available beginning NOVEMBER 21, 2014. Details may be obtained by letter of request to Jonathan Yahn, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until JANUARY 6, 2015 at 4:30 p.m. Central Time at the above address and opened JANUARY 7, 2015 at 8:00 a.m. Central Time.

- 2) A vendor requested the list of attendees from the pre-proposal conference.

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Acknowledgment of Addendum One (1) to RFP Emailed on December 17, 2014

COMPANY NAME: _____

SIGNATURE: _____

DATE: _____

*Please include this signed Addendum with your bid response.

C4. Adopt a Resolution Authorizing the City Manager to Submit an Application for \$310,000 in Non-competitive Planing Grant Funding Provided Under the Building Homes and Jobs Act (SB2) and Execute the Grant Agreement and Related Documents (Staff Contact: Ned Thomas, 408-586-3273)

Recommendation: Adopt a resolution authorizing the City Manager to submit an application for \$310,000 in non-competitive grant funding, provided under the California Building Homes and Jobs Act (Senate Bill 2), and to execute the grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.



CITY OF MILPITAS AGENDA REPORT (AR)

92

Item Title:	Adopt a Resolution Authorizing the City Manager to Submit an Application for \$310,000 in Non-competitive Planing Grant Funding Provided Under the Building Homes and Jobs Act (SB2) and Execute the Grant Agreement and Related Documents
Category:	Consent Calendar-Community Development
Meeting Date:	10/1/2019
Staff Contact:	Avery Stark, Assistant Planner 408-586-3288 Ned Thomas, Planning Director 408-586-3273
Recommendation:	Adopt a resolution authorizing the City Manager to submit an application for \$310,000 in non-competitive grant funding, provided under the California Building Homes and Jobs Act (Senate Bill 2), and to execute the grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.

Background:

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, the housing package included the Building Homes and Jobs Act (SB2), which established a \$75 recording fee on real estate documents as a permanent, ongoing source of funding dedicated to affordable housing development. Revenues generated by this new recording fee are collected at the county level and sent quarterly to the State Controller for deposit into the Building Homes and Jobs Fund.

The Planning Grant Programs (PGP) is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production. Funding is intended to help cities and counties:

- Accelerate housing production;
- Streamline the approval of housing development affordable to owner and renter households at all income levels;
- Facilitate housing affordability, particularly for lower- and moderate-income groups;
- Promote development consistent with the State Planning Priorities; and
- Ensure geographic equity in the distribution and expenditure of allocated funds

PGP funding is provided through a non-competitive, over-the-counter process to eligible local governments that meet the following requirements:

- Have a Housing Element certified by the State Department of Housing and Community Development;
- Have submitted a recent Annual Progress Report;
- Demonstrate a nexus to accelerating housing production; and
- Demonstrate that the applicant is consistent with State Planning Priorities, including infill development, the protection of environmental and agricultural resources, and efficient land development patterns.

The State has deemed the following activities to automatically demonstrate a nexus to accelerating housing production:

- Objective Design and Development Standards: Developing objective design standards or pre-approved site and architectural plans that facilitate non-discretionary permitting.
- Accessory Dwelling Units or Other Innovative Building Strategies: Encouraging ADUs and other innovative building types through actions above state law such as outreach, fee waivers, pre-approved plans, website zoning clearance assistance, and other homeowner tools or finance tools. Also, establishing other approaches to intensify existing lower density residential areas
- Expedited Processing: Speeding up approvals and permit processing, including instituting programs that streamline or consolidate the review process or create a separate process for expedited review of housing projects.
- Rezone to Permit By-right: Rezoning for significant additional housing capacity with less discretionary review or establishing zoning to permit residential development, particularly multi-family housing, by-right.
- Specific Plans or Form based Codes Coupled with CEQA Streamlining: Designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.
- Housing Related Infrastructure Financing and Fee Reduction Strategies: Develop and implement approaches to local, regional or sub-regional housing related infrastructure financing. Create plans and programs to finance and increase infrastructure with accompanying enhanced housing capacity, such as enhanced infrastructure financing districts. Develop and implement fee reduction and rationalization approaches, such as reassessing fees to adhere to best practices in reducing costs, deferrals, sliding scales or proportionate impacts fees.

Eligible Activities:

Activities eligible for PGP funding may include:

- Updates to general plans, community plans, specific plans, local planning related to the implementation of sustainable communities' strategies, or local coastal plans.
- Updates to zoning ordinances.
- Environmental analyses that eliminate the need for project-specific review.
- Local process improvements that expedite local planning and permitting.

Ineligible Activities:

Activities that are not eligible for PGP funding in this years' grant cycle include:

- Rent relief programs (direct or indirect)
- Social Services Programs
- Activities unrelated to housing production

Program Timeline:

Technical Assistance	Beginning early 2019
NOFA release	March 2019
Over-the-counter period	Eight months from NOFA release date, ending on November 30, 2019
Awards	Beginning summer 2019 and ongoing with the potential for supplemental round
Grant term	Three-year grant term. Projects to be completed by June 30, 2022.

Analysis:

The California Building Homes and Jobs Act (SB2) established the Planning Grant Program (PGP) in 2019 to provide non-competitive planning grants to cities and counties across the state. Based on population, the City of Milpitas is eligible to receive \$310,000 in PGP grant funding. To receive these funds, the City must submit a grant application to the Department of Housing and Community Development (HCD) with a proposal to achieve the general program goals of streamlining housing approvals and accelerating housing production. City Council authorization is needed for the City Manager to submit an application to the California Department of Housing and Community Development (HCD) for the City's share of SB 2 grant funds.

Staff recommends three eligible planning activities or tasks to include in the SB 2 grant application based on the need for better access to information regarding affordable housing options in the Milpitas community and the need for objective design standards in the Milpitas Zoning Ordinance to ensure streamlined review and processing of new affordable housing projects. The recommended planning activities are outlined below. The City Council Housing Subcommittee reviewed staff's proposal for the SB 2 grant application on September 10, 2019, and supported using the funds for the three recommended planning activities or tasks. The SB 2 grant funds will be used to hire consultants, through a formal RFP process, to assist staff in completing these tasks and developing and implementing the programs and processes described below.

Once the City submits an application to receive its share of SB 2 grant funds, HCD will review the application and inform the City of Milpitas within two to three months regarding the status of our funding. As noted above, the grant term runs through June 30, 2022, and all projects must be completed and funds spent by the end of the term. Staff will work during the HCD review period to prepare the draft RFP and gather data in preparation for a successful kick-off meeting with the selected consultant.

Task 1: Develop Objective Design Standards for New Residential and Mixed-Use Development

The City of Milpitas does not currently have objective design standards for residential or mixed-use zones. The Midtown and Transit Area Specific Plans have semi-defined objective design and development standards for buildings, landscaped areas, and public rights-of-way in those areas, but most residential zoning districts in the City are not regulated by any specific design criteria. The proposed project would analyze best practices and develop objective design standards for all residential and mixed-use zones within the City. These would be mandatory standards applicable to all new residential development and not merely guidelines. As stated above, the intent is to streamline housing approvals and accelerate housing production by providing clarity and certainty in design decisions and eliminating unnecessarily burdensome review in the approval process. SB 2 grant funds may not be used to develop design standards for non-residential development but may lay the groundwork for future work on design standards in those areas.

The objective design standards for residential development will apply to all projects seeking mandatory streamlining pursuant to state law, unless the applicant requests exceptions or modifications to these standards through the Design Review Process. The anticipated outcome of this project is a streamlined review process for all new residential and/or mixed-use development applications for staff, Planning Commission and City Council. The objective design standards will also ensure compliance with SB 35, which stipulates that qualifying multi-family residential projects meeting certain criteria may request a streamlined ministerial approval process. Extensive community engagement, including stakeholder workshops and informal study sessions with the City Council and Planning Commission will be a key part of the development of the proposed design standards.

Task 2: Develop an Online ADU Toolkit and User Guide

Accessory dwelling units (ADU's) are seen as a key opportunity in the production of affordable housing across the state, and many local governments, including Milpitas, have adopted ordinances to reduce restrictions and streamline approval of ADUs. This, in turn, has led to a dramatic uptick in the volume of ADU-related public inquiries and permit applications from homeowners interested in earning extra income, providing affordable housing for family members, and aging in place. The goal of the ADU tool kit and user guide would be to inform, inspire, and guide the homeowner through a full-service review process at the City of Milpitas.

The related links below describe web-based service programs in the Bay Area that would be referenced to develop an ADU tool kit and “concierge-type” ADU review process specifically for Milpitas residents and property owners:

City of San Jose: *Backyard Home* is a new initiative aimed at increasing the projection of ADUs
<https://www.sjbackyardhomes.com>

San Mateo County: *Second Unit Resources Center* is an online toolkit that provides online information and resources to homeowners considering building a second unit. <https://secondunitcentersmc.org/>

City of San Mateo: Basic webpage with information and resources to support the construction of ADUs
<https://www.cityofsanmateo.org/3907/Accessory-Dwelling-Unit-ADU>

California AIA: *Plus1Home* is an online resource center created by the California Chapter of the American Institute of Architects to answer questions about ADUs. <http://plus1house.org/>

Task 3: Develop an Online ADU/Zoning Clearance Tool

The purpose of an online ADU/Zoning Clearance Tool would be to assist homeowners in understanding the zoning and development standards for their properties and simplifying the approval process for an ADU (like turbo tax for homeowners). The City of Palo Alto has developed this type of tool to provide home owners with an online parcel report that identifies zoning, setbacks, possible easements, flood zone boundaries, and most importantly, if they are eligible for an ADU (see <http://xmap.cityofpaloalto.org/parcelreports/>). Along with an ADU tool kit, this type of online zoning clearance tool would clarify ADU requirement and eligibility and help facilitate the approval and production of ADUs in the City.

Another potential approach might be collaborating with a company called Symbium to develop an online portal that would enable homeowners, design professionals, developers, and staff to determine whether an ADU is allowed on a particular parcel in the City of Milpitas. The online portal would allow homeowners and designers to easily visualize where ADUs could be located on a property and understand the applicable site-specific development standards and constraints. The tool could also generate reports on ADU development to provide a resource to homeowners and City staff. The City of San Francisco launched this online tool earlier this year (<https://the-atlas.com/projects/san-francisco-uses-symbium-s-build-portal-to-combat-the-housing-crisis-4>).

Future SB 2 Funding:

Additional SB 2 funds will be available to cities and counties in future years. HCD has indicated that a second round of SB 2 grants will build off of the first-year policy and planning work and provide funds needed by local jurisdictions to meet their affordable housing objectives. With the goal of producing affordable housing, future SB 2 grant funding will be allocated through the Permanent Local Housing Allocation Program (PLHP) and awarded in accordance with the Community Development Block Grant (CDBG) formula. The purpose of PLHP is to provide a permanent source of funding to help cities implement plans and increase affordability housing.

See: <http://www.hcd.ca.gov/policy-research/docs/Permanent-Local-Housing-Allocation-Draft-Guidelines.pdf>.

Funding will help cities and counties achieve the following objectives:

- Increase the supply of housing for households at or below 60% of area median income
- Increase assistance to affordable owner-occupied workforce housing
- Assist persons experiencing or at-risk of homelessness
- Facilitate housing affordability, particularly for lower- and moderate-income households
- Promote projects and programs to meet the local unmet share of regional housing needs allocation
- Ensure geographic equity in the distribution of the funds

Policy Alternatives:

Alternative 1: Do not authorize the City Manager to submit an application for SB 2 grant funding.

Pros: None.

Cons: The funding is non-competitive, so the City would forgo \$310,000 in SB 2 grant funds. Staff would still need to develop objective design standards to address SB 35. Homeowners would not be provided with tools to assist in designing and building ADUs.

Reason not recommended: The City should apply for its share of SB 2 funds to create objective design standards and zoning tools to comply with state legislation. Online resources and interactive tools to support the development of ADUs would encourage and inspire Milpitas residents to develop second units on their properties and help implement the housing goals outlined the the City's Housing Element.

Fiscal Impact:

The maximum award amount for the City of Milpitas as a Medium Localities is \$310,000 per table 2 of Article IV, Section 400 of the PGP Guidelines. This is a noncompetitive grant application available to local jurisdictions within the State of California, and there will be no fiscal impact to the City of Milpitas.

Environmental Review:

Authorization of a grant application is not a project under the California Environmental Quality Act (CEQA).

Recommendation:

Adopt a resolution authorizing the City Manager to submit an application for \$310,000 in non-competitive grant funding, provided under the California Building Homes and Jobs Act (Senate Bill 2), and to execute the grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.

Attachments:

- 1) Resolution No. _____
- 3) Senate Bill 2 Planning Grant Guidelines

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR \$310,000 IN NON-COMPETITIVE PLANNING GRANT FUNDING PROVIDED UNDER THE BUILDING HOME AND JOB ACT (SB2) AND EXECUTE THE GRANT AGREEMENT AND RELATED DOCUMENTS

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) has issued a Notice of Funding Availability (“NOFA”) dated March 28, 2019, for its Planning Grants Program (“PGP”); and

WHEREAS, the City Council of the City of Milpitas desires to submit a project application for the PGP to accelerate the production of housing and will submit a 2019 PGP grant application as described in the Planning Grants Program NOFA and SB 2 Planning Grants Program Guidelines released by the Department for the PGP; and

WHEREAS, the SB 2 grant application will be for the not to exceed the amount of \$310,000. The grant term begins on the day the Department and the City of Milpitas have both signed the completed Standard Agreement;COMPETITIVEand

WHEREAS, the end of the grant term will be determined by the state based on the availability of grant funds and the administrative requirements for liquidation. The anticipated grant term runs through June 30, 2022; and

WHEREAS, the Department is authorized to provide up to \$123 million under the SB 2 Planning Grants Program from the Building Homes and Jobs Trust Fund for assistance to Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)) related to the PGP Program.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is hereby authorized and directed to apply for and submit to the Department the 2019 Planning Grants Program application for the amount of \$310,000 in grant funds.
3. In connection with the PGP grant, if the application is approved by the Department, the City Manager or Planning Director is authorized to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of \$310,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the City of Milpitas obligations related thereto, and all amendments thereto (collectively, the "PGP Grant Documents"), as approved by the City Attorney.
4. The City of Milpitas shall be subject to the terms and conditions as specified in the Standard Agreement, the SB 2 Planning Grants Program Guidelines, and any applicable PGP guidelines published by the Department. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, the information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The City of Milpitas agrees to use the funds for eligible uses in the manner presented in the application as approved by the Department and in accordance with the Planning Grants NOFA, the Planning Grants Program Guidelines, and 2019 Planning Grants Program Application.

5. The City Manager is authorized to execute the City of Milpitas Planning Grants Program application, the PGP Grant Documents, and any amendments thereto, on behalf of the City of Milpitas as required by the Department for receipt of the PGP Grant.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Senate Bill 2

Planning Grants Program

Year 1 Guidelines



State of California
Governor Edmund G. Brown Jr.

Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency

Ben Metcalf, Director
Department of Housing and Community Development

Zachary Olmstead, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development

2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833

December 2018

The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

In consultation with stakeholders, the California Department of Housing and Community Development (Department) may adopt Guidelines to implement this section, including determining allocation methodologies. Any guideline, rule, policy, or standard of general application employed by the Department in implementing this chapter shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Gov. Code).

NOTE: Authority Cited: Health and Safety Code section 50470, subdivision (d).

The Department reserves the right, at its sole discretion, to suspend or amend the provisions of these Guidelines, including, but not limited to, grant award amounts.

INTRODUCTION

Chapter 354, Statutes of 2017 (SB 2, Atkins) was part of a 15 bill housing package signed by Governor Brown that was aimed at addressing the state's housing shortage and high housing costs. Specifically, it establishes a permanent source of funding intended to increase the affordable housing stock in California. The revenue from SB 2 will vary from year to year, as revenue is dependent on real estate transactions with fluctuating activity. The legislation directs the California Department of Housing and Community Development (Department) to use 50 percent of the revenue in the first year to establish a program that provides financial and technical assistance to local governments to update planning documents and zoning ordinances in order to streamline housing production, including, but not limited to, general plans; community plans; specific plans; implementation of sustainable communities strategies; and local coastal programs. Eligible uses also include new environmental analyses that eliminate the need for project-specific review and local process updates that improve and expedite local permitting.

Guidelines for the SB 2 Planning Grants program are organized into seven Articles as follows:

Article I. General provisions: This Article includes information on the purpose of the Guidelines, program objectives, and definitions used throughout the document.

Article II. Eligibility and threshold criteria: This Article describes the eligibility requirements for applicants and proposals in order to apply for funds under the SB 2 Planning Grants program.

Article III. Eligible activities and uses: This Article describes eligible uses for the SB 2 Planning Grants funds, including priority policy areas and ineligible uses.

Article IV. Award amounts and distribution: This Article describes award amounts and geographic distribution.

Article V. Application review: This Article describes the application review process.

Article VI. Administration: This Article describes administrative functions such as terms, non-performance remedies and reporting requirements.

Article VII. Technical assistance: This Article describes technical assistance.

SB 2 Planning Grants Program: Year 1 Guidelines

Table of Contents

ARTICLE I. GENERAL PROVISIONS.....	1
Section 100. Purpose and Scope	1
Section 101. Program Objectives	1
Section 102. Definitions.....	1
ARTICLE II. ELIGIBILITY AND THRESHOLD CRITERIA	5
Section 200. Eligible Applicants.....	5
Section 201. Threshold Criteria	6
ARTICLE III. ELIGIBLE ACTIVITIES AND USES.....	7
Section 300. Eligible Activities	7
Section 301. Ineligible Activities.....	8
Section 302. Eligible Uses	9
ARTICLE IV. AWARD AMOUNTS AND DISTRIBUTION	9
Section 400. Award Amounts	9
Section 401. Geographic Distribution	10
ARTICLE V. APPLICATION REVIEW AND AWARD.....	10
Section 500. Application Review.....	10
ARTICLE VI. ADMINISTRATION	11
Section 600. Grant Execution and Term	11
Section 601. Payment and Accounting of Grant Funds.....	12
Section 602. Accounting Records and Audits	12
Section 603. Remedies of Non-performance	13
Section 604. Reporting	14
ARTICLE VII. TECHNICAL ASSISTANCE	14
Section 700. Method.....	14
Section 701. Geographic Distribution	15
ATTACHMENTS	
1 – Nexus to Accelerating Housing Production Form	
2 – State Planning and Other Planning Priorities Form	
3 – Reporting Forms	

ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

- (a) These Guidelines (hereinafter “Guidelines”) implement, interpret, and make specific the Chapter 364, Statutes of 2017 (SB 2, Atkins) (hereinafter “SB 2”) as authorized by Health and Safety Code section 50470.
- (b) These Guidelines establish terms, conditions, and procedures for a local government to submit an application for planning grants funds to the Department.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 101. Program Objectives

- (a) The principal goal of this program is to make funding available to all local governments in California for the preparation, adoption and implementation of plans that streamline housing approvals and accelerate housing production.
- (b) This grant program is meant to facilitate planning activities that will foster an adequate supply of homes affordable to Californians at all income levels. It is designed to help local governments meet the challenges of preparing and adopting land use plans and integrating strategies to promote housing development.
- (c) Funded activities are intended to achieve the following program objectives:
 - Accelerate housing production
 - Streamline the approval of housing development affordable to owner and renter households at all income levels
 - Facilitate housing affordability for all income groups
 - Promote development consistent with the State Planning Priorities (Government Code section 65041.1)
 - Ensure geographic equity in the distribution and expenditure of allocated funds

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d) and Government Code section 65041.1. Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms described in Health and Safety Code section 50470.

- (a) “Accelerating Housing Production” means improving the timing, cost, feasibility, approval and amount of development through various mechanisms such as zoning incentives (e.g., increased density and heights, reduced parking requirements), upzoning, zoning amendments to permit residential in non-residential zones, corridor planning, development standards modifications, non-discretionary review, financing strategies, sliding scale fee modifications, facilitating adequate infrastructure to support development, approval streamlining that addresses quickness and ease of entitlements, and other mechanisms that promote production or remove or mitigate regulatory barriers.
- (b) “Affordability” means a housing unit that satisfies at least one of the following criteria:
 - 1. It is available at an “affordable rent” as that term is used and defined in Section 50053 of the Health & Safety Code;
 - 2. It is offered at an “affordable housing cost”, as that term is used and defined in Section 50052.5 of the Health & Safety Code; or
 - 3. It is available at an “affordable rent” or an “affordable housing cost” according to the alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to Department regulations adopted under Health and Safety Code section 50462(f).
- (c) “Annual Progress Report” (APR) means the housing element Annual Progress Report required by Government Code section 65400 on the prior year’s activities and due to the Department April 1 of each year.
- (d) “Department” means the California Department of Housing and Community Development.
- (e) “Disaster Recovery Area” means a locality experiencing a state or federally declared disaster in the last five years, where proposed planning activities will significantly address the present and future housing needs of the disaster, including climate adaptation.
- (f) “Fund” means the Building Homes and Jobs Trust Fund pursuant to Health and Safety Code section 50470.
- (g) “High-quality transit corridor” means an existing corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. An existing stop along a high-quality transit corridor may include a stop currently in service or a planned and funded stop that is included in an adopted regional transportation improvement program.
- (h) “Housing” means any development that satisfies both of the following criteria:

1. At least two-thirds of the square footage of the development must be designated for residential use; and
2. Includes a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have a direct access from the outside of the building or through a common hall.

Note: accessory dwelling units (ADU) and junior accessory dwelling units (JADU) pursuant to Gov. Code sections 65852.2 and 65852.22 meet the definition above.

- (i) “Local government” or “Locality” means any city, including a charter city, county, including a charter county or city and county, including a charter city and county.
- (j) “Location Efficient” means either of the following definitions (1) within one half of a mile of a major transit stop or high-quality transit corridor, or (2) where the household per capita vehicle miles traveled is below the regional average per capita vehicle miles travelled, as determined by a regional travel demand model.
- (k) “Lower-Income” means households whose incomes are less than 80 percent of area median income pursuant to Health and Safety Code section 50079.5.
- (l) “Lower-income Community” means a locality with a median household income at or below 80 percent of the state median income.
- (m) “Major Transit Stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with frequencies of service intervals of 15 minutes or less during the morning and afternoon peak-commute periods. An existing “Major Transit Stop” may include a planned and funded stop that is included in an adopted regional transportation improvement program.
- (n) “Moderate-Income” means households whose income is above 80 percent of area median income but does not exceed 120 percent of area median income pursuant to Health and Safety Code section 50093.
- (o) “Objective zoning standard”, “objective subdivision standard”, and “objective design review standard” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. “Objective design review standards” means only objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, which are broadly applicable to development within the jurisdiction.

- (p) “Other Planning Priorities” means planning, policies, programs or investments to promote housing choices and affordability to lower and moderate income households, the encouragement of conservation of the existing affordable housing stock and efforts to take into account current and future impacts of climate change, including hazard mitigation.
- (q) “Priority Policy Areas” means any of the following:
1. Rezone to Permit By-right: Rezoning for additional housing capacity without or lesser discretionary review or establishing zoning to permit residential development by-right, particularly multifamily, without discretionary action pursuant to Government Code Section 65583.2(h) and (i).
 2. Objective design and development standards: Developing objective design standards or pre-approved site and architectural plans that facilitate non-discretionary permitting.
 3. Specific plans or Form Codes coupled with CEQA streamlining: Designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.
 4. Accessory Dwelling Units and other innovative building strategies: Encouraging ADUs and other innovative building types through ordinances, outreach, fee waivers, pre-approved plans, website zoning clearance assistance, and other homeowner tools or finance tools.
 5. Expedited processing: Speeding up approvals and permit processing, including instituting programs that streamline or consolidate the review process or create a separate process for expedited review of housing projects.

NOTE: Priority policy areas are subject to change and will be defined in the Notice of Funding Availability (NOFA).

- (r) “Program” means the program developed to implement the first year of the Fund pursuant to Health and Safety Code section 50470(b)(1)(A).
- (s) “State Planning Priorities” means priorities which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities pursuant to Gov. Code Section 65041.1.
- (t) “Streamlined Housing Production” means improving the entitlement process through actions such as removing, mitigating or minimizing local regulatory requirements, reforming the local approval process to reduce processing times, the number of local discretionary approvals and permits needed for projects, improving

approval certainty, establishing non-discretionary processes, modifying development standards such as reducing parking requirement and increasing height limits or other efforts such as taking the fullest advantage of existing streamlining mechanisms provided in state law.

(u) “Under-resourced Localities” means

1. Lower-income community that meets either of the following criteria: (1) a population less than 25,000 (2018 Department of Finance (DOF) population estimate, report E-5) and two or less planners (as reported to the Office of Planning and Research (OPR) in 2018) or (2) a population less than 50,000 and three or less planners.

or

2. A locality demonstrating to the Department a significant lack of planning capacity based on population size, poverty levels, median household incomes relative to the state median incomes, unemployment rates, number of planners, and budget size.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470.5 and 50470, subdivision (b)(1)(A).

ARTICLE II. ELIGIBILITY AND THRESHOLD CRITERIA

The Program does not use a competitive process to award funds. All localities that meet the eligibility requirements outlined below will be funded as provided in these Guidelines.

Section 200. Eligible Applicants

- (a) Eligible applicants are limited to local governments.
- (b) Local governments may partner through legally binding agreements with other forms of governments or entities where the proposal will have a direct effect on land-use or development within the locality. This includes, but is not limited to, partnerships with other localities, regional governments, housing authorities, school districts, special districts, community based organizations, or any duly constituted governing body of an Indian Reservation or Rancheria. Multi-jurisdictional partnerships between local governments are encouraged to coordinate with regional governments, leverage regional and state investment, promote consistency with the sustainable communities strategy, and affirmatively further fair housing.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 201. Threshold Criteria

Applicants must meet all the following threshold requirements for participation in the Program:

- (a) **Housing element compliance:** The applicant must have a housing element that has been adopted by the jurisdiction's governing body by the deadline specified in the NOFA and subsequently determined to be in substantial compliance with state housing element law pursuant to Gov. Code Section 65585.
1. The jurisdiction's adopted housing element will be deemed to have met this requirement if the adopted element is received by the Department on or prior to the date specified in the NOFA and the Department subsequently determines the adopted housing element to be in substantial compliance pursuant to Gov. Code Section 65585 without further amendment.
 2. However, applicants not meeting housing element requirements may be considered to meet this threshold requirement at the discretion of the Department and based on factors such as significant progress in meeting housing element requirements (e.g., a draft found to meet statute, rezoning near completion), proposing activities to meet housing element requirements (e.g., rezoning to accommodate housing needs pursuant to Gov. Code Section 65583(c)(1)) and adoption of a compliant element prior to the award of funds.
 3. No documentation is necessary to meet this threshold requirement if an adopted housing element has been found in substantial compliance by the Department.

A jurisdiction's current housing element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element/index.shtml> or by contacting Paul McDougall at paul.mcdougall@hcd.ca.gov.

- (b) **Annual Progress Report (APR) on the housing element:** The applicant must submit the APR to the Department as required by Gov. Code section 65400 for the current or prior year by the date established in the NOFA.
1. Charter cities are not exempt from this specific Program requirement and must submit an APR to be eligible for the Program.
 2. Please be advised that the Department will not accept other reports in lieu of the APR. Housing Authority Financial Reports, Redevelopment Reports, and other similar reports will not be accepted as meeting this requirement. If uncertain of the status of the report submittal for a jurisdiction, please contact the Department for more information.
 3. The proposed use of the planning grant shall be included in the locality's funding plan and annual progress reports pursuant to Gov. Code section 50470(b)(2)(B)(ii)(II) and (III).

4. No documentation is necessary to meet this threshold requirement.

- (c) **Nexus to accelerating housing production:** The applicant must propose and document plans or processes that accelerate housing production. The application must demonstrate a significant positive effect on accelerating housing production through timing, cost, approval certainty, entitlement streamlining, feasibility, infrastructure capacity, or impact on housing supply and affordability. An application not utilizing priority policy areas must include an explanation and documentation of the nexus plans or processes impact on accelerating housing production based on a reasonable and verifiable methodology and must utilize the Department's form (see Attachment 1). A verifiable methodology may include a statement of support from a non-profit or for-profit developer that is active in the locality.

Applicants proposing priority policy areas do not require a nexus demonstration and are automatically deemed to accelerate housing production without any documentation.

- (d) **State Planning and Other Planning Priorities:** Applicants must demonstrate that the locality is consistent with State Planning or Other Planning Priorities. Consistency may be demonstrated through activities (not necessarily proposed for SB 2 funding) that were completed within the last five years. Applicants must self-certify utilizing the Department's form (see Attachment 2).

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

ARTICLE III. ELIGIBLE ACTIVITIES AND USES

Section 300. Eligible Activities

(a) Eligible activities must demonstrate a nexus to accelerating housing production.

(b) Eligible activities may include:

1. Updates to general plans, community plans, specific plans, local planning related to implementation of sustainable communities strategies, or local coastal plans;
2. Updates to zoning ordinances;
3. Environmental analyses that eliminate the need for project-specific review; and
4. Local process improvements that improve and expedite local planning.

Applicants proposing priority policy areas are automatically deemed to accelerate housing production without any documentation or demonstration to the Department.

- (c) Eligible activities are not necessarily jurisdiction-wide and may include a smaller geography with a significant impact on housing production. For example, eligible activities may include a housing development-related project with a significant community level impact or planning or process improvement for a project with an ongoing community impact beyond the project. Eligible activities also include an overlay district, project level specific plan or development standards modifications proposed for significant areas of a locality, such as corridors, downtown or priority growth areas.
- (d) Eligible activities may include the creation or enhancement of a housing sustainability district pursuant to AB 73 (Chapter 371, Statutes of 2017), workforce housing opportunity zone pursuant to SB 540 (Chapter 369, Statutes of 2017), zoning for by-right supportive housing, pursuant to Government Code section 65651 (Chapter 753, Statutes of 2018), zoning incentives for housing for persons with special needs, including persons with developmental disabilities, rezoning to meet requirements pursuant to Government Code Section 65583.2(c) and other rezoning efforts to facilitate supply and affordability, rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps), pre-approved architectural and site plans, regional housing trust fund plans, SB 2 funding plans, and infrastructure financing plans.
- (e) Eligible activities may include environmental hazard assessments, data collection on permit tracking, feasibility studies, site analysis, or other background studies that are ancillary and part of the proposed activity.
- (f) Eligible activities may be part of a larger planning effort (e.g., a comprehensive zoning code update) if proposed activities have not been completed prior to the NOFA date, are distinct, and demonstrate a nexus to accelerating housing production.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 301. Ineligible Activities

- (a) Activities unrelated to housing production.
- (b) Activities that obstruct or hinder housing production, e.g. moratoriums, downzoning, planning documents with conditional use permits that significantly impact approval certainty and timing, planned development, or other similarly constraining processes.
- (c) The Department may consider proposals that include activities under subdivisions (a) and (b) if a significant housing component is also present and the net effect on accelerating housing production is positive. For example, an applicant may propose combining an open-space designation, downzoning, or anti-displacement measures with by-right upzoning that has a significant net gain in housing capacity.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 302. Eligible Uses

- (a) Grant funds shall be used for the costs of preparing and adopting the proposed activity.
- (b) Program grant funds may not be used for administrative costs of persons employed by the grantee for activities not directly related to the preparation and adoption of the proposed activity.
- (c) A jurisdiction that receives funds under this Program may use a subcontractor. The subcontract shall provide for compliance with all the requirements of the Program. The subcontract shall not relieve the jurisdiction of its responsibilities under the Program.
- (d) Applicants will enter into a State Standard Agreement (Standard Agreement) for distribution of funds. Program grant funds must be spent by the anticipated end of the grant term (June 30, 2022).
- (e) Unless otherwise noted, no costs incurred prior to the execution date of the Standard Agreement may be charged to Program funds. After the contract has been executed by the state, eligible expenditures may be incurred and expended for the project(s) subject to the terms and conditions of the Standard Agreement.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

ARTICLE IV. AWARD AMOUNTS AND DISTRIBUTION

Section 400. Award Amounts

- (a) The minimum award is \$25,000.
- (b) The maximum award amount is a sliding scale based on population estimates from the Department of Finance (DOF) (2018 DOF Population Estimates, E-5), as follows:
 - 1. \$500,000 for large localities (greater than 200,000 people)
 - 2. \$250,000 for medium localities (60,000 to 200,000 people)
 - 3. \$125,000 for small localities (less than 60,000 people)

For a link to the 2018 DOF Population Estimates, E-5, see
<http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>.

- (c) Applicants seeking partnerships with other local governments will be additive. For example, two large localities could submit a proposal for up to \$1,000,000.
- (d) The maximum or minimum award amounts may be adjusted based on the amount collected in the Fund.
- (e) The maximum or minimum awards may be adjusted in the event the Department considers a supplemental round of funding.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 401. Geographic Distribution

- (a) The Department will ensure geographic equity in the distribution and expenditure of funds through marketing, outreach and technical assistance to potential applicants.
- (b) In the event of a supplemental round of funding, the Department will ensure geographic equity through criteria such as minimum set-asides, under-resourced localities, disaster recovery, and location efficient communities (e.g., access to transportation).

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(C).

ARTICLE V. APPLICATION REVIEW AND AWARD

Section 500. Application Review

- (a) The Program will not initially utilize a competitive process to award funds. Funds will be available to eligible applicants upon request ("over the counter").
- (b) Funds will be available for an eight-month over-the-counter period, commencing from the date of the NOFA.
- (c) The Department may extend the over-the-counter period.
- (d) Applicants must submit an application to be eligible for funding. An application form will be available upon release of the NOFA and will include forms to demonstrate meeting threshold requirements, a proposed budget and timeline, and a request for letters of support from key stakeholders and decision-makers in the adoption process.
- (e) The Department may request additional information to complete the initial application for funding.

- (f) Applications recommended for funding are subject to conditions specified by the Department. Applicants will receive an official letter of award after the Department approves funding recommendations.
- (g) If funds are not fully awarded at the conclusion of the over-the-counter period, the Department may consider a supplemental funding round.
 - 1. The supplemental funding round will be available to prior applicants and localities that have not submitted a request for funding. The supplemental funding round will either use the initial complete application for funding, a new application where localities have not submitted a request for funding, or a new application and NOFA.
 - 2. Localities that have not submitted a previous request for funding will receive top priority in the supplemental funding round, subject to the minimum and maximum award amounts described in Section 400. All other applicants for the supplemental funding round will be subject to scoring criteria. Scoring criteria will include priority policy areas, under-resourced localities, disaster recovery, and location efficient. A tiebreaker will use factors such as impact on housing supply and affordability, level of housing need, and affirmatively furthering fair housing.
 - 3. The Department may adjust scoring criteria to accommodate changes in conditions and circumstances, such as the results of the initial funding round and equitable geographic distribution.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

ARTICLE VI. ADMINISTRATION

Section 600. Grant Execution and Term

- (a) The Department will notify the grantee if they have been selected for a grant award.
- (b) After the Standard Agreement and attachments have been finalized, the grantee will be provided instructions for signing all required documents. The grantee must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instructions or risk forfeiting the grant award.
- (c) The grant term begins on the day the Department and the grantee have both signed the completed Standard Agreement. The Department will notify the grantee and partners when work may proceed.
- (d) The end of the grant term will be determined by the state based on the availability of grant funds and the administrative requirements for liquidation. The anticipated grant term runs through June 30, 2022.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 601. Payment and Accounting of Grant Funds

- (a) Grant funds cannot be disbursed until the Standard Agreement has been fully executed.
- (b) The grantee will be responsible for compiling and submitting all invoices and reporting documents. Grantees will submit for reimbursements to the Department based on actual cost incurred.
- (c) The grantee must bill the state based on clear deliverables outlined in the Standard Agreement. Only approved and eligible costs incurred for work after the NOFA date, continued past the date of the Standard Agreement and completed during the grant term will be reimbursable. Approved and eligible costs incurred prior to the NOFA date are ineligible.
- (d) Work must be completed prior to requesting reimbursement.
- (e) Grant fund payment will be made on a reimbursement basis; advance payments are not allowed. The grantee and partners must have adequate cash flow to pay all grant-related expenses prior to requesting reimbursement from the Department. Project invoices will be submitted to the Department by the grantee on a quarterly basis.
- (f) In unusual circumstances, the Department may consider alternative arrangements to reimbursement and payment methods based on documentation demonstrating cost burdens, including the inability to pay for work.
- (g) Supporting documentation may include, but is not limited to: purchase orders, receipts, progress payments, subcontractor invoices, time cards, etc.
- (h) Invoices must be accompanied by reporting materials where appropriate. Invoices without the appropriate reporting materials will not be paid. The Department may withhold 10 percent of the grant until grant terms have been fulfilled.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 602. Accounting Records and Audits

- (a) The grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the attached Work Plan and Budget. Separate bank accounts are not required.

- (b) The grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with generally accepted accounting principles.
- (c) The grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- (d) The grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.
- (e) Subcontractors employed by the grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.
- (f) At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the awardee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during project implementation and over the project life.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 603. Remedies of Non-performance

- (a) In the event that it is determined, at the sole discretion of the state, that the grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement.
- (b) Both the grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The grantee will submit any requested documents to the Department within 30 days of the early termination notice.
- (c) There must be a strong implementation component for the funded activity through this Program, including, where appropriate, agreement by the locality to formally adopt the completed planning document. Localities that do not formally adopt the funded activity could be subject to repayment of the grant.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 604. Reporting

- (a) During the term of the Standard Agreement, and according to the annual deadline identified in the Standard Agreement, the awardee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in the Standard Agreement.
- (b) Upon completion of all deliverables within the Standard Agreement, the awardee shall submit a close out report. See Attachment 3.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b).

ARTICLE VII. TECHNICAL ASSISTANCE

Section 700. Method

- (a) Five percent of the SB 2 planning funds will be available for the Department and the Governor's Office of Planning and Research (OPR) to provide technical assistance to localities requesting grant funds to update planning documents, zoning ordinances, environmental analyses, or local processes to meet the objectives of the Program.
- (b) Technical assistance provided by the Department and OPR to localities will include at least three phases, including assistance in meeting threshold requirements, providing tools, models and best practices to supplement proposed activities related to accelerating housing production, and direct assistance to applicants.
- (c) The Department will coordinate with OPR on technical assistance related to the SB 2 planning funds.
- (d) With minor exceptions and accounting for equitable geographic distribution, technical assistance will be used on priority policy areas.
- (e) Technical assistance will incorporate the Department's responsibility to affirmatively further fair housing.

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Section 701. Geographic Distribution

- (a) The Department will prioritize geographic distribution in the provision of technical assistance to potential applicants.
- (b) Geographic distribution considerations include minimum set-asides, under-resourced localities, disaster recovery, or location efficiency (e.g., access to jobs and a variety of transportation modes).

NOTE: Authority cited: Health and Safety Code section 50470, subdivision (d). Reference cited: Health and Safety Code section 50470, subdivision (b)(1)(A).

Attachment 1
Nexus to Accelerating Housing Production
Form
(Only for proposals not using the priority policy
areas)

Locality: _____

Planned Activity: _____

Applicants shall demonstrate how the application includes a nexus to accelerating housing production. Applicants selecting priority policy areas are automatically deemed to demonstrate a nexus to accelerating housing production and do not need to complete this form. Please complete the following chart by providing information about the current conditions and expected outcomes with respect to the planned activity and housing production.

Application Nexus to Accelerating Housing Production				
Type (Select At least One)	Baseline*	Projected**	Difference***	Additional notes
Timing (e.g., reduced number of days of processing)				
Development cost (e.g., land, fees, financing, construction costs per unit)				
Approval certainty and reduction in discretionary review (e.g., prior versus proposed standard and level of discretion)				
Entitlement streamlining (e.g., number of approvals)				
Feasibility of development				
Infrastructure Capacity (e.g, number of units)				
Impact on housing supply and affordability (e.g., number of units)				
Other				
* Baseline – Current conditions in the jurisdiction (e.g. 6-month development application review) **Projected – Expected conditions in the jurisdiction because of the planning grant actions (e.g. 2-month development application review) ***Difference – Potential change resulting from the planning grant actions (e.g., 4-month acceleration in permitting, creating a more expedient development process)				

Attachment 2

State Planning and Other Planning Priorities Form

Locality: _____

Applicants shall report on meeting state objectives by showing activities completed prior to application submittal in one or more of the State Planning Priorities (i.e., Infill and Equity, Resource Protection, Efficient Development Patterns) or Other Planning Priorities (i.e., Affordability, Conservation, Climate Change)

Please select one or more of the areas in the following chart by marking X in the completed box and describe the action and completion date.

STATE PLANNING PRIORITIES (Select one or more)		
Action	Completed	Describe Action and Completion Date
Promote Infill and Equity		
Rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas.		
Seek or utilize funding or support strategies to facilitate opportunities for infill development.		
Other (describe how this meets subarea objective)		
Promote Resource Protection		
Protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands; natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands; recreation lands such as parks, trails, greenbelts, and other open space; and landscapes with locally unique features and areas identified by the state as deserving special protection.		

Actively seek a variety of funding opportunities to promote resource protection in underserved communities.		
Other (describe how this meets subarea objective)		
Encourage Efficient Development Patterns		
Ensuring that any infrastructure associated with development, other than infill development, supports new development that does the following: (1) Uses land efficiently. (2) Is built adjacent to existing developed areas to the extent consistent with environmental protection. (3) Is located in an area appropriately planned for growth. (4) Is served by adequate transportation and other essential utilities and services. (5) Minimizes ongoing costs to taxpayers.		
Other (describe how this meets subarea objective)		

OTHER PLANNING PRIORITIES

(Select one or more)

Action	Completed	Describe Action and Completion Date
Affordability and Housing Choices		
Incentives and other mechanisms beyond State Density Bonus Law to encourage housing with affordability terms.		
Efforts beyond state law to promote accessory dwelling units or other strategies to intensify single-family neighborhoods with more housing choices and affordability.		
Upzoning or other zoning modifications to promote a variety of housing choices and densities.		
Utilizing surplus lands to promote affordable housing choices.		
Efforts to address infrastructure deficiencies in disadvantaged communities pursuant to Government Code Section 65302.10.		
Other (describe how this meets subarea objective)		
Conservation of Existing Affordable Housing Stock		
Policies, programs or ordinances to conserve stock such as an at-risk preservation ordinance, mobilehome park overlay zone, condominium conversion ordinance and acquisition and rehabilitation of market rate housing programs.		
Policies, programs and ordinances to protect and support tenants such as rent stabilization, anti-displacement strategies, first right of refusal policies, resources to assist tenant organization and education and "just cause" eviction policies.		
Other (describe how this meets subarea objective)		

Climate Adaptation

Building standards, zoning and site planning requirements that address flood and fire safety, climate adaptation and hazard mitigation.		
Long-term planning that addresses wildfire, land use for disadvantaged communities, and flood and local hazard mitigation.		
Community engagement that provides information and consultation through a variety of methods such as meetings, workshops, and surveys and that focuses on vulnerable populations (e.g., seniors, people with disabilities, homeless, etc.).		
Other (describe how this meets subarea objective)		

I certify under penalty of perjury that all of the information contained in this SB 2 Planning Grants State Planning and Other Planning Priorities Form is true and correct.

Certifying official's name: _____

Certifying official's title: _____

Certification date: _____

Certifying official's signature: _____

Attachment 3

Close Out Reporting Form

SB 2 Planning Close Out Reporting Template

Brief Summary

- Overview of the project
- Project start date and duration
- Project goals and relevance to SB 2 Planning Grants Program goals
- Outcomes

Lead Agency and Partnerships

- List lead agency and partnerships (including names, titles, organizations, and roles and responsibilities of each)
- What did those collaborative relationships and processes look like?

Drivers

- Did any local, state, or federal legislation or mandates drive the project? (SB 35, AB 1397, etc.)
- Was it a community driven effort?
- Were there additional funding opportunities present?

Engagement Process

- Who were your stakeholders?
- What did the engagement process look like?
- What role did stakeholders play in the process? (Keep in mind: training, education, council formation, technical assistance, etc.)
- What were the outcomes of the engagement process?

Challenges

- What challenges were encountered?
- What solutions were encountered or created?
- Are there areas for improvement of policy alignment at the state or federal level to help achieve this project more easily?

Outcomes

- What are the current or projected outcomes? Benefits?
- Were outcomes as anticipated?
- Have new opportunities arisen as a result of this project?
- What are the next steps?

SB 2 Planning Close Out Reporting Template

Replicability

- What aspects of the project could be replicated in other communities?
- Useful resources and tools? For a specific region or sector?

Additional Resources

- Links to the project itself
- Links to resources used throughout and any other relevant resources

Further Information

- Who can be reached to ask more questions about this project?
 - o Name
 - o Number and/or email

- C5. Adopt a Resolution Accepting a Department of Homeland Security (FEMA) SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$2,336,284 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Six New Milpitas Firefighters, Adopt a Resolution Amending the Classification Plan to Add Six Firefighter Paramedic Positions to the City's Authorized Positions List, and Approve Related Budget Amendment (Staff Contact: Rick Frawley, 408-586-2824)**

Recommendations:

- (1) Adopt a Resolution accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to City of Milpitas, and direct staff to proceed with hiring of six new firefighters no later than the start of the period of performance for the grant which is March 11, 2020.
- (2) Adopt a Resolution amending the Classification Plan to authorize adding six (6) Full Time Equivalent (FTE) Firefighter Paramedic positions to the City's Authorized Positions List.
- (3) Approve related budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City's cost for FY 2019-20.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Accepting a Department of Homeland Security (FEMA) SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$2,336,284 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Six New Milpitas Firefighters, Adopt a Resolution Amending the Classification Plan to Add Six Firefighter Paramedic Positions to the City's Authorized Positions List, and Approve Related Budget Amendment (Staff Contact: Rick Frawley, 408-586-2824)
Category:	Consent Calendar-Public Safety
Meeting Date:	10/1/2019
Staff Contact:	Rick Frawley, Deputy Fire Chief, 408-586-2824
Recommendations:	1. Adopt a Resolution accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to City of Milpitas, and direct staff to proceed with hiring of six new firefighters no later than the start of the period of performance for the grant which is March 11, 2020. 2. Adopt a Resolution amending the Classification Plan to authorize adding six (6) Full Time Equivalent (FTE) Firefighter Paramedic positions to the City's Authorized Positions List. 3. Approve related budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City's cost for FY 2019-20.

Background:

The City of Milpitas submitted a grant proposal to the United States Department of Homeland Security requesting funding to assist with hiring six new firefighters. The grant application was approved by Council on March 19, 2019.

The Staffing for Adequate Fire and Emergency Response (SAFER) grant application was approved by Federal Emergency Management Agency (FEMA) and awarded to Milpitas on September 18, 2019. The three-year grant will fund 75% of the salary and benefits for each of the six newly-hired firefighters for the first two years and 35% in the final year of the grant. The total project cost is \$3,788,568. The federal grant funding totals \$2,336,284 and the local cost match for the City totals \$1,452,284. Additionally, there will also be a cost to the City of approximately \$0.4 million for salary and benefit increases over the three-year term.

The additional firefighters will be added to each shift to increase existing daily staffing. The current staffing levels would increase to support increased fire suppression personnel and deployment of the transport capable ambulance. The ambulance will be placed in service in early 2020.

In support of these additional personnel, the City's Classification Plan will need to be amended to reflect the addition of the six (6) Firefighter Paramedic positions.

Analysis:

The Fire Department conducted an assessment of service delivery for the organization in 2019. This assessment known as the Standards of Coverage (SOC) supported the addition of personnel for both overall emergency response as well as increasing services with the deployment of a transport capable ambulance.

One of the benchmarks utilized in an SOC for the analysis of the delivery of emergency services is the National Fire Protection Association (NFPA). The NFPA standard for fire service staffing is NFPA 1710 "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments". The SAFER grant program was created to provide funding directly to fire departments to help increase or maintain the number of trained, "front line" firefighters available in the community. The goal of SAFER is to enhance the local fire departments' ability to comply with staffing, response and operational standards established by the NFPA 1710. As such, the acceptance of these grant monies from the SAFER program will support industry best practices to improve firefighter safety and health and enhance service in the Milpitas community.

In support of accepting SAFER grant funds and hiring six additional personnel, the City's Classification Plan will need to be amended to reflect the addition of the six (6) Firefighter Paramedic positions. Additionally, the budget will be amended in the Fire Department's FY 2019-20 General Fund Operating Budget to reflect City costs associated with the personnel costs for six (6) new Firefighter Paramedics for approximately six months of the current fiscal year.

Policy Alternative:

Alternative 1:

Council may choose to not adopt a resolution accepting the SAFER grant funds. This would result in grant funding not being available to support future staffing in the Fire Department.

The Fire Department goals of deploying a transport capable ambulance in 2020 are a key factor in increasing staffing within the Fire Department. With current staffing levels, ambulance deployment would place additional needs on our personnel resulting in the increased deployment of personnel on overtime and the potential for Firefighter fatigue and the drawdown of personnel resources.

The Milpitas Fire Department has previously been successful in increasing the numbers of line personnel through SAFER grant funding. In 2018, the City of Milpitas was successful in applying for and securing funding through the SAFER grant process for four (4) Firefighters. The Department hired and trained six (6) Firefighters in 2019. Four of these positions were grant funded. These personnel successfully completed the fire academy and are currently deployed on fire apparatus. The addition of these personnel has improved service to the community by increasing daily staffing levels with an additional Firefighter on the Milpitas Truck Company.

Pros: If Council chooses to not adopt a resolution to approve the acceptance of SAFER grant funding, the City would not be impacted by the fiscal challenges of maintaining the cost of personnel at the completion of the grant cycle. The SAFER grant is a three-year grant with restrictions and requirements. The grant will pay for the salary and benefits for newly hired firefighter at a rate of 75% of actual costs the first two years and 35% of actual costs in the third year. The City is responsible for 100% of the costs after the third year. As part of the grant agreement, the City is bound to grant program rules requiring the maintenance of staffing levels at the level that existed at the time of the award and must retain all SAFER funded positions throughout the grant's full three-year period of performance unless FEMA affords the grant recipient a waiver. Additionally, the Fire Department would not be required to support regulatory compliance for grant program that require quarterly reporting to FEMA.

Cons: If Council chooses to not adopt a resolution to approve the acceptance of SAFER grant funding, ambulance deployment would face challenges in the drawdown of personnel resources. This would potentially limit the service timelines for the ambulance. The grant will fund \$2,336,284 of personnel costs that will support increased line staffing and support Firefighter health and safety for the three year period of the grant. Acceptance of these grant funds would benefit service delivery by providing additional personnel to enhance emergency operations in the community.

Reason not recommended: The Fire Department sees no reason to not recommend adopting the resolution to accept the grant funds. The addition of more line personnel will be a benefit to the community and support recommendations outlined in the previously completed SOC report.

Fiscal Impact: The SAFER grant is a three-year grant with restrictions and requirements. The grant will pay for the salary and benefits for newly hired firefighter at a rate of 75% of actual costs the first two years and 35% of actual costs in the third year.

The City is responsible for 100% of the costs after the third year, but is not required to maintain the positions after the third year as a condition of receiving SAFER grant funding. Costs associated with salary and benefit increases per the MOU with the International Association of Fire Fighters, Local 1699 and salary increases as assumed in the Five-Year General Fund Forecast estimated at \$ 0.4 million over the grant period will be paid by the City. The estimated costs during the three-year grant period is \$1.9 million.

The projected cost to maintain six (6) firefighter paramedics in year four, after the three-year grant term ends, is approximately \$1.7 million for salary and benefits. These costs have been incorporated into the City's FY 2020-25 General Fund Five-Year Forecast, with the City picking up \$0.16 million of costs starting in year one (FY 2019-20), and increasing to \$1.7 million in year four (FY 2022-23) for the full cost of the (6) firefighters, and continuing through the last year (FY 2024-25) of the Forecast. There are currently funds set aside for the first year costs in the FY 2019-20 Operating Budget. A budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget is recommended to cover the City's share of the first year's (FY 2019-20) cost.

California Environmental Quality Act:

Not applicable.

Recommendations:

1. Adopt a Resolution accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to the City of Milpitas, and direct staff to proceed with hiring of the six new firefighters paramedics no later than the start of the period of performance for the grant, which is March 11, 2020.
2. Adopt a Resolution amending the Classification Plan to authorize adding six (6) additional Full Time Equivalent (FTE) Firefighter Paramedic positions to the City's Authorized Positions List.
3. Approve related budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City's cost for FY 2019-20.

Attachment(s):

- a) Award Package
- b) SAFER Grant Application
- c) Council Minutes 3-19-19 Approving Application
- d) Budget Change Form
- e) Resolution Accepting SAFER Grant 2018
- f) Resolution Amending Classification Plan to add 6 FTE FF

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Geoffrey Maloon
Milpitas, City of
455 E CALAVERAS BLVD
MILPITAS, CA 95035



EMW-2018-FH-00502

Dear Geoffrey Maloon,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2018 Staffing for Adequate Fire and Emergency Response (SAFER) Grant funding opportunity has been approved in the amount of \$2,336,283.60 in Federal funding.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2018 SAFER Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink, which appears to read "Bridget Bean".

Bridget Bean
Acting Assistant Administrator
Grant Programs Directorate

Summary Award Memo

Program: Fiscal Year 2018 Staffing for Adequate Fire and Emergency Response

Recipient: Milpitas, City of

DUNS number: 038142642

Award number: EMW-2018-FH-00502

Summary description of award

The purpose of the SAFER Grant Program is to provide funding directly to fire departments and volunteer firefighter interest organizations to assist in increasing the number of firefighters to help communities meet industry minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards, and to fulfill traditional missions of fire departments. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application — including budget information — was consistent with the SAFER Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for FY2018 Staffing for Adequate Fire and Emergency Response (SAFER) funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded

The amount of the award is detailed in the attached Obligating Document for Award.

The following is the approved budget for this award (including Federal share plus your cost share, if applicable) and summarizes the financial aspects of the grant:

Object Class	First Year	Second Year	Third Year	Total
Personnel	\$679,626.00	\$679,626.00	\$679,626.00	\$2,038,878.00
Fringe benefits	\$583,230.00	\$583,230.00	\$583,230.00	\$1,749,690.00
Travel	\$0.00	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00
Indirect charges	\$0.00	\$0.00	\$0.00	\$0.00
Federal	\$947,142.00	\$947,142.00	\$441,999.60	\$2,336,283.60
Non-federal	\$315,714.00	\$315,714.00	\$820,856.40	\$1,452,284.40
Total	\$1,262,856.00	\$1,262,856.00	\$1,262,856.00	\$3,788,568.00

2 C.F.R. § 200.308 identifies the limits to the changes that can be made and when prior approval is required from FEMA, but this provision does not apply to the breakdown by year. If you have questions about which changes require FEMA's prior approval, please contact your Grants Management Specialist.

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2018 SAFER NOFO.

Approved request details:

Hiring of Firefighters

Firefighter Position

BENEFITS FUNDED

The City Benefit Package is as follows: Family Medical coverage up to \$2,032 per month PERS retirement at 48% of base salary per month Dental coverage at \$232 per month Vision insurance at \$17.50 per month Disability Insurance at \$24.50 per month Deferred Compensation match-Varies In addition there are variables that include education incentives, leave use and cash out, education allowance (reimbursement of tuition costs), and optional life insurance plans. Of the last five new hires in the department, all were lateral firefighters under the traditional PERS structure and four were classified under the family insurance plan. Three were paramedics and we will be hiring paramedics under this SAFER grant (additional 12% salary) due to staffing needs. The cost assumptions are based on classic PERS rates and family medical.

NUMBER OF FIREFIGHTERS	ANNUAL SALARY PRICE	ANNUAL BENEFITS	TOTAL PER FIREFIGHTER
6	\$113,271.00	\$97,205.00	\$210,476.00
3 YEAR TOTAL			
	\$3,788,568.00		

Agreement Articles

Program: Fiscal Year 2018 Staffing for Adequate Fire and Emergency Response

Recipient: Milpitas, City of

DUNS number: 038142642

Award number: EMW-2018-FH-00502

Table of contents

Article 1	Assurances, Administrative Requirements, Cost Principles, Representations and Certifications
Article 2	DHS Specific Acknowledgements and Assurances
Article 3	Acknowledgement of Federal Funding from DHS
Article 4	Activities Conducted Abroad
Article 5	Age Discrimination Act of 1975
Article 6	Americans with Disabilities Act of 1990
Article 7	Best Practices for Collection and Use of Personally Identifiable Information (PII)
Article 8	Civil Rights Act of 1964 – Title VI
Article 9	Civil Rights Act of 1968
Article 10	Copyright
Article 11	Debarment and Suspension
Article 12	Drug-Free Workplace Regulations
Article 13	Duplication of Benefits
Article 14	Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX
Article 15	Energy Policy and Conservation Act
Article 16	False Claims Act and Program Fraud Civil Remedies
Article 17	Federal Debt Status
Article 18	Federal Leadership on Reducing Text Messaging while Driving
Article 19	Fly America Act of 1974
Article 20	Hotel and Motel Fire Safety Act of 1990
Article 21	Limited English Proficiency (Civil Rights Act of 1964, Title VI)
Article 22	Lobbying Prohibitions
Article 23	National Environmental Policy Act
Article 24	Nondiscrimination in Matters Pertaining to Faith-Based Organizations
Article 25	Non-supplanting Requirement
Article 26	Notice of Funding Opportunity Requirements
Article 27	Patents and Intellectual Property Rights
Article 28	Procurement of Recovered Materials
Article 29	Rehabilitation Act of 1973

Article 30	Reporting of Matters Related to Recipient Integrity and Performance
Article 31	Reporting Subawards and Executive Compensation
Article 32	SAFECOM
Article 33	Terrorist Financing
Article 34	Trafficking Victims Protection Act of 2000
Article 35	Universal Identifier and System of Award Management (SAM)
Article 36	USA Patriot Act of 2001
Article 37	Use of DHS Seal, Logo and Flags
Article 38	Whistleblower Protection Act
Article 39	Acceptance of Post Award Changes
Article 40	Prior Approval for Modification of Approved Budget
Article 41	Disposition of Equipment Acquired Under the Federal Award
Article 42	Environmental Planning and Historic Preservation

Article 1 Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget(OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances -Construction Programs as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations(C.F.R) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article 2 DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. 1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS. 2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. 4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance. 5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. Recipients are required to provide this information once every two (2) years, not every time an award is made. After the initial submission for the first award under which this term applies, recipients are only required to submit updates every two years, not every time a grant is awarded. Recipients should submit the completed tool, including supporting materials to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. .

Article 3 Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article 4 Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article 5 Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article 6 Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article 7 Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

Article 8 Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article 9 Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (See 42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D)

Article 10 Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article 11 Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, and 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article 12 Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101).

Article 13 Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article 14 Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article 15 Energy Policy and Conservation Act

Recipients must comply with the requirements of The Energy Policy and Conservation Act Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

Article 16 False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of The False Claims Act, 31 U.S.C. § 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Article 17 Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article 18 Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

Article 19 Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article 20 Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, codified as amended at 15 U.S.C. § 2225.

Article 21 Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidancepublished-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 22 Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article 23 National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article 24 Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article 25 Non-supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article 26 Notice of Funding Opportunity Requirements

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated hereby reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

Article 27 Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

Article 28 Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article 29 Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973) (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 30 Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the recipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article 31 Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

Article 32 SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article 33 Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article 34 Trafficking Victims Protection Act of 2000

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) codified as amended by 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

Article 35 Universal Identifier and System of Award Management (SAM)

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

Article 36 USA Patriot Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

Article 37 Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article 38 Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

Article 39 Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@dhs.gov if you have any questions.

Article 40 Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. § 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. § 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 41 Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its subrecipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313.

Article 42 Environmental Planning and Historic Preservation

DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation (EHP) review process. This review does not address all Federal, state, and local requirements. Acceptance of Federal funding requires recipient to comply with all Federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize Federal funding. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. To access the FEMA's Environmental and Historic Preservation (EHP) screening form and instructions go to the DHS/FEMA website at: <https://www.fema.gov/media-library/assets/documents/90195>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. Failure to provide requisite information could result in delays in the release of grant funds. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Obligating document

1. Agreement No. EMW-2018-FH-00502	2. Amendment No. N/A	3. Recipient No. 94-6019192	4. Type of Action AWARD	5. Control No. WX02684N2019T		
6. Recipient Name and Address Milpitas, City of 455 E Calaveras Blvd Milpitas, CA 95035		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Richard Frawley	9a. Phone No. 408-586-2824	10. Name of FEMA Project Coordinator Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program		10a. Phone No. 1-866-274-0960		
11. Effective Date of This Action 09/13/2019	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING	14. Performance Period 03/11/2020 to 03/10/2023 Budget Period 03/11/2020 to 03/10/2023			
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
SAFER	97.083	2019-F8-GF01 - P431-xxxx-4101-D	\$0.00	\$2,336,283.60	\$2,336,283.60	\$1,452,284.40
Totals			\$0.00	\$2,336,283.60	\$2,336,283.60	\$1,452,284.40
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE
Bridget Bean, Acting Assistant Administrator Grant Programs Directorate	09/13/2019

Entire Application

148

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
Staffing for Adequate Fire and Emergency Response (SAFER)
(General Questions All Applicants)

OMB
Collection
Number: 1660-
0135
Expiration Date: 01/31/2021

PAPERWORK BURDEN DISCLOSURE NOTICE
FEMA Form 080-0-4

Public reporting burden for this data collection is estimated to average 9 hours per response for FEMA Form 080-0-4, Staffing for Adequate Fire and Emergency Response (SAFER) (General Questions All Applicants). The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. This collection of information is required to obtain or retain benefits. You are not required to respond to this collection of information unless a valid OMB control number is displayed on this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472-3100, Paperwork Reduction Project (1660-0135) NOTE: Do not send your completed form to this address.

Applicant's Acknowledgements

- * I certify the DUNS number in this application is our only DUNS number and we have confirmed it is active in SAM.gov as the correct number.
- * As required per 2 CFR § 25, I certify that prior to submission of this application I have checked the DUNS number listed in this application against the SAM.gov website and it is valid and active at time of submission.
- * I certify that the applicant organization has consulted the appropriate Notice of Funding Opportunity and that all requested activities are programmatically allowable, technically feasible and can be completed within the award's Period of Performance (POP).
- * I certify that the applicant organization is aware that this application period is open from 02/15 to 03/22/2019 and will close at 5 PM EST; further that the applicant organization is aware that once an application is submitted, even if the application period is still open, a submitted application cannot be changed or released back to the applicant for modification.
- * I certify that the applicant organization is aware that it is solely the applicant organization's responsibility to ensure that all activities funded by this award(s) comply with Federal Environmental planning and Historic Preservation (EHP) regulations, laws, and Executive Orders as applicable. The EHP Screening Form designed to initiate and facilitate the EHP Review is available at: <https://www.fema.gov/media-library/assets/documents/90195>.
- * I certify that the applicant organization is aware that the applicant organization is ultimately responsible for the accuracy of all application information submitted. Regardless of the applicant's intent, the submission of information that is false or misleading may result in actions by FEMA that include, but are not limited to: the submitted application not being considered for award, an existing award being locked pending investigation, or referral to the Office of the Inspector General.
- * I certify that the applicant organization is aware that the grants awarded under this funding opportunity are provided a recruitment period, which begins when the application is approved for award. The recruitment period for grants awarded under the Hiring of Firefighters Activity is 180-days and the period of performance automatically starts after the recruitment period, regardless of whether the grantee has successfully hired the requested firefighters. The recruitment period for Recruitment & Retention of Volunteer Firefighters Activity is 90-days and the period of performance automatically starts after the recruitment period.

* I certify that the applicant organization will, to the extent practicable, seek, recruit, and hire members of racial and ethnic minority groups and women to increase their ranks within their organization.

149

* I certify that, if awarded under the Hiring of Firefighters Activity, the applicant organization, will assure a policy will be put into place, or is currently in place, ensuring that positions filled under this grant are not discriminated against, or prohibited from, engaging in volunteer firefighting activities in another jurisdiction during off-duty hours. (If applying under the Recruitment and Retention of Volunteer Firefighters Activity, this does not apply, however, in order to move forward in the application process, you must complete this question).

Signed by **Geoffrey D Maloon** on **2019-03-22 15:38:44.0**

Overview

* Are you a member, or are you currently involved in the management of the fire department or organization applying for this grant with this application?	
Yes, I am a member/officer of this applicant	

If you answered **No**, you must please complete the preparer information below. If you answered **Yes**, please skip the Preparer Information section.

Note: Fields marked with an asterisk (*) are required.

Preparer Information	
Preparer's Name	
Address 1	
Address 2	
City	
State	
Zip	Need help for ZIP+4?
Primary Phone	Ext. Select
Email	

In the space below please list the person your fire department or organization has selected to be the **Primary Point of Contact** for this grant. This should be an officer, member, or employee of the fire department or organization applying for the grant that will see the grant through completion, has the authority to make decisions on and to act upon this grant application.

The Primary Contact, as listed below, is the person for which all exchanges of information will be made relative to the application; all information provided must be specific to the contact listed. The Primary Contact must be an employee of the fire department or organization applying for the grant and shall not be a grant writer or a non-employee of the fire department or organization.

In addition to the Primary Contact information, you will be asked to provide two (2) Alternate Points of Contact on the next page. The Alternate Contacts must be familiar with the application and must be able to answer any questions relative to this application in the event that Primary Point of Contact is unavailable. When you are finished, click the Save and Continue button below.

Reminder: Please list only phone numbers and an email address where we can get in *direct contact* with the respective point of contact(s). If this contact changes at any time during the period of performance please update this information.

Note: Fields marked with an asterisk (*) are required.

Primary Point of Contact	
* Title	Battalion Chief
Prefix	Select
* First Name	Geoffrey
Middle Initial	D
* Last Name	Maloon
* Primary Phone	408-586-2818 Ext. Type work

* Secondary Phone	831-277-2198 Ext. Type cell	150
Optional Phone	Ext. Type Select	
Fax		
* Email	gmaloon@ci.milpitas.ca.gov	

Contact Information

Alternate Contact 1 Information	
* Title	Deputy Chief
Prefix	N/A
* First Name	Richard
Middle Initial	
* Last Name	Frawley
* Primary Phone	408-586-2824 Ext. Type work
* Secondary Phone	925-946-1229 Ext. Type cell
Optional Phone	Ext. Type Select
Fax	
* Email	rfrawley@ci.milpitas.ca.gov

Alternate Contact 2 Information	
* Title	Fire Chief
Prefix	N/A
* First Name	Brian
Middle Initial	
* Last Name	Sherrard
* Primary Phone	408-586-2811 Ext. Type work
* Secondary Phone	408-687-5086 Ext. Type cell
Optional Phone	Ext. Type Select
Fax	
* Email	bsherrard@ci.milpitas.ca.gov

Applicant Information

EMW-2018-FH-00502

Originally submitted on 03/22/2019 by Geoffrey Maloon (Userid: rbethke)

Contact Information:

Address: 777 South Main Street
City: Milpitas
State: California
Zip: 95035
Day Phone: 4085862820
Evening Phone: 8316888534
Cell Phone: 8312772198
Email: gmaloon@ci.milpitas.ca.gov

Application number is EMW-2018-FH-00502

Applicant Information	
* Organization Name	Milpitas Fire Department

* What kind of organization do you represent?	All Paid/Career	151
If you answered "Combination" above, what is the percentage of career members in your organization?	%	
* Type of Jurisdiction Served	City	
If "Other", please enter the type of jurisdiction served		
* In what county/parish is your organization physically located? If you have more than one station, in what county/parish is your main station located?	Santa Clara	
<u>SAM.gov (System For Award Management)</u>		
* What is the legal name of your Entity as it appears in SAM.gov ? Note: This information must match your SAM.gov profile if your organization is using the DUNS number of your Jurisdiction.	City of Milpitas	
* What is the legal business address of your Entity as it appears in SAM.gov ? Note: This information must match your SAM.gov profile if your organization is using the DUNS number of your Jurisdiction.		
* Mailing Address 1	455 East Calaveras Blvd	
Mailing Address 2		
* City	Milpitas	
* State	California	
* Zip	95035 - 5411 Need help for ZIP+4?	
* Employer Identification Number (e.g. 12-3456789) Note: This information must match your SAM.gov profile.	94-6019192	
* Is your organization using the DUNS number of your Jurisdiction?	Yes	
* I certify that my organization is authorized to use the DUNS number of my Jurisdiction provided in this application. (Required if you select Yes above)	☒	
* What is your 9 digit DUNS number ?	038142642 (call 1-866-705-5711 to get a DUNS number)	
If you were issued a 4 digit number (DUNS plus 4) by your Jurisdiction in addition to your 9 digit number please enter it here. Note: This is only required if you are using your Jurisdiction's DUNS number and have a separate bank account from your Jurisdiction. Leave the field blank if you are using your Jurisdiction's bank account or have your own DUNS number and bank account separate from your Jurisdiction.		
* Is your DUNS Number registered in SAM.gov (System for Award Management previously CCR.gov)?	Yes	
* I certify that my organization/entity is registered and active at SAM.gov and registration will be renewed annually in compliance with Federal regulations. I acknowledge that the information submitted in this application is accurate, current and consistent with my organization's/entity's SAM.gov record.	☒	
Headquarters or Main Station Physical Address		
* Physical Address 1	777 S. MAIN ST	
Physical Address 2		
* City	Milpitas	
* State	California	
* Zip	95035 - 5322 Need help for ZIP+4?	
Mailing Address		
* Mailing Address 1	455 E Calaveras Blvd	
Mailing Address 2		
* City	Milpitas	

* State	California	152
* Zip	95035 - 5322 Need help for ZIP+4?	
Bank Account Information		
* The bank account being used is: (Please select one from right)	Maintained by my Jurisdiction	
Note: The following banking information must match your SAM.gov profile.		
* Type of bank account	Checking	
* Bank routing number - 9 digit number on the bottom left hand corner of your check	121000248	
* Your account number	4050010628	
Additional Information		
* For this fiscal year (Federal) is your jurisdiction receiving Federal funding from any other grant program that may duplicate the purpose and/or scope of this grant request?	No	
* Is the applicant delinquent on any federal debt?	No	
If you answered "Yes" to any of the additional questions above, please provide an explanation in the space provided below (4000 characters) :		

Applicant Characteristics (Part I)

* Is this application being submitted on behalf of a Federal Fire Department or organization contracted by the Federal government which is solely responsible for the suppression of fires on Federal property?	No
* Please indicate the type of community your organization serves.	Suburban
* Please describe your organization and/or the community that you serve (2000 characters) .	Located at the southern tip of the San Francisco Bay, the City of Milpitas is a progressive community that is an integral part of the high tech Silicon Valley. Milpitas is often called the Crossroads of Silicon Valley with most of its 13.63 square miles of land situated between two major freeways (I-880 and I-680), State Route 237, and a County expressway. A new light rail line opened for service in 2004 and an extension of BART including a major multi-modal station is scheduled to open later this year. An additional 350 acres are dedicated to regional and community retail centers supporting 3.5 million square feet of commercial shops. The Great Mall of the Bay Area is the largest enclosed mall in Northern California, with approximately 1.1 million square feet of leasable space for retail and entertainment operations. Several local shopping centers serve regional needs for Asian-oriented retail and services. Several top employers have made the City of Milpitas their corporate headquarters as well. Given the City's desirable location for the high-tech industry, the daytime population of Milpitas doubles to 130,000. Milpitas is rich in diversity. In 2000, Asians constituted 52% of the population with Filipino the largest Asian group at 15%. Caucasians were 24%; Hispanic 17% and African-American were 3%. Services provided by the Fire Department include fire suppression, ALS first response, technical/specialist level hazardous materials mitigation and USAR technical rescue provided by 64 (not all positions are filled) authorized safety and prevention personnel working from four stations strategically placed throughout the city. The area served by the Milpitas Fire Department presents our firefighters with a myriad of

rescue and suppression challenges including hazardous materials used in the high tech industry, a commuter and freight rail line, three major highways, a large wildland/urban interface area and high value light and medium industry.

153

* What is the square mileage of your first-due response area? Primary/First Due Response Area is a geographical area proximate to a fire or rescue facility and normally served by the personnel and apparatus from that facility in the event of a fire or other emergency and does not include daily or seasonal population surges.

14

* What percentage of your primary response area is protected by hydrants?

92 %

* Does your organization protect critical infrastructure?

Yes

If Yes, please describe the critical infrastructure protected (3000 characters) .

The Silicon Valley is the technology hub of the United States and the City of Milpitas (in partnership with our mutual and auto aid partners) protects an incredible array of critical infrastructure that includes: - Moffett Field and NASA Ames Research Center - Stanford Linear Accelerator - Multiple large power generation facilities that provide power for over 2.5 million people - High tech research facilities - Military research and production facilities - Large sports venues including the 2016 Super Bowl 50 that is located four miles from the Milpitas border. - Multiple universities and hospitals - Biomedical research and production facilities - Multiple passenger and freight rail moving over 80 million tons of freight and thousands of passengers daily - Nuclear research facilities - Huge amounts of hazardous materials involved in the aforementioned industries - San Jose International Airport - Multiple regional and local airports - Amusement parks and other high profile civilian targets - Multiple large reservoirs providing potable water to over 2.5 million people

(Percentages in three answers below must sum up to 100%)

* How much of your primary response area is for agriculture, wildland, open space, or undeveloped properties?

18%

* What percentage of your primary response area is for commercial and industrial purposes?

23 %

* What percentage of your primary response area is used for residential purposes?

59 %

* How many occupied structures (commercial, industrial, residential, or institutional) in your primary response area are more than three (3) stories tall? Do not include structures which are not regularly occupied such as silos, towers, steeples, etc.

57

* What is the permanent resident population of your Primary/First-Due Response Area or jurisdiction served?

82000

* Do you have a seasonal increase in population?

Yes

If Yes what is your seasonal increase in population?

15000

* How many stations are operated by your organization?

4

* Please indicate if your department has a formal automatic/mutual aid agreement with another community or fire department and the type of agreement that exists.

Both automatic and mutual aid

* What services does your organization provide?

Advanced Life Support

Haz-Mat Technical Level

Rescue Technical Level
Structural Fire Suppression
Wildland Fire Suppression

SAFER intends to improve local fire departments' staffing and deployment capabilities so they may more effectively respond to emergencies. With the enhanced staffing, a SAFER grant recipient's response time will be reduced sufficiently and an appropriate number of trained personnel will be assembled at the incident scene.

The following questions are designed to help us understand the staffing changes that have occurred in your department over the past several years and how the grant will assist in improving your staffing levels. The information provided must be a true and accurate depiction of your department on the timelines listed below.

Use the following definitions when completing the table below.

Total # of Operational Career Personnel — this number represents the total number of **full-time operational career personnel** employed by your department on the dates indicated. (Note: only operational personnel — including operational officers - should be included)

Operational Officers — of the operational career personnel indicated in the "Total # of Operational Career Personnel" question, how many of those serve in **operational officer-level (both command and company) positions**?

NFPA Compliance — of the "Total # of Operational Career Personnel" indicated, how many are assigned to **field or response apparatus positions that directly support the department's compliance** with NFPA 1710 (Section 5.2.4.1 — Single-Family Dwelling Initial Full Alarm Assignment Capability) or NFPA 1720 (Section 4.3 — Staffing and Deployment)? (Note: Officers should **only** be included in this number if they **directly support the department's compliance** with NFPA 1710 or NFPA 1720 compliance)

Note: The number of **career personnel** in any of these fields should include positions which are job-shared. Job-shared positions will be counted as one (1) regardless of how many personnel fill those positions.

For more information regarding these standards please see the Notice of Funding Opportunity or go to www.nfpa.org/freeaccess

• What is the department's current (at the start of the application period) budgeted operational staffing level? (NOTE: include all budgeted positions, even if they are not currently filled)	57		
	Total # of Operational Career Personnel	# Operational Officers	# NFPA Support
• Staffing levels at the start of the application period	60	18	60
• Staffing levels at one year prior to the start of the application period	54	18	54
• Staffing levels at two years prior to the start of the application period	51	18	51
• If awarded this grant, what will the staffing levels be in your department? Note: These numbers should reflect the staffing levels at the start of the application period plus the number of positions being requested in the application. (Whole Numbers only)	66	18	66
• Please provide details on the department's existing staffing model to include the number of shifts, number of positions per shift, chief level officer staffing per shift (i.e., Battalion Chief, District Chief, etc.), and contracted work hours. (3000 characters) The Department functions on a three shift schedule with each of the three shifts (platoons) working 48 hours on duty followed by 96 hours off duty. This totals a 56 hour workweek for operational personnel. Each platoon staffs apparatus as follows: Battalion Chief-1 Truck Company-2 Heavy Rescue-1 (runs as a tandem vehicle single company with the truck) Four engines with three personnel per engine-12 Minimum daily staffing per the MOU is set at 15 plus the battalion chief. Currently we have a total of 17 assigned to two platoons and 18 assigned to one platoon, leaving two relief personnel per shift before overtime is necessary. It is the intention of this grant to increase daily minimum staffing to 21 plus the battalion chief (total 22) under a constant staffing model (total of 66 operations positions). The deployment model is as follows: Battalion Chief-1 Truck-4 Rescue medic-2 Four engines with 3 firefighters per engine-12 Note: We will be able to staff all units plus add a fourth firefighter to our two busiest engine companies with SAFER funding.			
• Does your department utilize part-time paid firefighters?	No		
If Yes, please provide details on how the part-time firefighters are used within your department to include the number of part-time firefighters, the number of full-time, NFPA compliant positions these part-time firefighters occupy, if applicable, and how they are scheduled to meet your staffing needs (3000 characters) .			
• Does your department utilize reserve/relief paid firefighters?	No		
If yes, please provide details on how the reserve/relief firefighters are used within your department to include the number of reserve/relief firefighters, the number of full-time, NFPA compliant positions these part-time firefighters occupy, if applicable, and how they are scheduled to meet your staffing needs (3000 characters) .			
	Yes		

* Do you currently report to the National Fire Incident Reporting System (NFIRS)?

155

Applicant Characteristics (Part II)

	2019	2018	2017
* What is the total number of fire-related civilian fatalities in your jurisdiction over the last three calendar years?	0	1	1
* What is the total number of fire-related civilian injuries in your jurisdiction over the last three calendar years?	1	1	0
* What is the total number of line of duty member fatalities in your jurisdiction over the last three calendar years?	0	0	0
* What is the total number of line of duty <u>member injuries</u> in your jurisdiction over the last three calendar years?	3	8	7
* What is your department's operating budget (e.g., personnel, maintenance of apparatus, equipment, facilities, utility costs, purchasing expendable items, etc.) related to fire-related programs and emergency response for the current (at time of application) fiscal year?	Fiscal Year: 2018 Budget: \$ 21,510,345		
* What was your department's operating budget (e.g., personnel, maintenance of apparatus, equipment, facilities, utility costs, purchasing expendable items, etc.) related to fire-related programs and emergency response for the previous three fiscal years?	Fiscal Year: 2017 Budget: \$ 20,189,338 Fiscal Year: 2016 Budget: \$ 18,467,620 Fiscal Year: 2015 Budget: \$ 17,644,407		
Please indicate in the text box next to each of the budget figures what fiscal year that amount pertains to.			
* What percentage of your operating budget is dedicated to personnel costs (salary, benefits, overtime costs, etc.)?	87 %		
* Does your department have any rainy day reserves, emergency funds, or capital outlay?	No		
If yes, what is the total amount currently set aside?			
If yes, describe the planned purpose of these funds (1000 characters).	The City does maintain a capital outlay account that includes all city functions and is allocated based on need each year. There is no specific set aside for the fire department, but the City has allocated nearly 5 million dollars for fleet replacement over the last two years. Governmental Accounting Standards Board (GASB) mandates are also followed with regards to maintenance of a specific operating reserve and unfunded liability servicing.		
* What percentage of your annual operating budget is derived from: Enter numbers only, percentages must sum up to 100%			
<u>Taxes?</u>	88 %		
Bond Issues?	0 %		
<u>EMS Billing?</u>	0 %		
Grants?	0 %		
Donations?	0 %		
Fund drives?	0 %		
<u>Fee for Service?</u>	12 %		
Other?	0 %		
If you entered a value other than 0 into the "Other" field, please explain (1000 characters) :			

* How many **frontline** vehicles does your organization have in each of the types or classes of vehicle listed below that respond to **first alarm assignments in support of NFPA 1710/1720**? You must include vehicles that are leased or long-term loan as well as any vehicles that have been ordered or otherwise currently under contract for purchase or by your organization but not yet in your possession. Enter numbers only and enter 0 if you do not have any of the vehicles below.

Type or Class of Vehicle	Number of Frontline Vehicles	Total Number of Available Riding Positions	Total Number of Filled Riding Positions
Engines or Pumpers (pumping capacity of 750 gpm or greater and water capacity of 300 gallons or more): Pumper, Pumper/Tanker, Rescue/Pumper, Foam Pumper, CAFS Pumper, Type I or Type II Engine Urban Interface	4	16	12
Ambulances for transport and/or emergency response	1	2	2
Tankers or Tenders (pumping capacity of less than 750 gallons per minute (gpm) and water capacity of 1,000 gallons or more)	0	0	0
Aerial Apparatus: Aerial Ladder Truck, Telescoping, Articulating, Ladder Towers, Platform, Tiller Ladder Truck, Quint	1	4	4
Brush/Quick attack (pumping capacity of less than 750 gpm and water carrying capacity of at least 300 gallons): Brush Truck, Patrol Unit (Pickup w/ Skid Unit), Quick Attack Unit, Mini-Pumper, Type III Engine, Type IV Engine, Type V Engine, Type VI Engine, Type VII Engine	3	10	0
Rescue Vehicles: Rescue Squad, Rescue (Light, Medium, Heavy), Technical Rescue Vehicle, Hazardous Materials Unit	2	8	1
Additional Vehicles: EMS Chase Vehicle, Air/Light Unit, Rehab Units, Bomb Unit, Technical Support (Command, Operational Support/Supply), Hose Tender, Salvage Truck, ARFF (Aircraft Rescue Firefighting), Command/Mobile Communications Vehicle	4	4	4

Please use this comments section if you wish to provide any additional information with regards to the **Type or Class of Vehicle** section above (2000 characters).

This grant will allow for staffing of the new medic unit and add firefighters to our busiest engine companies.

Department Call Volume

	2018	2017	2016
* Summary of responses per year by category (Enter whole number only. If you have no calls for any of the categories, Enter 0)			
Fire - NFIRS Series 100	143	138	148
Overpressure Rupture, Explosion, Overheat (No Fire) - NFIRS Series 200	4	3	3
Rescue & Emergency Medical Service Incident - NFIRS Series 300	3728	3843	3733
Hazardous Condition (No Fire) - NFIRS Series 400	111	95	103
Service Call - NFIRS Series 500	328	309	304
Good Intent Call - NFIRS Series 600	372	429	380
False Alarm & False Call - NFIRS Series 700	543	517	590
Severe Weather & Natural Disaster - NFIRS Series 800	3	3	0
Special Incident Type - NFIRS Series 900	18	21	10
Total	5250	5358	5271

FIRES

* How many responses per year by category? (Enter whole number only. If you have no calls for any of the categories, Enter 0)

Of the NFIRS Series 100 calls, how many are "Structure Fire" (NFIRS Codes 111-120)	39	25	31	157
Of the NFIRS Series 100 calls, how many are "Vehicle Fire" (NFIRS Codes 130-138)	29	13	21	
Of the NFIRS Series 100 calls, how many are "Vegetation Fire" (NFIRS Codes 140-143)	29	38	52	
Total	97	76	104	
What is the total acreage of all vegetation fires?	333	88	9	

RESCUE AND EMERGENCY MEDICAL SERVICE INCIDENTS

* How many responses per year by category? (Enter whole number only. If you have no calls for any of the categories, Enter 0)

Of the NFIRS Series 300 calls, how many are "Motor Vehicle Accidents" (NFIRS Codes 322-324)	330	245	246
Of the NFIRS Series 300 calls, how many are "Extrications from Vehicles" (NFIRS Code 352)	2	4	2
Of the NFIRS Series 300 calls, how many are "Rescues" (NFIRS Codes 300, 351, 353-381)	15	14	14
How many EMS-BLS Response Calls	0	0	0
How many EMS-ALS Response Calls	3328	3466	3324
How many EMS-BLS Scheduled Transports	0	0	0
How many EMS-ALS Scheduled Transports	0	0	0
How many Community Paramedic Response Calls	0	0	0
Total	3675	3729	3586

MUTUAL AND AUTOMATIC AID

* How many responses per year by category? (Enter whole number only. If you have no calls for any of the categories, Enter 0)

How many times did your organization receive Mutual Aid?	9	6	8
How many times did your organization receive Automatic Aid?	4	7	9
How many times did your organization provide Mutual Aid?	66	57	43
How many times did your organization provide Automatic Aid?	71	68	42
Of the Mutual and Automatic Aid responses, how many were structure fires?	39	3	2

Request Details

The activity for your organization is listed in the table below.

Activity	Number of Entries	Total Cost
<u>Hiring of Firefighters</u>	1	3,788,568

FEMA Form 080-0-4

Hiring of Firefighters

* 1. Select which line-item below best describes your organization and the NFPA standard you are attempting to meet.

NFPA Requirements

Check One	NFPA Standard (see the Notice of Funding Opportunity for more detail)	Department Characteristics	Demographic	Assembly Staffing	Response Time	Frequency of Time

	regarding these standards)					
X	1710	Career	With Aerial	15	8 min	90%
	1710	Career	Without Aerial	14	8 min	90%
	1720 - Urban	Urban Combo/Vol	> 1,000 pop/square mile	15	9 min	90%
	1720 - Suburban	Suburban Combo/Vol	500 - 1,000 pop/square mile	10	10 min	80%
	1720 - Rural	Rural Combo/Vol	< 500 pop/square mile	6	14 min	80%
	1720 - Remote	Remote Combo/Vol	Travel > 8 mi	4	n/a	90%

* 2. Based on the **current staffing** levels, how often does your department meet the NFPA assembly requirements as indicated in the table above for the department's primary/first due response area?

Half of the Time (40 to 59%)

[Help](#)

NOTE: If your department utilizes overtime to fill positions to ensure you are meeting applicable NFPA staffing and deployment standards, you should remove the number of positions filled by overtime from your calculations.

* 2a. If awarded the number of positions requested in this application, how often do you anticipate that your department will meet the NFPA assembly requirements as indicated in the table above?

Always (100%)

[Help](#)

* 3. Based on the **current staffing** levels, what is the average actual staffing level on your first arriving engine company or vehicle capable of initiating suppression activities on the number of structure fires indicated in the "Department Call Volume" section of your application? (Up to one decimal i.e., 2.5)

3

NOTE: If your department utilizes overtime to fill positions to ensure you are meeting applicable NFPA staffing and deployment standards, you should remove the number of positions filled by overtime from your calculations.

* 3a. If awarded the number of positions requested in this application, what will be the average actual staffing level on your first arriving engine company or vehicle capable of initiating suppression activities on the number of structure fires indicated in the "Department Call Volume" section of your application? (Up to one decimal i.e., 2.5)

4

* 4. Describe the department's step-by-step hiring process (application period, written test, physical, approval). The timeline for each step must be included and you must discuss how long, after award, you will be able to start a recruit class. If you are requesting more positions than can be trained in one recruit class, please discuss when you will be able to hold the second class. (2000 characters).

The Department hires from lists that are established with an open and competitive testing and evaluation process. The testing process includes a job announcement that is distributed through a variety of print and on line media including outreach to specific communities such as gender, ethnic and veteran communities. There is an application period and all qualified candidates are then invited to complete the written test portion of the process. Candidates that pass the written are invited to an oral board interview panel and the highest scoring candidates are then invited to an interview with the Fire Chief at which time a decision is made regarding an offer of employment.

If an employment offer is extended the candidate is required to then pass a rigorous background investigation as well as an NFPA 1582 compliant physical. Upon completion all candidates enter into a probationary period during which they are trained to the NFPA FFII level. If a candidate completes all aspects of probation they will then be recommended for permanent appointment.

	The actual testing and hiring phase is generally a nine one hundred twenty (90-120) day process. Position posted-30 days Written test-10 days Physical agility-Must complete to apply Interviews-30 days Offers and background investigations-30 days Job offers and acceptance-10 days	159
* 5. How many recruits can be trained in one academy class?	10	
* 6. Does the department need governing body approval to accept the award and hire the positions?	Yes	
6a. If yes, provide details on the timeline needed for acceptance. (1000 characters)	The City council adopted a resolution approving this application. If awarded it can now be accepted at the direction of the City Manager.	
* 7. Is your request for hiring firefighters based on a risk analysis, staffing needs analysis, or an Insurance Services Office (ISO) rating?	Yes	
7a. If Yes, describe how the analysis was conducted and the outcome of the analysis or ISO rating. (1000 characters)	An internally prepared document provides a thorough examination of the entire department including budget and staffing analysis. The staffing section of this document includes a formal GIS staffing analysis and response times modeling as it pertains to personnel assemblage in compliance with NFPA 1720 and 1500. A GIS standards of coverage document was prepared for the department utilizing the IAFF GIS service. The City has also contracted with a firm for a formal standards of cover assessment and gap analysis. This process is still underway, but is 90% complete and preliminary data support this application. The determination was made that staffing was inadequate and the department deployment model was inefficient.	
* 8. If awarded a grant, will you provide the new hires with entry-level physicals in accordance with NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments 2013 Edition, Chapter 6?	Yes, NFPA 1582 compliant	
* 9. Do you currently provide annual medical/physical exams in accordance with NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments 2013 Edition, Chapter 6?	Yes, NFPA 1582 compliant	
* 10. Will the personnel hired meet the minimum EMS training and certification as required by your Authority Having Jurisdiction (AHJ)?	Yes	
* 11. Does your department currently have a policy in place to recruit and hire veterans?	Yes	
11a. If yes, please provide a brief description of the policy in place (1000 characters).	Our hiring policy includes wording to specifically address the VOW To Hire Heroes Act of 2011 strategies.	
* 12. Is it your department's intent to sustain the positions filled under this grant after the completion of the period of performance?	Yes	
12a. If yes, please provide a brief description on how the positions will be sustained. (1000 characters)	With recent development in the City favoring residential units the City instituted a "rooftop" tax on all new residential units in the City. This funding is specifically earmarked to pay for City provided services for new residents including police and fire department personnel, water and sewer infrastructure and road maintenance. It is estimated that the revenue generated from the new development in the City will allow for sustainability of the additional positions.	

Budget Item

* How many full-time firefighter positions, including positions that will be job-shared, are you requesting? "Full-time" is considered 2,080 hours or more worked per year and entitles the employee to receive benefits earned by the other full-time employees in the organization. "Job-share" is the term used to describe the hiring of more than one person to fill one full-time position. Part-time positions are less than 2,080 hours per year. Often part-time employees do not earn benefits or do not earn them at the same rate or level as full-time employees	6				
If you are requesting to fund a full-time position(s) that will be "job-shared" by more than one individual you must indicate how many individuals will fill the position(s), how they will be used and scheduled to fill the position(s), and provide an explanation as to why the position will be shared. (1000 characters)					
* What are the current usual annual costs of a first-year firefighter in your department? "Usual annual costs" includes the base salary (exclusive of non-FLSA overtime) and the standard benefits package (including the average health cost, dental, vision, FICA, life insurance, retirement/pension, etc.) offered by the fire departments to first-year (i.e. entry-level) firefighters.	<table border="1"> <tr> <td>Annual Salary:</td> <td>\$ 113,271</td> </tr> <tr> <td>Annual Benefits:</td> <td>\$ 97,205</td> </tr> </table>	Annual Salary:	\$ 113,271	Annual Benefits:	\$ 97,205
Annual Salary:	\$ 113,271				
Annual Benefits:	\$ 97,205				
* What costs are included in the standard benefits package your department provides to first-year firefighters? You must provide details on the dollar amounts or percentages for each benefit being provided (health costs (family, employee only, employee plus one), dental, vision, FICA, life insurance, retirement/pension, etc.). (2000 characters) NOTE: Failure to provide this information may results in reductions to the requested amounts.	The City Benefit Package is as follows: Family Medical coverage up to \$2,032 per month PERS retirement at 48% of base salary per month Dental coverage at \$232 per month Vision insurance at \$17.50 per month Disability Insurance at \$24.50 per month Deferred Compensation match-Varies In addition there are variables that include education incentives, leave use and cash out, education allowance (reimbursement of tuition costs), and optional life insurance plans. Of the last five new hires in the department, all were lateral firefighters under the traditional PERS structure and four were classified under the family insurance plan. Three were paramedics and we will be hiring paramedics under this SAFER grant (additional 12% salary) due to staffing needs. The cost assumptions are based on classic PERS rates and family medical.				

FEMA Form 080-0-4a

Budget**Hiring of Firefighters:**

There is a three-year period of performance for grants awarded under the Hiring of Firefighters Activity. The amount of Federal funding provided to a recipient for hiring a firefighter in any fiscal year may not exceed -

- **Year One:** 75 percent of the usual annual costs of a first-year firefighter as provided in the Request Details section;
- **Year Two:** 75 percent of the usual annual cost of a first-year firefighter as provided in the Request Details section;

- **Year Three: 35 percent of the usual annual cost of a first-year firefighter as provided in the Request Details section.**

161

Review and confirm the budget information below. If you need to change any of the budget amounts on the matrix, you will need to update the information on the previous Request Details screen.

When you are finished, press the *Save and Continue* button below.

Budget Matrix				
	First 12-Month Period	Second 12-Month Period	Third 12-Month Period	Total
Personnel	679,626	679,626	679,626	2,038,878
Benefits	583,230	583,230	583,230	1,749,690
Total:	1,262,856	1,262,856	1,262,856	3,788,568
Total Applicant Share	315,714	315,714	820,856	1,452,284
Total Federal Share	947,142	947,142	442,000	2,336,284

FEMA Form 080-0-4a

Narrative Statement for Hiring of FireFighters

* Element #1 - Project Description (30%):

* 1a. Why does the department need the positions requested in this application? (2500 characters)

The City of Milpitas is changing and growing at a rapid pace. With the recovery of the economy in the San Francisco Bay Area the region has experienced an influx of new workers from throughout the world. This has resulted in the highest average housing prices in the world and an extreme shortfall of not only affordable housing, but housing in general. The result has been a significant increase in the demand for high density housing. The City of Milpitas has embraced the concept of high density housing. Recent development as well as recently approved projects include the addition of thousands of multi family dwelling units, most configured in a form of "Texas wrap" where the parking garage is located in the center of the structure with the living units arrayed to the outside of the parking area. Most of the structures include recreation areas on the roof and consist of 120 to 600 single family units in buildings ranging from 4-12 stories. The direct result has been two fold as it pertains to the provision of emergency services: firefighting challenges and population increases. The City has chosen to address these challenges with the addition of an ALS transport rescue-ambulance to reduce response times for ALS care and to transition from an aerial platform to a tiller with greater reach and significantly improved maneuverability for increased access in the ever growing high density housing units. It is important to note that the rescue ambulance is a fire and rescue response unit staffed by firefighters that will operate in a primary fire suppression role. The provision of ambulance transport is governed by Santa Clara County and is strictly administered in a partnership with a private company. The rescue ambulance is anticipated to transport 300-1500 patients per year, but will respond on the most critical patients as determined by 911 triage. This grant will allow for full-time staffing of the medic ambulance with one paramedic and one EMT as well as allow for staffing of four on the two busiest engine companies in the City (as leave allows).

* 1b. How will the positions requested in this application be used within the department (e.g., 4th on engine, open a new station, eliminate browned out stations, reduce overtime)? (2500 characters)

The newly hired firefighters will be used to supplement daily staffing across all three shifts and will be assigned to the rescue ambulance. Truck company staffing (with the SAFER firefighters) will include the following positions: Captain, Engineer, Engineer (tiller driver), and Firefighter. Engine company staffing will increase on two of our four companies to four firefighters. In addition the City plans to hire all paramedics which will allow us to increase the number of ALS companies from the current four to six (with the ladder company and the ambulance) dependent on daily staffing levels and actual number of paramedics on duty. With our command staff officer we will arrive on scene within 6 minutes of dispatch with at least 16 operational personnel to safely establish Incident Command, IRIC, establish water supply, and initiate fire suppression and SAR while awaiting additional resources and manpower to arrive during the next 5 minutes. Two firefighters will be assigned to each shift.

* 1c. What specific benefits will the requested positions provide to the department and community? (2500 characters)

The following specific benefits will be realized with the addition of the SAFER firefighters: -Improved NFPA 1710 as well as with 100% compliance. This represents a 100% improvement over 1710 compliance in 2017. A first alarm assignment under the current dispatch and staffing matrix only allows for 13 total firefighters (1 BC, 3 on the truck and rescue and 9 on each of the three responding engines). The new matrix will include two additional firefighters on the rescue ambulance unit and 1 additional firefighter on the truck company as well as a fourth firefighter on two of our engine companies. - Improved response times -Improved training opportunities -Ability to split truck crew to complete search and rescue and ventilation simultaneously -Improved completion of essential fireground tasks. This improves safety for both firefighters and residents. Additional personnel will not only contribute to the response and suppression activities, but also the other ancillary duties and daily workload of all in service companies. The addition of a rescue ambulance will be tremendously helpful in both fire suppression as well as rescue capabilities, especially during multiple simultaneous service calls in the City. Multiple simultaneous calls for service that can lead to significant response delays will be easier to cover with lower response times. Better trained and less fatigued firefighters will be better able to effectively service the citizens of Milpitas. Staffing of a new medic ambulance will allow: 1 Incident Commander 1 Safety officer 2 hand lines operated by 4 FFs 3 engineers for water supply 4 person ventilation crew 3 person RIC We will maintain at least 100% compliance, with NFPA 1710 on all structure fires or large scale incidents.

*** 1d. Describe how funds awarded through this grant would enhance the department's ability to protect critical infrastructure within the primary response area. (2500 characters)**

The Silicon Valley is the technology hub of the United States and the City of Milpitas (in partnership with our mutual and auto aid partners) protects an incredible array of critical infrastructure that includes: - Moffett Field and NASA Ames Research Center - Stanford Linear Accelerator - Multiple large power generation facilities that provide power for over 2.5 million people - High tech research facilities - Military research and production facilities - Large sports venues including last year's Super Bowl 50 that is located four miles from the Milpitas border. - Multiple universities and hospitals - Biomedical research and production facilities - Multiple passenger and freight rail moving over 80 million tons of freight and thousands of passengers daily - Nuclear research facilities - Huge amounts of hazardous materials involved in the aforementioned industries - San Jose International Airport - Multiple regional and local airports - Amusement parks and other high profile civilian targets - Multiple large reservoirs providing potable water to over 2.5 million people - The list of critical infrastructure literally goes on and on and is too much to list here. Additional personnel per shift including increased response As stated in the extensive description of the critical infrastructure the Milpitas Fire Department is tasked with protecting a significant number of high profile critical infrastructure. The versatility of a four person truck company combined with the addition of an ALS ambulance and the additional personnel on each shift will improve response times to the critical infrastructure as well as allowing additional personnel on scene to assist with mitigating emergencies. In addition to the aforementioned benefits, the additional personnel will also free time for companies to participate in area familiarization, pre-planning and training allowing for enhanced critical infrastructure protection.

*** Element #2 - Impact on Daily Operations (30%):**

*** 2a. Explain how the community and the current firefighters employed by the department are at risk without the positions requested in this application? (2500 characters)**

Growth has led to an increase in demand for service that has averaged 4% per year. Concurrently, there has been an increase in multiple simultaneous calls. Most fire departments with comparable populations, geography and infrastructure staff more stations with minimum daily staffing levels of at least 24 firefighters. In-service companies currently run an average of 10-20 emergency responses each work period. Staff level reductions will increase the workload on suppression personnel while demands for service continue to increase. This additional stress is likely to result in a continued high level of on the job injuries as well as difficulty maintaining compliance with NFPA standards. Without sufficient manpower for staffing all stations the critical functions of our department are negatively affected in the following manner: -We arrive on the scene with insufficient manpower to immediately and safely begin SAR and aggressive sustained fire suppression activities -We cannot quickly establish a sustained and adequate water supply to support safe interior suppression efforts or SAR within an IDLH environment. -We cannot set up proper IRIC or RIC efforts -No ventilation crew is available -No safety officer is available -Without minimum staffing, if a citizen or FF goes down from heart attack, we lose a FF to CPR efforts riding the ambulance. That takes another FF off the fire ground and usually results with an engine being out of service for lack of personnel until the FF returns from the ambulance run. -We cannot conduct in-service training because we do not have enough FFs to leave skeleton crews to initiate immediate response with apparatus.

*** 2b. How will that risk be reduced if awarded? (1500 characters)**

Additional personnel will not only contribute to the response and suppression activities, but also the other ancillary duties and daily workload of all in service companies. The addition of a fast attack ALS medic unit will be

tremendously helpful in EMS, fire suppression as well as rescue capabilities, especially during multiple simultaneous service calls in the City. Multiple simultaneous calls for service that can lead to significant response delays will be easier to cover with lower response times. Better trained and less fatigued firefighters will be better able to effectively service the citizens of Milpitas. 1 Incident Commander 1 Safety officer 2 hand lines operated by 4 FFs 3 engineers for water supply 4 person ventilation crew 3 person RIC We will maintain at least 100% compliance, with NFPA 1710 on all structure fires or large scale incidents.

Element #3 - Financial Need (30%):

*** 3a. Provide an income versus expenses breakdown of the current annual budget as indicated in the Applicant Characteristics section of the application. (2500 characters)**

Budget Breakdown Current Budget Year Expenses Personnel: \$18,683,749 Supplies and Contractual Services: \$2,696,514 Capital Outlay: \$130,082 Apparatus: \$2,250,000-Capital Improvement Funding not included in the Fire budget, but entered here for clarity and transparency . Total: \$21,510,345 without CIP Total with CIP: \$23,760,345 The budget listed in applicant characteristics does not account for the capital outlay. There is also a mid year budget adjustment for new hires not accounted for in the budget above because it has not officially been credited to the Fire Department at this time. This is the reason for the slight discrepancies, but the final budget can be found on the City website. Current Budget Year Income General Fund: \$20,189,338 Capital Improvement Fund: \$2,250,000 A few items of note with regards to the budget expenditures. The City and its individual departments must show a balanced budget so the numbers above reflect a balanced budget. Overall the City General Fund budget for the current fiscal year is also balanced and showing a budget surplus of almost \$10 million dollars, but this number is misleading as it does not account for numerous unfunded capital improvement projects. These funds remain unencumbered until the mid-year budget review at which time they are disbursed based upon need. In addition, the City has established a pension stabilization fund that reflects as a surplus, but is encumbered for unforeseen increases in PERS rates which has been a regular occurrence in prior budget years and led to significant fiscal difficulties. Significant growth in the City suggests a new census population count of approximately 100,000 in 2020. The City has also spent nearly \$6,000,000 on apparatus replacement over the last two years to include the purchase of four new command vehicles (replacing 1998 Suburbans), One tiller truck (replacing a 1998 tower) and four new type 1 engines replacing rigs that ranged in age from 11 to 19 years old.

*** 3b. Describe the department's budget shortfalls and inability to address financial needs without federal assistance. (2500 characters)**

Overall the financial health of the City and the Fire Department is on solid footing, but as funds become available in the budget year over year those funds are being earmarked to service long term debt and/or replace personnel and services that were cut or reduced over the last decade. Overall the Fire Department employs 12 fewer personnel than we did 18 years ago. This includes both line and administrative staff. In addition, our aging fleet finally reached crisis stage this year and the City has ordered four new engines, four command vehicles, the tiller ladder and the rescue ambulance with an additional support vehicle, two wildland rigs and a heavy rescue slated for purchase in the next two budget cycles. This totals nearly \$7,000,000 in vehicle purchases in three years. Additionally, two stations are slated to be rebuilt (they were built in the 1960's) and the headquarters station is in need of a comprehensive expansion and remodel. The significant capital improvement needs has stressed the ability for the City to provide funding for the positions in the coming budget year, but we have received support from the City Manager and the City Council to pursue this SAFER grant opportunity as a stopgap in anticipation of improved funding in the coming budget years.

*** 3c. What other actions has the department taken to obtain funding elsewhere (e.g., state assistance programs, other grant programs)? (2500 characters)**

The City has funded six new operational position and three administrative positions (including prevention) over the last three budget years. In addition the City implemented the rooftop tax as a revenue generating mechanism to fund public safety and other critical functions, but the funding has not yet become available. There are no other grant programs available for fire personnel funding at this time. The City hired an additional six firefighters that are currently in the academy in anticipation of staffing needs and upcoming retirements. No other funding for full time staffing exists.

*** 3d. Discuss how the critical functions of the department are affected without this funding. (2500 characters)**

Growth has led to an increase in demand for service that has averaged 3% per year. Concurrently, there has been an increase in multiple simultaneous calls. Most fire departments with comparable populations, geography and infrastructure staff more stations with minimum daily staffing levels of at least 24 firefighters. In-service companies currently run an average of 8-20 emergency responses each 48-hour work period. Staff level reductions will increase the workload on suppression personnel while demands for service continue to increase. This additional stress is likely to result in a continued high level of on the job injuries as well as difficulty maintaining compliance with NFPA standards. Without sufficient manpower for staffing all stations the critical functions of our department are negatively affected in the following manner: -We arrive on the scene with insufficient manpower to immediately and safely begin SAR and aggressive sustained fire suppression activities -We cannot quickly establish a sustained and adequate water supply to support safe interior suppression efforts or SAR within an IDLH environment. -We cannot set up proper IRIC or RIC efforts -No ventilation crew is available -No safety officer is available -Without minimum staffing, if a citizen or FF goes down from heart attack, we lose a FF to CPR efforts riding the ambulance. That takes another FF off the fire ground and usually results in an engine being out of service for lack of personnel until the FF returns from the ambulance run. -We cannot conduct in-service training because we do not have enough FFs to leave skeleton crews to initiate immediate response with apparatus.

*** Element #4 - Cost Benefit (10%):**

*** Describe the benefits (e.g., quantifying the anticipated savings and/or efficiencies) the department and community will realize if awarded the positions requested in this application. (3500 characters)**

The cost benefit of this SAFER project is tremendous. As stated above the funding for three firefighters will have an immediate and profound effect on firefighter and constituent safety, maintaining both response capability and administrative functions while also improving morale. It is anticipated and has been shown in numerous studies that the increased staffing levels and fire scene assemblage results in fewer injuries, more efficient response, safer fireground operations and myriad other benefits. The average daily cost per day per population served over the two-year life of the grant is a mere \$0.19. Less than two pennies per day per constituent served will allow for 100% compliance with NFPA 1710 and a corresponding increase in firefighter and citizen safety, reduced time lost to injury and improved morale. The most important and immediate benefits of this grant will be reduced response times and staff assembly on structure fires and the addition of a versatile and efficient two person ALS fast attack unit in the City. Our citizens receive cost benefit for a number of reasons as well. Among them is eliminating the need to increase taxes for our citizens to pay for additional manpower. Having adequate manpower assures that we have proper resources to arrive in a timely manner when called and have enough manpower to effectively and safely mitigate the fire. This reduces property damage losses for them and significantly reduces the risk of a fire fatality occurring. If we have the proper number of FFs then our ISO rating remains stable resulting in a cost benefit to our citizens by eliminating the premium costs that would rise for their homeowner's property hazard insurance premiums if the current rate is raised. It is estimated that a single point rise in ISO rating will result in a 10% increase in insurance hazard premiums for the citizens. If we lose our current ISO rating then we surely could not hope to have a tax increase pass with the citizens to maintain the staffing levels after the period of performance. Proper staffing levels are also critical for increasing our tax revenues as public safety services are high on the list of considerations for commercial developers, industry heads and residential developers in choosing to locate into our areas of service. The cost benefit of this SAFER project is tremendous. As stated above the funding for 6 firefighters will have an immediate and profound effect on firefighter and constituent safety, maintaining both response capability and administrative functions while also improving morale. It is anticipated and has been shown in numerous studies that the increased staffing levels and fire scene assemblage results in fewer injuries, more efficient response, safer fireground operations and myriad other benefits. Pursuant to AFG Program guidelines, the Department has strictly adhered to every single program priority and exhibited tremendous need.

Element #5 - Additional Information : If you have any additional information you would like to include about the department and/or this application in general, please provide below. (2000 characters)

The Milpitas Fire Department has been the recipient of numerous grants through the AFG and SAFER programs over the last 18 years and all have been administered pursuant to program requirements. Additionally, the state of EMS delivery in the County is in a state of flux as the contract with the current provider expires in July and the exclusive operating area provision will also expire. This will allow for more local control of EMS transport services. While a clear picture is yet to be determined because the City has little control over what the County and State EMSA boards will decide, the City must be positioned to provide some level of transport services in the case of an overall system failure.

Assurances and Certifications

165

FEMA Form SF 424B

You must read and sign these assurances. These documents contain the Federal requirements attached to all Federal grants including the right of the Federal government to review the grant activity. You should read over the documents to become aware of the requirements. The Assurances and Certifications must be read, signed, and submitted as a part of the application.

Note: Fields marked with an asterisk (*) are required.

O.M.B Control Number 4040-0007

Assurances Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. Section 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signed by **Geoffrey D Maloon** on **03/22/2019**

Form 20-16C

You must read and sign these assurances.

Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements.

Note: Fields marked with an asterisk (*) are required.

O.M.B Control Number 1660-0025

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on

Lobbying" and 44 CFR Part 17, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Homeland Security (DHS) determines to award the covered transaction, grant, or cooperative agreement.

167

1. Lobbying

A. As required by the section 1352, Title 31 of the US Code, and implemented at 44 CFR Part 18 for persons (entering) into a grant or cooperative agreement over \$100,000, as defined at 44 CFR Part 18, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement and extension, continuation, renewal amendment or modification of any Federal grant or cooperative agreement.

(b) If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all the sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements and sub contract(s)) and that all sub recipients shall certify and disclose accordingly.

2. Debarment, Suspension and Other Responsibility Matters (Direct Recipient)

A. As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A, the applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.

(b) Have not within a three-year period preceding this application been convicted of or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or perform a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application. (4000 characters)

3. Drug-Free Workplace (Grantees other than individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 44 CFR Part 17, Subpart F, for grantees, as defined at 44 CFR part 17, Sections 17.615 and 17.620:

(A) The applicant certifies that it will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the applicable awarding office.

(f) Taking one of the following actions, against such an employee, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance

Street	City	State	Zip	Action

If your place of performance is different from the physical address provided by you in the Applicant Information, press **Add Place of Performance** button above to ensure that the correct place of performance has been specified. You can add multiple addresses by repeating this process multiple times.

Section 17.630 of the regulations provide that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for FEMA funding. States and State agencies may elect to use a Statewide certification.

Signed by **Geoffrey D Maloon** on **03/22/2019**

FEMA Standard Form LLL

Only complete if applying for a grant for more than \$100,000 and have lobbying activities. See Form 20-16C for lobbying activities definition.

Submit Application

Application 100% complete, Submitted

169

Please click on any of the following links to visit a particular section of your application. Once all areas of your application are complete, you may submit your application.

Application Area	Status
Applicant's Acknowledgements	Complete
Overview	Complete
Contact Information	Complete
Applicant Information	Complete
Applicant Characteristics (I)	Complete
Applicant Characteristics (II)	Complete
Department Call Volume	Complete
Request Details	Complete
Budget	Complete
Narrative Statement	Complete
Assurances and Certifications	Complete

PLEASE READ THE FOLLOWING STATEMENTS BEFORE YOU SUBMIT.

- **YOU WILL NOT BE ALLOWED TO EDIT THIS APPLICATION ONCE IT HAS BEEN SUBMITTED.**
- **Be sure you have thoroughly reviewed the application before you submit.**
- **If "placeholders" were used, be sure to update the application with the correct information before submitting.**
- **If you are not yet ready to submit this application, save it, and log out until you feel that you have no more changes.**
- **When you submit this application, you, as an authorized representative of the organization applying for this grant, are certifying that the following statements are true:**

To the best of my knowledge and belief, all data submitted in this application are true and correct.

This application has been duly authorized by the governing body of the applicant and the applicant will comply with the terms of the Notice of Funding Opportunity, comply with all the terms and conditions of the grant award, including any special conditions in accordance with the articles of agreement, and comply with all applicable Federal statutory and regulatory requirements, if awarded.

To sign your application, check the box below and enter your password in the space provided. To submit your application, click the Submit Application button below to officially submit your application to FEMA.

Note: The Primary Point Of Contact will be responsible for signing and submitting the application. Fields marked with an asterisk (*) are required.

I, Geoffrey D Maloon, am hereby providing my signature for this application as of 22-Mar-2019.

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, March 19, 2019
Time: 5:30 PM Closed Session
 7:00 PM Open Session
Location: Council Chambers, Milpitas City Hall,
 455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the meeting to order at 5:30 PM. City Clerk Mary Lavelle called the roll.

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

ABSENT: Councilmember Phan was absent at roll call. He arrived in Closed Session.

CLOSED SESSION City Council convened in Closed Session to discuss two matters listed on the agenda.

City Council convened at the dais for the Open Session regular agenda at 7:08 PM.

ANNOUNCEMENT City Attorney Chris Diaz reported out of Closed Session that Council did vote to initiate litigation, with detail on the subject to be reported later.

PLEDGE The pledge of allegiance was led by a visiting police officer in the audience, upon invitation by Mayor Tran.

INVOCATION Councilmember Montano offered a prayer, and wished to remember those who lost their lives in an attack recently in New Zealand. She asked for a moment of silence, and Mayor Tran offered to adjourn the meeting in memory of the Muslim worshippers killed on March 15.

PRESENTATIONS Mayor Tran proclaimed March 2019 as *American Red Cross Month*, and the proclamation was accepted by Ms. Thu-Thuy Truong, Vice Chair of the Board of the Silicon Valley Chapter.

Vice Mayor Dominguez presented a proclamation declaring the month of March as Women's History Month to Protima Pandey of Santa Clara County Office of Women's Policy.

Councilmember Carmen Montano presented a commendation to the Chair of the Santa Clara County's Commission on the Status of Women.

PUBLIC FORUM A group of local students, led by a young man who was a senior from Milpitas High School and a young woman who was a junior, members of CAT (community advocates) club, addressed the Council. He was President of the club, and one effort was to keep students from using tobacco products. He'd met with Mayor Tran last year on legislation and the group was trying to prevent vaping at the high school.

Mayor Tran requested the City Manager to ask staff to bring back information on banning smoking at Multi-Unit Housing in Milpitas.

John Agg, 20 year resident of Milpitas and Chair of the Arts Commission, thanked Mayor Tran for meeting with the High School drama teacher and two students recently. Mr. Agg requested on a Council agenda his request to add a Senior high school student to serve in an active role on the Arts Commission. School Board member Dan Bobay who is a member of the Arts Commission asked Council to consider having a student from each of the two Milpitas high schools (MHS and Calaveras Hills).

A boy and a girl, students from “Friday Night Live” of Milpitas High School, were trying to keep teens from using tobacco, cannabis, drugs and alcohol (“AOD”). They wanted to impact peers and stay healthy.

Tom Valore, resident, noted 40,000 residents in US lost their lives due to gun violence. He felt Council should look at what could be done to minimize gun violence in Milpitas. Do something soon, he urged, and asked to have it on the agenda. He also requested that Council take agenda items numbered C9 and C7 off the consent calendar.

Rob Means, 1421 Yellowstone resident, supported Mr. Valore’s comments. He spoke of a handout he provided on an MOU with the County on transit improvements needed, including the use of “PRT” (personal rapid transit). He wanted to meet with Councilmembers on this.

Robert Marini, resident, said he’d made a request for information but had not received any response. He asked for information regarding the water fund and charges to that fund. He spoke of a campaign literature claim by one City Councilmember.

Voltaire Montemayor, resident of Penitencia St, mentioned combination of budget allocation and a respect for the speakers. The proclamations - he supported, and he had given blood to Red Cross.

ANNOUNCEMENTS

Mayor Tran invited all to the Spring Valley Firefighters pancake breakfast on Sunday, March 25.

Councilmember Montano requested to the City Manager to invite Valley Transportation Authority to come to Milpitas to allow City Council to learn the status of projects, especially the BART station and pedestrian bridge. Mayor Tran stated he supported her request, as a member of the Santa Clara VTA Board of Directors.

City Attorney Chris Diaz reported that there was a notice in the newspaper for a public hearing on a project time extension request (Main St. development). While it was not on the agenda at this meeting, it would be re-noticed in the newspaper.

Councilmember Nuñez departed the dais and was absent for the remainder of the meeting, following the public forum.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended

City Manager Julie Edmonds-Mares stated that agenda item no. C9 (out of state travel for City Councilmembers) would be amended to delete the request for Councilmember Montano to travel to a conference, due to a conflict she had with another event at the same time.

Motion/Second: Councilmember Phan/Councilmember Montano

Motion carried by a vote of:
AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

CONSENT CALENDAR

Motion: to approve the consent calendar including agenda items no. 1-6, 8, 10-11, and 14-16

Mayor Tran noted Council would remove items no. 7, no. 9 and no. 17, per residents’ requests.

Councilmember Montano requested to remove items no. 12 and no. 13.

Councilmember Phan requested that City Council hear agenda item no. 18 first before other discussion items.

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

- * 1. Council Calendars Accepted City Council calendar for March and April 2019.
- * 2. Meeting Minutes Approved City Council meeting minutes of February 26 and March 5, 2019.
- * 3. EMP Grant to Fire Dept.
 1. Adopted Resolution No. 8853 to accept the 2018 Emergency Management Performance Grant (EMPG) funds and authorized the City Manager (or designee) to execute the related Agreement with the County of Santa Clara.
 2. Approved budget amendment to appropriate funds in the amount of \$4,200 to the Fire Department's FY 2018-19 Operating Budget.
- * 4. Purchase 3 Chevy Tahoe Adopted Resolution No. 8854 authorizing the Purchase Agent to purchase three fire vehicles from the National Auto Fleet Group for the total amount of \$127,721.41 through a cooperative procurement contract through Sourcewell, formerly NJPA.
- * 5. Adopt Resolution for SWIMS
 1. Adopted Resolution No. 8855 to approve the award of a sole source contract to Storm Water Maintenance Services, Inc. (SWIMS).
 2. Authorized the City Manager to execute a contract with SWIMS, for the fabrication, installation, and maintenance of Stormtek Storm Drain Inlet Trash Capture Devices for the Trash Removal Devices, Project No. 3713, in the amount of \$290,195.
 3. Authorized the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$30,000 for the project.
- * 6. Adopt Resolution for SB1 Funded Projects Adopted Resolution No. 8856 listing projects for FY 2019-20 to be funded by SB 1 Road Repair and Accountability Act of 2017.

7. Approve Staff Travel Mayor Tran noted a member of public asked for this item to be removed.

Tom Valore, resident, felt the travel items should be discussed out loud, not just approved on consent. He'd seen comments online about these resources being spent and wanted to know the outcome of the travel.

Mayor Tran said it was a long time policy for out of state travel to be approved by City Council. These events were for professionals to attend conferences. He invited additional speakers from the audience.

Rob Means, resident, agreed with professionals keeping up to speed on industry and work.

Robert Marini, resident, wanted to know what was expected from the conference at UESI.

Mayor Tran asked Public Works Director Tony Ndah to respond, who expressed it was to gain knowledge, opportunity to learn what's new in his field, and to network on latest technology.

Voltaire Montemayor said it was important to be represented at conferences.

Motion: to authorize out of state travel for Public Works Director Tony Ndah to attend the Utility Engineering and Surveying Institute (UESI) Pipelines 2019 Conference in Nashville, TN, July 21-24, 2019

Motion/Second: Councilmember Phan/Vice Mayor Dominguez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

* 8. Approve Staff Travel

Approved out of state travel for Fire Captain G. Perez to attend training Fire Department Instructors Conference in Indianapolis, IN for the dates of April 4 – 12, 2019. NOTE: Class was canceled so staff would not travel.

9. Approve Travel – Mayor and Councilmembers

Resident Robert Marini asked the City Council why it was sending two people to the Mayor's conference, as he felt one person should be enough.

Mayor Tran responded with comments about the value of the annual US Mayor's conference.

Vice Mayor Dominguez stated she was new in her role as Vice Mayor, so this conference would be a training for her. She felt it was helpful to conduct networking by learning what other cities were doing.

Mayor Tran next allowed additional speakers from the audience.

Resident Tom Valore said he raised this issue since he saw some comments online about this.

Resident Voltaire Montemayor spoke of important conferences and back-up.

Motion: to authorize and approve out-of-state travel for Mayor Tran and Vice Mayor Dominguez to attend the U.S. Conference of Mayors' 87th Annual Meeting in Honolulu, Hawaii for total expense amount not to exceed budgeted Conferences/Meeting allocation of \$15,000

Motion/Second:

Councilmember Phan /Councilmember Montano

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

*10. Amendment No. 2 to Agreement with BMI

Approved Amendment No. 2 to the Agreement with BMI Imaging Systems to increase the total value of the assumed Piggyback Agreement of \$84,070.35 by \$150,000 for a new total amount not to exceed \$234,070.35.

*11. Amendment No. 1 to Agreement with Avolve

Approved and authorized the City Manager to execute Amendment No. 1 with Avolve Software for the purchase of ProjectDox Test System and Assurance Services in the amount of \$35,074.87, resulting in a new total contract amount of \$369,731.07.

12. Agreement for Measure B Local Streets funds

Councilmember Montano asked staff for background on this item.

City Engineer Steve Erickson came forward and explained what Measure B was and why it took a few years for the money to be available to the City for these street projects.

Motion: to approve and authorize the City Manager to execute a Master Funding Agreement between the City and the Santa Clara Valley Transportation Authority (VTA) for 2016 Measure B Local Streets and Roads Program, \$1.38 million in the next Fiscal Year

Motion/Second:

Councilmember Montano/Councilmember Phan

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

13. Amendment No. 11 to Agreement with Vali Cooper

Councilmember Montano wanted some background information. City Engineer Steve Erickson responded to her inquiry, explaining the use of funds was for staff support on the BART extension project work in Milpitas.

Motion: to approve Amendment No. 11 to the Consulting Services Agreement with Vali Cooper & Associates/TRC, Inc. to extend the term to December 31, 2019 to continue support on the Silicon Valley Rapid Transit Program Berryessa BART Extension (SVBX) Project No. 4265

Motion/Second: Councilmember Montano/Councilmember Phan

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

- *14. Amendment No. 2 to Agreement with TEA
 - 1. Approved and authorized the City Manager to execute Amendment No. 2 to the Agreement with Telecommunications Engineering Associates, a Subsidiary of Daryl D. Jones, Inc. for Maintenance and Support of the Public Safety Dispatch Center Telecommunications System and Analog Radio System.
 - 2. Authorized the Purchasing Agent to exercise option years 2 and 3 per the terms of the agreement.
- *15. Approve Submitting SAFER Grant Application

Authorized the Milpitas Fire Department to submit an application to the Department of Homeland Security for consideration of funding under the Staffing for Adequate Fire and Emergency Response (SAFER) Grant for the hiring of six Firefighters.
- *16. Reappoint Commissioner

Reappointed Commissioner Ed Smythe to the Milpitas Veterans Commission to new 3-year term that would expire in February of 2022.
- 17. Support Assembly Constitutional Amendment 1 legislation

Assistant City Manager Ashwini Kantak responded to Councilmember Montano about why this letter of support for legislation in Sacramento was requested. ACA1 would move the voter approval threshold from 2/3 to 55% for budget financing proposals by cities and other agencies.

Mayor Tran invited speakers from the audience.

Rob Means, resident, was a proponent of democracy and felt this change was a big deal, and fully supported this change in voting.

Motion: to authorize the City Manager to issue a letter of support for Assembly Constitutional Amendment 1 (Aguiar-Curry, D): *Local government financing: affordable housing and public infrastructure: voter approval* to state legislators and representatives at the League of California Cities

Motion/Second: Councilmember Montano/Councilmember Phan

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

COMMUNITY DEVELOPMENT

- 18. Fee Review/Study

Deputy City Manager Steve McHarris and consultant Courtney Ramos of Matrix Consulting reported on fees for development projects, including building and planning. Staff needed more training on Trak-It software, so that it was used consistently by all involved department staff.

At this meeting, requests for direction from City Council included: 100% cost recovery, permit streamlining (reduce time for permits), and service delivery issues for discussion. Mr. McHarris said “time is money” was the prime reason to improve these processes, in reply to Councilmember Montano.

Mayor Tran spoke about costs for fees for homeowners to renovate. He wanted to seek financial assistance for seniors to renovate their homes, when they could not afford it, and for disabled persons to build a ramp for Americans with Disabilities (ADA) purposes, for example.

Councilmember Montano replied to the Mayor that the City had such a program, through a loan program for assistance for this purpose. She asked what other cities did with regard to cost recovery. The consultant noted that every city had its own policy.

Vice Mayor Dominguez asked several questions on the permitting process and commented on the speed of processing permits.

Councilmember Phan noted that staff could come back with a Zoning Administrator process, so that position could be authorized to approve some permits or other needs. The position would legally publish decisions. Maybe the City could have the permit approval process on television, or staff noted that meetings could be recorded.

Councilmember Montano heard that process could take a long time. Moving things along faster was a good goal. She wanted to ensure it would be one building inspector that stays with a project. Ms. Ramos commented there was a need for the City to have consistency in application of building codes, following the training of all staff.

Councilmember Phan agreed with seeking 100% cost recovery, to be phased in over time, possibly. He urged being more resourceful with helping applicants who do not speak English. He thanked Mr. McHarris for recommending and bringing the fee study to Council.

No vote was taken on this matter. Mayor Tran invited speakers.

Rob Means, resident, spoke on the report, and looked forward to streamlining processes.

Voltaire Montemayor, resident, mentioned the policies and said to beware of what was happening right from the start.

Tom Valore, resident, was previously on the Board of Directors of the Chamber of Commerce, and felt this issue was heard for more than 20 years (timeliness). Be proactive, he said.

PUBLIC SAFETY

19. Police Staffing Report

Police Chief Armando Corpuz addressed City Council on results of a recent staffing needs assessment and operational recommendations. He would identify enhancements in this first organizational assessment ever done. Chief Corpuz provided much statistics and data on police staffing and services, particularly as the City of Milpitas has grown in population, and ultimately the recommendations from the consultant report.

Councilmember Montano asked questions about the impact when the Police reduced the number of sworn officers, some years ago.

Vice Mayor Dominguez asked about School Resource Officers and their role. That officer responded to calls from the high school campus. The Vice Mayor expressed concern for the prevention component of Community Service Officers and did not want crime prevention to get left behind.

As the recommendation on this item, Chief Corpuz asked the Council to simply receive the report from the consultant and comments he'd given.

Mayor Tran thanked him and supported the recommendations.

Councilmember Phan thanked the Chief for efforts to keep the community safe. He wanted to comment on community outreach, and the efforts on that subject.

Councilmember Montano reminded all that the number one priority of the City Council was public safety. She asked about needs for an Information Technology staff person within the department, as identified by the consultant. She agreed Police needed support staff. She inquired about training for people with mental illness specifically.

Mayor Tran noted the Council's receipt of the report and no vote was taken.

LEADERSHIP

20. New Council Subcommittee

Assistant City Manager Ashwini Katak explained that this item came in response to direction from the City Council, following its recent retreat meeting. Staff requested feedback and direction. She described a possible new Council Agenda Subcommittee, similar to a nearby city's Rules Committee. Staff provided ideas for the role of a subcommittee and some meeting management ideas.

Vice Mayor Dominguez wanted an opportunity for all Councilmembers to set agenda items and to be transparent about the agenda. She wondered how the three non-subcommittee Council members could place items on a Council agenda. Ideas funneled through a pipeline and would come to the subcommittee.

The Vice Mayor did not want to put anything into the proposed Council Handbook at this meeting while Councilmember Nuñez was absent.

Councilmember Phan commented on the status of the Handbook. He expressed his view that the Council did not want staff to come back with the Handbook nor approve it.

Mayor Tran called a recess at 10:33 PM following some remarks by Mr. Phan. The Mayor and City Council returned to the dais at 10:42 PM.

Councilmember Phan disagreed with the second staff topic on the presentation. He felt an Agenda Subcommittee would not be agenda setting and made further comments. His support was for a named Rules Committee.

Councilmember Montano wanted to defer this matter until Councilmember Nuñez was at the dais and so she moved to continue.

Motion: to continue this item to the next City Council meeting of April 2, 2019

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

21. Adopt Resolution on Unrepresented Management in Public Safety Depts.

Mayor Tran announced this would be the last item of the evening.

Human Resources Director Liz Brown explained the resolution needed to correct the compaction of salaries issue in the public safety departments' management staff, explaining the circumstances that have arisen. When some individuals had been promoted into management, the current salaries did not reflect the duties and at times were lower than those supervised.

Councilmember Phan asked if those affected would receive back pay and Ms. Brown said no, since the action was written to be effective with the date of the next scheduled Memorandum of Understanding pay increases. For Fire, that would occur in July of 2019 and for Police, in January of 2020.

Councilmember Montano asked for an explanation of "Special Pay" as the Human Resources Director mentioned in her report. Ms. Brown responded with some examples of such.

Vice Mayor Dominguez agreed with colleagues to change this situation. She asked to learn if this issue was occurring with non-sworn personnel in other positions, too.

Mayor Tran was supportive of this topic, as recommended.

Motion: to adopt Resolution No. 8857 to amend the classification plan to adjust the salary ranges for unrepresented Police and unrepresented Fire management classifications

Councilmember Phan stated he wanted in the motion to authorize retroactive pay. City Attorney Diaz responded that could be possible, following his research to confirm if that was legal to do.

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

22. Adopt Resolution for Labor Relations Officer

This item was not heard.

23. Preview next agenda

Did not review preview list for April 2, 2019 City Council agenda.

ADJOURNMENT

Mayor Tran adjourned the meeting at 11:12 PM following a moment of silence in honor of those who died in New Zealand.

The foregoing minutes were approved by Milpitas City Council on April 2, 2019.

Mary Lavelle
Milpitas City Clerk

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO ACCEPT THE
2018 STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE GRANT
ADMINISTERED BY THE U.S. DEPARTMENT OF HOMELAND SECURITY'S
FEDERAL EMERGENCY MANAGEMENT AGENCY AND APPROVE AND
ACCEPT THE GRANT TERMS**

WHEREAS, on March 19, 2019, the City of Milpitas submitted an application to the U.S. Department of Homeland Security's Federal Emergency Management Agency ("FEMA") for its 2018 Staffing for Adequate Fire and Emergency Response ("SAFER") grant, seeking funding to assist with hiring six new firefighters; and

WHEREAS, the SAFER grant program was created to provide funding directly to fire departments and volunteer firefighter interest organizations to help them increase or maintain the number of trained, "front line" firefighters available in their communities. The goal of the SAFER program is to enhance the local fire departments' abilities to comply with staffing, response and operational standards established by the NFPA; and

WHEREAS, the City's SAFER grant application was approved on September 18, 2019 and the City was awarded the grant, with the grant funds totaling \$2,336,284 over three years; and

WHEREAS, for each of the six firefighters to be hired, the grant will fund 75% of the salary and benefits for the first two years and fund 35% in the final year of the grant. The total project cost for three years is \$3,788,568 and the City's local matching cost totals \$1,452,284; and

WHEREAS, the City will also be responsible for any salary or benefit increases during the term of the grant and for the costs of retention of the six additional Fire staffing after the expiration of the grant, with the performance period for the grant expiring on March 11, 2023; and

WHEREAS, funding from the SAFER grant will help the City address service needs relating to anticipated population growth and the additional firefighters to be hired will allow for the addition of firefighter staffing of the ambulance that will be placed in service in early 2020; and

WHEREAS, in order to accept the SAFER grant funds, the City must accept the terms of the grant set forth in the Summary Award Memo, the Agreement Articles, the Obligating Document, and the FY 2018 SAFER Grant Notice of Funding Opportunity (collectively the "Grant Award Package"), a copy of which is attached hereto as **Exhibit A**.

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 accepts the 2018 Staffing for Adequate Fire and Emergency Response grant in the total amount of \$2,336,284 administered by the Federal Emergency Management Agency and approves and accepts the terms of grant set forth in the Grant Award Package attached hereto as **Exhibit A**.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING RESOLUTION 1626, THE CLASSIFICATION PLAN, FOR POSITION AUTHORIZATIONS

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

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges; and

WHEREAS, the City's acceptance of the SAFER grant funds and attendant hiring of six new firefighter/paramedics necessitates changes in position authorizations that will result in modifications to the Classification Plan.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Resolution No. 1626, as amended, is hereby amended effective October 1, 2019, as follows:

A. Authorize the following positions:

Six (6) additional Firefighter/Paramedic positions to the Fire Department.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	100-3558	483,383	100-812-4111	338,796
☐ Budget Appropriation	100-910-4141	161,127	100-812-4132	65,052
☐ Budget Transfer			100-812-4131	171,522
			100-812-4161	15,696
			100-812-4133	20,610

Adopt a Resolution Accepting a Department of Homeland Security (FEMA) SAFER (Staffing for Adequate Fire and Emergency Response) Grant of \$2,336,284 to Cover Personnel Costs Including Salary and Benefits Associated with Hiring Six New Milpitas Firefighters, Adopt a Resolution Amending the Classification Plan to Add Six Firefighter Paramedic Positions to the City's Authorized Positions List, and Approve Related Budget Amendment (Staff Contact: Rick Frawley, 408-586-2824)

Background:

The City of Milpitas submitted a grant proposal to the United States Department of Homeland Security requesting funding to assist with hiring six new firefighters. The grant application was approved by Council on March 19, 2019.

The Staffing for Adequate Fire and Emergency Response (SAFER) grant application was approved by Federal Emergency Management Agency (FEMA) and awarded to Milpitas on September 18, 2019. The three-year grant will fund 75% of the salary and benefits for each of the six newly-hired firefighters for the first two years and 35% in the final year of the grant. The total project cost is \$3,788,568. The federal grant funding totals \$2,336,284 and the local cost match for the City totals \$1,452,284. Additionally, there will also be a cost to the City of approximately \$0.4 million for salary and benefit increases over the three-year term.

The additional firefighters will be added to each shift to increase existing daily staffing. The current staffing levels would increase to support increased fire suppression personnel and deployment of the transport capable ambulance. The ambulance will be placed in service in early 2020.

In support of these additional personnel, the City's Classification Plan will need to be amended to reflect the addition of the six (6) Firefighter Paramedic positions.

Analysis:

The Fire Department conducted an assessment of service delivery for the organization in 2019. This assessment known as the Standards of Coverage (SOC) supported the addition of personnel for both overall emergency response as well as increasing services with the deployment of a transport capable ambulance.

One of the benchmarks utilized in an SOC for the analysis of the delivery of emergency services is the National Fire Protection Association (NFPA). The NFPA standard for fire service staffing is NFPA 1710 "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments". The SAFER grant program was created to provide funding directly to fire departments to help increase or maintain the number of trained, "front line" firefighters available in the community. The goal of SAFER is to enhance the local fire departments' ability to comply with staffing, response and operational standards established by the NFPA 1710. As such, the acceptance of these grant monies from the SAFER program will support industry best practices to improve firefighter safety and health and enhance service in the Milpitas community.

In support of accepting SAFER grant funds and hiring six additional personnel, the City's Classification Plan will need to be amended to reflect the addition of the six (6) Firefighter Paramedic positions. Additionally, the budget will be amended in the Fire Department's FY 2019-20 General Fund Operating Budget to reflect City costs associated with the personnel costs for six (6) new Firefighter Paramedics for approximately six months of the current fiscal year.

Policy Alternative(s):

Alternative 1:

Council may choose to not adopt a resolution accepting the SAFER grant funds. This would result in grant funding not being available to support future staffing in the Fire Department.

The Fire Department goals of deploying a transport capable ambulance in 2020 are a key factor in increasing staffing within the Fire Department. With current staffing levels, ambulance deployment would place additional needs on our personnel resulting in the increased deployment of personnel on overtime and the potential for Firefighter fatigue and the drawdown of personnel resources.

The Milpitas Fire Department has previously been successful in increasing the numbers of line personnel through SAFER grant funding. In 2018, the City of Milpitas was successful in applying for and securing funding through the SAFER grant process for four (4) Firefighters. The Department hired and trained six (6) Firefighters in 2019. Four of these positions were grant funded. These personnel successfully completed the fire academy and are currently deployed on fire apparatus. The addition of these personnel has improved service to the community by increasing daily staffing levels with an additional Firefighter on the Milpitas Truck Company.

Pros: If Council chooses to not adopt a resolution to approve the acceptance of SAFER grant funding, the City would not be impacted by the fiscal challenges of maintaining the cost of personnel at the completion of the grant cycle. The SAFER grant is a three-year grant with restrictions and requirements. The grant will pay for the salary and benefits for newly hired firefighter at a rate of 75% of actual costs the first two years and 35% of actual costs in the third year. The City is responsible for 100% of the costs after the third year. As part of the grant agreement, the City is bound to grant program rules requiring the maintenance of staffing levels at the level that existed at the time of the award and must retain all SAFER funded positions throughout the grant's full three-year period of performance unless FEMA affords the grant recipient a waiver. Additionally, the Fire Department would not be required to support regulatory compliance for grant program that require quarterly reporting to FEMA.

Cons: If Council chooses to not adopt a resolution to approve the acceptance of SAFER grant funding, ambulance deployment would face challenges in the drawdown of personnel resources. This would potentially limit the service timelines for the ambulance. The grant will fund \$2,336,284 of personnel costs that will support increased line staffing and support Firefighter health and safety for the three year period of the grant. Acceptance of these grant funds would benefit service delivery by providing additional personnel to enhance emergency operations in the community.

Reason not recommended: The Fire Department sees no reason to not recommend adopting the resolution to accept the grant funds. The addition of more line personnel will be a benefit to the community and support recommendations outlined in the previously completed SOC report.

Fiscal Impact: The SAFER grant is a three-year grant with restrictions and requirements. The grant will pay for the salary and benefits for newly hired firefighter at a rate of 75% of actual costs the first two years and 35% of actual costs in the third year.

The City is responsible for 100% of the costs after the third year, but is not required to maintain the positions after the third year as a condition of receiving SAFER grant funding. Costs associated with salary and benefit increases per the MOU with the International Association of Fire Fighters, Local 1699 and salary increases as assumed in the Five-Year General Fund Forecast estimated at \$ 0.4 million over the grant period will be paid by the City. The estimated costs during the three-year grant period is \$1.9 million.

The projected cost to maintain six (6) firefighter paramedics in year four, after the three-year grant term ends, is approximately \$1.7 million for salary and benefits. These costs have been incorporated into the City's FY 2020-25 General Fund Five-Year Forecast, with the City picking up \$0.16 million of costs starting in year one (FY 2019-20), and increasing to \$1.7 million in year four (FY 2022-23) for the full cost of the (6) firefighter paramedics, and continuing through the last year (FY 2024-25) of the Forecast. There are currently funds set aside for the first year costs in the FY 2019-20 Operating Budget. A budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget is recommended to cover the City's share of the first year's (FY 2019-20) cost.

California Environmental Quality Act:

Not applicable.

Recommendation:

1. Adopt a Resolution accepting the Department of Homeland Security (FEMA) SAFER grant of \$2,336,284 awarded to the City of Milpitas, and direct staff to proceed with hiring of the six new firefighter paramedics no later than the start of the period of performance for the grant, which is March 11, 2020.
2. Adopt a Resolution amending the Classification Plan to authorize adding six (6) additional Full Time Equivalent (FTE) Firefighter Paramedic positions to the City's Authorized Positions List.
3. Approve related budget amendment to transfer \$161,127 from the Non-departmental Operating Budget to the Fire Department Operating Budget to cover the City's cost for FY 2019-20.

Attachment(s):

- a) Award Package
- b) SAFER Grant Application
- c) Council Minutes 3-19-19 Approving Application
- d) Budget Change Form
- e) Resolution Accepting SAFER Grant 2018
- f) Resolution Amending Class Plan to add 6 FTE FF

Check if City Council Approval required.

Meeting Date: October 1, 2019

Requested by:	Geoff Maloon, Acting Battalion Chief	Date: 9/23/2019
Reviewed by:	Finance Director: 	Date: 9/25/19
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)

C6. Approve a Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services for a Total Amount Not to Exceed \$341,182 for a Five-Year Period (Staff Contact: Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602)

Recommendation: Approve an Agreement with Odyssey Power Corporation for preventive generator maintenance and repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year period, subject to annual appropriation of funds.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve a Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services for a Total Amount Not to Exceed \$341,182 for a Five-Year Period
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/1/2019
Staff Contact:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendation:	Approve an Agreement with Odyssey Power Corporation for preventive generator maintenance and repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year period, subject to annual appropriation of funds.

Background:

The City has a fleet of thirteen (13) stationary emergency generators that are deployed at pump stations and facilities. These generators are used for back-up power for critical facilities such as water and sewer systems, as well as for City Hall, Public Works, Sports Center, and the Police Station and Fire Stations. In the event of a power interruption, these generators automatically turn on, which allows staff to maintain operations of these vital systems and services at City facilities identified below.

Preventive maintenance services performed on the City's generators lessen the likelihood of equipment failure and helps control costs by prolonging each generator's useful life. The intent of this procurement is to provide the City with a dedicated and qualified contractor to augment staff efforts in the performance of preventive generator maintenance and as needed repair services. The agreement is for annual preventive maintenance and repair services for the City's generators at the following locations:

Location	Address
Ayer Water Pump Station	1429 East Calaveras Boulevard
Bellew Storm Pump Station	481 Murphy Ranch Road
City Hall	455 East Calaveras Boulevard
Fire Station 1	777 South Main Street
Fire Station 2	1263 Yosemite Drive
Fire Station 3	45 Midwick Drive
Fire Station 4	775 Barber Lane
Gibraltar Water Pump Station	641 Gibraltar Court
Main Lift Sewage Pump Station	1425 North McCarthy Boulevard
Manor Storm Pump Station	349 Marylinn Drive
Public Works/Police Department	1265 North Milpitas Boulevard
Sports Center	1325 E Calaveras Boulevard
Wrigley Ford Storm Pump Station	75 Marylinn Drive

Analysis:

On June 24, 2019, the Purchasing Division released an Invitation for Bid (IFB) 2354 after collaboration with the Public Works Department to develop a scope of work to perform preventive generator maintenance and repair services at thirteen (13) City locations. IFB 2354 was publicly noticed in accordance with the City's Municipal

Code, advertised on the City's website, and email notifications were sent to companies registered with the City via PublicPurchase.com, the City's eProcurement system. Upon release, 251 firms received the solicitation notification, and 21 firms accessed the IFB package.

The contract specification calls for yearly testing of the generators and basic preventative maintenance service such as checking fluid levels, maintaining all parts in good working condition, changing filters, and making as needed repairs. In addition, the majority of these generators are located in confined spaces requiring special procedures for air testing and monitoring during the maintenance operation.

Major services to be performed under this agreement include:

- Three (3) quarterly preventive maintenance inspections every year;
- One (1) annual preventive maintenance service;
- One (1) annual 2-hour load bank test; and
- Three-year preventive maintenance service during Year 3 of contract.

The Purchasing Division received two proposals by the August 16, 2019 deadline in response to IFB 2354. The Purchasing Agent reviewed the responses and rejected one of the bids due to it being incomplete. Odyssey Power Corporation was the lowest responsible bidder submitting a responsive bid in the amount of \$341,182 for the five-year term, which is within the City's estimate for these services. The cost for the first year of service is \$49,350.

Policy Alternative:

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

Pros: City maintains control of all the work on its generators.

Cons: City staff has limited resource and would not be able to provide the complete service needs for the generators.

Reason not recommended: The City does not have adequate resources to perform the complete preventive generator maintenance and repair services needed for the City's generators. By utilizing a contractor to augment City staff, all of the City's generators will be serviced on a regular schedule to remain compliant with OSHA standards.

Fiscal Impact:

This project will be funded from the Fiscal Year 2019-2020 operations budget of the Public Works Department for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year term, subject to annual appropriation of funds by Council during the annual budget process.

The annual compensation over the total five-year term is as follows:

Service Year 1	\$49,350.00
Service Year 2	\$49,350.00
Service Year 3*	\$136,872.00
Service Year 4	\$52,805.00
Service Year 5	\$52,805.00
Total Contract Price	\$341,182.00

* Service Year 3 includes the additional cost for providing backup generators while performing services at Main Lift Pump Station, Ayer Pump Station, and Public Works/Police Department.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation:

Approve an Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not-to-exceed \$341,182 over the five-year term, subject to annual appropriation of funds.

Attachment:

Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services.

CITY OF MILPITAS MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into **October 2, 2019** by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **Odyssey Power Corporation**, a California Corporation, with its principal place of business at **625 N. Shepard Street, Anaheim, CA 92806** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

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

2.2 Project.

City desires to engage Contractor to render such services for the Preventative Generator Maintenance project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term

The term of this Agreement shall be from **October 2, 2019** to **October 1, 2024**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

3.2 **Responsibilities of Contractor.**

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

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

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

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

3.2.5 Contractor's Representative. Contractor hereby designates **Joshua Linehan**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services,

using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

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

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Two Hundred Fifty Dollars (\$250)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided

by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the

same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

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

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental

Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

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

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

3.2.11 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under **Exhibit "D"** (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

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

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in **Exhibit “C”** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in **Exhibit “C”** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City’s sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best’s rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to

the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in **Exhibit “C”** attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Forty-One Thousand One Hundred Eighty-Two Dollars (\$341,182.00)** without written approval of City’s **Project Manager**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

3.3.5 California Labor Code Requirements

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The

requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Termination of Agreement.

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

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

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

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement

3.5 General Provisions.

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

Contractor:

Joshua Linehan
Odyssey Power Corporation
625 North Shepard Street
Anaheim, CA 92806

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Glen Campi, Public Works

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

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's

Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

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

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

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

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

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

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void,

and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

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

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

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

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

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

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

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

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

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

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

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

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

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

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND ODYSSEY POWER CORPORATION**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of October 2, 2019.

CITY OF MILPITAS

Approved By:

Steven McHarris
Interim City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved:

Walter C. Rossmann
Risk Manager/Finance Director

Approved As To Content:

Tony Ndah
Public Works Director

ODYSSEY POWER CORPORATION

Signature

Name

Title

Date

EXHIBIT A

Scope of Work

A. General

1. Regular scheduled preventive maintenance shall be in accordance with the manufacturer's written prescribed maintenance.
2. All repairs required not covered in the manufacturer's prescribed maintenance must be approved by the Public Works Maintenance Manager for Utilities.
3. All parts purchased that are not covered in the manufacturer's prescribed maintenance must be approved by the Public Works Maintenance Manager for Utilities.
4. All parts required in regular scheduled maintenance for each respective generator set shall be kept in stock by the Contractor and be available on site at each scheduled maintenance inspection.
5. All regular scheduled preventive maintenance inspections shall be performed during normal business hours between 8:00 AM and 5:00 PM. A minimum notification of 48-hours for regular scheduled preventive maintenance inspections shall be given to the Public Works Maintenance Manager for Utilities.
6. A written report, including a list of all items inspected and/or serviced, recommendations of repairs, and any corrections and/or modifications not covered under the manufacturer's prescribed maintenance, shall be submitted to the Public Works Maintenance Manager for Utilities and signed by the Technician performing regular scheduled maintenance inspection.
7. During the regular scheduled maintenance inspections, all transfer switches connected to each generator set shall be inspected and/or serviced.
8. Fluids, such as engine oil and engine coolant, shall be changed according to manufacturer's prescribed regular scheduled maintenance inspection programs. Fluids changed out shall be tested according to the manufacturer's recommendations or to industry standards, if the manufacturer has no recommendations. Test results shall be presented to the Public Works Maintenance Manager for Utilities.
9. All parts used during regular scheduled maintenance inspections, unscheduled service, and/or emergency repairs shall be new in container unless otherwise approved by the Public Works Maintenance Manager for Utilities.
10. The Contractor shall provide all tools, equipment, and/or testing devices necessary to perform maintenance and/or service on all generator sets and pumps included in this contract.

11. Public Works Maintenance personnel will be on site at each and every regular scheduled maintenance inspection, emergency service situation, and/or load bank test.
 12. The manufacturer's prescribed maintenance programs shall be followed accordingly, unless otherwise approved by the Public Works Maintenance Manager for Utilities. Written copies of the respective manufacturer's maintenance schedules shall be submitted to the Public Works Maintenance Manager for Utilities upon contract being awarded.
- B. Service Personnel
1. All technicians dispatched by the Contractor to perform regular scheduled maintenance inspections, unscheduled service, and/or emergency repairs shall be certified to perform maintenance and/or repairs on various manufacturers' generator sets and pumps included in this contract.
 2. The Contractor shall not dispatch any personnel to provide maintenance and/or service that are not fully certified to provide maintenance and/or service on the various manufacturers of generator sets included in this contract.
 3. The Contractor personnel shall wear identifiable uniforms at all times on City of Milpitas property. The Contractor personnel shall provide picture identification upon request at any time while on City property.
- C. Inspection Service and Preventive Maintenance
1. Provide three (3) quarterly preventive maintenance calls at the locations listed in the IFB. During each of the inspections, all systems shall be visually checked for potential problems, and shall be manually tested to assure reliability.
 2. Preventive maintenance services shall include, but not be limited to, the items identified below and as recommended by the manufacturer.
 - i. The technician will verify the fluid levels (oil, coolant, and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.
 - ii. Before Starting Engine
 - a. Check engine oil and coolant levels.
 - b. Check block heater (should maintain a coolant temperature of 90° F in the block).
 - c. Check fuel level in storage tank.
 - d. Check battery water level and top as necessary.
 - e. Check battery terminals for corrosion and connections for tightness (lead acid).
 - iii. With Engine Running
 - a. Check oil pressure.

- b. Check fuel pressure.
 - c. Check RPM (frequency).
 - d. Check generated voltage.
 - e. Check for leaks or unusual noises.
- iv. After Stopping Engine
 - a. Check/verify all switches are in proper positions for automatic start.
 - b. Check fuel level in tank.
 - c. Record battery charger volts and check for proper operation.
 - d. Remove, clean, and reinstall all battery connections (lead acid).
 - e. Inspect generator for cleanliness.
- v. Reporting
 - a. Provide written service report with each visit.
 - b. Advise customer of any/all unusual situations or potential problems which will require further attention.
 - c. Advise when main fuel tank is below $\frac{3}{4}$ full.

- 3. The Contractor shall contact City's Department of Public Work's Maintenance Manager for Utility Services of any problems and advise as to the cost of repairs.

D. Annual Service

- 1. Provide one (1) annual servicing at the locations listed in this IFB.
- 2. The annual service shall include a full inspection of each unit and full service which includes, but is not limited to, the replacement of engine oil, oil filters, and fuel filters.
- 3. The annual preventive maintenance service shall include, but is not limited to, all inspections services and the following:
 - i. Drain crankcase oil and replace with new oil.
 - ii. Remove and replace oil and fuel filters.
 - iii. Inspect air filter(s).
 - iv. Check generator output.
 - v. Take oil, fuel, and coolant samples for analysis.
- 4. Load Test
 - i. The Contractor shall provide load testing to ensure the proper operation of the generators. A load test shall include the connection of a portable resistive load bank. The load will be varied in steps for a two (2) hour duration.
 - ii. The Contractor shall start engine and load with Contractor supplied resistive load bank. The Contractor shall run under load for at least two (2) hours:
 - a. $\frac{1}{2}$ hour at 25% load
 - b. $\frac{1}{2}$ hour at 50% load
 - c. $\frac{1}{2}$ hour at 75% load

d. ½ hour at 100% load

5. The Contractor shall provide the City with a copy of all test results upon completion of the Annual Maintenance, to include, but not be limited to fuel, oil, and coolant analysis; safety shutdowns; and load tests.

E. Three Year Service

1. Every three (3) years, engine manufacturers recommend replacement of battery, cooling system belts, coolant, and hoses.
2. The three (3) year services include, but are not limited to, the following: upgrading block heater hoses to high temperature silicon hoses. Block heater isolation ball valves will be installed on any engine not already so equipped. Batteries are recommended for replacement on a three (3) year cycle and will be replaced with Maintenance Free batteries.
3. The Contractor shall perform, but not be limited to, the following services:
 - i. Replace battery
 - ii. Replace belts
 - iii. Replace hoses
 - a. Block heater hoses will be replaced with high temperature silicon hose.
 - b. Block heater isolation ball valves will be added when needed.
 - iv. Replace coolant
 - a. Standard antifreeze will be replaced every three (3) years.
 - b. Extended life coolants will be upgraded after the first three (3) years and replaced after six (6) years.
4. Backup Generator
 - i. The Contractor shall make every effort to get the generator back up and running within one (1) hour. If the Contractor anticipates that the work will exceed one (1) hour, the Contractor will need to provide a trailer generator to provide back-up support while the generator is out of service. This requirement applies to Main Lift Pump Station (1425 North McCarthy Boulevard), Ayer Pump Station (1429 East Calaveras Boulevard) and Public Works/Police Department (1265 North Milpitas Boulevard).

F. Additional Services

1. Additional services not included in the service contract shall be offered by the Contractor at the standard rates provided on the bid sheet on a Time-&-Material (T&M) basis.

G. Warranty

1. Performance Warranty
 - i. The Contractor shall guarantee all work, equipment, and materials included in the service against any defects in workmanship; and shall satisfactorily correct, at no Cost to the City, any such defect that may become apparent within a period of one (1) year after completion of work.

- ii. The warranty period shall commence upon date of acceptance, inspection, and approval by the City's Public Works Maintenance Manager for Utilities. If the Contractor is notified in writing of a deficiency in the work provided, within one (1) year from completion of the work, the Contractor shall, at the City's option, re-perform the work in question at no additional cost to the City, or refund the original charges for the work in question to the City, including the difference in cost, if any, to re-perform work if completed by another Contractor.

2. Material Warranty

- i. Parts furnished under the purchase order shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. Used, shopworn, demonstrator, prototype, reconditioned, or discontinued models or materials are not acceptable.
- ii. The warranty period for Contractor provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is later. The warranty period shall commence upon date of acceptance by the City's Public Works Maintenance Manager for Utilities.
- iii. The Contractor shall provide the City's Public Works Maintenance Manager for Utilities with all manufacturers' warranty documents.

EXHIBIT "B"**SCHEDULE OF SERVICES**

All labor, material, tools, management, travel, and equipment necessary for the annual and preventative maintenance and testing of the generators for Service Years 1, 2, 3, 4, & 5 (See below Location List)

Backup generator needed for Service Year 3 at the following three locations only:
Main Lift Pump Station, 1425 North McCarthy Blvd (Caterpillar 3508, S/N 4GM00337/Mfg 1999), Ayer Pump Station, 1429 E Calaveras Blvd (Caterpillar 3412, S/N 81Z16092/Mfg 1995) and Public Works/ Police Department, 1265 N Milpitas Blvd (Caterpillar 3412, S/N 81Z10567) Service Year 3

Location List (Service Years 1, 2, 3, 4, &5)

Location	Address	Model	Amperage	Serial
Ayer Water Pump Station	1429 E Calaveras Blvd	Caterpillar 3412	1,000 kW	81Z16092
Bellew Storm Pump Station	481 Murphy Ranch Rd	Caterpillar C18	600 kW	G7A02261
City Hall	455 E Calaveras Blvd	Cummins DQAF/ 5006412	300 kW	A020323428
Fire Station 1	777 S Main Street	Detroit Diesel/ 100DSJ	100 kW	660956
Fire Station 2	1263 Yosemite Dr	Electro Motion	25 kW	3700079CR3A003
Fire Station 3	45 Midwick Dr	Electro Motion	25 kW	3700078CR3A003
Fire Station 4	775 Barber Lane	Caterpillar D25	25 kW	KGBE01386
Gibraltar Water Pump Station	641 Gibraltar Court	Caterpillar 3516	2,500 kW	SBK00868
Main Lift Sewage Pump Station	1425 N McCarthy Blvd	Caterpillar 3508	1,000 kW	4GM00337
Manor Storm Pump Station	349 Marylinn Dr	Caterpillar 3306	230 kW	6YR02965
Public Works/ Police Dept	1265 N Milpitas Blvd	Caterpillar 3412	600 kW	81Z10567
Sports Center	1325 E Calaveras Blvd	Caterpillar C13 GS	350 kW	TP22939585
Wrigley Ford Storm Pump Station	75 Marylinn Dr	Caterpillar 3406B	400 kW	1JJ00574

EXHIBIT "C"
COMPENSATION

Bid Schedule

Item	Description	Unit	Quantity	Annual Cost
1	Total cost for all labor, material, tools, management, travel, and equipment necessary for the annual and preventative maintenance and testing of the generators for Service Years 1, 2, 3, 4, & 5	LUMP SUM	1	\$49,350.00
Total Bid Price- Year 2				\$49,350.00
Total Bid Price- Year 3				\$136,872.00
2	Total cost for the backup generator needed for Service Year 3 at the following three locations only: Main Lift Pump Station, 1425 North McCarthy Blvd (Caterpillar 3508, S/N 4GM00337/Mfg 1999), Ayer Pump Station, 1429 E Calaveras Blvd (Caterpillar 3412, S/N 81Z16092/Mfg 1995) and Public Works/ Police Department, 1265 N Milpitas Blvd (Caterpillar 3412, S/N 81Z10567) Service Year 3	LUMP SUM	Year 3	\$15,400.00
Total Bid Price- Year 4				\$52,805.00
Total Bid Price- Year 5				\$52,805.00

TOTAL CONTRACT PRICE \$341,182.00

TOTAL AMOUNT WRITTEN IN WORDS Three Hundred Forty-One Thousand One Hundred Eighty-Two Dollars

The Contractor shall provide all labor, material, tools, management, travel, and equipment necessary for the maintenance and testing of all units as defined in the Scope of Work. Labor and material costs for preventative and annual maintenance work shall be bid as a lump sum per generator per service on the bid submission sheet.

PERFORMANCE/PAYMENT BONDS ARE NOT REQUIRED.

Repair Services

ITEM	DESCRIPTION	UNIT	QTY	UNIT COST
1	Labor Rate- Regular Hourly Rate Minimum Charge (if any) of <u>4</u> Hours	HR	1	\$145.00
2	Labor Rate- After Hours Rate Minimum Charge (if any) of <u>4</u> Hours	HR	1	\$217.50
3	Trip Charge (if any) Note: It is understood by both parties that a single trip and not mileage may be invoiced by Contractor per service trip for the life of this contract. (e.g. 1 generator serviced- 1 trip charge; 3 generator serviced- 1 trip charge)	TRIP	1	\$400.00
4	Prices for Parts Shall be on a Cost- Plus Basis. The maximum percentage (%) of markup will be <u>15%</u> (shall not exceed 15%). Invoices for work performed shall require a copy of itemized parts receipt. Failure to provide cost-plus percentage markup on an invoice may result in payment at cost.	% of MARKUP (shall not exceed 15%)		

Additional work provided above and beyond the contract allowance will be provided at the Contractor's rates on a time-and- material basis.

EXHIBIT “D”

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this **Exhibit D**. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00

per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

 X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

 Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

 Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

 Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

 (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

 Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

 X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

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

 X _____
Contractor/Consultant Signature

Builder's Risk (Course of Construction):

 Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

 Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

 Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

 X **Additional Insured Status:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

X Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or

destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract

documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT “E”
FEDERAL REQUIREMENTS

RESERVED

C7. Report on Request for Proposals for an Energy and Water Savings Performance Contract and Approve and Authorize the Interim City Manager to Execute the Professional Service Agreement with Engie Services U.S. Inc. for Conducting an Investment Grade Audit of City Facilities and Land (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations:

(1) Receive report on Request for Proposal for Energy and Water Savings performance contract to identify, engineer, install, commission, and maintain Energy Conservation Measures on City facilities and land; and

(2) Approve and authorize the Interim City Manager to execute a Professional Service Agreement with Engie Services U.S. Inc. for the purpose of conducting an investment grade audit on City facilities and land in the maximum amount of \$150,000.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Report on Request for Proposals for an Energy and Water Savings Performance Contract and Approve and Authorize the Interim City Manager to Execute the Professional Service Agreement with Engie Services U.S. Inc. for Conducting an Investment Grade Audit of City Facilities and Land
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	10/1/2019
Staff Contact:	Tony Ndah, 408-586-2602
Recommendation:	1. Receive report on Request for Proposal for Energy and Water Savings performance contract to identify, engineer, install, commission, and maintain Energy Conservation Measures on City facilities and land; 2. Approve and authorize the Interim City Manager to execute a Professional Service Agreement with Engie Services U.S. Inc. for the purpose of conducting an investment grade audit on City facilities and land in the maximum amount of \$150,000.

Background:

A significant amount of the City's infrastructure is at or near the end of its useful life, resulting in deferred and/or recurring maintenance problems and inefficient operations. As a result, the City's utility and operation and maintenance (O&M) costs have increased above their optimum levels. Energy Savings Performance Contracting can provide a budget-neutral approach to implementing infrastructure improvement projects without using funds from capital budgets. An Energy Services Company (ESCO) develops and implements energy and water conservation projects and guarantees ongoing cost savings to the City for a specified period of time. Guaranteed cost savings from energy and water saving projects are designed to meet any finance payments over the useful life of the equipment.

In Fall 2017, staff began efforts to explore an Energy Services Performance Contract with the specific goal of implementing energy and water savings projects and utilizing the savings to pay for the financing on the projects. The work effort included exploring the structure of the project, including engaging in conversations with other cities on how they implemented similar programs and lessons learned through the process.

As a result of this initial work, staff determined that the best model for moving forward included issuing a Request for Proposal (RFP) in order to select and engage an Energy Service Company (ESCO). In May of 2018 the City issued Request for Proposals No. 2229 to select an ESCO for a guaranteed energy and water savings program.

The RFP was written to allow proposers to provide the City with a range of energy saving projects from lighting retrofits to water conservation measures in buildings through the replacement of fixtures. The goals of this program include:

- Project funding through a guaranteed reduction in water consumption and utility costs, as well as incentives and grants;
- Reduction of energy consumption and peak energy demands;

- Reductions in maintenance and other operational costs to the City;
- Renewable energy generation and optimum location of energy storage devices for arbitrage, which is the ability to purchase low-cost off-peak energy and re-sell this energy during on-peak periods;
- Turn-key project design and implementation of improvements and updates to the City's infrastructure.

As part of the RFP process, the City provided firms with some City energy usage data, and invited firms to a one-day site walk to view relevant City facilities. Six ESCOs submitted proposals.

Analysis:

RFP STRUCTURE AND RESULTS – The RFP structure provided information to the proposers on areas of focus for the City, such as the City's desire to implement LED lighting, solar PV, and HVAC improvements. Some California government entities have constructed utility savings projects without public bidding by following California Government Code section 4217.10 *et seq.* Government Code section 4217 *et seq.* does not require public bidding if the project meets certain conditions. However, the City nevertheless engaged in a competitive procurement process to allow for competition amongst the proposers and to allow the proposers to bring their market-proven methods forward for the City's consideration. The evaluation team included individuals from the Public Works Department, Finance Department, Engineering Department, City Manager's Office, and a consultant for the Public Works Department with experience working with ESCOs, in order to help evaluate the energy and water savings aspects of the proposals.

On May 31, 2018, RFP No. 2229 was released on PublicPurchase.com, the City's eProcurement website. Notice that the RFP was released was emailed to 622 firms registered on PublicPurchase.com and 65 firms accessed the bid documents. The RFP closed on October 17, 2019, and six proposals were received. After thorough review by the Purchasing Division, all six were deemed responsive per the minimum qualifications specified in the RFP. A six-member evaluation committee was convened to review the proposals and prepare a shortlist of vendors to advance to the interview phase of the evaluation process. Shortly after completion of the proposal review phase, one firm withdrew from consideration.

The RFP evaluation progressed in two phases. The evaluation team first evaluated the submitted proposal documents. From the original six proposals received, three companies were selected to move forward to the second phase based on the quality of their proposal, experience of the proposer, and costs associated with the proposal. The second phase further refined the rankings of the proposers based on the expertise and overall quality of proposal as evaluated through an interview process.

Following the interview phase, final scoring reflected Engie Services U.S Inc. as the highest ranked ESCO. Final rankings are set forth in the table below.

Rank	Company	Score
1	Engie Services U.S. Inc.	83.83
2	Ameresco Inc.	77.75
3	ABM	69.08

Staff began negotiations with Engie Services U.S. Inc. and has developed the proposed terms as put forward in this report and the attached professional service agreement for the development of an investment grade audit for the City.

PROGRAM STRUCTURE – An ESCO program contains a series of Energy Savings Measures (ECMs) where the projected savings derived from implementing the ECMs equal or exceed the cost of implementing the ECMs as measured over what is generally a 10-15 year financing term. Furthermore, the program is proposed to be separated into two phases, each with several distinct elements. The first phase is project development and the second phase is implementation of the identified projects. These phases align with the recommendations in this memorandum. The chart below outlines the components of each phase.

Project Development	Project Implementation
Investment Grade Audits (IGAs)	Financing
Energy Saving Measures (ECM) Identification	Construction Contract Award
Selection of ECMs for Implementation	Construction
Project Package Development	Monitoring and Verification (M&V)

The components of the project development phase are incorporated into the professional service agreement – which is the contract staff is currently asking Council to approve. The components of the project implementation phase will be incorporated into one or more "Energy Services Contracts." Staff will be returning to the Council at a subsequent date to request approval of any Energy Services Contracts. Both of these agreements are described in more detail below.

Phase 1 – Project Development:

Project development involves several stages of review of the City's assets to develop an IGA for the City. The IGAs provide an intense look at City property and facilities and are conducted to an industry standard level of detail. The audits are used to identify ECMs at an investment grade level, meaning the degree of certainty in the savings associated with projects is high at the completion of this stage. The completion of the IGAs is expected to result in one or more groupings or "packages" of ECMs that are "feasible." A package of ECMs is feasible if--over the period of time needed to finance implementation of those ECMs--the combined savings from the ECMs is projected to exceed the combined cost of implementing the ECMs. Accordingly, not every individual ECM included in a "package" must have a projected savings that exceeds the projected cost of implementing that individual ECM.

The development of the ECM packages is the end of the first phase. Once the ECM packages are developed, a financing plan will be prepared for each package and the package will be implemented separately through an Energy Services Contract, if approved by Council. At this point, the ECM package will include all delivery costs, including City project management costs and costs associated with issuing financing. This ensures that Council has the opportunity to review each ECM package and the associated financing prior to authorizing the implementation phase.

The City does not begin incurring contract costs until the IGA has been completed. Once the audit has been completed, the fee for the completion of the IGA for the City would be \$150,000. If feasible ECM packages are brought forward for Council consideration and approved, the cost of the IGA is incorporated into the overall project costs as part of the Project Implementation Phase. If the City does not proceed with any of the ECMs, the City will compensate Engie for the lump sum IGA development fee, under the professional service agreement, and the City can choose to implement the ECMs through future CIP and O&M projects.

The costs associated with the IGA are extremely reasonable and it is in the interest of Engie and the City to move to the project implementation phase, since that will be the phase where the City is expected to realize the energy and water savings it desires and Engie generates the profit for its work.

Phase 2 - Project Implementation:

Council is not being asked to approve anything related to the Project Implementation at this time. An Energy Services Contract with contract terms for the design and implementation of the ECM packages will be presented to Council for approval if ECM packages are identified for implementation. As ECM packages are assembled, staff will work to establish a financing plan associated with those packages.

The project implementation phase is expected to take 8 – 12 months to complete, depending on the final scope of the ECMs selected by the City.

PROPOSED MEASURES:

As part of the RFP response, Engie provided a preliminary investment grade audit for the City. Some of the measures that were identified for the City fall in the areas below:

- Lighting - LED lighting retrofits (interior, exterior, and streetlights).

- Renewables and Energy Storage - solar photovoltaics, battery storage, microgrid controls, and electric vehicle charging stations.
- Energy Management and Controls – Plug load control, high-efficiency transformers, and SCADA control upgrades.
- Heating and Cooling systems – building HVAC retrofits and controls
- Water Savings – weather based irrigation controls and indoor water fixture retrofits and commissioning.

Before and during ECM installation, Engie would provide the City with the required documents concerning installation procedures such as a quality assurance plan, notification of work outside regular hours, planned utility outages, and ECM testing. Engie would also be responsible for bidding the work, awarding the contract, and managing the installation of the projects. The City would be responsible for monitoring the ESCO's progress during ECM installation to ensure that the work is proceeding as planned.

PROJECT BENEFITS:

There are several benefits to the ESCO model including:

- Potential opportunity for cost savings (i.e. any savings beyond the financed costs for project implementation).
- The ability to renew aging infrastructure and address some portion of the deferred maintenance backlog in a timely manner.
- The possibility to further address the City's Climate Action Plan goals, especially those focused on energy efficiency, renewable energy, and water savings at a rate far quicker than might otherwise be possible.

NEXT STEPS:

Upon Council approval, Engie will begin the project development phase, which includes detailed on-site energy audits, interviews with City staff and stakeholders to ascertain priorities, problematic equipment, and ongoing maintenance concerns.

Engie will provide a final IGA report that provides a comprehensive evaluation of potential efficiency, water, and other infrastructure upgrade measures, along with costs, savings, and simple payback of any viable measures. City staff will work with Engie to determine a final scope for the Council to approve, and negotiate terms of an Energy Services Contract. The IGA process is expected take approximately six months to develop a final scope, costs, and savings.

Policy Alternatives:

Alternative 1: The City could establish its own team for evaluation of lands and facilities to identify ECMs and potential projects.

Pros: City would not spend funds on consultant services for this work.

Cons: City would have to hire staff with the appropriate expertise for this effort.

Reason not recommended: This alternative is not recommended at this stage as Engie provides expertise not currently held among City staff.

Fiscal Impact:

The fee for the completion of the Investment Grade Audits (IGA) for the City is \$150,000. If feasible Energy Saving Measures (ECM) packages are then made a part of a project package and brought forward to Council for approval as part of the Project Implementation Phase, the cost of the IGA will be carried forward and financed in association with the project package and the related Capital Improvement Program (CIP) project budget. If there is a situation where the ECMs are not brought forward for approval, the City will compensate Engie for the lump sum IGA development fee.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a “project” for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation:

1. Receive report on Request for Proposal for Energy and Water Savings performance contract to identify, engineer, install, commission, and maintain Energy Conservation Measures on City facilities and land;
2. Approve and Authorize the Interim City Manager to execute the Professional Service Agreement with Engie Services U.S. Inc. for the purpose of conducting an investment grade audit on City facilities and land in the maximum amount of \$150,000.

Attachments:

1. Professional Service Agreement with Engie Services U.S. Inc.

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 20____ (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and ENGIE Services U.S. Inc., a Delaware corporation with its principal place of business at 500 12th Street, Oakland, CA 94607 (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Guaranteed Energy and Water Savings Program (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The primary purpose of the services to be provided under this Agreement is to provide an engineering and economic basis for the implementation of the energy conservation measures identified in the recommendations, in furtherance of which the Parties may elect to negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction and training services of a renewable energy generation and/or energy efficiency improvement project (“Energy Services Contract”).

D. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00)** (“Assessment Fee”), provided that, if City, acting in good faith, makes a finding that the recommendations made by Consultant do not result in a paid-from-savings project which complies with California Government Code Sections 4217.10 through 4217.18, City will have no obligation to pay any portion of the Assessment Fee. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Payments to Consultant for work performed will be made on a lump sum basis.

c. If on the thirtieth (30th) calendar day after completion of the services under this Agreement, Consultant and City are negotiating an Energy Services Contract for implementation of the measures recommended as a result of the services in good faith, the Assessment Fee will be due ninety (90) calendar days after completion of the services; *provided further*, that if Consultant and City execute an Energy Services Contract within ninety (90) calendar days after completion of the services, the Assessment Fee will be incorporated into the total contract amount payable under such Energy Services Contract.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date. Consultant shall complete the services required hereunder within 365 calendar days and in accordance with Exhibit C of this agreement.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses, but this indemnity does not apply to liability for damages arising from the sole negligence or willful misconduct of the indemnitee(s). Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon

Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original written reports produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only (1) in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant or (2) in the event that Consultant determines that the projected savings from implementation of the energy conservation measures identified through performance of the services under this agreement cannot result in a paid-from-savings project which complies with California Government Code Sections 4217.10 through 4217.18.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other proprietary documents prepared by Consultant pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of Consultant and will be used only in connection with work performed by Consultant. The Investment Grade Audit (IGA) Report shall be and remain the property of City following payment by the City of the Assessment Fee. The official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants. The IGA Report shall be the property of City whether or not the work for which it made is executed or completed. . Any use of the Project Documents other than pursuant to an Energy Services Contract with Consultant will be at City's sole risk and without liability to Consultant, and City agrees to hold harmless, Consultant, its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

18. Organization

Consultant shall assign Mariana de Brito as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

1265 North Milpitas Blvd.

Milpitas, California 95035

Attn: Tony Ndah, Public Works Director

CONSULTANT:

ENGIE Services U.S.

4020 Moorpark Avenue, Suite 100

San Jose, CA 95117

Attn: Mariana de Brito, Sr. Project Manager

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

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

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

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

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

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

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

31. Limitation of Liability. The liability of a defaulting Party, in connection with this Agreement or any analysis, report, recommendations, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, in no event will either Party be liable to the other Party for any Losses which collectively exceed twice the amount of the Assessment Fee.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND ENGIE SERVICES U.S. INC.**

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, Interim City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

Tony Ndah, Director of Public Works

ENGIE SERVICES U.S. INC.

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

I. Required Documents To be Provided by City

City will provide the following detailed documentation:

1. Most recent two (2) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of three (3) years, and preferably five (5) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30-minute electrical demand for characteristic months of the year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites:
 - a. mechanical
 - b. electrical
 - c. building automation and temperature controls
 - d. structural
 - e. architectural
 - f. modifications and remodels
5. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs.
6. A list of key contacts at each Site, including City of Milpitas personnel knowledgeable of the electrical, HVAC, lighting and controls systems.
7. Energy management system, HVAC equipment, and pumping equipment operating schedules, point lists and sequences of operation.
8. Original construction submittals and factory data (specifications, pump curves, etc.), where available.
9. Test and balance reports for water and air systems, where available.

II. Consultant Scope of Work.

Consultant will perform the following tasks needed for the completion of the Investment Grade Audit (the "IGA"):

- A. Perform detailed review of documents provided by City.
- B. Perform an inspection survey to:
 1. Identify potential energy conservation measures ("ECMs"), water conservation measures, and opportunities for distributed and renewable generation technologies.

2. Identify the potential locations and type of application for solar photovoltaics (PV) and other measure installations.
 3. Interview the facility manager, chief engineer, or others as needed.
 4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
 5. Obtain the hours of operation for building systems and equipment, and expected occupancy and use.
 6. Survey major energy and water using equipment, and record (to extent available) the pertinent information for the following:
 - a. Interior/exterior and street lighting
 - b. HVAC equipment
 - c. Controls and automation
 - d. Fan coil units
 - e. Irrigation controls
 - f. Transformers
 - g. Pumping operations
 - h. Plumbing fixtures
 7. Perform Site survey, consisting of:
 - a. Site walk
 - b. Shading analysis
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
1. Identify current rate schedule, analyze electrical usage and model load profile for each Site
 2. Determine historical Site-specific rate escalation
 3. Determine expected solar photovoltaic production curve for proposed Sites
 4. Overlay electrical load profile with expected solar photovoltaic production curve, to right-size the solar photovoltaic system(s) and identify rate restructuring opportunities.
- D. Calculate energy use and cost for all viable ECMs, water measures, and renewable generation technologies:
1. For each ECM, water measure, or renewable generation technology, calculate annual energy and water savings
 2. Calculation methodology will be determined by Consultant and may include using modeling software such as eQuest or Trace 700, or may involve spreadsheet analysis or other accepted, standard engineering procedures.
 3. Calculations will follow ASHRAE or other nationally recognized authority and will be based on sound engineering principle(s).
 4. Operational and maintenance savings, if any, will be identified as a separate line item.
- E. Prepare a preliminary measurement and verification plan, explaining how each measure is to be measured and verified. This plan need only show intended methodologies, but is not required to identify precise instrumentation and/or formulae intended for use. This plan should be carefully enough prepared so as not to materially conflict with the final measurement and verification plan to be prepared during final negotiations of, and incorporated into, the Energy Services Contract.

- F. Prepare a proposed “Project Cost” and a list of “Services to Be Provided,” in anticipation of Consultant and City entering into an Energy Services Contract to design, construct, install, and monitor the projects proposed in the Recommendations. Cost calculations will explicitly state that the Energy Services Contract must be promptly executed to avoid price increases and that hazardous substance or abnormal subsurface/soil condition issues must not be present.
- G. Identify how the proposed ECMs, renewable energy, operational efficiency measures, and other program elements could be utilized to leverage opportunities to promote City of Milpitas, and local business, cultural, and public-private partnership and innovation, including workforce development, local school district and regional education curriculum development opportunities.
- H. Development of the Community Engagement program, which will include:
 - 1. Meeting with City of Milpitas stakeholders, as defined and suggested by City of Milpitas, to determine program goals
 - 2. Research, curate, vet and create potential program components as needed
 - 3. Consult with City of Milpitas to finalize program scope and details
 - 4. Potential program elements may include:
 - a) Event facilitation and support
 - b) CivicSpark partnership
 - c) STEM career exposure/Work-based learning
 - d) Milpitas USD engagement
- I. Consultant will provide City with Recommendations which will include:
 - 1. A draft Energy Services Contract which will include the contract amount, scope of work, and payment schedule
 - 2. A scope of work for each measure per Site which is compatible with City’s investment and infrastructure improvement goals
 - 3. A description of each recommended measure and a table summarizing all recommended ECMs
 - 4. An economic analysis for the aggregated Sites, including project costs, utility incentives, energy savings, renewable energy revenue, operation and maintenance savings and any other revenue or program contributions

III. Technologies to be Considered:

- A. Consultant will consider the technologies listed below during the performance of the IGA:
 - 1. Lighting
 - a. Lighting fixture retrofit
 - b. Lighting controls
 - c. LED parking lot lighting
 - d. Energy efficient security lighting
 - e. LED street lighting
 - 2. Building HVAC retrofits and controls
 - 3. Solar photovoltaic electric generation
 - 4. Battery storage and microgrid opportunities
 - 5. Electric vehicle charging stations

6. Plug load controls
7. High efficiency transformers
8. SCADA control upgrades
9. Weather-based irrigation controls
10. Plumbing fixture retrofits and retrocommissioning

Provided that the IGA results in potential project(s) that meet the City's requirements, it is the intent of the Parties to work together to pursue a design-build project.

IV. Site Inventory:

SITES INCLUDED IN IGA:

Site	Address
City Hall	455 East Calaveras Blvd.
Public Works, Corp Yard, Vehicle Shop, Police Department	1265/1275 North Milpitas Blvd.
Community Center	457 East Calaveras Blvd.
Senior Center	40 North Milpitas Blvd.
Sports Center Complex	1325 East Calaveras Blvd.
Library Parking Garage	160 North Main St.
Fire Station No.1, Main Fire Admin and Fire Training Center	777 South Main St.
Fire Station No. 2	1263 Yosemite Dr.
Fire Station No. 3	45 Midwick Dr.
Fire Station No. 4	775 Barber Ln.
City-wide Pumping Stations	Various
City-wide Streetlights	Various
City-wide Parks	Various

SITES NOT INCLUDED IN IGA:

Any site not listed above.

EXHIBIT B

Schedule of Charges/Payments

City will compensate Consultant for all services performed under this Agreement by payment to Consultant of a lump sum Assessment Fee in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).

EXHIBIT C
Activity Schedule

Action	Duration from NTP
Kickoff meeting, data requests	4 day
City provides data required	18 days
CONSULTANT performs utility analysis and data benchmarking, preparing for detailed site audits	32 days
CONSULTANT performs detailed site audits across City facilities; performs energy/water measures design and begins savings analysis; starts drafting preliminary IGA	78 days
City and CONSULTANT meet to review project scope of work	76 day
CONSULTANT runs a competitive bidding process for the scopes of work identified; finalizes savings analysis; continues working on IGA	127 days
City and CONSULTANT meet to review scope of work	132 day
CONSULTANT incorporates any feedback into final IGA draft	147 days
Final IGA presented	148 days

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X_ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

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

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X_ Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

X Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

___ Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

X_ Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X_ Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C8. Consider Request from Sunnyhills Neighborhood Association to Waive Fees for Rental of Augustine Park on October 26, 2019 for its Halloween Event (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive Fee Waiver Request from Sunnyhills Neighborhood Association and move to waive fees of \$1,112.63 for City of Milpitas costs related to the special neighborhood Halloween event at Augustine Park on October 26, 2019.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Request from Sunnyhills Neighborhood Association to Waive Fees for Rental of Augustine Park on October 26, 2019 for its Halloween Event (Staff Contact: Mary Lavelle, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Mary Lavelle, 408-586-3001
Recommendation:	Receive Fee Waiver Request from Sunnyhills Neighborhood Association and move to waive fees of \$1,112.63 for City of Milpitas costs related to the special neighborhood Halloween event at Augustine Park on October 26, 2019.

Background

On August 13, 2019, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from the Sunnyhills Neighborhood Association. The group applied for a Special Event Permit through the Planning Department, and reserved through Recreation Services the rental of Augustine Park for this special event. Sunnyhills requested that the City Council waive City fees charged for its Halloween neighborhood event emphasizing safety from 2:00 to 4:00 PM on Saturday, October 26, 2019.

The adopted Fiscal Year 2019-20 Budget includes \$25,000 for donations, fee waivers, and events. Allocation of this money for the full Council versus individual Councilmembers was included as a discussion item for the August 20, 2019 Council meeting, however, due to time constraints, the item had been deferred to the September 17 meeting and subsequently to the October 1 meeting. Due to time sensitivity of the request in this report, this fee waiver is being brought forward for Council consideration, prior to the policy discussion. On September 3, the City Council approved two donation requests for a total of \$1,000. On September 17, 2019, the City Council approved one fee waiver of \$1,412.63 for American Cancer Society. The total amount of donations and fee waivers approved to date is \$2,412.63.

Analysis

Milpitas City Council adopted the "City Council Donation and Fee Waiver/Reduction Policy" on April 16, 2013. A copy is included as an attachment. This policy allows Milpitas non-profit organizations to request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. The requesting groups must be local Milpitas non-profits and provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board. Groups are requested to file a follow up report with the City Clerk after the event for which the fee waiver or funds were requested.

The group submitted its application form, IRS letter, and copy of last year's event report. The location has been reserved and deposit fees paid toward costs for the picnic area and park rental at Augustine Park from Recreation Services as well as the Planning Special Event permit fee.

City of Milpitas fees requested to be waived are:

Park Rental fee – Recreation Services	\$180.00
Special Event permit application – Planning Dept.	\$932.63
TOTAL	\$1112.63

Fiscal Impact

\$25,000 was approved and included in the adopted FY 2019-20 City budget for City Council's Unallocated Community Promotions. If this request is approved, \$21,474.74 would remain in that line item of the current year's budget.

Policy Alternatives:

Alternative 1: Do not approve the fee waiver as requested.

Pros: The City's General Fund will not incur the costs of the fees waived and would receive revenue.

Con: Denial of the request would negatively impact the non-profit organization.

Reason not recommended: Denial of this request would negatively impact a valuable non-profit organization in the community. Denial would not allow Sunnyhills Neighborhood Association to maximize its own funds for this and other events.

Alternative 2: Defer approval of the fee waiver requested after Council's consideration of the draft Council Policy titled "Council Policy for Events."

Pros: Council would have an opportunity to discuss a comprehensive policy before taking action on any donations or fee waivers.

Con: Deferring this request would negatively impact the non-profit organization.

Reason not recommended: Deferring approval of this request would negatively impact a valuable non-profit organization in the community and would not allow the Sunnyhills Neighborhood Association to maximize its own funds for this and other events.

Recommendation

Receive Fee Waiver Request from Sunnyhills Neighborhood Association and move to waive fees of \$1,112.63 for City of Milpitas costs related to the special neighborhood Halloween event at Augustine Park on October 26, 2019.

Attachments

- a) Application Form, City fee statements, IRS letter
- b) Event Flyer
- c) Report of 2018 event
- d) Donation/Fee Waiver Policy
- e) List of Donations/Fee Waivers FY 2019-20

City Clerk's Office

City of Milpitas

250

AUG 13 2019

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

RECEIVED**RECEIVED**

Complete this form and return it to Milpitas City Clerk

AUG 13 REC'D

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

CITY OF MILPITAS
PLANNING DIVISIONName of Organization: Sunnyhills Neighborhood Association

(co-sponsored by Supervisor Cortese)

Is there a Milpitas branch or affiliation? yesMailing Address: Sunnyhills Neighborhood Association1421 Yellowstone Ave. Milpitas, CA 95035
P.O. Box 36058, M 672 K8Contact Person: Allysson McDonald Telephone No. 408-507-3913Email Address: allyssonmcdonald@gmail.com

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and \$ amount) Planning \$932.63 + [REC \$180.00] = \$1112.63Event date(s): Saturday, Oct. 26, 2019 - Augustine ParkWhat is the purpose of the event? Safety education, community education and fun! (Costume Contest, Neighborhood Watch, etc.)
Open to all MilpitasHow will the Milpitas community benefit from this event? Families with childrenwill have an opportunity to celebrate Halloween in a safe environment, meet their neighbors, learn about Neighborhood Watch, etc.
What % of the fund raising proceeds will benefit Milpitas community? _____No fundraising will occurHow will the City's contribution (if granted) be recognized in any publicity? City Will be noted on the flier and social media promotions and in PA at party

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: Allysson McDonald (president) Date: 08-12-19Print Name & Title: Allysson McDonald, Board President

SEP 17 2019

251

RECEIVED

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: MAR 25 2003

SUNNYHILLS NEIGHBORHOOD IMPROVEMENT
ASSOCIATION
C/O ROBERT S MEANS
PO BOX 361474
MILPITAS, CA 95036-1474

Employer Identification Number:

77-0493926

DLN:

17053025723043

Contact Person:

EDWARD J POMERANTZ

ID# 3131

Contact Telephone Number:

(877) 829-5500

Our Letter Dated:

August 1999

Addendum Applies:

No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(v).

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

You are required to make your annual information return, Form 990 or Form 990-EZ, available for public inspection for three years after the latest of the due date of the return or the date the return is filed. You are also required to make available for public inspection your exemption application and any supporting documents, and your exemption letter. Copies of these documents are also required to be provided to any individual upon written request without charge other than reasonable fees for copying and postage. You may fulfill this requirement by placing these documents on the Internet. Penalties may be imposed for failure to comply with these requirements. Additional information is available in Publication 557, Tax-Exempt Status for Your Organization, or you may call our toll free number shown above.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

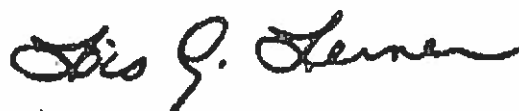
-2-

SUNNYHILLS NEIGHBORHOOD IMPROVEMENT

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

A handwritten signature in black ink, reading "Lois G. Lerner". The signature is written in a cursive, flowing style.

Lois G. Lerner
Director, Exempt Organizations



CITY OF MILPITAS

253

Mailing Address: 455 East Calaveras Boulevard, Milpitas, California 95035-5479
www.ci.milpitas.ca.gov

INVOICE

Allvsson McDonald
672 Kevenarie Drive
Milpitas, CA *5035

Project Number: P-SE19-0017
Address: Augustine Park
Invoice Date/Time: 8/13/2019 10:03:48AM

CONTACT: Planning Department

<u>Fee Description</u>	<u>Activity Code</u>	<u>Units</u>	<u>Amount</u>
MINOR EVENTS PLAN	100-317	0.00	\$909.00
PLANNING AUTOMATION FEE	506-3601 (PAF)	909.00	\$23.63
TOTAL AMOUNT DUE:			<u>\$932.63</u>

For Finance Dept Use:

100-317	\$909.00		
506-3601 (PAF)	\$23.63		
	<u>932.63</u>		



CRW


[Intro](#) [Activities](#) [Reservations](#) [Memberships](#)
[My Cart](#)

Permit Contract

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

Permit #24017, Approved
 Jul 26, 2019 3:36 PM



Robert Means
 1421 Yellowstone Ave
 Milpitas, CA 95035
 Email: --

Customer Type: Customer

Prepared By: Elyse Sacramento

Customer ID: 50331

Work: (408) 262-0420 Home: (408) 262-8975

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
\$200.00	\$0	\$0	\$200.00	\$0	\$0	(\$200.00)	\$0	\$0

▼ RESERVATIONS

Event	Resource	Center	Notes		
Halloween Party Type: Private Rental Attend/Qty: 50	Park - Augustine Memorial Area A	Milpitas Picnic Areas Cortez and Coelho Milpitas, Ca 95035 (408) 586-3210	--		
Day	Days Requested Date	Event Begins	Duration	Event Ends Date	Time
Saturday	Oct 26, 2019	8:00 AM	12 hours	Oct 26, 2019	8:00 PM
Summary	Notes				
Total Number of Dates: 1					--
Total Time: 12 hours					

▼ RESERVATIONS

Event	Resource	Center	Notes		
Halloween Party Type: Private Rental Attend/Qty: 50	Park - Augustine Memorial Area B	Milpitas Picnic Areas Cortez and Coelho Milpitas, Ca 95035 (408) 586-3210	--		
Day	Days Requested Date	Event Begins	Duration	Event Ends Date	Time
Saturday	Oct 26, 2019	8:00 AM	12 hours	Oct 26, 2019	8:00 PM
Summary	Notes				
Total Number of Dates: 1					--
Total Time: 12 hours					

▼ RESERVATIONS

Event	Resource	Center	Notes		
Halloween Party Type: Private Rental Attend/Qty: 50	Park - Augustine Memorial Area C	Milpitas Picnic Areas Cortez and Coelho Milpitas, Ca 95035 (408) 586-3210	--		
Day	Days Requested Date	Event Begins	Duration	Event Ends Date	Time

Saturday Oct 26, 2019 8:00 AM 12 hours Oct 26, 2019 8:00 PM

Summary

Notes

255

Total Number of Dates: 1

Total Time: 12 hours

▼ CHARGES

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Application Fee	Halloween Party #24017 Park - Augustine Memorial Area A	\$20.00	1.00	--	\$20.00
Park Rental Fee - Resident	Halloween Party #24017 Park - Augustine Memorial Area A	\$60.00	1.00	--	\$60.00
Park Rental Fee - Resident	Halloween Party #24017 Park - Augustine Memorial Area B	\$60.00	1.00	--	\$60.00
Park Rental Fee - Resident	Halloween Party #24017 Park - Augustine Memorial Area C	\$60.00	1.00	--	\$60.00

▼ Payments and Refunds

Receipt #	Date	Charge Description	Resource / Event	Payment
1171228.002	Jul 26, 2019	Application Fee	Park - Augustine Memorial Area A Halloween Party #24017	\$20.00
1171228.002	Jul 26, 2019	Park Rental Fee - Resident	Park - Augustine Memorial Area A Halloween Party #24017	\$60.00
1171228.002	Jul 26, 2019	Park Rental Fee - Resident	Park - Augustine Memorial Area B Halloween Party #24017	\$60.00
1171228.002	Jul 26, 2019	Park Rental Fee - Resident	Park - Augustine Memorial Area C Halloween Party #24017	\$60.00

▼ DISCLAIMERS

Keep a copy of this permit at your event for proof of site reservation. We require posting reservations signs prior to 8 a.m. the day of your event to avoid any other individuals setting up prior to your event.

NO electricity is provided. NO amplified music is permitted without prior approval. NO vehicles are allowed on the park facility other than the parking lot.

Should there be any park rental issues the day of your event, please contact the Milpitas Police Department at 408-586-2400.

▼ CUSTOM QUESTIONS

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

▼ WAIVERS

Rental Waiver

Waiver for: Robert Means

Due Date: Oct 26, 2019

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

Waiver Signed by: Robert Means on Jul 26, 2019

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.



Free Halloween Party & Community Gathering Saturday, October 26, 2019 2:00 - 4:00 pm Augustine Park in Milpitas

- Have fun and learn about safety
- Meet your neighbors, learn more about your community
- Give your children a chance to show off their costumes
(adults also invited come costume)

Children's Costume Contest

(Judging at 3:15pm)

Free Pumpkins
Free Art Projects

Free Drinks and Snacks
Free Child ID Cards

Live Music by Jump for Joy Music

Fun for the whole family!



Sponsored by the Sunnyhills Neighborhood Association and County Supervisor Dave Cortese. For more information, please contact The-Vu Nguyen at (408) 386-6115 or the-vu.nguyen@bos.sccgov.org

We are grateful for the generous support of the City of Milpitas.

Can you help? Contact wiley@jumpforjoymusic.com or call (408)757-8126.
Community Service opportunities for teens.



**Dave
Cortese**

County Supervisor,
Third District

RECEIVED

CITY OF MILPITAS – FEE WAIVER/DONATION REPORT TO CITY CLERK

ORGANIZATION: Supervisor Dave Cortese & Sunnyhills Neighborhood Association

FUNCTION and DATE: Annual Neighborhood Watch Awareness & Halloween
Costume Party

SUBMITTED BY: Sunnyhills Neighborhood Association, assisted by Wiley Rankin

1. number of participants: 130-140
2. copies of all publicity of the event (attach). FLYER ATTACHED
3. benefit to the community:

A Raises awareness of Neighborhood Watch Program for entire neighborhood
B Introduces local residents to each other, making new friendships between families
C Engages participation of high school volunteers, who are good role models to children
D Milpitas Police Department is deeply appreciated (NW presentation, meeting officer)
E Milpitas Fire Department is deeply appreciated (SAFE House, meeting fire fighters)
F Appreciation is expressed to City of Milpitas for its support & generosity in waiving fees
G Supervisor Dave Cortese arrived to speak to the crowd. Well received by audience
H Children have a great time with art projects, SAFE House, costume parade, music
I Children and families are affirmed for their participation in costume "contest".

4. amount of funds raised: \$0
5. accounting of how the proceeds of the event will be dispersed: NA

DATE: 12/1/18

12/1/18
12/1/18

SIGNATURE:


Wiley Rankin

**CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE**

SUBJECT: CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY

1. Purpose

The City of Milpitas recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents. To that end, the City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. Donation and Fee Waiver Budget

With each budget cycle, the City Council will establish an annual budget amount for donations or fee waivers/reductions for unspecified community events. Except for extraordinary circumstances, donations and or fee waivers/reductions will not be granted once the budgeted amount has been expended.

3. Requirements

- a) Any requests for donation or fee waiver/reduction must be submitted in writing using the attached application form.
- b) Requests for donations or fee waivers/reductions will be considered by the City Council during a regularly scheduled meeting.
- c) To be eligible, the organization must be a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency. In either case, only events that provide community benefit within the City of Milpitas shall be eligible. If fund raising is involved, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community. The organization must be non-discriminatory, and non-political in nature, based in Milpitas or have a local affiliation within the City.
- d) If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.
- e) Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any City staff overtime costs required due to the event cannot be waived.
- f) The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have in the City.
- g) The fee waiver/reduction amount is further subject to \$1,500 maximum annually and the donation amount is subject to \$500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.
- h) To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising.
- i) Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the 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.
- j) Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

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: _____

Is there a Milpitas branch or affiliation? _____

Mailing Address: _____

Contact Person: _____ Telephone No. _____

Email Address: _____

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and \$ amount) _____

Event date(s): _____

What is the purpose of the event? _____

How will the Milpitas community benefit from this event? _____

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

How will the City's contribution (if granted) be recognized in any publicity? _____

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: _____

Print Name & Title: _____

260

260

[illegible]

C9. Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Review a Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendation:	Review a Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status

Background:

This staff report provides an update on budget versus actual expenditures and revenues status of the City's major operating funds including the General, Water and Sewer Funds based on unaudited financial reports for FY (fiscal year) 2018-19 as of March 31, 2019 and June 30, 2019. Due to limited staff resources and turnover in Finance staff, the third quarter financials report is presented with the fourth quarter financials report. The Audited financials for Fiscal Year 2018-19 will be presented to the City Council in December 2019.

Analysis:

Revenues - General Fund Financial Status

- **Property Taxes and RPTTE:** For the twelve months ended June 30, 2019, \$33.8 million, or 101.5% of the \$33.3 million amended budget, has been received. For the nine months ended March 31, 2019, \$18.3 million, or 55% of the \$33.3 million amended budget, was received. Due to timing of property tax revenue receipts, the nine months ended March 31, 2019 did not include a few large tax payments received in the fourth quarter that amounted to \$14.8 million. The FY 18-19 property tax estimates were revised upward \$1.9 million from the FY 18-19 original projection of \$31.4 million in February 2019 as part of the Report on the Updated Five-Year Projection and General Fund Reserves for Fiscal Year Ended June 30, 2019. The projection was updated based on estimates from the City's contracted property tax consultant, which were in line with the County of Santa Clara's Assessor's Office February 2019 estimates which factored in property tax corrections and activity through December 2018.
- **Sales & Use Tax:** For the twelve months ended June 30, 2019, \$28.9 million, or 102% of the \$28.3 million amended budget, has been received. For the nine months ended March 31, 2019, \$18.2 million, or 64% of the \$28.3 million amended budget, was received. Actual revenues received were more than the amended budget due to an accounting change of the California Department of Tax and Fee Administration's (CDTFA) in the quarterly sales tax allocation to the City as well as one-time payments amounting to approximately \$2 million related to FY 2017-18 due to technical difficulties experienced at the CDTFA paid in the first two quarters of FY 2018-19. In February 2019, the FY 18-19 sales tax estimates were revised downward by \$1.9 million from the December 2018 initial estimate of \$30.2 million as part of the Report on the Updated Five-Year Projection and General Fund Reserves for Fiscal Year Ended June 30, 2019. The revised amount of \$28.3 million was kept relatively flat to the original FY 18-19 projection of \$28.5 million based on data from the City's

contracted sales tax consultant that reflected significant declines in third quarter activity from a fee the City's business to business sales tax generators for office equipment.

- **Franchise Fees:** For the twelve months ended June 30, 2019, \$5.1 million, or 107.7% of the \$4.8 million amended budget, has been received. For the nine months ended March 31, 2019, \$2.4 million, or 49.4% of the \$4.8 million amended budget, was received. Due to the timing of Franchise Fee receipts for the electric and gas franchise fees, \$1.5 million was received in April 2019, in addition to the May and June receipts that essentially included one more month of receipts for the last quarter in comparison to the third quarter. The FY 2018-19 adopted Franchise Fees was increased 18.8% over FY 2017-18 budgeted revenues, primarily due anticipated new residential units, and the related increase in franchise taxes collected from utilities as they were becoming occupied.
- **Hotel/Motel (TOT) Tax:** For the twelve months ended June 30, 2019, \$14.5 million, or 93.6% of the \$15.5 million amended budget, has been received. For the nine months ended March 31, 2019, \$8.0 million, or 51.7% of the \$15.5 million amended budget, was received. In February 2019, the FY 18-19 TOT tax estimate was revised upward \$2.8 million from the FY 18-19 original projection of \$12.7 million during February 2019 as part of the Report on the Updated Five-Year Projection and General Fund Reserves for Fiscal Year Ended June 30, 2019. This revised estimate was due to the increase in the TOT rate of 14% (from 10%) that was effective January 2019, and based upon actual trends and analysis performed against TOT estimates from a contracted consultant.
- **License and Permits:** For the twelve months ended June 30, 2019, \$11.4 million, or 91.7% of the \$12.5 million amended budget, has been received. For the nine months ended March 31, 2019, \$10.8 million, or 86.3% of the \$12.5 million amended budget, was received. The FY 18-19 Licenses and Permits revenue estimate was revised upward a total of \$2.7 million from the FY 18-19 original projection of \$9.8 million during December 2018 (remained the same in the February 2019 update) as part of the Reports on the Updated Five-Year Projection and General Fund Reserves for Fiscal Year Ended June 30, 2019. This was primarily due to the a one-time adjustment for the accounting treatment of deferred revenues and additional resources that were added to the Building and Housing Department's budget in addressing the backlog of work in FY 2018-19.
- **Charges for Services:** For the twelve months ended June 30, 2019, \$7.0 million, or 103.5% of the \$6.8 million amended budget, has been received. For the nine months ended March 31, 2019, \$5.0 million, or 75.1% of the \$6.8 million amended budget, was received. The FY 18-19 Charges for Services estimate was revised downward \$0.7 million from the FY 18-19 original projection of \$7.5 million during February 2019 as part of the Report on the Updated Five-Year Projection and General Fund Reserves for Fiscal Year Ended June 30, 2019. This was due to reimbursements for overhead and labor associated with billable staff time that have decreased in the last two years. However, FY 18-19 actual reimbursements were approximately flat to FY 17-18 reimbursements and there was not as much of a decrease as expected. Additionally, higher than estimated revenues were collected for recreation, fire, and police services in FY 18-19 as compared to FY 17-18.

Revenues - Water Maintenance & Operation (M&O) Funds Financial Status

- **Charges for Services:** For the twelve months ended June 30, 2019, \$29.3 million, or 96.4% of the \$30.4 million budget, has been received. For the nine months ended March 31, 2019, \$22.8 million, or 75.0% of the \$30.4 million budget, was received. This was due to an increase of the budget from FY 17-18 in anticipation of scheduled rate increases assumed for the entire fiscal year, but which did not become effective until June 2019.

Revenues - Sewer Maintenance & Operation (M&O) Fund Financial Status

- **Charges for Services:** For the twelve months ended June 30, 2019, \$17.5 million, or 104.3% of the \$16.8 million budget, has been received. For the nine months ended March 31, 2019, \$13.0 million, or

77.1% of the \$16.8 million budget, was received. This was primarily driven by volume, as the City collected new revenue for a few large multifamily residential developments in FY 18-19.

Expenditures - General Fund Financial Status

For the twelve months ended June 30, 2019, the General Fund has utilized \$96.0 million, or 91.0%, of the FY 18-19 department expenditure amended budget of \$105.9 million. Additionally, \$10.0 million, or 100%, of the amended transfers out budget of \$10.0 million has been expended. Total General Fund expenditures and transfers out were \$106.0 million, or 91.5%, of the \$115.9 million amended budget for the twelve months ended June 30, 2019. For the nine months ended March 31, 2019, the General Fund utilized \$74.9 million, or 71.0%, of the FY 18-19 amended department expenditure budget of \$105.4 million. Additionally, \$9.1 million, or 100%, of the amended transfers out budget of \$9.1 was expended. Total General Fund expenditures and transfers out were \$84.0 million, or 73.3%, of the \$114.5 million amended budget for the nine months ended March 31, 2019. The savings across departments is primarily due to position vacancies throughout the year. Through June 30, 2019, there was a monthly average of 47.6 vacant full-time equivalent (FTE) positions, or 11.7%, of the 406.5 FY 18-19 amended budgeted FTEs.

General Fund Year-End Summary

For the twelve months ended June 30, 2019, total General Fund revenues and transfers in were \$111.7 million, or 101.4% of the amended budget of \$110.2 million. For the twelve months ended June 30, 2019, total General Fund expenditures and transfers out were \$106.0 million, or 91.5%, of the FY 18-19 amended budget of \$115.9 million. As noted above, revenues were better than expected primarily due to the continued strong housing market and new developments, the change in accounting of the California Department of Tax and Fee Administration's (CDTFA) in the quarterly sales tax allocation to the City, one-time payments amounting to approximately \$2 million related to FY 2017-18 due to technical difficulties experienced at the CDTFA paid in the first two quarters of FY 2018-19, and investment earnings. Expenditures savings were primarily due to position vacancies throughout the year.

Fiscal Impact:

There is no fiscal impact from this report; it is intended to provide an update of the City's financials comparing budget versus actual expenditures and revenues for the third and fourth quarters for FY 2018-19. Staff will return to Council in December 2019 with final audited financials for Fiscal Year 2018-19.

California Environmental Quality Act:

N/a

Recommendation:

Review a Report on the City of Milpitas' Third Quarter and Fourth Quarter Financial Status

Attachments:

1. General Fund Expenditures by Department – March 31, 2019 (2019Q3)
2. General Fund Expenditures by Department – June 30, 2019 (2019Q4)
3. FY 2018-2019 Revenue Report For Fiscal Year-To-Date March 31, 2019
4. FY 2018-2019 Revenue Report For Fiscal Year-To-Date June 30, 2019

General Fund Expenditures by Department - March 31, 2019

Department/Division	Amended Budget	YTD Expenditures	Encumbrances	Total YTD Exp (inc. Encumbrances)	Percent Utilized
City Council	942,107	809,157	-	809,157	85.89%
City Manager	2,327,221	1,345,482	118,816	1,464,298	62.92%
City Clerk	773,900	531,363		531,363	68.66%
Economic Development	1,024,207	484,500	100,783	585,283	57.14%
Policy Planning	5,067,435	3,170,502	219,599	3,390,101	66.90%
Building & Housing	6,596,466	3,869,382	234,446	4,103,828	62.21%
City Attorney	846,282	601,787	265,223	867,010	102.45%
Finance	3,874,578	2,606,104	286,759	2,892,863	74.66%
Public Works	7,598,035	4,870,210	1,265,825	6,136,035	80.76%
Engineering	4,157,346	2,274,261	471,456	2,745,717	66.04%
Planning	1,823,639	1,245,854	-	1,245,854	68.32%
Police	33,054,494	22,677,722	130,833	22,808,555	69.00%
Fire	23,396,936	17,176,673	307,314	17,483,987	74.73%
Information Technology	3,182,507	2,061,741	16,261	2,078,002	65.29%
Human Resources	1,582,314	998,416	154,175	1,152,591	72.84%
Recreation and Community Services	5,752,060	3,604,726	334,453	3,939,179	68.48%
Non-Departmental	8,481,968	5,292,480	719,701	6,012,181	70.88%
Total Expenditures	105,414,060	70,449,858	4,406,045	74,855,903	71.01%
Transfers Out	9,134,245	9,134,245	-	9,134,245	100.00%
Total Expenditures and Transfers Out	114,548,305	79,584,103	4,406,045	83,990,148	73.32%

General Fund Expenditures by Department - June 30, 2019

Department/Division	Amended Budget	YTD Expenditures	Encumbrances	Total YTD Exp (inc. Encumbrances)	Percent Utilized
City Council	942,607	829,603	-	829,603	88.01%
City Manager	2,163,685	1,975,417	21,719	1,997,136	91.30%
City Clerk	773,900	674,037	-	674,037	87.10%
Economic Development	1,024,207	707,976	185,157	893,133	69.12%
Policy Planning	4,904,399	4,187,033	206,876	4,393,909	85.37%
Building & Housing	6,601,441	5,264,727	85,560	5,350,287	79.75%
City Attorney	1,281,657	1,260,893		1,260,893	98.38%
Finance	3,874,578	3,575,448	195,519	3,770,967	97.33%
Public Works	7,598,035	7,241,616	339,768	7,581,384	99.78%
Engineering	4,133,636	3,030,473	110,002	3,140,475	75.97%
Planning	1,818,664	1,710,386	78,130	1,788,516	98.34%
Police	33,018,358	30,593,893	383,975	30,977,868	93.82%
Fire	23,957,189	23,466,428	212,383	23,678,811	98.84%
Information Technology	3,182,507	2,720,980	253,780	2,974,760	93.47%
Human Resources	1,582,314	1,400,058	85,704	1,485,762	93.90%
Recreation and Community Services	5,752,060	5,143,607	209,600	5,353,207	93.07%
Non-Departmental	8,216,799	3,746,490	509,333	4,255,823	51.79%
Total	105,921,637	93,342,032	2,670,630	96,012,662	90.64%
Transfers Out	9,934,245	9,934,245	-	9,934,245	100.00%
Total Expenditures and Transfers Out	115,855,882	103,276,277	2,670,630	105,946,907	91.45%

CITY OF MILPITAS
FY 2018-2019 Revenue Report
For Fiscal Year-To-Date March 31, 2019
With comparative Information for the same period in FY 2017-2018

	FY 17/18				FY 18/19				Comparison		
	Final Budget	Actual	Year to Date	Percentage of Actual	Adopted Budget	Amended Budget	Year to Date	Percentage of Budget	CY Actual to CY Budget	CY Actual to PY Actual	CY Budget to PY Budget (%)
<u>Revenues</u>											
<u>General Fund</u>											
Property Taxes	\$23,750,000	\$ 24,968,778	\$ 16,158,214	64.71%	\$24,774,000	\$27,095,136	\$ 15,727,385	58.05%	\$ (11,367,751)	\$ (430,829)	114.08%
RFTTF Distributions	5,100,000	6,924,240	2,968,892	42.88%	6,631,000	6,206,000	2,575,141	41.49%	(3,630,859)	(393,751)	121.69%
Sales and Use Taxes	25,520,000	27,854,332	18,959,838	68.07%	28,520,056	28,434,202	18,199,605	64.01%	(10,234,597)	(760,234)	111.42%
Other Taxes	1,055,000	1,026,083	717,148	69.89%	1,305,000	1,125,996	848,193	75.33%	(277,803)	131,045	106.73%
Franchise Fees	3,981,000	4,677,808	1,657,003	35.42%	4,730,851	4,762,100	2,350,589	49.36%	(2,411,511)	693,586	119.62%
Hotel/Motel Tax	11,196,000	12,121,515	7,613,985	62.81%	12,693,000	15,501,553	8,015,291	51.71%	(7,486,262)	401,306	138.46%
License & Permits	8,388,690	12,281,999	9,054,823	73.72%	9,781,714	12,468,019	10,759,616	86.30%	(1,708,403)	1,704,793	148.63%
Fines and Forfeitures	386,000	475,867	341,870	71.84%	471,500	435,000	295,801	68.00%	(139,199)	(46,070)	112.69%
Interest Income	377,000	259,357	816,872	314.96%	756,000	756,000	1,067,603	141.22%	311,603	250,732	200.53%
Intergovernmental	1,674,153	1,507,503	361,837	24.00%	555,500	768,802	427,498	55.61%	(341,304)	65,661	45.92%
Charges for Services	6,751,729	6,877,156	5,246,149	76.28%	7,452,954	6,674,036	5,017,526	75.18%	(1,656,510)	(228,622)	98.85%
Other Revenue Sources	152,293	146,568	77,285	52.73%	41,000	46,000	229,194	498.25%	183,194	151,909	30.20%
Operating Transfers In	5,427,000	5,551,541	5,551,541	100.00%	6,355,432	6,502,208	6,502,208	100.00%	(0)	2,550,667	149.29%
Total General Fund Revenue	\$93,758,865	\$104,672,748	\$69,525,458	66.42%	\$104,068,007	\$110,775,052	\$72,015,649	65.01%	(38,759,402)	4,090,192	118.15%
<u>Water M & O Fund</u>											
Charges for Services	\$ 29,968,479	\$ 29,518,657	\$ 23,360,536	79.14%	\$30,400,000	\$30,400,000	\$ 22,794,693	74.98%	(7,605,307)	\$ (565,843)	101.44%
<u>Sewer M & O Fund</u>											
Charges for Services	\$ 16,800,000	\$ 17,052,187	\$ 12,944,448	75.91%	\$16,800,000	\$16,800,000	\$ 12,955,146	77.11%	(3,844,854)	\$ 10,698	100.00%

CITY OF MILPITAS
FY 2018-2019 Revenue Report
For Fiscal Year-To-Date June 30, 2019
With comparative Information for the same period in FY 2017-2018

	FY 17/18				FY 18/19				Comparison		
	Final Budget	Actual	Year to Date	Percentage of Actual	Adopted Budget	Amended Budget	Year to Date	Percentage of Budget	CY Actual to CY Budget	CY Actual to PY Actual	CY Budget to PY Budget (%)
<u>Revenues</u>											
<u>General Fund</u>											
Property Taxes	\$ 23,750,000	\$ 24,968,778	\$ 24,968,778	100.00%	\$ 24,774,000	\$ 27,095,136	\$ 27,422,274	101.21%	\$ 327,138	\$ 2,453,495	114.08%
RFTTF Distributions	5,100,000	6,924,240	6,924,240	100.00%	6,631,000	6,206,000	6,388,736	102.94%	182,736	(535,504)	121.69%
Sales and Use Taxes	25,520,000	27,854,332	27,854,332	100.00%	28,520,056	28,305,900	28,889,785	102.06%	583,885	1,035,454	110.92%
Other Taxes	1,055,000	1,026,083	1,026,083	100.00%	1,305,000	1,125,996	1,128,531	100.23%	2,535	102,448	106.73%
Franchise Fees	3,981,000	4,677,808	4,677,808	100.00%	4,730,851	4,762,100	5,127,312	107.67%	365,212	449,504	119.62%
Hotel/Motel Tax	11,196,000	12,121,515	12,121,515	100.00%	12,693,000	15,501,553	14,502,736	93.56%	(998,817)	2,381,221	138.46%
License & Permits	8,388,690	12,281,999	12,281,999	100.00%	9,781,714	12,468,019	11,428,565	91.66%	(1,039,454)	(853,434)	148.63%
Fines and Forfeitures	386,000	475,867	475,867	100.00%	471,500	435,000	425,097	97.72%	(9,903)	(50,770)	112.69%
Interest Income	377,000	259,357	259,357	100.00%	756,000	756,000	2,050,230	271.19%	1,294,230	1,790,873	200.53%
Intergovernmental	1,674,153	1,507,503	1,507,503	100.00%	555,500	1,330,198	1,626,363	122.26%	296,165	118,860	79.45%
Charges for Services	6,751,729	6,877,156	6,877,156	100.00%	7,452,954	6,772,411	7,011,666	103.53%	239,255	134,510	100.31%
Other Revenue Sources	152,293	146,568	146,568	100.00%	41,000	46,000	326,838	710.52%	280,838	180,270	30.20%
Operating Transfers In	5,427,000	5,551,541	5,551,541	100.00%	6,355,432	5,396,682	5,396,682	100.00%	-	(154,859)	99.44%
Total General Fund Revenue	\$93,758,865	\$104,672,748	\$104,672,748	100.00%	\$104,068,007	\$110,200,995	\$111,724,815	101.38%	1,523,820	7,052,067	117.54%
<u>Water M & O Fund</u>											
Charges for Services	\$ 29,968,479	\$ 29,518,657	\$ 29,518,657	100.00%	\$ 30,400,000	\$ 30,400,000	\$ 29,307,618	96.41%	(1,092,382)	\$ (211,039)	101.44%
<u>Sewer M & O Fund</u>											
Charges for Services	\$ 16,800,000	\$ 17,052,187	\$ 17,052,187	100.00%	\$ 16,800,000	\$ 16,800,000	\$ 17,521,842	104.30%	721,842	\$ 469,654	100.00%

- 10. Conduct a Public Hearing and Consider Adoption of Resolution of the City Council Upholding the Planning Director's Appeal and Finding that the Non-Conforming Industrial Use at 1831-1841 Tarob Court was Discontinued for a Continuous Period of more than One Year, and in Accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be Replaced with a Different Non-Conforming Industrial Use (Staff Contact: Ned Thomas, 408-586-3273)**

Recommendations:

- (1) Conduct a public hearing and move to close the hearing following comments.
- (2) Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) (Not a Project).
- (3) Adopt a resolution upholding the Planning Director's appeal and finding that the previous nonconforming industrial use located at 1831-1841 Tarob Court was discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use.

GEOMAX

City Clerk's Office

SEP 26 2019

RECEIVED

September 26, 2019

City of Milpitas
Attention: City Clerk

Re: 1831-1841 Tarob Court, Milpitas

Dear Sirs:

Please postpone the appeal for 1831-1841 Tarob Court, Milpitas.

Sincerely,



George L. Quinn, Jr.
Partner



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Consider Adoption of Resolution of the City Council Upholding the Planning Director's Appeal and finding that the nonconforming industrial use at 1831-1841 Tarob Court was discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use
Category:	Public Hearings-Community Development
Meeting Date:	8/13/2019
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273
Recommendations:	1) Conduct a public hearing and move to close the hearing following comments. 2) Consider the Exemption in accordance with the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) (Not a Project). 3) Adopt a resolution upholding the Planning Director's appeal and finding that the previous nonconforming industrial use located at 1831-1841 Tarob Court was discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use.

Background:

On July 19, 2018, George L. Quinn Jr. (the "Applicant") contacted the Planning Department seeking approval to lease the property at 1831-1841 Tarob Court (the "Property") to an electric car manufacturer. Prior to adoption of the Transit Area Specific Plan (TASP) in 2008, the City's General Plan had designated the subject site for industrial uses. Concurrent with the adoption of the TASP in 2008, the City Council also rezoned the property to Multi-Family Very High Density Residential (R4).

A car manufacturer is not an allowable use in the R4 Zoning District. Therefore, the property owner sought to install the car manufacturing use pursuant to the Nonconforming Buildings and Uses provisions in the Milpitas Municipal Code Section XI-10-56.03 (Discontinuation of Nonconforming Use), which states that if a nonconforming use at a particular site has been discontinued for a period of less than one (1) year, it may be replaced with a nonconforming use of the same use classification as a matter of right. In this case, staff found that more than one year had passed since the most recent legal nonconforming industrial tenant vacated on January 31, 2017. However, the Applicant asserted that the cessation of nonconforming use was interrupted by a short-term lease with Stratford Schools, commencing on December 13, 2017, which purportedly established a warehousing/wholesale use of school record storage that ended the cessation of a period of industrial use onsite. Thereafter, Stratford Schools applied for a Conditional Use Permit (CUP) to establish a school use, and that application was later withdrawn. Apart from the Stratford School, the Property has been vacant since January 2017.

On August 3, 2018, the Planning Department issued a letter of determination rejecting the Applicant's interpretation of the Municipal Code (see Attachment F). Staff determined that use of the premises for records storage did not qualify as a warehousing use within the meaning provided in the Municipal Code and, therefore, was not a legal nonconforming use. Staff concluded that since the last known industrial use of the building was discontinued as of January 31, 2017, the prior nonconforming use of the site was discontinued for a continuous period of more than one (1) year or and could only be replaced with a conforming use.

On August 14, 2018, the Applicant appealed staff's determination to the Planning Commission. The Applicant did not dispute Staff's interpretation rejecting Stratford Schools' onsite storage as a continuation of legal conforming industrial uses. Instead, the Applicant argued that, despite the site's extended vacancy and the fact that no industrial tenant had used the site since January 2017, a series of deferred maintenance and tenant improvements undertaken while the Property was vacant during 2017 and 2018 constituted a "continued" industrial use of the property.

On September 26, 2018, the Planning Commission held a public hearing to consider the Applicant's appeal. It was undisputed that no industrial user had operated on the site since the last industrial tenant vacated the premises in January 2017; however, in his appeal before the Planning Commission, the Applicant asserted that above-referenced maintenance and tenant improvements, together with listing the Property for purposes of securing an industrial tenant, amounted to an ongoing "industrial use" of the vacant site, thereby preserving its legal nonconformity. Staff disagreed with this assertion in that maintenance, tenant improvements, and marketing are not equivalent to the "industrial use" of a property, and these criteria are not included in the Municipal Code for the purpose of determining the continuation of a non-conforming uses. In addition, there has been no dispute that industrial use of the Property is nonconforming and has been since the 2008 TASP adoption and associated rezoning, nor has the Applicant asserted that he lacked proper notice and knowledge of the Property's TASP designations and current zoning. Nevertheless, at the conclusion of the public hearing, the Planning Commission voted to uphold the appeal and overturn Staff's August 3, 2018 determination.

On September 27, 2018, the Planning Director filed this appeal (the "Council Appeal") of the Planning Commission's September 26 decision on the grounds that the Planning Commission improperly approved an expired nonconforming use contrary to the Milpitas Municipal Code Section 56 - Nonconforming Buildings and Uses. The Planning Commission's decision fails to enforce the City's adopted and established nonconforming use regulations, which, as stated in the Council Appeal, is contrary to the goals and policies of the TASP and prevents its timely implementation (see Attachment B). The Planning Director's appeal was scheduled for public hearing before the City Council on October 16, 2018, but the item was subsequently withdrawn because the property owner and the City entered into negotiations for purchase of the property by the City for planned roadway improvements. Those negotiations continued through June 2019 until the applicant abruptly withdrew from the discussions due to a disagreement over the cleanup of contaminated soils on the site.

Basis of the Council Appeal:

The primary question before the City Council is whether Staff appropriately determined that the Applicant's prior legal nonconforming industrial use of the Property was discontinued for a period of one year or more, as specified in Milpitas Municipal Code Section XI-10-56.03. Section XI-10-56.03 provides that "[a] legally established use that is no longer permitted in a particular zoning district because of a modification of [the Zoning Code] shall be allowed to continue indefinitely, *absent discontinuation of the use for a year or more.*" (Emphasis added). As outlined below, this Council Appeal addresses several issues relevant to the Council's determination regarding this primary question.

Issue #1: Nonconforming Buildings and Uses Ordinance

A legal nonconforming use refers to a use that was legal for a particular site at the time it was instituted, but which does not conform to subsequently enacted zoning or other regulations. Cities and counties commonly establish legal nonconforming use ordinances and regulations to establish parameters for the continuation of nonconforming uses while encouraging conversion to conforming uses. Consistent with these principles, the City's legal nonconforming use ordinance, per Milpitas Municipal Code Section XI-10-56, *et seq.* (the "Ordinance"), provides a set of guidelines to assist property owners in managing the eventual transition of their existing nonconforming uses to uses that conform to the current zoning classifications.

Essentially, the Ordinance provides a narrowly tailored exception to ordinary rules governing permitted and conditionally permitted uses under the City's Zoning Code. In that vein, the Ordinance clearly encourages *conforming* uses, while recognizing that until nonconforming buildings, structures and uses are converted, improvements to them which promote their compatibility with their neighborhoods, enhance the quality of

development, and do not increase nonconformity should be encouraged and allowed.” (See Milpitas Municipal Code Section XI-10-56.01). 273

Here, despite the absence of continuing industrial activities onsite, the Applicant has asserted that industrial uses did not cease for more than a year because building improvements and listing the Property for leasing during the course the site’s vacancy amounts to an ongoing industrial use.

Staff does not agree with this interpretation of the Nonconforming Buildings and Uses Ordinance. Nothing in the Ordinance specifies nor contemplates the activities the Applicant describes as a demonstration of the continuation of legal nonconforming uses. Although the Ordinance allows routine maintenance and repairs of nonconforming buildings or structures, it does not suggest that merely undertaking such actions constitute continuation of the legal nonconformity. Regarding the Applicant’s building and maintenance activities, the Ordinance allows such improvements only as a **limitation** on ongoing conforming uses, **not** evidence that an otherwise discontinued nonconforming use is ongoing. (See Milpitas Municipal Code Section XI-10-56.02).

The Ordinance’s intent and purpose is to enable existing nonconforming uses to continue without expansion or alterations that enhance their permanence. To that end, the Ordinance specifies that any repairs, maintenance or aesthetic improvements are allowed “provided that no structural alterations shall be made except those required by law or ordinance.” (See Milpitas Municipal code Section XI-56.02.A).

Similarly, the Applicant has provided no support for his assertion that listing the Property for potential leasing with an industrial tenant amounts to a continued industrial use of the site. Neither the Ordinance nor the cases cited in the Applicant’s Planning Commission appeal suggest that mere marketing efforts (nor those efforts coupled with the Applicant’s maintenance and other improvements) constitute a continuation of legal nonconforming uses. Although the Applicant’s attempts to obtain an industrial tenant may show his intermittent interest in continuing an industrial use if one could be secured, they do not constitute a continuation of the industrial use itself. The Applicant’s evidence of a listing agreement with a commercial brokerage, the posting of a “for lease” sign for an industrial user at the Property, or a letter of intent with a prospective tenant that never proceeded to a signed lease agreement do not alter this conclusion. To the extent the Applicant’s intentions might be relevant, the facts show his intent to abandon industrial uses when Stratford Schools leased the Property and commenced an application process to convert the site to nonindustrial school uses (see Issue #4 on the next page).

Under the Ordinance, where legal nonconforming uses cease, a property owner has a one year period to institute a new legal nonconforming use in order to continue its legal nonconforming status. If the owner fails to do so, the legal nonconforming status lapses and ordinary rules governing permitted and conditionally permitted uses apply. The Ordinance does not contemplate that routine maintenance or unsuccessful efforts to market the property amount to a continuation of the legal nonconforming use or extend the one year period for re-instituting a ceased use.

Issue #2: The meaning of “use” in the context of the Nonconforming Buildings and Uses Ordinance

At the September 26, 2018 Planning Commission meeting, the Applicant’s attorney, Andrew L. Faber, asserted that the Applicant’s above-described building and marketing activities constituted a continued industrial use under the Zoning Code’s general definitions. Specifically, the Applicant asserted industrial use of the Property continued because Milpitas Municipal Code XI-10-2.03, defines “use” as “the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.” Because this definition does not “require” occupancy, the Applicant has asserted that mere “maintenance” amounts to continued industrial use.

Staff disagrees with the Applicant’s interpretation. Although the Code’s general definition does allow maintenance to occur within any “use” category, it does not suggest that mere maintenance constitutes continuation of a particular use. This provision merely recognizes that occupation or maintenance activities to support an underlying allowed use, such as industrial, commercial, residential, also are allowed. It does not mean that such activities alone perpetuate that use, particularly when the underlying use is nonconforming.

As described above, a legal nonconforming use is an exceptional category of uses, subject to very specific restrictions that are designed to discourage permanency of the nonconformity. The Municipal Code's general definition of "use" does not, and is not intended to, address the peculiarities of legal nonconforming uses, which are specifically addressed in Section 56 - Nonconforming Buildings and Uses ordinance of the Milpitas Municipal Code.

Issue #3: City permitting process for building repairs and maintenance

In its appeal before the Planning Commission, the Applicant implied that Planning Department staff were aware of the repairs and maintenance that were made to the Property in 2017 and 2018. Apparently, the Applicant hoped this would lead to an inference that the City staff implicitly authorized or endorsed these alterations for purposes of prolonging the nonconforming use of the building. There is no factual support for this inference. Whether or not Planning staff are called upon for review depends on the nature of the changes being proposed by an applicant. In the interest of streamlining the permitting process, interior tenant improvements such as plumbing and electrical work or the replacement of a roof do not require discretionary Planning review nor a building permit plan check by Planning staff. Any City review of the permit requests would not likely have revealed any particular intent regarding the use of the Property, but even if it had, the fundamental facts underlying this Council Appeal are unchanged. The Applicant's pursuit of the improvements, permitted or not, did not constitute continuation of the industrial legal nonconforming use of the Property.

Issue #4: Stratford Schools' efforts to pursue a nonindustrial use via Conditional Use Permit application

Throughout the course of the Applicant's appeal to the Planning Commission, the Applicant repeatedly asserted that pursuit of a new industrial tenant and improving the Property for continuation of nonconforming industrial use has been the Applicant's objective since the last industrial tenant vacated the site in January 2017. This argument apparently was advanced in an effort to show that the Applicant had not intended to abandon his industrial uses, even though he had not actually continued them. The evidence, however, shows that the Applicant did intend to abandon further industrial use of the Property and install Stratford Schools as a nonindustrial, conforming, conditionally permitted use in the R4 zoning designation. As noted above, the Applicant leased the Property to Stratford Schools on December 13, 2017 on a month-to-month term. Then, on February 8, 2018, Stratford Schools, applied for a Conditional Use Permit (CUP) to operate a school on the Property, a conditionally permitted use in the R4 zoning district. Ultimately, Stratford Schools withdrew their CUP application on June 29, 2018 after deciding not to undertake the California Environmental Quality Act (CEQA) study that would be required for the project. Nonetheless, the Applicant's support for Stratford Schools plans for the Property clearly demonstrate the Applicant's willingness and desire to abandon the previous industrial use.

Issue #5: Availability of economically viable conforming use of the Property consistent with the R4 zoning classification and the TASP

In his appeal to the Planning Commission, the Applicant asserted that Staff's determination that the legal nonconforming industrial use had lapsed deprived the Property of all economically viable use. Staff sees no basis for this assertion. At this juncture, there is no reason to believe that the Property cannot be developed as prescribed by the TASP development standards for Multi-Family Very High Density Residential (R4). The Applicant asserts that the TASP-planned extension of Milpitas Boulevard which would bisect the Property precludes such development; however, Staff is optimistic that a successful residential proposal could be developed. As of the writing of this report, the Planning Department has not received any residential development proposals from the Applicant nor have they been approached for any preliminary conversations.

The City remains receptive to any proposal for conforming use development on the Property, as evidenced by adjacent properties to the site either entitled for R4 development or that are currently under development. These developments include 355 Sango Court, a 100-unit affordable housing project directly west of the property and 1980 and 1992 Tarob Court and 551 Lundy, where construction has already begun for approximately 200 townhomes.

In an attempt to ascertain whether the multifamily residential development community would be interested in developing the Property, Staff spoke with representatives from DR. Horton, True Life Companies and Summerhill Homes who all agreed that there was residential development potential on the site even after a portion of the Property was dedicated to roadway construction.

Issue #6: Implications of failing to enforce the legal Nonconforming Use Ordinance

In his September 26 appeal hearing, the Applicant persuaded the Planning Commission that his maintenance and marketing activities demonstrated sufficient evidence of continued industrial use to allow such nonconforming uses to proceed into the future. In this Council Appeal, Staff believes that the Planning Commission decision erred in failing to rigorously enforce the Nonconforming Buildings and Uses Ordinance despite significant evidence and legal support for Staff's determination that the Property's legal nonconforming status had lapsed under the terms of the Ordinance in the Municipal Code.

The potential adverse consequences of failing to rigorously enforce the Ordinance and the Municipal Code are worth noting. As discussed above, the Ordinance is intended to facilitate the transition of nonconforming uses to conforming uses. The importance of fulfilling this intention is particularly apparent in the TASP area, where the future of the surrounding neighborhood and the ultimate buildout of high density residential uses within walking distance of the BART station and ultimately, the realization of the goals of the greater TASP require the eventual conversion of nonconforming uses. The neighborhood surrounding the Property is rapidly transitioning from former industrial uses to residential uses as prescribed by the TASP. Fundamentally, the noise, odors, vibrations and traffic patterns of industrial uses are incompatible with the residential community already in use or under construction. To interpret the Ordinance in a manner that allows the Property's lapsed industrial nonconforming use to resume could establish a virtually permanent state of land use incompatibility in this important planning area.

Notwithstanding the TASP goals and the on-the-ground land use transition that is occurring in TASP area, if the Applicant demonstrated that legal nonconforming uses had not been discontinued for over a year, the industrial uses could proceed consistent with the Nonconforming Buildings and Uses Ordinance. But, as expressed in this Council Appeal, Staff does not find that to be the case. As a result, in Staff's view, it would be an error to uphold the Planning Commission's incorrect interpretation of the Nonconforming Buildings and Uses Ordinance in the Municipal Code and its application to the Property.

Conclusion: For the reasons described in this report and as demonstrated in the record before the Council, Planning staff recommends the City Council adopt a resolution reversing the Planning Commission decision and upholding the original Planning Department determination that the nonconforming industrial use at the subject property had been discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use at 1831-184 Tarob Court in the Transit Area Specific Plan. All of these properties were rezoned from industrial to residential in the adoption of the TASP.

Policy Alternative:

Alternative 1: Concur with the Planning Commission's decision and allow the subject site to be occupied by a new nonconforming use consistent with its previous use prior to adoption of the Transit Area specific Plan.

Pros: None.

Cons: Doing so is inconsistent with the City's Municipal Code. Further, there is a high risk of potential land use conflicts between an industrial use at the subject site and the surrounding residential uses.

Reason not recommended: The duly adopted Transit Area Specific Plan designates the subject site for high density residential development based on its proximity to the new Milpitas BART Station. The decision by the Planning Commission is contrary to the principles of effective land use planning and TASP implementation.

Recommendations:

1. Conduct a public hearing and move to close it following comments.
2. Consider the exemption in accordance with CEQA.
3. Adopt a Resolution to reversing the Planning Commission decision and upholding the original Planning Department determination that the previous nonconforming industrial use located at 1831-1841 Tarob Court was discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use.

Attachments:

- A. Resolution for Approval of Planning Director's Appeal
- B. Resolution for Denial of Planning Director's Appeal
- C. Appeal Form
- D. Planning Commission Staff Report 9/26/2018
- E. Planning Commission Meeting Minutes 9/26/2018
- F. Staff Letter of Determination 8/3/2018
- G. Applicant's Appeal of Staff Determination 8/14/2018
- H. Geomax Attorney Letter to Council 10/14/2018
- I. City Attorney's Response to Geomax Attorney Letter to Council 10/14/2018

11. **Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and to Allow a Limited Deferral of TADIF for Certain Projects with Entitlements (Staff Contacts: Kevin Riley, 408-586-3292 and Ned Thomas, 408-586-3273)**

Recommendation: Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and to Allow a Limited Deferral of TADIF for Certain Projects with Entitlements (Staff Contact: Ned Thomas, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	10/1/2019
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, TASP Manager, 408-586-3292
Recommendations:	Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.

Background:

With the adoption of the Transit Area Specific Plan (TASP) in 2008, the City Council adopted a fee program to share the costs of public improvements among all new developments approved and constructed within the TASP area. The Council last adopted and applied the current Transit Area Development Impact Fees (TADIF) in March 2014, and staff has identified the need for a near-term update of fees to recover costs that have escalated since 2014.

The consultant contract with Economic & Planning Systems Inc. (EPS), approved by the City in January 2019, contemplates a comprehensive update of the TASP development program and a concurrent update of development impact fees to reflect TASP infrastructure needs. The work by EPS is being provided in two parts, with the initial effort being an immediate (interim) update from 2014 to 2019 of the costs of the infrastructure program and an estimation of the appropriate per-unit fees (rates) to match the percentage of growth of those costs at 2019 levels. This simplified approach would provide a “catch up” fee schedule that will be applied by development categories to pending projects that have not yet obtained building permits prior to new fee resolution becoming effective. The second and more comprehensive element of the work by EPS will come later following completion of the pending update of the overall development scenario and related environmental work for the TASP. That pending TASP Update 2020 may reflect an expanded TASP area, new opportunities for development, and some limited additional public improvements to serve the potential development capacity.

Preparation of the attached fee resolution follows staff disclosure of updated fee estimates to Plan Area developers, businesses, property owners and other interested parties at the Community Development Roundtable meetings on June 6 and August 15, 2019. Staff has also had follow-up conversations and meetings with individual developers to discuss how the proposed fee changes would affect their pending projects.

The purpose of the impact fee is to proportionally share the costs of public infrastructure that benefit the new residences and businesses that are developed within the TASP area and thereby minimize adverse overburdening of other existing City facilities. The TASP commitment to parks, roadways, pedestrian

pathways, utilities and other services and amenities is an important part of the marketing of new development within the TASP area.

Analysis:

The City has authority to impose development impact fees under the State's Mitigation Fee Act (Government Code Section 66000, *et seq.*) and as codified in Title VIII, Chapter 4 of the City's Municipal Code, which allows adjustment of such fees "from time to time" by resolution. The last fee resolution, currently in effect since March 2014, calls for infrastructure costs listed in the TASP Basic Infrastructure Program (BIP) to be adjusted automatically annually using a San Francisco area based cost index (Resolution 8344, Section 9). EPS has completed the infrastructure cost escalation to 2019, as provided in the attached Technical Memorandum dated May 29, 2019 (Exhibit A to the fee resolution).

Fees intended to address cost recovery on a proportional share basis from new development are adjusted periodically at the City's discretion. Fee share allocations vary by development type insofar as they include both the costs of acquisition and development of parklands and the costs of construction of facilities. The EPS memorandum presents an increase in fees based solely on the growth of impact fees between 2014 and 2019 and then allocates those fees across the various development categories based upon the benefits to each category. For the purposes of this interim adjustment, no changes have been made to either the components of the BIP or to the development scenario previously utilized for the adopted 2014 fee schedule.

The 2014 fee study had established a reallocation of fees across a reduced volume of anticipated development based upon a weaker economic climate at that time, but as the City recovered from the Great Recession the improving economic conditions brought impressive residential interest and production to the TASP area. Current figures show that 6,955 of the 7,109 planned housing units in the 2008 TASP are occupied, are under construction or are entitlement at this time. There are only 154 of the original 7,109 units in TASP that have not yet been entitled.

Permit records indicate that as of March 2019 and including the latest entitlements, there are approximately 1,964 (over 28%) of the entitled 6,955 units that have not yet been issued building permits. Some of those projects identified as under permit review could be issued permits prior to the effective date of this proposed fee resolution and therefore would not be subject to revised fees.

The EPS Memorandum calculates the fee allocations based upon design and construction costs that have cumulatively increased 16.2%, and land values that have cumulatively increased 43.8%. The total costs to fund the TASP BIP increased by nearly \$50 million, from \$233,788,200 (2014) to \$286,968,018 (2019), which represents an overall 22.75% increase for the combined commercial and residential components. To cover this increased cost, EPS has calculated a 2019 fee rate of \$40,487 per residential unit, \$26.49 per retail square foot, and \$42.52 per office square foot; no hotel rooms were included in the 2014 development scenario. Each fee category increase is tied directly to the associated cost increase attributable to that category of land use, as shown in Table 1 of the EPS Memorandum. For residential developments, where the increase in land values for parkland acquisition are a significant factor, the proposed \$40,487 per-unit fee is an increase of 23.5 percent, matching the 23.5 percent increase in costs attributable to residential impacts on infrastructure.

While the above fee increases are authorized by the Municipal Code and necessary to cover the costs of planned infrastructure, some developers have commented that this fee increase could have significant implications for the feasibility of their projects, especially pipeline projects that have already obtained entitlements but have yet to submit for or obtain building permits. While some of the developers' financial analyses and project pro-formas may have assumed the current TADIF, staff does not recommend reducing these fees from the amounts calculated by EPS as this would reduce the likelihood of covering infrastructure costs. However, to offset the impact on pipeline projects in the TASP and to incentivize construction of already approved projects, staff recommends that the City Council consider allowing a deferral of the payment of the TADIF until approval of occupancy instead of at building permit issuance, which is the current requirement. While fees would continue to be calculated at the time of permit issuance, allowing payment of these fees at occupancy can lessen the financial burden on development projects and assist with project financing and cash flow. The City would still collect the necessary funds for the BIP, but at a later date.

For example, a 100-unit project could have an impact fee obligation that increases 23.5 percent from just over \$3 million to just over \$4 million. The developer would lock in the fees at the time of issuance of permits by entering into a binding agreement at that time to pay the fees at some later agreed upon stage of occupancy (e.g., final inspection, temporary occupancy, 1st phase occupancy, or other) that could accommodate their financial constraints, such as allowing the fees to be covered by permanent financing as opposed to construction financing. The deferred payment agreement assures the City receives the fees to cover the costs of land acquisition and various infrastructure projects that benefit the development, while the developer locks in the actual fee amounts to guard against further increases and to perhaps financially separate that fee from other variables, such as rising construction costs. Staff would negotiate when the TADIF must be paid in the occupancy process.

If the City Council supports the deferred payment of the TADIF, staff recommends allowing the fee deferral for the pipeline projects listed in Exhibit B to the fee Resolution (i.e. projects that have already received Planning entitlements). Further, staff recommends setting the deferred payment provision to expire twelve (12) months after the effective date of the fee increase. Since the effective date is sixty (60) days after adoption, if the City Council adopts the fee increase that goes into effect in December 2019, the fee deferral period would expire in December 2020. Pipeline projects must have filed a complete building permit application with the City before the expiration date to qualify for the fee deferral. For applications submitted after this date, payment of the TADIF would once again be required at building permit issuance. This provision would not affect the timing for payment of any other fees.

Policy Alternatives:

Alternative 1:

Adopt the maximum allowable fee in accordance with EPS Technical Memorandum and as recommended by staff and require all developers within the TASP to pay the increased TADIF prior to issuance of a building permit, which is the current requirement.

Pros: The increased fees will maximize cost recovery to fund the BIP, recognizing that projects that may receive a building permit before the effective date of the fee increase (60 days after adoption) would still pay the lower fee.

Cons: An increase in fees along with earlier payment at building permit issuance can affect the financial feasibility of approved projects and discourage interest in future development. A sudden and sharp increase in development fees for pipeline projects without buildings permits could cause delays, postponement, or cancellation of projects.

Alternative 2:

Do not increase the TADIF in accordance with the EPS Technical Memorandum and adopt a lower fee or maintain the current 2014 fees.

Pros: Development projects would proceed based on a lesser or the current TADIF and the financial feasibility of TASP pipeline projects would be minimally or less affected.

Cons: Maintaining the current TADIF or reducing the fee from the maximum allowed would result in the City collecting less funds than are required for the BIP. The City would incur a financial deficit and additional sources of funds would have to be identified to make up for the shortfall. Some developers may not pay their proportional share of necessary public improvements that will benefit their projects. Potentially higher per-unit fees would be allocated to future projects with any subsequent fee update to compensate for lower cost recovery in this current cycle.

Fiscal Impact:

The increased TADIF would improve cost recovery and increase the amount of funds that are available to fund the BIP, which consists of roadway, sewer and water system infrastructure improvements and parks and community facilities to serve existing and future residents and businesses in the TASP area. The EPS analysis indicates that the recommended TADIF increase could generate up to \$53,179,818 in additional funds for the BIP depending on the amount and types of actual projects that will eventually be built.

California Environmental Quality Act (CEQA):

The action being considered is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15273 insofar as establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment.

Recommendations:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) Consider the exemption in accordance with CEQA.
- 3) Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B of the Resolution, with the deferred payment provision to expire twelve (12) months after the effective date of the fee increase.

Attachments:

Resolution

Exhibit A to Resolution: EPS Technical Memo dated May 20, 2019

Exhibit B to Resolution: List of Pipeline Projects in TASP

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADJUSTING THE EXISTING TRANSIT AREA DEVELOPMENT IMPACT FEE FOR PUBLIC INFRASTRUCTURE AND IMPROVEMENTS

WHEREAS, the City Council of the City of Milpitas (“City”) has previously established a development impact fee program, set forth in Chapter 4 of Title VIII of the Milpitas Municipal Code, in order to collect revenue to defray the cost of public infrastructure and improvements necessitated by new development; and

WHEREAS, pursuant to Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council may adopt development impact fees for different areas within the City by resolutions with appropriate findings that set forth the bases for such fees and the formulae to calculate such fees; and

WHEREAS, on June 3, 2008, the City Council adopted Resolution No. 7760 approving the Transit Area Specific Plan, which identified basic public infrastructure needed to serve the new development in the Transit Area Specific Plan area and to maintain or improve levels of service for public facilities; and

WHEREAS, on September 2, 2008, the City Council adopted Resolution No. 7778 establishing a Transit Area Development Impact Fee (“TADIF”) pursuant to Government Code Section 66000, *et seq.* (“Mitigation Fee Act”) and Chapter 4 of Title VIII of the Milpitas Municipal Code to defray costs of constructing public infrastructure and improvements necessitated by new development in the Transit Area Specific Plan area, based upon a costs/fees technical report dated August 2008 prepared by Economic and Planning Systems, Inc., and which fees may be adjusted from time to time in accordance with Chapter 4 of Title VIII of the Milpitas Municipal Code; and

WHEREAS, Resolution No. 7778 establishing the Transit Area Development Impact Fee called for an annual evaluation of the TADIF fund balance and activity, and further called for annual adjustments of infrastructure costs to be determined by a regional index, and further called for periodic updates of the Infrastructure Financing Technical Report through the review of the infrastructure costs, development activity and collection and use of fees to date; and

WHEREAS, on December 18, 2012, the City Council adopted Resolution No. 8214 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which resolution was based upon a costs/fees technical report dated December 2012 prepared by Economic and Planning Systems, Inc. augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

WHEREAS, on March 4, 2014, the City Council adopted Resolution No. 8344 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which resolution was based upon a costs/fees technical report dated February 2014 prepared by Economic and Planning Systems, Inc. augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

WHEREAS, based upon increased design and construction costs as measured by the Engineering News Report Construction Cost Index (“ENR” for the San Francisco Bay Area, and for increased right of way or land costs based on appraisal, all as further described in the costs/fees 2019 Technical Memorandum by Economic and Planning Systems, Inc. dated May 20, 2019, the City Council now wishes to adjust the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray higher and additional costs of constructing such public infrastructure and improvements; and

WHEREAS, in accordance with Government Code Section 66018, the City Council conducted an open public hearing on the proposed fee adjustment set forth in this Resolution at its regularly scheduled meeting held on October 1, 2019, and notice of the time and place of this meeting, including a general explanation of this Resolution and the related development impact fee program ordinances and a statement regarding the availability of data indicating the amount of the

proposed Transit Area Development Impact Fee and the revenue sources anticipated to finance the improvement provided at least fourteen (14) days prior to this October 1, 2019, City Council meeting to those interested parties requested such notice in writing, but since no such requests were made, notification of this hearing matter was provided in accordance with Government Code Section 66016; and

WHEREAS, notice of time and place of the public hearing on the adjustment to the Transit Areas Development Impact Fee was published in a newspaper regularly published once a week as required by California Government Sections 6062a and 66018, and public data indicating the amount of the revised Transit Area Development Impact Fee, estimated cost required to provide the public infrastructure or improvements, and the revenue sources anticipated to finance the facilities was made available to the public at least ten (10) days prior to the October 1, 2019 City Council meeting; and

WHEREAS, the City Council has received and considered any and all public comments, oral and written, received prior to or during the public hearing on the adjustment to the Transit Area Development Impact Fee; and

WHEREAS, the Transit Area Specific Plan includes a detailed description of public facilities required to serve the Transit Area Specific Plan area and a Financing Plan, dated May 28, 2008, updated periodically, that contains specific fiscal and financial policies, identifies public facilities costs and recommended financing mechanisms to pay for the needed public facilities; and

WHEREAS, the City Council has considered such Financing Plan and finds that it sets forth in-depth factual grounds for the need for a Transit Area Development Impact Fee as a means of assuring that new developments within the Transit Area pay their proportionate share of the costs of needed public facilities; and

WHEREAS, the City Council has also considered the 2019 Technical Memorandum describing the need for adjusted fees, along with the initial Milpitas Transit Area infrastructure Financial Technical Report (“Technical Report”), dated August 2008, pursuant to the policies contained in the Financing Plan; the 2019 Technical Memorandum prepared by Economic and Planning Systems, Inc., is on file with the City Clerk; and the public facilities for which the Transit Area Development Impact Fee will be used are specifically identified in the Basic Infrastructure Program, for which a summary of the schedule of costs is included in the 2019 Technical Memorandum; and

WHEREAS, the public facilities reflected in the Basic Infrastructure Program are needed to protect the health, safety and general welfare within the Transit Area Specific Plan area, to facilitate orderly urban development within the Transit Area Specific Plan area, and to promote economic well-being within that area and the City as a whole; and

WHEREAS, the 2019 Technical Memorandum attached to this Resolution, which memorandum describes the need for adjusted fees, further augments and updates the prior studies regarding the Transit Area Development Impact Fee and is the basis for the proposed adjustment to the fees as set forth in this Resolution and, when considered together with the Technical Report and the Transit Area Development Impact Fee Report, dated February 2014 (“2014 Report”), establishes the required nexus findings for the Transit Area Development Impact Fees; and

WHEREAS, the per-unit rate increase for new fees is substantial and may be a detrimental burden on desirable development that has already been approved but has not yet been permitted; the California Government Code Sections 66000, *et seq.* require that development impact fees be paid not later than final inspections or the issuance of a certificate of occupancy; the City Municipal Code requires impact fee payments be made at the time of building permit issuance unless otherwise described by the fee Resolution or otherwise required; and

WHEREAS, the City is planning and preparing an update of the Transit Area Specific Plan, including an updated development scenario and associated public infrastructure needs, with a corresponding infrastructure cost and fee study that can alter the amount and arrangement of allocated proportional share payments in a new resolution process; and

WHEREAS, establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment and is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15273 of the CEQA Guidelines.

NOW THEREFORE, the City Council of the City of Milpitas, after duly considering the record before it, including the 2019 Technical Memorandum attached hereto, the Technical Report, and the 2014 Report, all of which are incorporated herein by this reference, makes the following findings and determines based upon the reports, testimony and other materials before it, including but not limited to the documents and information listed in the Recitals above, which are found to be true and correct and are fully incorporated herein by reference:

1. The purpose of the Transit Area Development Impact Fee is to finance basic public infrastructure facilities, as identified in the Basic infrastructure Program, as amended, that are needed to provide essential public services and assure the public safety for new development within the Transit Area Specific Plan area.

2. Based on the analysis set forth in the Technical Report as augmented by the 2014 Report and the 2019 Technical Memorandum and the comments received thereon, there is a need to impose an increase to the current development impact fee for basic infrastructure facilities identified in the Basic Infrastructure Program, as amended, so that development within the Transit Area will meet the standards and policies in the Transit Area Specific Plan and the City's General Plan.

3. The reports and facts and evidence presented to the City Council establish that there is a reasonable relationship between public facilities, as identified in the Basic Infrastructure Program, as amended, to be funded in part by the Transit Area Development Impact Fee proposed herein and the types of development on which the fee is imposed; and there is a reasonable relationship between the amount of the fee, as set forth in this Resolution, and the costs of needed public infrastructure facilities as they are specifically attributed to the various types of development within the Transit Area Specific Plan areas.

4. The cost estimates contained in the 2019 Technical Memorandum are an accurate reflection of the current construction costs for necessary basic infrastructure facilities and the fee revenues that are expected to be generated by new development will not exceed such development's proportionate share of these costs.

5. The proposed Transit Area Development Impact Fee is consistent with the City of Milpitas General Plan and the Transit Area Specific Plan.

RESOLVED ACTIONS

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

Section 1. General.

- A) This Resolution is adopted pursuant to California Government Code Section 66000 *et seq.* ("Mitigation Fee Act"), Article XI, Section 7 of the California Constitution, and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code ("Fees for New Development").
- B) The fee established by this Resolution shall apply to all new development within the Transit Area as a condition precedent of building permit issuance to defray the cost of certain public infrastructure improvements and facilities required to serve or to benefit the new development. The fee established by this Resolution shall apply to all new development within the Transit Area that has not been issued a building permit(s) and has not fully paid the applicable Transit Area Development Impact Fee. The Transit Area is delineated by the boundaries of the adopted City of Milpitas Transit Area Specific Plan. This Resolution does not replace subdivision map exactions or other measures required to mitigate site-specific impacts of a development project, other regulatory, development and processing fees, funding required pursuant to a development agreement, funds collected pursuant to a reimbursement agreement for amounts that may exceed a development's share of public improvement costs, or assessment district proceedings, benefit assessments, or property taxes, unless so specified.

Section 2. Definitions.

- A) "Transit Area" means the approximate 437-acre area of the City covered by the Transit Area Specific Plan adopted by the Milpitas City Council on June 3, 2008.

- B) “Transit Area Development Impact Fee” means the combined fee required to implement the Basic Infrastructure Program, as amended, in the amount calculated according to the formulae and methodologies set forth in this Resolution.
- C) “Basic Infrastructure Program” is the listing and schedule of public facilities that can be funded by the Transit Area Development Impact Fee that is applicable to all new development in the Transit Area. The Basic Infrastructure Program is included in the Infrastructure Financing Technical Report on file with the City Clerk.
- D) Land uses subject to the Transit Area Development Impact Fee are defined as follows:
- (1) “Residential” means all new single and multi-family dwellings.
 - (2) “Commercial” means any business engaging in the sale of merchandise and food. This category would also include those establishments providing commercial services, as defined in Milpitas Municipal Code XI-10-2.02, General Definitions. Uses in this category include but are not limited to retail stores, restaurants, banks, childcare facilities and beauty salons.
 - (3) “Office” means any administrative, professional, research, medical, or similar businesses, having only limited contact with the public, provided no merchandise or services are sold on the premises except those that are incidental or accessory to the primary use. Uses in this category include but are not limited to medical clinics and offices, real estate offices, and research and development businesses.
 - (4) “Hotel” refers to the definition provided in Milpitas Municipal Code XI-10-2.02, General Definitions.
 - (5) “Other Uses” means land uses not specifically defined by this section.

Section 3. Fee Amount.

A) The amount of the Transit Area Development Impact Fee is based upon the findings in the Technical Report, with costs increased based on technical and financial analyses contained in the 2019 Technical Memorandum. That 2019 Technical Memorandum is attached hereto and incorporated herein by reference as **Exhibit A**. According to the Technical Memorandum, the following schedule of base fees shall apply to all new development in the Transit Area:

- a) Residential - \$40,487 per unit
- b) Commercial - \$26.49 per square foot
- c) Office - \$45.52 per square foot
- d) Hotel - \$0 per room
- e) Other Uses - The fee amount for uses not specifically defined in this Resolution shall be determined by the Finance Director or his or her designee. A focused nexus study may be required of the applicant to make the determination.

B) The fee amounts listed herein shall be subject to annual adjustment, as set forth in Section 9 of this Resolution, and as otherwise allowed by law. As described in the 2019 Technical Memorandum, the fee program should be reviewed annually as part of the City year-end financial reporting process and the technical reports and supporting data and information should be updated every three to five years, and the fee program may need to be revised during these reviews accordingly.

Section 4. Transit Area Development Impact Fee Requirements.

A) General.

- (1) The amounts and calculation of the Transit Area Development Impact Fee are based upon the following considerations:
 - a. New development will pay only for the construction of those public facilities or where there is a reasonable relationship between the facilities funded and the benefits, demands and needs generated by the new development.
 - b. Each type of new development shall contribute to the funding of the needed facilities in proportion to the need for the facilities created by that type of development.
 - c. The public facilities funded by the Transit Area Development Impact Fee and the calculations resulting in

the Transit Area Development Impact Fee amount are documented in the original Infrastructure Financing Technical Report included in the materials considered for adoption of the original Transit Area Impact Fee Resolution in September of 2008 and which is here augmented by the 2014 Updated Report.

286

- d. The amount of the Transit Area Development Impact Fee shall include consideration for appropriate financing charges including any reimbursement payments made to developers or property owners pursuant to subsection 5.B (2), and shall include consideration for reimbursement of administrative costs pursuant to subsection 5.B (3).

- B) Applications Requiring Payment of Fee - Building Permit/ Certificate of Occupancy. Any applicant who receives a building permit or makes a valid permit application within one (1) year of the effective date of this resolution for a building permit to construct within the Transit Area Specific Plan area shall have such fees calculated prior to the issuance of the building permit and shall pay to the City, not later than final inspection or issuance of occupancy for each building, the fee in the amount as set forth in this Resolution and thereby calculated, unless earlier payment is required by City ordinance or State law. Developers who choose to take advantage of this deferred payment shall enter into an agreement with the Planning Department prior to the issuance of permits in order to specify the payment arrangements with respect to timing of payment upon occupancy. Projects subject to the provisions herein shall include those "pipeline" projects, as identified in the attached **Exhibit B** to this Resolution, which are currently known but that have not yet obtained permits. Disputes as to the timing of payment obligations as provided in these provisions shall be resolved by the Planning Director.
- C) Fee Unit. The unit basis of the Transit Area Development Impact Fee shall be charged for each new dwelling unit and new non-residential square footage. No Transit Area Development Impact Fee shall be charged for remodeling or for an addition to an existing building creating less than 500 square feet of additional floor area. For additions greater than 500 square feet the amount of the Transit Area Development Impact Fee for that addition shall be determined according to the formula set forth in Section 4(D).
- D) Formula for Calculating the Fee. The Transit Area Development Impact Fee, as set forth in this Resolution, shall be determined by a formula that is based on the cost of the required infrastructure, the proportion of those costs attributable to development in the Transit Area as a whole, and each unit of development's proportional share of the Transit Area costs as a whole. These formulas are included in the Infrastructure Financing Technical Report and shall be updated pursuant to this Resolution from time to time to reflect changes in construction costs, development schedules, availability of supplemental funds, and other relevant factors. Changes in such costs form the basis for the fee adjustments adopted in this Resolution and as described in the 2019 Technical Memorandum.

Section 5. Use of Fee Revenue.

The Transit Area Development Impact Fee shall fund public facilities, improvements identified in the Basic Infrastructure Program, as amended, and as determined in the Infrastructure Financing Technical Report and any future additions and amendments to the said report, all of which are incorporated by reference into this Resolution.

- A) The City shall deposit the fees collected under this Resolution in a special fund, the Transit Area Development Impact Fee Account, designated for funding facilities listed in the Basic Infrastructure Program.
- B) The fees and all interest earned on accrued funds shall be used only to:
 - (1) Fund the costs of the public facilities specified in the Basic Infrastructure Program, or to reimburse the City for such construction if funds were advanced by the City from other sources; or
 - (2) Reimburse developers or property owners for the costs accrued when a developer or property owner constructs and dedicates to the City a public facility(ies) included in the Basic Infrastructure Program and the sum value of the facility(ies) constructed (as estimated in the Basic Infrastructure Program) exceeds the total fee liability for a given project. Reimbursements shall include appropriate financing charges and shall be based upon the Local Agency Investment Fund (LAIF) quarterly interest rate. Financing charges included in any reimbursement payments to developers or property owners shall not exceed this interest rate, as calculated by the City's Director of Finance. Reimbursements shall not be available if the value of the constructed and dedicated improvement is below the total fee liability for a given project.

- (3) Reimburse the City of Milpitas, to offset administrative costs associated with administering and u the Area Development Impact Fee, not to exceed two (2.0) percent of the applicable fee amount.

Section 6. Ministerial Exemptions.

The following actions or conditions shall qualify for a ministerial exemption from the Transit Area Development Impact Fee without having to go through the City Council exemption process set forth in Milpitas Municipal Code VIII-4-2.04:

- A) No Transit Area Development Fee shall be due for the demolition of an existing structure and the building of a new structure on the same site where the additional area in the new structure is 500 square feet or less and no additional dwelling units are created;
- B) No Transit Area Development Impact Fee shall be due if the Transit Area Development Fee or an equivalent amount has been previously paid in full (e.g. as a requirement of a subdivision map) for a particular property and use.

Section 7. Authority for Additional Mitigation.

Fees collected pursuant to this Resolution do not replace any existing development fees, except for the sewer treatment plant fee, VIII-2-7.04 "Treatment Plant Fees" and the park in-lieu fee, XI-01-9.07 "Amount of Fee In-Lieu of Land Dedication," or as otherwise the City Council may specifically provide, or demand or connection charges levied on a Citywide basis, or limit requirements or conditions to provide site-specific mitigation of site-specific impacts imposed upon development projects as part of the normal development review process.

Section 8. Annual Review.

Pursuant to Government Code Section 66006(b) and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council shall review annually a report prepared by staff documenting the amount of the Transit Area Development Impact Fee, fee fund balances, the amount of fees collected, and the amount of fee funds expended (by infrastructure item as shown in the Basic Infrastructure Program) and the fund balance of the TADIF Account.

Section 9. Annual Adjustments.

The Transit Area Development Impact Fee adopted pursuant to this Resolution shall be automatically increased each fiscal year by the Finance Director or his or her designee by the percentage increase in the Engineering New Record (ENR) Construction Cost Index for the San Francisco Bay Area, measured from the immediately preceding December and December of the prior year.

Section 10. Periodic Update.

The Infrastructure Financing Technical Report shall be updated every three to five years. This update will include a thorough review of the infrastructure costs, development activity, and collection and use of fees to that date.

Section 11. Termination of Fee.

The City shall not collect the Transit Area Development Impact Fee established by this Resolution once funds sufficient to construct all improvements described in the then-current Basic Infrastructure Program have been collected.

Section 12. Severability.

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

Section 13. Effective Date.

This Resolution shall take effect sixty (60) days after the date of its adoption in accordance with California Government Code Section 66017, provided this Resolution may take effect immediately if the City Council adopts a separate Resolution making the required findings of an urgency measure as provided by California Government Code Section 66017.

288

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

TECHNICAL MEMORANDUM

To: Steven McHarris, City of Milpitas

From: Teifion Rice-Evans, Michael Nimon, and Walter Kieser

Subject: 2019 Update to Transit Area Development Impact Fee;
EPS #181167

Date: May 20, 2019

The Economics of Land Use



This memorandum calculates the potential new 2019 Transit Area Development Impact Fee. The updated 2019 fee schedule is based on changes in the cost consistent with the adjustment approach described in City Resolution No. 8344, Section 9: Annual Adjustments. Because the City has not adjusted its fees since 2014, this adjustment reflects the 5-year period, 2014 to 2019.¹

Context

The City of Milpitas (City) adopted the Transit Area Specific Plan (TASP) in 2008. The Specific Plan sets forth land use policies which allow for the intensification of development in the 437-acre Transit Area with multifamily housing, office, and retail development. To support more residents and workers with appropriately scaled utilities, parks, and community facilities, the City developed a Basic Infrastructure Program (BIP) of improvements. To ensure new development in the TASP paid its fair share of the costs of these improvements, the City enacted the Transit Area Development Impact Fee (TADIF) in 2008 with allowances for periodic adjustments as costs change.

*Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612-3604
510.841.9190 tel
510.740.2080 fax*

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

¹ As a point of reference, it is estimated that the City would have received an additional \$14.6 million in TASP infrastructure fee revenues if it had made annual adjustments in the years following 2014.

The TADIF is a development impact fee adopted by the City of Milpitas pursuant to the provisions of Government Code Section 66000 (the Mitigation Fee Act) and per the City Code Title VIII-4.2.01. The TADIF fees were authorized by ordinance and were set and adopted by resolution, based on the technical analysis in the *Milpitas Transit Area Infrastructure Financing Technical Report*, dated August 2008.

Since 2008, the City has updated the TADIF, both through the process of annual adjustment as well as through more comprehensive periodic updates. The last comprehensive update occurred in 2014 with a new TADIF schedule adopted through Resolution No. 8344 and supported by the technical analysis in the *Transit Area Development Impact Fee Report*, dated February 2014. That Resolution was passed and adopted in March 2014 and the fees were effective immediately with the subsequent passage that evening of an emergency resolution (Resolution 8345). No annual adjustments or comprehensive periodic updates have been conducted since 2014.

Updated 2019 Fees

Table 1 shows the potential fee increase under the annual adjustment approach outlined in Resolution No. 8344, Section 9: Annual Adjustments. As shown, the cumulative annual adjustments for 2014 to 2019 result in an increase of 16.2 percent for nonresidential uses (retail and office development) and 23.5 percent for residential uses. The supporting technical calculations are provided below.

Table 1 Potential Increase in TADIF Fees

Item	2014 Fee Schedule*	Escalation Factor	2019 Fee Schedule*
Residential	\$32,781	23.5%	\$40,487 per unit
Retail	\$22.80	16.2%	\$26.49 per sq. ft.
Office	\$36.60	16.2%	\$42.52 per sq. ft.
Hotel (1)	\$0.00	na	\$0.00 per sq. ft.

*Note: includes a 2% admin component.

(1) The 2014 analysis discontinued a fee on hotels.

The City has the option to increase the fees to this new level, to increase them by a smaller proportion, or to leave them as is. Previously, the City has decided to increase fees to their maximum allowable levels to require new TASP development to fully cover its proportionate share of the infrastructure/ improvement costs in the Basic Infrastructure Program. To the extent, the City enacts fees at a below the full/ maximum level, the City would need to “fill the gap” by providing infrastructure/ improvement funding from the General Fund or others sources.

Fee Update Calculations

The 2014 Resolution No. 8344 (TADIF Resolution) describes the process for fee adjustments in Section 9: Annual Adjustments. Section 9 of the TADIF Resolution states the following:

“The total design, construction, and contingency costs of each infrastructure item in the Basic Infrastructure Program shall be automatically adjusted each fiscal year by the Finance Director or his or her designee using the Engineering News Record (ENR) Construction Cost Index for the San Francisco Bay Area. The right of way or land costs of each item shall be automatically adjusted each fiscal year using the fair market value for an acre of land in the City as determined by the City Council pursuant to XI-1-9.07.1 “Amount of Fee In Lieu of Land Dedication.””

The technical calculations described below follow this methodology, applying the change in the ENR Construction Cost Index to the 2014 estimates of non-land infrastructure/ improvement costs and applying the change in the estimated land values to the 2014 estimates of parkland costs. Because the Basic Infrastructure Program’s Park/ Plaza/ Community Facilities costs are only allocated to residential development, the change in parkland values/ costs only affects the residential fee. To account for this, the analysis shows the distribution of costs between residential development and non-residential development and applies distinct percentage fee adjustments for each.

Table 2 shows the percent changes in costs between 2014 and 2019 based on the ENR Construction Cost Index and the estimated land values. As shown, the increase in the construction cost index was 16.2 percent and the increase in land values was 43.8 percent. The average land value in the TASP area in 2014 was estimated at about \$2.8 million per acre. The new land value of about \$4.0 million per acre in the TASP area was provided by Associated Right of Way Services Inc. in an April 2019 appraisal.

Table 2 Basic Infrastructure Program Cost Change Indices

Item	Unit of Measure	2014	2019	Total Increase 2014-2019
Engineering News Record (1)	Indexed Number	6,232	7,240	16.2%
Land Appraisal (2)	Land Value per Acre	\$2,787,840	\$4,007,520	43.8%

(1) Represents June 2014 and May 2019 (latest available) Engineering News Record (ENR) construction cost index for the San Francisco metro area.

(2) Land value estimates in TASP area provided by Associated Right of Way Services, Inc.

The 2014 estimate was used in the 2014 TADIF fee analysis. The 2019 estimate was determined in April 2019.

Sources: Engineering News Record; Associated Right of Way Services, Inc.; 2014 2014 Transit Area Development Impact Fee Report (February 2014); Economic & Planning Systems, Inc.

To determine the appropriate increases in the fee levels, these indexed increases in costs were applied to the detailed 2014 estimates of Basic Infrastructure/ Improvement costs by category with costs allocated by residential and non-residential use. As shown in **Table 3**, the total net TASP Basic Infrastructure/ Improvement program totaled \$233.8 million (this represented the

appropriate allocation of Basic Infrastructure Program costs to new TASP development). About \$209.5 million of these costs were allocated to residential development, including about \$97.8 million in Parks/ Plazas/ Community Facilities costs (of which \$55.7 million were associated with park-related land acquisition costs). About \$24.3 million of these costs were allocated to nonresidential development; nonresidential development did not have any Parks/ Plaza/ Community Facilities or Linear Parks/ Trails costs allocated to it.

Table 3 2014 Basic Infrastructure Program Costs and Allocations (2014 \$\$)

Infrastructure Category	Net TASP Cost in 2014 \$\$		
	Residential Total	Commercial Total	Total
Roadway	\$36,611,862	\$10,278,905	\$46,890,766
Sewer	\$14,835,780	\$2,535,401	\$17,371,181
Water	\$30,342,702	\$4,427,762	\$34,770,464
Parks/Plazas/Community Facilities			
Right of Way Acquisition	\$55,735,145	\$0	\$55,735,145
Other Parks and Comm. Facility Costs	\$42,183,080	\$0	\$42,183,080
Linear Parks/Trails	\$3,739,634	\$0	\$3,739,634
Specific Plan Preparation & PFP Update	\$1,586,273	\$123,723	\$1,709,995
Subtotal	\$185,034,475	\$17,365,790	\$202,400,265
Regional Traffic Mitigation	\$24,504,177	\$6,883,758	\$31,387,935
Total Costs	\$209,538,652	\$24,249,548	\$233,788,200

Source: 2014 Transit Area Development Impact Fee Report (February 2014); Economic & Planning Systems, Inc.

Table 4 illustrates how the indexed increases calculated in **Table 2** are applied to the 2014 infrastructure cost schedule to adjust Basic Infrastructure Program costs to 2019 dollars and to determine the appropriate percentage increases in fees in proportion to the increase in costs. As shown in **Table 4**, the 16.2 percent construction cost index is applied to all infrastructure cost items, except parkland/ right of way acquisition, where the 43.8 percent increase in land values is applied. The resulting total Basic Infrastructure Program cost estimate in 2019 dollars is about \$287 million, representing an overall increase of 22.75 percent in net TASP costs between 2014 and 2019. The residential component of the net TASP infrastructure costs increased from \$209.5 million to \$258.8 million, an increase of 23.5 percent. The commercial component of the net TASP infrastructure costs increased from about \$24.3 million to about \$28.2 million, an increase of 16.2 percent. These increases in costs represent the appropriate maximum adjustments in the residential and nonresidential fees respectively and are applied in **Table 1** (above) to indicate the potential increase in TADIF fees.

Additional Steps

Beyond the fee adjustment associated with this analysis, the City is also conducting a broader assessment of the TASP. This is expected to include a review of all infrastructure/ improvement items in the Basic Infrastructure Program, an assessment of the costs of these improvements, as well as a broader consideration of the potential to include more development in the TASP and/or to expand the geographic boundary of the TASP. This review and evaluation may result in the need for a more comprehensive update to the TASP infrastructure program and associated fees. If that is the case, the TASP fees would be updated again at the appropriate time.

Table 4 Adjusted 2019 Infrastructure Program Costs and Overall Increases

Infrastructure Category	Indexed Increase (1)	Net TASP Cost in 2019 \$\$		
		Residential Total	Commercial Total	Total
Roadway	16.2%	\$42,532,928	\$11,941,264	\$54,474,192
Sewer	16.2%	\$17,235,102	\$2,945,439	\$20,180,541
Water	16.2%	\$35,249,886	\$5,143,843	\$40,393,729
Parks/Plazas/Community Facilities				
Right of Way Acquisition	43.8%	\$80,119,270	\$0	\$80,119,270
Other Parks and Comm. Facility Costs	16.2%	\$49,005,153	\$0	\$49,005,153
Linear Parks/Trails	16.2%	\$4,344,428	\$0	\$4,344,428
Specific Plan Preparation & PFP Update	16.2%	<u>\$1,842,813</u>	<u>\$143,732</u>	<u>\$1,986,545</u>
Subtotal		\$230,329,580	\$20,174,278	\$250,503,858
Regional Traffic Mitigation	16.2%	\$28,467,123	\$7,997,036	\$36,464,160
Total Costs		\$258,796,703	\$28,171,315	\$286,968,018
% Increase Over 2014 Cost (2)		23.5%	16.2%	22.75%

(1) All cost categories are escalated based on the ENR construction cost index with the exception of the parkland/ right of way acquisition cost subcategory, which is escalated based on the land value increase. See Table 2 for derivation of % increases.

(2) Represents total 2019 costs divided by the total 2014 costs shown in Table 3. These percentage cost increases for the 2014 and 2019 period for residential and commercial development are then applied to the existing 2014 fees to determine the updated 2019 fee schedule shown in Table 1.

Sources: 2014 Transit Area Development Impact Fee Report (February 2014); and Economic & Planning Systems, Inc.

Resolution ____

Exhibit B

TASP Pipeline Projects as of August 1, 2019

Project Name	Address	Site Development Permit #	Dwelling Units
Piper/Swenson Tower	1256 Piper Drive	P-SD14-0025	210
Summerhill - Phase 2	1500-1646 Centre Pointe	P-PP15-0001 / P-SD15-0012	361
1980 Tarob (Parkside)	1980 Tarob Court	P-SD15-0015	59
1992 Tarob	1992 Tarob Court	P-SD16-0010	53
551 Lundy Street	551 Lundy Street	P-SD16-0009	89
Lantana	720 Montague Expressway	P-SD15-0010	216
The District – Lot 3	1310-40 McCandless Drive	P-SD15-0006	383
The District – Lot 4	1410 McCandless Drive	P-SD15-0006	213
Zhang Condos	1316 South Main Street	P-SD14-0021	18
Main Street Condos	1380-1400 South Main Street	P-SD17-0013	220
355 Sango Court	355 Sango Court	P-SD17-0017	102
Tru-Life Condos	2001 Tarob Court	P-SD18-0014	40
Total Unit Count			1,964

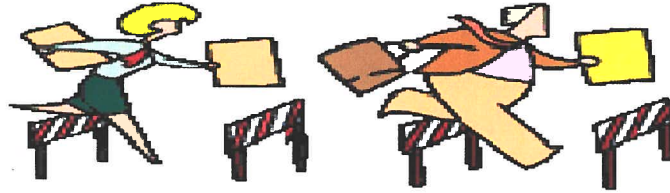


CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

10/01/2019

Agenda Item No. 11



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION





October 1, 2019

Honorable Mayor and City Council
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

City Clerk's Office
OCT 01 2019
RECEIVED

Dear Mayor and Members of the City Council,

I represent The Core Companies and we are the developers of the 220-unit multifamily project located at 1380-1400 South Main Street. I am writing regarding the proposed Transit Area Specific Plan (TASP) fee increase being considered on the October 1st City Council agenda.

We have been working with Staff since June 2019 when the item was reviewed at a developer round table meeting. The rationale with raising the fee was outlined by Staff as a need to keep up with current construction costs and land prices. We understand the need for the fee increase but find great hardship in the timing and severity in percentage increase with which the fee increase is proposed. Under the Staff proposal, the TASP fee would increase from \$32,781 per unit to \$40,487 per unit. This is almost a 25% increase and, for our project, is close to \$1.7MM in unanticipated fees that overly burden our project.

1380-1400 South Main Street received entitlement approvals in October 2018 which, in parallel with accepting the project's conditions of approval, solidified a substantial amount of the project's construction cost. We then proceeded to acquire the land in December 2018. The proposed fee increase was initiated by Staff with a consultant's study in January 2019 and finalized in May 2019. It was first brought to our attention in June 2019. This timing left us with little ability to adjust given such a substantial change in fees.

We sympathize and understand the need for additional TASP revenues. However, under the Staff proposal, the TASP fee increase leaves entitled pipeline projects with little leeway to proceed as fiscally viable but also retain the scheme that was approved by council. After voicing our concern, Staff has been working on solutions and communicated an option where pipeline projects receive deferred fees at \$40,487 per unit. We recognize that this helps offset financing expenses, yet it still burdens entitled pipeline projects with unanticipated and substantial costs that challenge the financial viability of the project.

Milpitas has always been a leader in providing quality housing for the region and providing the services and infrastructure needed to support residents in new communities. We ask the City Council and Staff to understand that while there is a need for infrastructure improvement fees in the TASP area, it is very difficult for entitled residential projects to pick up such large fee increases with little time to plan or ability to adjust project design aspects. We are requesting that City Council create a steady, predictable fee structure that the development community can count on. With the time it takes projects to go through the development and construction process, predictability creates the best environment for our business and others to plan and execute on quality, industry-leading projects. We urge City Council to consider the timing and impact of these fees on our project and to allow entitled pipeline projects to proceed under the current fee structure.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle Zaylor". The signature is stylized with a large "K" and a long, sweeping underline.

Kyle Zaylor
Senior Project Manager
The Core Companies

12. Receive Performing Arts / Youth Theatre Study Report (Staff Contact: Renee Lorentzen, 408-586-3409)

Recommendations:

- (1) Approve restructure of the youth theatre contract program and performing arts class opportunities resulting in:
 - (a) Increased availability for residents' use of the Community Center Auditorium;
 - (b) Creation of Performing Arts Brand and Marketing; and
 - (c) Expansion of performing arts opportunities including shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance;
- (2) Contract structure for director to go to a flat rate for each production, including a percentage of ticket sales revenue, and
- (3) Direct staff to develop additional recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Performing Arts/Youth Theatre Study Report
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	10/1/2019
Staff Contact:	Renee Lorentzen, 408-586-3409
Recommendation:	1) Approve restructure of the youth theatre contract program and performing arts class opportunities resulting in: a. Increased availability for residents' use of the Community Center Auditorium; b. Creation of Performing Arts Brand and Marketing; and c. Expansion of performing arts opportunities including shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance; d. Contract structure for director to go to a flat rate for each production, including a percentage of ticket sales revenue 2) Direct staff to develop additional recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest.

Background:

At its June 11, 2019 meeting, City Council requested a study of the Performing Arts/Youth Theatre program to provide information about the youth theatre contract program's cost to the City and the use of space in the Milpitas Community Center Auditorium. In order to provide a comprehensive report for Council consideration, staff evaluated the current state of performing arts and youth theatre in Milpitas based on past data as well as community feedback.

In July 2019, staff began work on a comprehensive study to include a thorough evaluation of the current programs, community-wide input and benchmarking with other municipalities. The public was invited to participate in an online survey and participate in an interactive planning workshop in August 2019. Special effort was made to include both current program participants and under-represented segments of the community. It is important to note that staff conducted the Performing Arts/Theatre Program study to meet an expeditious timeline and the work from this study will be used to inform the upcoming Parks and Recreation Master Plan. The Master Plan will evaluate all of the Recreation programs and fee structure and enable staff to bring forward additional recommendations on programs and fees as part of the annual budget process for Fiscal Year 2020-2021.

Youth Theatre Background

In 1982, the City of Milpitas launched a youth theatre program called "Rainbow Theatre." The program's mission was to provide a forum for youth to build self-esteem through positive theatrical experience, and to present quality, family-oriented entertainment for the community. At its inception, the program was staffed with

various part-time employee directors and volunteers. Ultimately, it evolved into a larger program with a full-time employee Director, part-time permanent employee Set Designer, and part-time Assistant Director.

In 2012, during the economic downturn, the Rainbow Theatre program was considered for cancellation and complete defunding. At the request of City Council, after receiving comment and concern from Rainbow Theatre participants, City staff created a youth theatre "Contract Program" model. This contract program model was developed 1) through benchmarking of other surrounding cities with similar programs, 2) to maintain fiscal responsibility during harder economic times, and 3) to allow for a maximum of program revenue to remain with the contractor to help sustain the program. The Contract Program model differed from the Contract Class model in the level of staff support for the program, and in-kind support of rehearsal and performance space. The director of the Rainbow Theatre, who was previously a City employee, became a contractor and the program was rebranded as Center Stage Performing Arts (CSPA). The annual contract allows for the City to retain 10% of the ticket sales revenue and the Contractor to retain the remaining 90%. The Contractor is responsible for paid advertising and hiring choreographers etc. The City provides the space for rehearsals and performances, pays for royalties and supplies, and provides a limited amount of marketing.

CSPA currently offers three to four productions per year and classes for young children that culminate in small performances. Youth participating in the CSPA program also perform smaller showcases as part of the regular season of shows and at events including the Tree Lighting Ceremony and Fourth of July.

Analysis:

Per Council direction, staff has evaluated the youth theatre contract program's cost to the City and the use of space in the Milpitas Community Center Auditorium. Staff has also compiled a comprehensive report on other performing arts programs for Council consideration, based on past data as well as community feedback. Data has been pulled from the department software, Activenet.com, which is used for contractor payment, program enrollment, and scheduling of City facilities. An evaluation of performing art and youth theatre programs was informed by an online survey, Community Workshop meeting, and stakeholder meetings with theatre program parents.

Community Center Auditorium Use

A review of Milpitas Community Center Auditorium reservation data for the past three (3) years reflects that the youth theatre contract program is the heaviest user of the facility, averaging 195 days per year. 73 days out of that overall use have a production set installed, which does not allow for shared use of space. 122 days out of that overall use are partial use reservations, for rehearsals. In this scenario the room is available for multiple reservations for daytime classes, City meetings and rentals, such as memorial services.

Internal City uses are the second most common, accounting for an average of 79 reservations per year. This category includes City-sponsored events, such as Tree Lighting or Lunar New Year; large City meetings, general classes, and Human Resources testing days. Of that overall use, nine (9) days are full-day reservations.

Rentals are the next most common use, with an average of 46 reservations per year. The most common type of reservation is for a family celebration, such as a wedding, anniversary or birthday party. The heaviest rented day of the week is Saturday, followed by Sunday.

Other performing arts uses account for a relatively small amount of time in the Auditorium, at average of 11 reservations per year. Most of these are rehearsal and performance days for the Milpitas Community Concert Band and performing arts classes. One (1) day of this overall use is a full-day reservation.

An average of 19 City holidays and facility closures account for an average of 19 days, most of which occur over the December holiday period. On average, 4 days per month go unused. The majority of the non-holidays that go unused are Sundays and Fridays.

The average annual value of the hours reserved in the Community Center Auditorium for the Youth Theatre contract program ranges from \$320,800 (at a resident rental rate of \$200 per hour) to \$160,400 (at a non-profit rental rate of \$100 per hour).

Table 1: Community Center Auditorium Usage

Community Center Auditorium Usage Summary Averages Over Past 3 Fiscal Years					
User	Exclusive Use Reservation (Full day reserved)	Partial Use Reservations	Total Reservations	Total Hours Used	Percentage of All Time Used (2577 hours)
Youth Theatre Contract Program	73	122	195	1604	62%
City events	9	70	79	549	21%
Rentals	0	46	46	332	13%
Other Performing Arts programs	1	10	11	92	4%
Total Use	83	249	332	2577	
City Holiday/Closure			19	323	
Unused but Available			46	782	

Cost Analysis

CSPA is the City's primary "resident" performing arts provider. Its youth musical theatre shows are fully staged, full-length musicals, for which participants audition and pay a participation fee upon being cast. Just as with adult community theatre, casting is competitive. Its theatre classes are intended to teach young performers the basics of performing and conclude with a production. Class productions are also staged and presented in the Community Center Auditorium, but these productions are on a much smaller scale, and all class members are guaranteed a role.

Table 2: Detailed Cost Analysis of the Youth Theatre Program

Youth Theatre Contract Program Cost					
Revenue	Average Annual / Average Per Production	Fees	Est. Revenue Per Production to Contractor	Est. Annual Revenue to Contractor	Est. Annual Revenue to City
Show Participants	58 / 19	\$130 resident rate (90/10 split)	\$2,223	\$6,786	\$754 (10% of revenue + applicable non- res fee))
Public Show Audience	1140/428 (71 per show)	\$15 avg. ticket (Prices \$12/\$15/\$18)	\$6,420	\$17,100	\$0
School Show* Audience *Not always offered	482/289 (160 per show)	\$5 ticket	\$1,445	\$2,410	\$0
Class Participants	18/9	\$130 resident rate (90/10 split)	\$1053	\$2,106	\$234 (10% of revenue + applicable non- res fee))
Class Audiences	346/208 (55 per show)	\$10 avg. ticket (Prices \$10/\$15)	\$2080	\$3460	\$0
TOTAL				\$31,862	\$988

Expense					Budgeted 2019-20
Contractor					(\$26,400)
Royalties					(\$20,000)
Supplies					(\$30,000)
City Staff Support*					(\$72,560)
TOTAL					\$148,960
Number of Participating Youth Served Annually					76
Cost to City Per Participating Youth					\$1,960
Est. number of People Served (Participants + Audience)					2,044
Cost to City Per Person, including audience					\$73

*Annual estimated % of time for (1) Senior PSA, (1) Program Coordinator, (1) Recreation Supervisor, (1) Department Director

Many of the show participants appear in multiple productions per year, so the number of unduplicated participants is smaller than 76. Ticket sales are based on averages reported from the contractor to the City. Similar to the participation number, the ticket sales numbers are totals, rather than unduplicated audience members.

A review of the Youth Theatre Program confirms that number of performer participants averages fewer than 60 per year, and approximately 20 youth per production. Ticket sales show an average audience of 428 per production. The number of students participating in the youth theatre classes averages nine (9) students per class. When classes perform the average attendance is 208 per class production. The number of youth participating annually (duplicative) is 76, with a per child cost to the City of \$1,960. If totaled with the number of audience members served to reflect the number of people experiencing the production, the cost to the City is \$73 per person.

Performances by CSPA at special events are paid independent of the theatre program. The average payment for performing at special events depends on the level of performance, and ranges from \$600 - \$1,000 per performance.

According to available data, Recreation Assistance program funds have not been used for enrollees in the youth theatre contract program.

Benchmarking

Staff benchmarked against eight Bay Area cities' performing arts offerings, chosen because they were near in size and/or demographic make-up to Milpitas (Appendix A in the Performing Arts/Youth Theatre Program Study). The cities were:

- Sunnyvale
- San Leandro
- Mountain View
- Pleasanton
- Union City
- Cupertino
- Gilroy
- Campbell

A review of similar cities suggests there are several cost-effective ways to structure a youth theatre program, and that there are a variety of other types of performing arts programs, including cultural programs, that could be successful.

Five of the eight cities currently have some type of youth theatre program offered at City facilities. Two (Pleasanton and Gilroy) operate as City programs. Pleasanton's program is directed by City employees. Gilroy's program is directed by independent contractors, who are hired show-by-show, rather than on an annual contract. Sunnyvale and Mountain View contract with a theatre company. San Leandro rents City space to a theatre company through its Library.

All of the cities that use contractors handle registration, assist with marketing and pay the contractor a split of performer enrollment fees. Milpitas' split arrangement is at 90/10. Gilroy's is 50/50. Sunnyvale's is 60/40. Mountain View's is 70/30 for programs on City property and 80/20 for programs offsite at the contractor's facility.

Ticket revenue is handled differently in each City. In Milpitas and Gilroy, the contractor keeps 100% of the ticket sales. Sunnyvale requires that the first 100 tickets be comps, but it allows the contractor to keep 100% of revenue on additional tickets sold. Mountain View requires the performances to be free of charge. Other cities ticket prices are in the \$5-\$12 range. Milpitas tickets are on average \$15.

All five cities researched offer some sort of need-based fee-waiver program either through a city-run program, or through the contractor. Milpitas' new Milpitas Assistance Program will be used to offset costs for Milpitas residents to participate

Milpitas' youth theatre contract program draws a demographic of 52% residents, 48% non-residents for shows and 80% residents, 20% non-residents for its theatre classes. Non-residents participating in Milpitas' program are typically from San Jose and Fremont. Mountain View's is virtually 100% residents. Pleasanton's is 75% residents. Sunnyvale's is 75% residents during the school year, but their program approaches 50% non-residents for all-day summer theatre camps. Gilroy's is 70% residents.

Community Outreach and Feedback

A total of 316 people responded to a survey about Performing Arts; 71 percent were residents.

Feedback from the residents indicates that providing opportunities for youth to perform is a high priority with musical theater as a popular genre, however, residents are also interested in having the City provide a wider variety of performing arts opportunities and genres.

Fifty-four people attended a Community Workshop on August 22. Meeting participants indicated a strong interest in preserving existing programs, youth musical theatre and the community band. Other opportunities of particular interest included an all-ages theatre program; an all-ages orchestra and choir; dance parties; workshops; performances in the park; and a community talent show.

Staff also held meetings with a stakeholder group consisting of the current youth theater contractor and parents to discuss possible programming changes. The group expressed support on adjusting program scheduling to free up the auditorium for rental uses and condense show runs to one weekend, provided occasional allowance of two-weekend runs as demand and facility availability warrants. Parents were supportive of the idea of a show selection committee, which would give the City and public greater input into the titles chosen.

Program Recommendations and New Auditorium Use

Based on the data researched, benchmark information, and stakeholder and community feedback, staff is recommending changes to the youth theatre program that will address City Council concerns about Community Center Auditorium usage, allow for consistent and more robust marketing of the productions, and facilitate a contractual structure that will enable more flexibility on types of shows. The proposed changes are also intended to expand the number and type of participants, with the goal of increasing participation from Milpitas residents. Table 3 shows the comparison between the current and proposed youth theatre programs.

Table 3: Comparison of Current and Proposed Youth Theatre Program

No.	Current Program	Proposed Program
1.	City contracts director on annual basis to run the program, under her business name. Director subcontracts other production personnel. Director paid 90% of resident participation fees.	City to flexibly contract director(s) by show or season, for show direction only. City contracts other production personnel for each show, with input from director. Contractors to be paid a flat fee.
2.	Show selection by contractor, with City approval.	Show selection by committee i.e.: Contractor(s); City staff; Arts Commissioner; current performer; one current volunteer.
3.	Productions are mainly youth musical theatre shows.	Productions could be musicals or non-musical, youth, mixed ages or adult performers.
4.	Director sells tickets and retains 100% of sales.	City will sell tickets, and director will receive a percentage of sales.
5.	Contractor is responsible for paid advertising. City provides limited marketing support.	City responsible for all marketing and advertising.
6.	City pays for royalties and supplies.	City pays for royalties and supplies.
7.	Three to four shows per season.	Three to four shows per season.
8.	Show runs are typically two weekends.	Show runs will be typically one weekend, with occasional exceptions of two week runs considered on a show by show basis and facility availability.
9.	Shows mostly rehearse in Community Center Auditorium.	Shows will rehearse in Community Center Auditorium during Tech Week, beginning the Monday before the show opens. Other rehearsals will be scheduled in other City facilities or joint use areas, unless no other space is available.
10.	Current average use is 195 days annually.	Use will average 39 days annually, an 80% reduction.

In summary, staff recommends City Council consideration of:

- 1) A more flexible community theatre program with key components being reduced auditorium usage, greater City control over the program, and flexibility to offer all-age productions; implement a contract structure for the theatre director to go to flat rate compensation for each production, plus a percentage of ticket sales revenue; contract with additional production personnel per productions for a flat rate
- 2) Adjusting program scheduling to free up the auditorium for rentals uses and condense show runs to one weekend, provided occasional allowance of two-weekend runs as demand and facility availability warrants, thereby **reducing Auditorium use by the youth theatre program by approximately 80%**;
- 3) Creating an over-arching program branding and increased marketing to include:
 - a. Community Theatre
 - b. Community Concert Band and other Community Music Ensembles
 - c. Milpitas Arts and Culture Grants
 - d. Classes/Workshops
- 4) Expanded Performing Arts Classes and Workshops

- 5) Offer shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance;
- 6) Develop recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest such as:
 - a. Community Talent Show
 - b. Milpitas Birthday Dance Party
 - c. Milpitas Arts and Culture Grant Program Re-design via the Arts Commission
 - d. Community Orchestra and/or Community Choir

Policy Alternatives:

Alternative 1: Make no changes to the Performing Arts/Youth Theatre program.

Pros: This alternative would continue to serve the existing youth theater participants.

Cons: This alternative does not reflect the community input requesting greater diversity in performing arts program opportunities. Nor does it address community demand for greater access to the Milpitas Community Center Auditorium for other uses, including rentals by residents.

Reason not recommended: This alternative will not increase performing arts participant numbers or diversity. It does not include any provisions for more equitable use of City space and funding resources.

Alternative 2: Discontinue the Youth Theatre Program

Pros: This alternative would address the community demand for greater access to the Milpitas Community Auditorium for other uses, including rentals by resident, and after the conclusion of the Fall Production, result in a budget savings of \$63,050.

Cons: This alternative does not reflect the community input placing importance on youth theatre programs or requesting greater diversity in performing arts program opportunities.

Reason not recommended: This alternative does not reflect the community input placing importance on youth theatre programs, or requesting greater diversity in performing arts program opportunities.

Fiscal Impact:

Staff recommendations for the youth theatre and overall performing arts programs for this current fiscal year are achievable within the approved FY 2019-2020 budget of \$76,400 as well as staff support budgeted in Administration and related overhead totaling approximately \$149,000.

If staff's recommendation is approved, the reduction in Auditorium use by the youth theatre contract program for the remainder of the 2019-20 fiscal year could generate an estimated \$3,200 in revenue. Further, the youth theatre contract program restructure could generate an estimated \$9,000 in ticket sales revenue to the City for the remainder of the 2019-20 fiscal year, totaling an additional \$12,200 in estimated revenue.

Recommendation:

- 1) Approve restructure of the youth theatre contract program and performing arts class opportunities resulting in:
 - a. Increased availability for residents' use of the Community Center Auditorium;
 - b. Creation of Performing Arts Brand and Marketing; and
 - c. Expansion of performing arts opportunities including shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance;

- d. Contract structure for director to go to a flat rate for each production, including a percentage of ticket sales revenue
- 2) Direct staff to develop additional recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest.

Next Steps:

Upon City Council direction, the Performing Arts Brand would be announced in the Spring 2020 including program, production and/or class opportunities for the Spring and Summer 2020 seasons.

Attachments:

1. Performing Arts/Youth Theatre Study Report



PERFORMING ARTS / YOUTH THEATRE STUDY

2019

CITY OF MILPITAS
DEPARTMENT OF RECREATION & COMMUNITY SERVICES

Table of Contents

Executive Summary	2
Background.....	3
Cost Analysis of Current Youth Theatre Program	5
Other Milpitas Performing Arts Programs & Classes	6
Auditorium Usage.....	8
Benchmarking.....	9
Community Outreach	12
Program Redesign Proposal	19
Program Re-Design Fiscal Impact.....	23

Executive Summary

This study of the City of Milpitas' Performing Arts/Youth Theatre program was requested by the City Council, at its June 11, 2019 meeting, to provide the City Council with information about the youth theatre contract program's cost to the City and the use of space in the Milpitas Community Center Auditorium. The study also includes information about the other performing arts programs so as to provide Council with contextual information about all current and potential future performing arts and youth theatre programs in the City. The information is based on past data as well as stakeholder and community feedback.

In conducting this study, staff has been mindful to include the wider community in the visioning process -- both under-represented demographic groups and stakeholders who have strong feelings for the current programs. Community input was sought through a widely publicized online survey and community brainstorming meeting and has met multiple times with a stakeholder group representing the youth theatre participants. Staff has also analyzed three years' worth of auditorium use data and youth theatre participation data and benchmarked with nearby communities.

Key recommendations for City Council consideration that have come out of this research are:

- Make structural changes to the theatre contract program that will reduce auditorium usage, increase participation and attendance; re-establish active City oversight of the contract program.
- Create an over-arching Milpitas performing arts "brand," that will consistently and effectively market all performing arts programs;
Expand performing arts classes and camps beginning with Summer 2020, emphasizing: workshops for teens and adults;
- Offer shorter, less expensive programs for children with subsidy through the Milpitas Assistance Program; and greater variety, including cultural music and dance;
- Develop recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest such as:
 - Community Talent Show
 - Milpitas Birthday Dance Party
 - Milpitas Arts and Culture Grant Program Re-design via the Arts Commission
 - Community Orchestra and/or Community Choir

Background

In 1982, the City of Milpitas launched a youth theatre program called “Rainbow Theatre.” This program’s mission was to provide a forum for youth to build self-esteem through positive theatrical experience, and to present quality, family-oriented entertainment for the community. At its inception, the program was staffed with various part-time employee directors and volunteers. Ultimately, it evolved into a larger program with a full-time employee Director, part-time permanent employee Set Designer, and part-time Assistant Director. As a community theatre, parent and youth volunteers assisted with building costumes, sets, and running light and sound equipment for productions. Rainbow Theatre offered three to four shows per year and hosted a variety of satellite programs at the elementary schools and Milpitas High School.

The Recreation and Community Services Department also offered additional performing arts focused contract classes such as dance, chorus, piano, and guitar, by specialized instructors.

In 2012, during the economic downturn, the Rainbow Theatre program was considered for cancellation and complete defunding. At the request of City Council, after receiving comment and concern from Rainbow Theatre participants, City staff created a youth theatre “Contract Program” model. This contract program model was developed 1) through benchmarking of other surrounding cities with similar programs, 2) to maintain fiscal responsibility during harder economic times, and 3) to allow for a maximum of program revenue to remain with the contractor to help sustain the program. The Contract Program model differed from the Contract Class model in the level of staff support for the program, and in-kind support of rehearsal and performance space.

The Rainbow Theatre program budget, including staff, supplies and contracts, was defunded. The former Rainbow Theatre director became the new youth theatre contract program provider, and created her own LLC, Center Stage Performing Arts (CSPA).

Over the past four years, additional resources and budget have been added either directly for the youth theatre contract program, or indirectly in benefit of the program.

- **2015-16 FY Changes**
 - Allocated budget for Royalties
 - Allocated monies for a Theatrical Sound System upgrade project in the Milpitas Community Center Auditorium
- **2017-18 FY Changes**
 - Allocated budget for Supplies

The City and Contractor responsibilities for CSPA are as follows:

City Responsibilities	Contractor Responsibilities
Retains 10% of cast enrollment fees per show	Retains 90% of cast enrollment fees per show and 100% of ticket and concession sales
Pays for Royalties (FY 15-16 to current) Pays for Supplies (FY17-18 to current)	Pays for Royalties (FY 13-14 & 14-15) Pays for Supplies (FY 13-14, 14-15, & 15-16)

	Pays for and hires production personnel, including vocal directors and choreographers.
Provides scheduling support and free use of rehearsal and performance space as a City contract program	Uses City space for auditioning, rehearsals, and performances
Provides limited marketing assistance	Pays for advertising and marketing
Accepts and holds any donations on behalf of the theatre group	Works with parent volunteers on fund raising efforts
Provides space for storage	Recruits and directs volunteers

CSPA, through the youth theatre contract program, currently offers three to four productions per year and classes for young children that culminate in small performances. Youth participating in the CSPA program also perform smaller showcases as part of the regular season of shows and at events including the Tree Lighting Ceremony and Fourth of July.

Cost Analysis of Current Youth Theatre Program

Center Stage Performing Arts is the City's primary "resident" performing arts company. Its youth musical theatre shows are fully staged, full-length musicals, for which participants audition and then pay a participation fee upon being cast. Just as with adult community theatre, casting is competitive, and it is understood that performers bring a certain amount of experience and/or training to the production. Its classes are intended to teach young performers the basics of performing and conclude with a production. Theatre classes also have small productions that are staged and presented in the Community Center Auditorium. These performances have smaller productions and all class members are guaranteed a role. Of nine classes offered in the past three years, three were cancelled for low enrollment.

The following participation data is based on the past three years registrations in the ActiveNet enrollment system and is a total, rather than unduplicated participant number. Many of the show participants appear in multiple productions per year, so the number of unduplicated participants is smaller. Ticket sales are based on contractor's report to the City. As above, the sales numbers are totals, rather than unduplicated audience.

This chart does not include performer payments to the contractor for directing youth performances at special events to which the youth theatre program sometimes performs.

Youth Theatre Contract Program Cost					
Revenue	Average Annual / Average Per Production	Fees	Est. Revenue Per Production to Contractor	Est. Annual Revenue to Contractor	Est. Annual Revenue to City
Show Participants	58 / 19	\$130 resident rate (90/10 split)	\$2,223	\$6,786	\$754 (10% of revenue + applicable non-res fee)
Public Show Audience	1140/428 (71 per show)	\$15 avg. ticket (Prices \$12/\$15/\$18)	\$6,420	\$17,100	\$0
School Show* Audience *Not always offered	482/289 (160 per show)	\$5 ticket	\$1,445	\$2,410	\$0
Class Participants	18/9	\$130 resident rate (90/10 split)	\$1,053	\$2,106	\$234 (10% of revenue + applicable non-res fee)
Class Audiences	346/208 (55 per show)	\$10 avg. ticket (Prices \$10/ \$15)	\$2,080	\$3,460	\$0
TOTAL				\$31,862	\$988
Expense					Budgeted 2019-20
Contractor					(\$26,400)
Royalties					(\$20,000)
Supplies					(\$30,000)
City Staff Support*					(\$72,560)
TOTAL					\$148,960
Number of Participating Youth* Served Annually					76
Cost to City Per Participating Youth					\$1,960
Estimated number of People Served* (Participants + Audience)					2,044
Cost to City Per Person, including audience					\$73

*staff time reflects estimated % of annual time spent on the youth theatre program for: Senior Public Services Assistant, Program Coordinator, Recreation Supervisor, Department Director	
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Other Milpitas Performing Arts Programs & Classes

In addition to Center Stage Performing Arts, the City of Milpitas has three other components to its performing arts program: the Milpitas Community Concert Band, Performing Arts Recreation Classes; and the Milpitas Arts and Culture Grant program.

Milpitas Community Concert Band (MCCB)

The Milpitas Community Concert Band is the City's other "resident performing company," providing band musicians of all ages an opportunity to rehearse together weekly and perform publicly at free concerts and City events, six times per year. The City hires a professional conductor and provides rehearsal and performance space and marketing support.

The Milpitas Community Concert Band averages about 40 participating musicians a year, each paying \$30 to be a member. Registration revenue is approximately \$1,200/year. Performances are free, so there is no ticket revenue recovered by the City. Donations received at concerts are put into a holding account for future program use. A contract conductor is paid \$1,000 per concert, with a maximum of six concerts per year.

All other expenses (music, instrument, stand repair and replacement, etc.) are paid out of the program's supplies budget of \$1,000. Any expenses beyond the supplies budget are paid with funds in the holding account.

Performing Arts Recreation Classes

A major component of the City of Milpitas' existing performing arts program is recreation classes and camps in performing arts: music, dance and drama.

Milpitas' offerings are very similar to like-sized cities throughout the Bay Area, with most emphasis placed on beginning dance and music classes for preschool and elementary aged children, some adult dance classes to complement fitness offerings, and senior music and dance classes. Milpitas classes are taught by contractors, or volunteers in some cases at the senior center. Participant satisfaction surveys are generally positive and enrollment numbers are steady.

Performing arts classes are selected in the same manner as other recreation classes. Prior to each Activity Guide, returning contractors and others who have expressed interest in contracting with the city are invited to submit proposals. The Recreation and Community Services Contract Class Specialist monitors programs offered in nearby cities and may invite a contractor to submit a proposal if it appears a program offered elsewhere would also be successful in Milpitas. Phone/in-person interviews and reference checks are conducted for contractors new to Milpitas.

Proposals are evaluated to ensure a good mix of classes and maximize the use of available facilities.

For all classes, but especially new classes, the contract specialist checks in with contract instructor to discuss if any improvements are needed for the next term. Customer satisfaction feedback is also taken

into account. If a class has been offered but cancelled for lack of enrollment for two consecutive sessions, it is automatically dropped from the offerings.

All classes are marketed through the Recreation and Community Services' seasonal Activity Guides. Classes are marketed via email blast to Recreation customers, flyers, social media pages, and tabling opportunities at City of Milpitas events. Contract instructors are also encouraged to do their own marketing at their expense, within prescribed City guidelines.

Milpitas Arts & Culture Grants

The Milpitas Arts & Culture Grants program allows individual artists and organizations to apply for free use of City space for the purpose of presenting arts programming to the public. At the program's start in the early 1990's, the program was a competitive program that also included a cash stipend for grant recipients to help underwrite the cost of their offering a performance or activity in a City facility.

At its peak in 2011-12, this program provided space for seven community groups and individuals to offer arts programming in Milpitas. It was considered an innovative way for a city to expand its arts programming for very little expense. The Milpitas Arts & Culture Grants was a model program, replicated in at least one other Bay Area city.

Unfortunately, participation in the program began to drop off after the cash stipend was eliminated in response to budget cuts. However, arts organizations and individual artists continue to struggle to find affordable space in the Bay Area, and the City has a selection of indoor and outdoor venues available.

Auditorium Usage

In response to the City Council's query of the amount of time used in the Community Center Auditorium, Staff analyzed three years' worth of reservation data for the Milpitas Community Center Auditorium. Reservation data reflects time held for a user.

Center Stage Performing Arts is the heaviest user, accounting for an average of 1,604 use hours per year, or 195 reservations. The majority of these are weekday evening rehearsals, so the room can be used for daytime classes, City meetings and even rentals, such as memorial services. However, an average of 73 days were "set up" days, when the theatrical set is installed, and no other users can share the room. Because of back to back productions and class performances, "set up" periods have lasted up to 28 consecutive days, effectively making this space unavailable for other rentals for several weeks.

Internal City uses are the second most common, accounting for an average of 549 hours per year, or 79 reservations per year. This category includes City-sponsored events, such as Tree Lighting or Lunar New Year; large City meetings, general classes, and Human Resources testing days. Of that overall use, nine (9) days are full-day reservations.

Private Rentals are the next most common use, with an average of 332 hours per year, or 46 reservations per year. The most common type of rental is for a family celebration, such as a wedding, anniversary or birthday party. The heaviest rented day of the week is Saturday, followed by Sunday.

Other Milpitas performing arts uses account for a relatively small amount of time in the Auditorium, at 92 hours, or 11 reservations per year. Most of these are rehearsal and performance days for the Milpitas Community Concert Band and performing arts classes. One (1) day of this overall use is a full-day reservation.

An average of 19 publicly unused days are City Holidays and/or closure dates, most of which occur over the Christmas-New Year period. On average, 4 days per month go unused. The majority of the non-holidays that go unused are Sundays and Fridays. The majority of the rentable days that go unused are Sundays and Friday evenings.

Community Center Auditorium Usage Summary Averages Over Past 3 Fiscal Years					
User	Exclusive Use Reservation (Full day reserved)	Partial Use Reservations	Total Reservations	Total Hours Used	Percentage of All Time Used (2577 hours)
Youth Theatre Contract Program	73	122	195	1604	62%
City events	9	70	79	549	21%
Rentals	0	46	46	332	13%
Other Performing Arts programs	1	10	11	92	4%
Total Use	83	249	332	2577	
City Holiday/Closure			19	323	
Unused but Available			46	782	

Benchmarking

Staff benchmarked against eight Bay Area cities' performing arts offerings, chosen because they were near in size and/or demographic make-up to Milpitas (est. population 80K, based on US Census 2018 estimates). The cities were:

- Sunnyvale (est. 2018 population 156K)
- San Leandro (est. 2018 population 90K)
- Mountain View (est. 2018 population 82K)
- Pleasanton (est. 2018 population 80K)
- Union City (est. 2018 population 75K)
- Cupertino (est. 2018 population 60K)
- Gilroy (est. 2018 population 56K)
- Campbell (est. 2018 population 43K)

Youth Theatre

Five of the eight cities currently have some type of youth theatre program offered at City facilities. Two (Pleasanton and Gilroy) operate as City programs. Pleasanton's program is directed by City employees. Gilroy's program is directed by independent contractors, who are hired show-by-show, rather than on an annual contract. Sunnyvale and Mountain View contract with a theatre company. San Leandro rents City space to a theatre company through its Library.

All of the cities that use contractors handle registration, assist with marketing and pay the contractor a split of performer enrollment fees. Milpitas' split arrangement is at 90/10. Gilroy's is 50/50. Sunnyvale's is 60/40. Mountain View's is 70/30 for programs on City property and 80/20 for programs offsite at the contractor's facility.

Ticket revenue is handled differently in each City. In Milpitas and Gilroy, the contractor keeps 100% of the ticket. Sunnyvale requires that the first 100 tickets be comps, but it allows the contractor to keep 100% of revenue on additional tickets sold. Mountain View requires the performances to be free of charge. Other cities ticket prices are in the \$5-\$12 range. Milpitas tickets are on average, \$15.

All five cities researched offer some sort of need-based fee-waiver program either through a city-run program, or through the contractor. Milpitas' new Milpitas Assistance Program will be used to offset costs for Milpitas residents to participate

Milpitas' youth theatre contract program draws a demographic of 52% residents, 48% non-residents for shows and 80% residents, 20% non-residents for its theatre classes. Mountain View's is virtually 100% residents. Pleasanton's is 75% residents. Sunnyvale's is 75% residents during the school year, but their program approaches 50% non-residents for all-day summer theatre camps. Gilroy's is 70% residents.

Other Arts Programs

All of the cities offer different types of city-sponsored performances and performing arts events, which vary according to the city's facilities and proximity of other performance facility space.

The most common type of city-sponsored performance is some variation on a “concert in the park” series. Four cities have community theatre companies that perform in their venues, either as co-sponsored companies or rentals.

Cupertino has a city-sponsored orchestra. Sunnyvale has a co-sponsored choir and offers theater for youth, drop-in dance programs, professional actors performing shows of interest for young audiences. Pleasanton has a nonprofit band and teen improv company. Gilroy and Campbell have city-sponsored cultural dance troupes, Aztek and Polynesian respectively. Both Cupertino and Pleasanton have Shakespeare in the Park.

San Leandro has a community talent show and oratorical festival. Mountain View has a teen theatre company. Union City has a monthly open mic night and drop-in ukulele jams in the park.

In addition to its youth theatre and performing arts classes, Milpitas offers both a summer concert series and summer movie series in its neighborhood parks. It also offers three (3) Milpitas Community Concert Band concerts. Most recently, Milpitas added Lunar New Year to its special event calendar which features cultural songs and dances from the Asian community.

Performing Arts Classes

All eight cities offer a wide variety of performing arts classes for different age groups. Programming is similar to Milpitas' programming.

For youth, most offer ballet, tap, jazz, hip hop dance. Depending on the ethnic make-up of their city, some also offer Folklorico, Bollywood or Chinese folk dance. Most offer youth public speaking, dramatic arts classes for younger children and production classes or shows for older children and teens. Sunnyvale offers an experimental dance/drama production class, and Pleasanton offers improv and audition workshop classes. Most offer a preschool music appreciation class and piano keyboard for older kids. Some offer voice and a wider variety of music instrument lessons.

Dance classes for adults are also popular, usually fitness-oriented or ethnic varieties, with ballroom and other social dances next most common. Ballet, tap, jazz and hip hop for adults are offered in cities with big dance class programs. Most cities have a senior line dance program, and some have ballroom and ethnic dance program. Adult and senior music programs are less common, but when offered, voice, keyboard, guitar and ukulele are typical. San Leandro, like Milpitas, offers Taiko. Adult and senior theater classes are rare. Union City and Pleasanton offer adult improv. Pleasanton offers adult musical theater and senior readers' theater.

Milpitas currently offers: Music Together preschool music appreciation classes; Children's Improv; Tiny Stars Dance and Learn; Ballet; Ballet/Tap Combo; Hip Hop & Breakdance, Improv for Teens; Taiko drumming for Teens and Adults; Bollybeats dance for Teens; Enjoy Singing for Adults; Bollybeats dance for Adults; and Line Dancing for Seniors.

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Community Outreach

Community outreach was conducted to 1) hear from the current participants, and 2) hear and the needs and interests of non-participants. The information gathered from the community assisted in visioning more diverse ways to program city spaces with programs that are more likely to attract greater participation and wider cultural diversity.

This study included three different community outreach efforts: a community-wide survey, a community meeting and workshop, and a series of meetings with youth theatre stakeholders representing Center Stage Performing Arts.

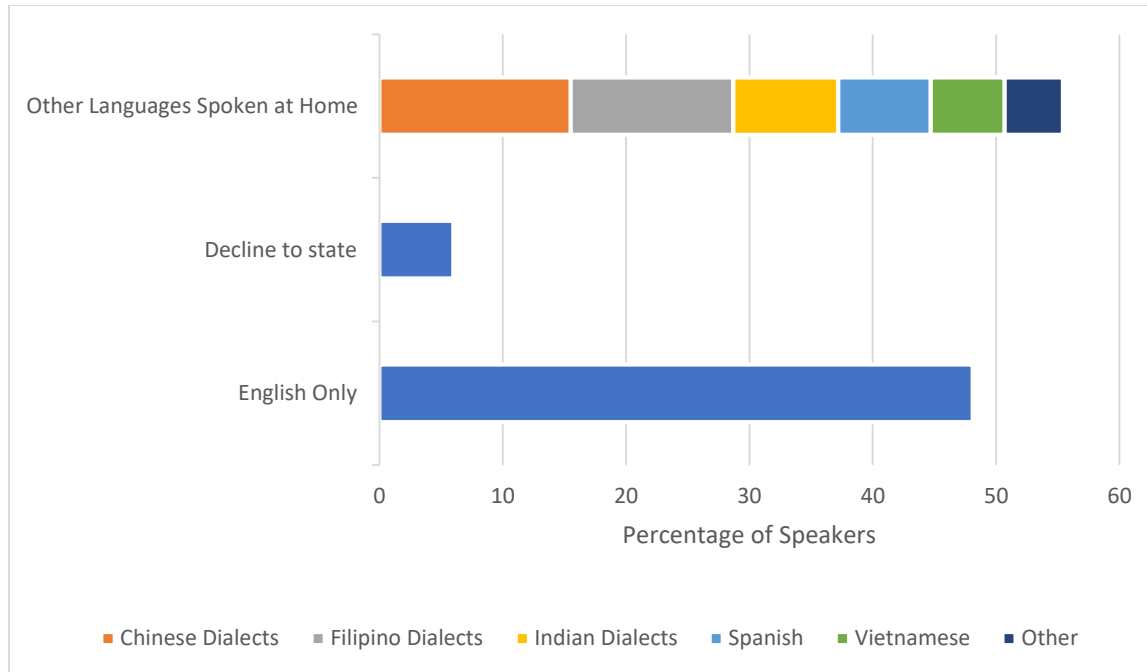
Online Survey

A public survey on performing arts programs was available on the City's Open Town Hall survey platform from August 1-31 and widely promoted through social media and flyers (including in Chinese, Vietnamese and Spanish), email blasts to Milpitas Unified students and current Recreation customers, and numerous mentions of the study in local news media.

A total of 316 people responded. Of those, 71% of those responding are residents; 11% are "daytime residents," non-residents who work or attend school here. 18% of survey's submitted are from people that neither live, work, nor attend school in Milpitas. Responses are shown for all and filtered for Milpitas residents only to better illustrate what residents seek, in comparison to current program participants.

For demographic purposes, respondents were asked their age. The majority responding were adults (36%) and seniors (33%). However, teens also responded accounting for (17%), of the respondents. Teens are over-represented in relation to general population but reflects the youth theatre contract program participation.

Special efforts were made to reach segments of the community for whom English is a second language. Respondents were also asked about languages other than English spoken at home. Census Bureau population estimates for 2018 suggest 68% of Milpitas residents speak a language other than English at home.



Most Important Performing Arts Opportunities

Respondents were asked to rate different kinds of performing arts opportunities on 5-point scale from “very important” to “not important.” The following ranking shows which activities were “important” or “very important.”

“Opportunities for children and teens to perform” ranked highest as important to the community, but the majority also felt it is important to offer a variety of performing arts opportunities. No opportunity was deemed “not important” by the community.

Performing Arts Opportunity	% for Whom This is Important or Very Important	
	All	Residents Only
Opportunities for children and teens to perform.	88%	87%
Recreational or beginner level performing arts classes.	79%	77%
Opportunities to see community performers.	77%	76%
Intermediate or advanced performing arts classes.	75%	74%
Opportunities to be exposed to new genres (cultures).	71%	72%
Workshops taught by special guest performers.	67%	68%
Opportunities to see professional performers.	61%	64%
Opportunities for drop-in practice with others.	59%	59%
Opportunities for adults to perform.	54%	52%
Opportunities for seniors to perform.	51%	50%

Performing Genres People Enjoy Watching or Doing

Respondents were given a dozen performing arts genres, as well as an “other” category, and invited to select their top six.

Musical Theatre ranked highest on this list. However, Milpitas residents were slightly more diversified in performing genres they would like to see than was the overall sample. Many write-in choices were offered, with Concert Band and Jazz each receiving multiple votes.

Genres	% Selecting Among Their Top Six	
	All	Residents Only
Musical Theatre	73%	69%
Comedy	49%	50%
Drama	46%	47%
Traditional Dance (ballet, tap, jazz)	46%	48%
Pop music	44%	45%
Pop Dance	43%	44%
Ethnic Dance	21%	21%
Ethnic Music	18%	19%
Country-Americana-Bluegrass	17%	17%
Opera	10%	11%
Other	7%	9%
Spoken Word	5%	5%

Participation in the Past Two Years

Respondents to this survey reported being active arts participant households, in or outside Milpitas. Milpitas residents are more likely to have attended free performances and less likely to be active arts participants (performers, volunteers) but as audience members.

Arts Participation by Someone in the Household	% who Have Participated in the Past Two Years	
	All	Residents Only
Attended a free performance at a City venue or event.	63%	70%
Attended a ticketed (\$) performance at a City venue.	60%	57%
Actively pursued a performing arts hobby.	40%	36%
Volunteered for a performing arts company.	30%	28%
Taken youth group performing arts class elsewhere.	27%	30%
Taken youth City of Milpitas performing arts class.	25%	26%
Taken youth performing arts private lessons.	19%	21%
Taken adult City of Milpitas performing arts class.	12%	13%
Taken adult performing arts class elsewhere.	12%	9%
Taken adult performing arts private lessons.	6%	7%
Worked as paid employee for performing arts org.	5%	3%

Respondents who have not participated in any City of Milpitas programs the past two years were asked why not. Most common reasons were: Programs Days/Times Inconvenient; Already

Committed to Similar Programs at School or Another; Unaware of Programs; and, Nothing Offered Has Been of Interest.

Respondents were also invited to write in reasons if the provided answers did not fit. The most common write-in answer was that the respondent no longer lived in the area. This is consistent with the number of non-residents responding. The second most common write-in reason for not participating was related to family schedules making it difficult to commit to regular participation in a program.

These responses suggest room for improvement in publicity, in offering programs with more convenient schedules, and exploring different types of programs to appeal to residents beyond those already participating.

Suggestions from the Public

Respondents were very engaged with 107 taking time to write in suggestions for improvement. More than 40 responses were directly related to providing increased funding and staff support for the youth theatre contract program. Fourteen responses were related to building a dedicated performing arts facility, as opposed to the multipurpose auditorium in the Community Center that serves as a theatre now.

Others provided a variety of new ideas for programs and process changes that they believe would encourage more participation. Themes included:

- More one-day and one-weekend programs to better serve families who are unable to make lengthy commitments and/or to provide more inexpensive programs
- Collaborative programs that would bring two or more arts groups or disciplines together in a single event
- Making the Milpitas Community Center Auditorium available to a wider variety of community groups
- Multi-generational performance opportunities
- Programs that are welcoming to people of differing abilities
- Programs that are welcoming to people of all culture backgrounds

Specific ideas proposed include:

- Pop-up performances in public spaces.
- Performances in parks.
- Performing arts class "try it" program
- Milpitas Community Choir or Orchestra
- Mixed-level dance classes
- Opportunities for youth to arts careers
- Beginning music programs

- Taiko, Spanish guitar, violin Open Mic events
- Talent competitions like Milpitas Got Talent
- Jazz Improv Group
- Free workshop programs
- Dance dramas based on mythology from different cultures
- Performances that are related to other educational disciplines (i.e. science, technology, history)

Community Meeting

Staff hosted an interactive community workshop at the Milpitas Community Center on Thursday, August 22. The event was widely promoted through social media and flyers (including in Chinese, Vietnamese and Spanish), email blasts to Milpitas Unified students and current Recreation customers, and numerous mentions of the study in local news media.

The meeting was intended to provide a more interactive opportunity for community members to discuss with each other and with staff their ideas for performing arts in Milpitas.

Fifty-four people attended, not including staff facilitators and observers. Of those, 27 were Milpitas residents, six identified as Milpitas business owners, one was the current performing arts contractor, 18 were non-residents and 19 were youth or teens.

Staff presented a brief PowerPoint to update the participants on preliminary findings from the survey, which had been open three weeks at that point, and benchmarking from other communities, showing a variety of arts programs offered elsewhere. The group broke into youth and adult groups to do three activities, and then regrouped at the end of the evening to discuss their feedback.

Dot Exercise - Performing Arts Activities

Adult and youth workshop attendees viewed posters displaying a variety of performing arts activities, including programs the City of Milpitas already offers, new programs suggested by survey respondents or successful programs offered by other demographically similar Bay Area cities. Participants were provided strips of seven colorful, numbered dots to "vote" for the performing arts activities that were most of interest to them, using the number one dot for the first choice and so on.

Participants could also write-in additional activities they would like to see. Write-in suggestions were: karaoke, chamber music, and father-daughter or mother-son formal dances.

Tallied results appear in Appendix B.

The vote-getters -- activities where the largest number of people with some interest -- were: Youth Musical Theater; Community Theatre for all-ages; Performing Arts Workshops; Dance Parties; Community Band; Performances in the Park.

Top weighted-rankings -- activities for which people have the most enthusiasm -- were: Youth Musical Theater; Community Theatre for all-ages; Community Band; Dance Parties; Performing Arts Workshops; Community Orchestra; Performances in the Park.

Matching Exercise - Activities by Venue

Small groups were given sheets showing various arts activities and asked to indicate which activities they would place in which existing City-owned venues or possible partnership venues. The exercise proved challenging for both age groups as it was difficult for them to envision activities in unfamiliar spaces.

A few observations that did come from the exercise:

- **Milpitas Community Center auditorium** is the desired location for most performances, especially theatre performances, band performances, collaborative performances or a talent show
- Although the **Milpitas Library Auditorium** seems like a likely spot for performances, restrictions on the days/times and types of shows make that space not an option for theatre. It is more appropriate for one-time performances with no ticket charge.
- The **Senior Center Auditorium** is also a possibility for certain types of shows, but not theatre. It is also preferred for dance parties and music recitals, especially given that the room has a piano available.
- The **Senior Center Dance Studio** is the spot preferred for theatre rehearsals.
- The new **Mobile Stage** is of interest for dance and music performances, especially Milpitas Community Concert Band or a multicultural showcase or talent show.
- **Murphy Park** and **Cardoza Park** might be good spots for Performances in the Park.
- There is some interest in partnering with schools to offer programming that is more educational in nature (lecture-demonstrations or workshops) at their locations.
- Several interested **Higuera Adobe Park** for jazz concerts.
- **City Hall plaza areas** were also suggested for jazz concerts.

Challenge Exercise

Groups were asked to brainstorm and report out on creative solutions for these challenges that staff is hoping to solve, including how to prioritize performing arts programs; how to serve families who cannot commit to weekly participation or multiple days a week; how to promote performing arts programs; how to ensure programs serve youth facing challenging socio-

economic circumstances; ideas for multi-generational performances; and visions for an "award-winning, unique to Milpitas" program.

Details on responses to each question are in Appendix C.

Stakeholder Meetings

In an effort to work collaboratively with the Center Stage Performing Arts participants who voiced their concerns at the City Council Meeting in August, Staff met on multiple occasions with a parent committee consisting of Lisa Baker, Christi Bradford, Lisa Moreno, and Jackie Romero. The current youth theatre contract program contractor, Mei Wan Chai, was also in attendance.

Over the series of meetings, key stakeholder input included the following:

- Opposition to a break in programming while the study was completed.
(A compromise has been reached, with a short-term letter of agreement, allowing the group to perform at the City's Veterans Lunch and Tree Lighting events as in the past, and to audition and begin rehearsals for a performance of Disney's Little Mermaid, to be presented in January.)
- Concerns that any change to the program may result in reduced compensation to the contract director.
- Support of rehearsals in other City-owned rooms to free up the Milpitas Community Center Auditorium.
- Open to reduce performance runs to one weekend but wanted some flexibility to have two weekend runs on occasion. Certain shows are difficult for small casts to perform six or eight times in a single week. Single weekend runs are generally fine if shows have some element of double casting.
- Support the City taking greater responsibility for marketing performing arts programs and developing a Performing Arts brand and marketing plan.
- Support the City offering other types of performing arts programming and performing arts events, in addition to youth theatre.

Program Redesign Proposal

The following proposal is intended to allow for more intentional use of City facilities to maximize both performing arts opportunities and availability of the space for public rentals.

It would also provide a wider variety of opportunities and flexible performing arts program that can welcome new interests as they arise, while preserving and celebrating longstanding Milpitas performing arts traditions.

The key elements of the proposed Performing Arts Program Redesign are:

- Balanced use of Community Center Auditorium with a **reduction of youth theatre program use by approximately 80%**
- Program Branding & Increased Marketing
 - Community Theatre
 - Community Concert Band and other Community Music Ensembles
 - Milpitas Arts and Culture Grants
 - Performing Arts Classes
- Expanded Performing Arts Classes and Workshops
- Expanded Performances at existing Events
- Develop additional recommendations for City Council consideration during the FY 2020-21 Budget process for additional opportunities based on community feedback/interest such as:
 - Community Talent Show
 - Milpitas Birthday Dance Party
 - Milpitas Arts and Culture Grant Program Re-design via the Arts Commission
 - Community Orchestra and/or Community Choir

Program Branding & Increased Marketing

Staff recommends the creation of a Milpitas performing arts "brand" and assume responsibility for marketing programs under that brand. With the City in control of the appearance, content and schedule of marketing materials and press releases, staff expects to improve quality and consistency, and help build a larger participation and audience base for all programs.

This proposed approach will allow some economies of scale as programs and performances are cross promoted under a single umbrella brand. It will also allow for consistently promoting individual programs and performances, according to a marketing plan determined by expected participant or audience capacity. For example, ticketed events generally require more promotion than free events. Large audience capacity events require more promotion than limited audience capacity events.

Staff proposes to develop a Milpitas performing arts (or more generically, arts) "brand" to be unveiled in spring 2020 with a matrix outlining expected marketing efforts for the brand and individual activities, which would be implemented beginning in January 2020.

Marketing efforts will include information about the Milpitas Assistance Program as a means for low-income families to participate in fee-based performing arts programs.

A Redesigned Theatre Program

The original Rainbow Theatre program is remembered by generations of performers and their families as a positive experience, where performers developed important life skills and formed lasting friendships. The opportunity to participate in youth theatre activities helps youth develop confidence, teamwork skills, creative problem solving, and social skills.

Staff proposes a redesigned Theatre program, combining some elements of original Rainbow Theatre model and some of the current youth theatre contract program model, to arrive at a more sustainable program.

Current Program	Proposed Program
City contracts director on annual basis to run the program, under her business name. Director subcontracts other production personnel. Director paid 90% of resident participation fees.	City to flexibly contract director(s) by show or season, for show direction only. City contracts other production personnel for each show, with input from director. Contractors to be paid a flat fee.
Show selection by contractor, with City approval.	Show selection by committee i.e.: Contractor(s); City staff; Arts Commissioner; current performer; one current volunteer.
Productions are mainly youth musical theatre shows.	Productions could be musicals or non-musical, youth, mixed ages or adult performers.
Director sells tickets and retains 100% of sales.	City will sell tickets, and director will receive a percentage of sales.
Contractor is responsible for paid advertising. City provides limited marketing support.	City responsible for all marketing and advertising.
City pays for royalties and supplies.	City pays for royalties and supplies.
Three to four shows per season.	Three to four shows per season.
Show runs are typically two weekends.	Show runs will be typically one weekend, with occasional exceptions of two week runs considered on a show by show basis and facility availability.
Shows mostly rehearse in Community Center Auditorium.	Shows will rehearse in Community Center Auditorium during Tech Week, beginning the Monday before the show opens. Other rehearsals will be scheduled in other City

	facilities or joint use areas, unless no other space is available.
Current average use is 195 days annually.	Use will average 39 days annually, an 80% reduction.

Within this re-design, the City would still contract a director, and other creative staff such as a vocal coach and choreographer. The City would also continue to underwrite royalties and supplies as it does now. However, the City would initiate a committee approach for selecting shows that would appeal to the broadest possible audiences, marketing and selling tickets.

The theatre program would "belong to" the City, rather than be a business of a single contractor. This would ensure continuity in operation in instances when individual contract directors stopped working with the City, or the discipline of a community interest theatre program/class requires specialized providers.

It is feasible to continue offering three shows a year, with six public performances and two school matinees per production. Productions would continue in the Community Center Auditorium.

However, in recognition of the fact that the Auditorium is a multiuse space staff recommends keeping most performance runs to a single weekend, and theatre program use of the space to tech week only. Thus, the maximum consecutive days of use would be nine: one day to load-in, three to four days to rehearse, three to four to perform, and one day to strike.

This would increase the number of available rental days in the Auditorium without impacting the number of performance dates. **Total theater days in the Auditorium would drop from an average of 195 per year to an average of 39 per year. Saturday use would drop from 13 per year to just four (4) days per year.**

Community Concert Band

As currently structured, the City hires a contractor, purchases sheet music, and provides space for interested musicians of all ages and skill levels to meet, rehearse, and perform at special concerts and City events. Currently the band performs a maximum of six concerts per year, including three City events: Memorial Day, Veterans Day and Tree Lighting. This program would be promoted through the proposed Milpitas Performing Arts Branding efforts.

Milpitas Arts and Culture Grants (MACG)

The Milpitas Arts and Culture Grants program, which allows arts and culture organizations and individual artists to apply to use City facilities free of charge, is an innovative program model that has been copied by other cities.

Regardless of cash subsidy, Staff proposes to promote this program through the proposed Milpitas Performing Arts Branding efforts, making sure to include City's variety of different types of venues available including the new Mobile Stage.

With the umbrella performing arts branding and marketing, staff believes small groups could benefit from the publicity assistance the City would provide.

Expanded Performing Arts Classes and Workshops

While Milpitas' recreation classes in the performing arts have had steady enrollment and strong satisfaction ratings, the responses to the study suggest there is room to expand the program.

Staff proposes the following changes beginning in Summer 2020:

- **Specialty workshops** taught by guest artists and aimed at teen-adult students, with a goal of offering one special workshop per Activity Guide
- **Short time-commitment children's classes**, designed as single-day or two-day (weekend) classes taught by current instructors and aimed at elementary children or families, with a goal of offering at least one short class per Activity Guide
- **Greater variety of performing arts classes**, with emphasis on finding and contracting with established performing arts instructors who have a following and are in need of teaching space

Expanded Performances at Events

Most Milpitas special events feature free, live entertainment. Seventy percent of Milpitas residents responding to the recent Performing Arts survey have attended free performances sponsored by the City, and they are a popular component of the City's performing arts program.

Staff proposes to increase the number of performers at existing events where possible, seeking out local performers, more youth performing groups and more diverse groups. Making an entertainment application available online can encourage interested groups to apply and help reduce staff time spent researching new and different performing acts.

This, coupled with increased advertising of entertainment schedules, is an easy and inexpensive way to demonstrate the City is meeting the public's demand for more opportunities to see community and professional performers.

Program Considerations for future Fiscal Years

As a result of this study, Staff would like to develop recommendations for future Performing Arts programs as part of the FY 2020-21 Budget process and beyond for additional opportunities based on community feedback/interest such as:

- a. Community Talent Show
- b. Milpitas Birthday Dance Party
- c. Milpitas Arts and Culture Grant Program Re-design via the Arts Commission
- d. Music Ensembles (Community Orchestra and/or Community Choir)

Additional opportunities would be evaluated for direct budget costs, community participation, and needed staff resources.

Program Re-Design Fiscal Impact

The proposed changes to the Youth Theatre in the second half of FY 2019-20 are expected to have a positive impact on the budget. The below estimates are based on current fees. However, the Parks and Recreation Master Plan, expected to commence in late 2019, will inform future Recreation and Community Service Department fees and future Fiscal Year revenue projections.

Youth Theatre Program Revenue

The fiscal impact of changes to the youth theatre program for the remainder of the FY2019-21 are estimated based on production ticket sale revenue coming back to the City. It is estimated the City will receive an additional \$9,000 in revenue from productions held in spring and summer 2020.

Auditorium Rental Revenue

The fiscal impact of having additional rental dates available is projected conservatively at an additional three (3) rentals for the remainder of this fiscal year. This results in a revenue increase of \$3,200. Most renters are using the space for parties/events that require planning, and so book more than six months in advance. The significant increase in rentals will be seen in FY 2020-2021, at which time the revenue increase is expected to be as high as \$18,800.

Appendices

Appendix A. - Comparative Information for Cities with Youth Theatre Programs

City	Staffing	City Responsibilities	Contractor Responsibilities	Revenue Share City/ Contractor	Participants Resident/Non-res
Gilroy	Multiple Contract Directors	Rehearsal space only Marketing support Royalties (Performance space = School District via joint use agreement)	Subcontractors (choreo/vocal) Sets Costumes Box Office Services	Registrations 50/50; tickets 100% to contractor	70/30
Milpitas	Single Contract Director	Rehearsal space Performance space Sets Storage space Marketing support Royalties	Subcontractors (choreo/vocal) Costumes Paid advertising	Registrations 10/90; tickets 100% to contractor	52/48 for shows 84/16 for classes
Mountain View	Single Contract Director	Rehearsal space Performance space Marketing support Box Office support	Subcontractors (choreo/vocal) Sets Costumes Paid advertising Royalties	Registrations 70/30, or 80/20 on programs at contractor's facility; tickets are free	100/0
Pleasanton	City Staff	Rehearsal space Performance space Storage space Marketing support Box Office support Royalties Paid Advertising	Sets are contracted with Community College	N/A; Registrations 100% to City; Tickets 100% to City	75/25

San Leandro	Renter	None	Subcontractors (choreo/vocal) Rehearsal space rent Perf. space rent Sets Costumes Marketing / Paid Ads Royalties Box Office	N/A; Registrations 100% to Renter; Tickets 100% to Renter	Unknown
Sunnyvale	Multiple Contract Directors	Rehearsal space Performance space Marketing support Box Office support	Subcontractors (choreo/vocal) Sets Costumes Marketing / Paid Ads Royalties Box Office	Registrations 60/40; tickets 100% to contractor after first 100	50/50 in summer 75/25 in school year

* Benchmarked cities of Campbell, Cupertino and Union City do not currently offer youth theatre programs in City facilities. Union City's youth theater is served by the Hayward Area Recreation District.

Appendix B. - Community Meeting Dots Exercise Results

Top-Voted Activities			
Activity	Votes		
	Among Adults	Among Youth	Overall
Youth Musical Theatre - under 18	#1	#1	#1
Community Theatre - all ages	#2	#3	#2
Workshops - Educational	#4	#5	#3
Workshops - Variety	#5	#4	#4
Dance Parties	Below Top 7	#2	#5
Community Band	#3	Below Top 7	#6
Performances in the Park	Below Top 7	#7	#7
Community Orchestra	#7 tie	#6 tie	Below Top 7
Community Choir	#6	Below Top 7	Below Top 7
Jazz Concert Series	#7 tie	Below Top 7	Below Top 7
Pop-up Performances	Below Top 7	#4 tie	Below Top 7
Open Mics	Below Top 7	#5 tie	Below Top 7
Talent Show	Below Top 7	#6 tie	Below Top 7

Top-Ranked Activities			
Activity	Weighted Rank		
	Among Adults	Among Youth	Overall
Youth Musical Theatre - under 18	#1	#1	#1
Community Theatre - all ages	#2	#2	#2
Community Band	#3	Below Top 7	#3
Dance Parties	Below Top 7	#3	#4
Workshops - Educational	#6	#4	#5 tie
Workshops - Variety	#5	#4	#5 tie
Community Orchestra	#7	#6	#6
Performances in the Park	Below Top 7	#6	#7
Open Mic	Below Top 7	#7	Below Top 7

Appendix C. - Community Meeting Challenge Responses

What factors would you like to see the City use when prioritizing which performing arts programs to consider adding?

Three adult groups and one youth group answered. Two groups expressed a preference for keeping existing programs rather than considering anything new. Groups suggested City Council and Staff prioritize programs based on the following:

- Cultural diversity
- Number of participants, especially youth
- Positive experience for participating youth
- Ability to serve all ages
- Size of audience
- Ability to attract participants and audiences from outside Milpitas
- Available space
- Costs

Groups also suggested that programs should not be prioritized based on revenue potential.

How can City performing arts programs serve families who cannot commit to weekly participation or multiple days a week?

Two adult groups responded. New ideas included:

- One-day workshops
- Drop-in role-playing opportunities, like murder mystery parties
- Audience involvement shows, like improv
- More evening events/classes
- Carpool/shuttle transportation
- Sing-alongs
- All ages line dance instruction
- Concert-style performances where performers use scripts during show (requires fewer rehearsals)

What are the most effective ways to inform Milpitas residents about upcoming performances?

One adult group and one youth group responded. New ideas included:

- Video ads on social media
- Door-to-door advertising

How can we make sure performing arts programs are welcoming and supportive to youth facing challenging socio-economic circumstances?

Two adult groups and one youth group answered. Some of the new ideas included:

- Donor-funded, competitive scholarship program -- different from the Milpitas Assistance Program in that economic need requirements would be less restrictive than MAP, but grades and essay would be taken into account;
- Sibling discounts;

- List MAP and other fee reduction opportunities in all marketing materials;
- Provide transportation assistance

If you could design an award-winning “Unique to Milpitas” Performing Arts program, what would it be?

Two adult groups answered. One proposed that CenterStage already fulfills this function and no changes are needed. The second suggested a more multigenerational theatre company that would work in collaboration with other performers and perform at various venues around town.

What ideas do you have for intergenerational performance opportunities?

One adult group answered. The suggestion was to involve the band in providing live music for the musicals and cast both adults and youth in the shows.

13. **Receive Presentation of Unmanned Aircraft System (UAS) Technology and Provide the Milpitas Police Department Staff with Feedback on Policy and the Program (Staff Contact: Jared Hernandez, 408-586-2406)**

Recommendation: Receive the presentation of Unmanned Aircraft System (UAS) Technology and provide the Milpitas Police Department staff feedback on program policy and program.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Presentation of Unmanned Aircraft System (UAS) Technology and Provide the Milpitas Police Department Staff with Feedback on Policy and the Program (Staff Contact: Jared Hernandez, 408-586-2406)
Category:	Public Safety
Meeting Date:	10/1/2019
Staff Contact:	Captain Jared Hernandez, 408-586-2406
Recommendation:	Receive the presentation of Unmanned Aircraft System (UAS) Technology and provide the Milpitas Police Department staff feedback on program policy and program.

Background:

Public safety agencies throughout the United States have been using UAS (Unmanned Aircraft Systems) to provide critical real-time information and situational awareness during volatile and life-threatening incidents. For example, law enforcement agencies have successfully used UAS to detect explosives, assess hazardous materials incidents, respond to major disasters, assist with hostage rescues, respond to armed and barricaded suspect calls, and find survivors during search and rescue operations.

In June of 2019, Milpitas Police Department staff began research about how the deployment of this tool might enhance our Department's ability to protect and serve the public. Staff determined the benefits of this tool are consistent with our Department's strategic operational goals and guiding principle of reverence for human life.

Analysis:

The Federal Aviation Administration (FAA) maintains authority over the use of UAS by government agencies and private citizens. Certification from the FAA is required in order for government agencies to operate a UAS program. There are regulations governing the use of UAS. The FAA grants various waivers and authorizations to accommodate governmental use of a UAS. The primary type of waiver relevant to law enforcement is the Part 107 and the primary type of authorization is a Certificate of Authorization (COA). The Part 107 waivers allow for the operation of a UAS in various circumstances where flight would otherwise be restricted. A COA is similar to a waiver but authorized flight in various circumstances and airspace.

Integrating UAS technology into the Department's resources will have an immediate positive impact on the safety of our officers and the safety of our community members. UAS can be utilized to perform several mission specific tasks such as search and rescue (e.g., missing person), critical incidents (e.g., barricaded, hostage, and active shooter), bomb investigations, traffic accident reconstruction, crime scene reconstruction, and "hot pursuits" of suspects.

UAS technology would also be useful to other City departments, such as the Milpitas Fire Department and Public Works Department. The Milpitas Fire Department would benefit from such a tool during fires, search and rescue missions and natural disasters. Public Works would benefit from the use of UAS when monitoring flood prone areas during heavy rains, inspections of pipes, roadways and structures.

UAS technology provides a cost effective alternative to traditional aircraft. In addition, this tool can be deployed more rapidly thus improving response time and increasing public safety. Currently, the Milpitas Police Department relies on other agencies for air support. The response times can be lengthy and aircraft or helicopters are often unavailable.

To ensure the privacy of citizens is maintained and respected, policies and procedures, in accordance with the FAA regulations, laws pertaining to government searches, and best practices, will be implemented. The draft policy, which is included in the attachments, will outline approved and prohibited UAS deployment.

Police Department staff has developed a draft UAS policy and will seek feedback from the Public Safety and Emergency Preparedness Commission and other community members. Community outreach will include community meetings and a resident survey through the Nextdoor social media platform.

Upon completion of the community outreach, the Police Department's staff will finalize the policy. Staff intends to return to the City Council with the policy, by the end of the calendar year, for additional feedback.

Policy Alternative:

Alternative: Discontinue UAS policy work and do not pursue the implementation of an Unmanned Aircraft System (UAS) program.

Pros: None.

Cons: The Milpitas Police Department would continue to rely on other cities for similar resources. These resources are not readily available and response times are delayed when assets are coming from other cities. Further, UAS type capabilities would not be available to the Fire and Public Works Departments.

Reason not recommended: The UAS program has the potential to expand the City of Milpitas' services, especially in matters involving public safety and the safety of our police officers.

Fiscal Impact:

A UAS program is estimated to cost \$55,000 to \$65,000. This estimate includes FAA certifications, pilot training, equipment, and accessories.

Funding is currently available in the Capital Improvement Plan for Public Safety and could be allocated to a UAS program. Annual maintenance and/or repair costs are expected to be minimal and can be absorbed by the department's operating budget.

California Environmental Quality Act:

N/A

Recommendation:

Receive the presentation on Unmanned Aircraft Systems and provide the Police Department staff with feedback on the Unmanned Aircraft System policy and program.

Attachments:

- a) Lieutenant Morales' memorandum on Program Review & Recommendation
- b) Draft UAS Policy

MEMORANDUM

Milpitas Police Department



DATE: August 21, 2019
TO: Captain Jared Hernandez #229
FROM: Lieutenant Frank Morales #248
SUBJECT: Unmanned Aircraft Systems (UAS)

Background

Municipalities throughout the United States have been using UAS (Unmanned Aircraft Systems) technology to improve operational efficiency and employee safety. Law enforcement has utilized UAS to provide critical real-time information and situational awareness during volatile and life-threatening incidents. For example, law enforcement agencies have successfully used UAS to detect explosives, respond to major disasters, assist with hostage rescues, respond to armed and barricaded suspect calls, collect data for traffic collisions and find survivors during search and rescue operations. Fire departments have used UAS to help commanders quickly analyze the scene of fires or emergency events. The UAS camera and thermal imaging technology can transmit footage and crucial data straight to a command center. Public Works Departments have used drones to inspect utilities, inspect structures, and oversee road projects.

Analysis

In recent years, the use of UAS within the public safety community (law enforcement and fire departments) has exploded. A study dated in May 28, 2018 titled, "Center for the Study of the Drone" at Bard College revealed that 58 public safety agencies in California had acquired UAS. Based on current trends in the field of UAS, it is reasonable to infer that the number of public safety agencies that have implemented a UAS program has only increased since the release of the study.

UAS have impressive capabilities including the use of spotlights, loud speakers, powerful zoom cameras and thermal cameras all while being able to fly or hover for approximately 25 to 30 minutes. This tool has proven to be highly effective force multiplier for public safety agencies. The ability to survey a scene from the air allows for the effective and efficient deployment of resources thus creating a significant benefit to our community. UAS have been an invaluable tool to public safety agencies but given their wide range of capabilities, UAS can serve an important role when used by Public Works and Building Departments. A UAS would be able to deploy during emergencies such as flooding and natural disasters to assist Public Works and the Building Department.

The FAA maintains authority over the use of UAS by government agencies and private citizens. Certification from the FAA is required in order for government agencies to operate a UAS program. There are two types of certifications, Part 107 and Certificate of Waiver or Authorization (COA). The Part 107 certificate is remote pilot license that allows for the operation of a UAS under significant restrictions such as not being able to fly at night, fly over people or fly in restricted airspace without a waiver from the FAA. The FAA maintains authority over the use of UAS by government agencies and private citizens. Certification from the FAA is required in order for government agencies to operate a UAS program

There are two types of certifications, Part 107 and Certificate of Waiver or Authorization (COA). The Part 107 certificate is remote pilot license that allows for the operation of a UAS under significant restrictions such as not being able to fly at night, fly over people or fly in restricted airspace without a waiver from the FAA. A COA provides a public safety agency with the authority to operate UAS with fewer restrictions as seen with the Part 107 certificate.

Program Management

The Milpitas Police Department will implement a rigorous policy that will govern the UAS program. The policy will outline approved uses, documentation of flights, identify those who will authorize deployment, specify training requirements, and designate a lieutenant who will oversee the program to ensure that pilots adhere to all policies and procedures.

The Milpitas Police Department is fully aware of the privacy concerns some may have regarding the use of UAS within our City. Mitigating concerns is a top priority for this organization. We hope to alleviate these concerns by hosting several educational presentations for our community members. Our educational presentations will explain the program, the capabilities and limitations of the UAS, under what circumstances UAS will be deployed, data retention, and policies and procedures. Finally, a significant portion of the presentation will allow community members to ask questions, address privacy concerns and offer feedback on the suggested policy. The goal is to demonstrate our ability to be transparent with the use of this technology, maintain public trust, and ensure the manner in which the Police Department is servicing the community is aligned with community values

The Milpitas Police Department UAS policy will reflect our respect for the privacy of our community members and their 4th Amendment rights. UAS will not be flown randomly over residential neighborhoods. Live or recorded viewing of flights will be limited to staff members who have a right and need to review captured video.

Deployments

UAS technology presents different deployment opportunities for each department within our City. The Milpitas Police Department would deploy this tool during incidents involving, but not limited to, a threat to human life, the protection of property, enhancing officer safety, and the apprehension of suspects. The Milpitas Fire Department can benefit from this tool during fires, search and rescues, and natural disasters. Public Works could use this tool during floods to observe water levels at creeks and to inspect damaged roadways or pipelines. The Building Department would be able to deploy UAS to inspect buildings for potential damage or defect.

Cost Analysis

Implementing a UAS program involves the purchase of equipment, maintenance costs, training costs and the costs associated with preparation and submission of the proper FAA documentation. Startup cost to implement a UAS program can range between \$45,000 to \$65,000.

Recommendation

The integration of a UAS program for the Police Department would be a great technological advancement that would help improve safety to officers and citizens, support tactical actions, perform search-and-rescue missions, enhance investigation efficiency, augment personnel through smart technology, and

ultimately save taxpayers money. This would be a tool not only available to the Milpitas Police Department but to the Milpitas Fire Department, Public Works Department and the Building Department under circumstances outlined in our policy. The benefits of this tool are consistent with our Department's strategic operational goals and guiding principle of reverence for human life.

I concur
#229
8/22/19

*Unmanned Aerial System (UAS) Operations*Policy
455Milpitas Police Department
Policy Manual

Unmanned Aerial System (UAS) Operations

455.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and protocol for the deployment and use of the Unmanned Aerial System (UAS) including the retention and/or destruction of media obtained using the UAS in accordance with applicable Federal law, State law, and City of Milpitas regulations.

455.2 DEFINITIONS

Definitions related to this policy include:

- a. **Unmanned Aerial System (UAS):** Consists of the small, unmanned aircraft weighing less than 55 lbs., the command system, a secure control link and other safety and support systems for operation of the UAS
- b. **Certificate of Authorization (COA):** Given by the Federal Aviation Administration (FAA) granting permission to fly the UAS within the specific boundaries and perimeters.
- c. **FAA Part 107 Certification:** Remote Pilot Certification given by the FAA to operate the controls of a small UAS under Part 107.
- d. **Operator:** A sworn or non-sworn member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to control a UAS during flight.
- e. **Observer:** A member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to maintain visual observation of the UAS while in flight.

455.3 POLICY

The UAS may be utilized to enhance the department's mission of protecting lives and property. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations, and industry best practices.

Department UAV's may be flown under two FAA regulatory authorizations:

- a. Per the condition of a Certificate of Authorization (COA); or
- b. FAA Part 107 Remote Pilot Certification

455.4 PRIVACY

The use of the UAS may generate privacy concerns. Personnel will balance the use of the UAS with the protection of an individual's civil rights and their reasonable expectation of privacy as a key component of any decision made to deploy the UAS. Operators will take reasonable precautions to avoid inadvertently recording or transmitting images that infringe upon an individual's right to privacy.

Unmanned Aerial System (UAS) Operations

455.5 USE OF UAS

Only authorized operators who have completed the required training shall be permitted to operate the UAS. A supervisor may authorize the deployment of the UAS to preserve life, maximize public safety and/or officer safety, or collect investigative data. Uses may include but are not limited to:

- a. High risk events such as; barricaded suspects, hostage situations, active shooters, apprehension of potentially armed and/or dangerous fleeing suspects, and high-risk search warrants,
- b. Hot pursuit;
- c. Mass casualty events;
- d. Pursuant to a search warrant;
- e. Rescue events;
- f. Disaster response and recovery;
- g. Suspected explosive devices;
- h. Fire suppression or investigation;
- i. Hazardous material releases;
- j. Post-incident crime scene and accident investigation, preservation and documentation;
- k. Lost or missing persons;
- l. Special Events;
- m. When there is probable cause to believe that the UAS will record images of a place, thing, condition, or event, and that those images tend to show a felony has been committed, or tends to show that a particular person has committed a felony;
- n. Anytime a UAS would enhance public safety, improve operational safety, incident stabilization or incident mitigation as determined by the authorizing person;
- o. Anti-UAV operations when a person is operating a UAV in a manner which impedes emergency personnel who, in the course of their duties, are coping with an emergency (refer to Penal Code § 402(a) 1);
- p. Training missions,
- q. In support of the Milpitas Fire Department when the underlying mission meets the uses outlined in this policy;
- r. Mutual Aid support when the underlying mission meets the uses outlined in this policy; and
- s. In support of any City of Milpitas department when the underlying mission meets the uses outlined in this policy

455.6 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- a. To conduct random surveillance activities.
- b. To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- c. Conduct any business other than official Department business.
- d. Shall not be weaponized

Unmanned Aerial System (UAS) Operations

455.7 EVIDENCE COLLECTION AND RETENTION

To avoid missing critical evidence during UAS operations, all UAS video will be recorded during flight. The pilot will manually activate the record feature on the UAS before take-off and will stop recording after landing.

Following a UAS operation by the Milpitas Police Department or the Milpitas Fire Department, a Milpitas Police Department case agent or officer shall meet with the UAS operator to collect the UAS digital media storage device (DMSD) containing the video(s). All recorded video will be uploaded into the approved digital evidence management system (DEMS). After uploading the video(s) into the DEMS, the DMSD will be returned to service after reformatting the DMSD. If uploading video(s) with evidentiary value to the DEMS is unavailable, the DMSD will be booked into MPD property as evidence. The collection and uploading of video(s) will be documented in an police report.

All data collected by the UAS shall be retained as follows:

- 1) Categories and retention schedule:
 - a. Non-criminal evidence - 1 year
 - b. Traffic stop - 1 year
 - c. Criminal - Misdemeanor - 3 years
 - d. Criminal - Felony - 6 years
 - e. Test/Training - 10 days
- 2) Unauthorized use, duplication, and/or distribution of UAS videos are prohibited. Personnel shall not make copies of any UAS videos for their personal use and are prohibited from using a recording device such as a personal camera or any secondary video capture device to capture duplicate UAS videos. All recorded media, images and audio are the property of the Milpitas Police Department and shall not be copied, released or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police or his / her designee.
- 3) Supervisors may review recorded UAS video files when there is a legitimate supervisory or business purpose. In addition, Milpitas Police personnel shall only review recorded UAS video files on a need/right to know basis. Authorized review may include the following circumstances:
 - a. For the purpose of completing a criminal investigation and/or preparing official reports.
 - b. Preparing for courtroom testimony or a courtroom presentation.
 - c. Evaluation of a critical incident: with supervisor approval.

Unmanned Aerial System (UAS) Operations

- d. For training purposes.
 - e. California Public Records Act requests.
- 4) Departmental request for a UAS video, including requests from the District Attorney's Office or City Attorney's Office, shall be forwarded as a written request to the Property and Evidence Unit. Requests should contain sufficient information to identify the specific UAS video being requested.
- 5) Non-Departmental requests for a UAS video shall be accepted and processed in accordance with Federal, State, and local laws, and Department policy (discovery, media inquiries, subpoenas, Public Records Act requests, etc.).
 - a. When practical, Department personnel will be advised prior to any release of UAS video under the California Public Records Act (CPRA).
- 6) Request for Deletion or Accidental Recording
 - a. In the event of an accidental or unintentional recording with the UAS camera system, a request that the UAS video be may be requested in writing through the chain of command to the Chief of Police. The request must include sufficient information to locate the UAS video and the reason for the request. The Chief of Police, or his / her designee, is the authority that may approve video deletion. The authorization to delete the video must be documented in an administrative memorandum and shall include sufficient information explaining the rational for the authorization.
 - b. Videos recorded during authorized department training may be retained for training purposes or deleted with the authorization of the Chief of Police or his/her designee. Retained files will be stored in approved training files or the digital management system.
- 7) Copying Procedures
 - a. A copy of the UAS video can be requested in accordance with the provisions of this policy.
 - b. Police Evidence Technicians will be responsible for duplication of video footage recorded by the UAS camera system pursuant to a discover request, CPRA request, or other authorized request approved by the Chief of Police or his/her designee.
- 8) UAS video may be retained and utilized for training purposes with the approval of the Field Services Division Captain.
 - a. An officer or supervisor recommending the use of a UAS video for training purposes shall submit the recommendation through the Chain of Command to the Field Services Division Captain.

Unmanned Aerial System (UAS) Operations

- b. The Field Services Division Captain will notify the Police Evidence Technician of the approval to produce a training copy of the video. Any video approved to be retained for training will be stored in a UAS Training file. Videos stored in this file shall not be duplicated, downloaded, moved or copied from the file.
- 9) An officer or employee involved in the recorded incident may object to the use of the UAS video for training purposes. Their objection should be submitted in writing through the Chain of Command to the Field Services Division Captain to determine if the employee's objection outweighs the training value of the recording. The Field Services Division Captain may consider a series of factors such as; the identities of the person(s) involved, the sensitive nature of the incident, the benefit of using the video versus other means of training (scenario based training, training bulletins, etc.), or any potential negative impacts the video may have on involved parties or those that view it.

455.8 ROLES AND RESPONSIBILITIES

The roles and responsibilities for UAS Program members are as follows:

- A. **Program Coordinator**- A Milpitas Police Lieutenant who manages the UAS Program and ensures the program operates in accordance with all Federal, State and local laws, and within department policy and guidelines. In addition, the Program Coordinator

Will ensure the UAS Unit completes the following:

1. Maintain all training flight and maintenance records for each operator and observer, as well as individual airframes.
 2. Ensure operators and observers stay current with their training and certifications.
 3. Maintain contact with the FAA and familiarity with the pertinent FAA regulations.
 4. Evaluate airframes based on mission needs.
 5. Remain up to date with current UAS case law, best practices, and industry standards.
 6. Develop and maintain the UAS Operational Guidelines Manual
- B. **Operator**—the operator's role is to safely operate the UAS in accordance with all applicable law and policy.
 1. The operator may reject a flight based on personnel safety or violation of FAA regulations.
 2. The operator shall be responsive to requests and input from the observer in order to accomplish the safe and effective deployment of the UAS.
 3. Operators are responsible for mission documentation.
- C. **Observer**—the Observer's role is to assist in the safe and effective operation of the UAS.

Unmanned Aerial System (UAS) Operations

The observer shall:

1. Assist the operator in avoiding obstacles.
2. Operate any attachments to the UAS.
3. Remain alert for safety issues surrounding the operator and observer.
4. Handle radio communications.

14. Discuss clarifications related to the scope of the Rules Subcommittee and provide direction to staff on next steps

Steve McHarris, 408-586-3059

Chris Diaz, 408-586-3041

Recommendation:

Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Discuss clarifications related to the scope of the Rules Subcommittee and provide direction to staff on next steps
Category:	Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Steve McHarris, 408-586-3059 Chris Diaz, 408-586-3041
Recommendation:	Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda

Background:

At the April 16, 2019 City Council meeting, Council approved the formation of a new Rules Subcommittee, comprised of Mayor Tran and Vice-mayor Dominguez. The Rules Committee met on May 10 and May 30 and an interim check in to solicit further Council direction was done at the June 11 City Council meeting. Subsequently, on June 18, 2019, the Council reviewed and approved the draft scope and guidelines of the Subcommittee. Council asked that the Rules Subcommittee be considered a pilot program for nine months, at which time it would return to Council for further direction and if directed by Council, would be incorporated into the Milpitas Municipal Code. Thus, it should be noted that at this time, the scope and guidelines of the Subcommittee is a policy document and not a legal one.

The Rules Subcommittee has been meeting since August 9 and it has been noted that there are a few items that need further clarification to enable the Rules Subcommittee to provide direction on the Council agenda, as originally intended. In addition, at the September 20, 2019 Rules Subcommittee, there was a discussion about the interpretation of the process for adding an item to the Council agenda. Thus, the City Attorney and City Manager indicated that the scope of the Subcommittee would be brought before the full City Council for discussion and to provide direction to staff on potential changes to the scope of the Subcommittee.

Council Agenda Item Request

The current process for requests to add agenda items is *any two Councilmembers working together are able to request items be added to a Council Agenda. Any request shall be submitted through an Agenda Item Request Form and shall include the following:*

1. *Names of the two Councilmembers submitting request*
2. *Name of Item*
3. *Date request is submitted*
4. *Item description and why it is being requested for Council consideration*
5. *Whether item is an urgent need and why*
6. *Alignment with Council Priority Area(s),*
7. *Timeframe within which the item would need to be heard*

If two Councilmembers request an item be added to the Council agenda, the item will be added to the next draft Council agenda and come to the Rules Subcommittee for informational purposes. The request needs to be submitted to the City Manager, City Clerk, and City Attorney by 5:00 pm, five days prior to the Rules Subcommittee meeting.

Submittal of the Agenda Item Request Form shall involve minimal to no staff work, any substantive staff work on the requested item shall commence with the approval of the full Council. Individual Councilmembers can continue to request staff work on any item requiring less than 4 hours of work, however any item requiring more than 4 hours of work will need to go through the request process and will require collaboration by two members of the Council.

Analysis:

At this time, staff is seeking Council feedback and direction on updated language to the scope of the Rules Subcommittee to further clarify the Subcommittee's role in adding items to the agenda. It should be noted that when new substantial items are directed to staff, the Council will also need to consider which current work items need to be re-prioritized in order to balance workload.

1. If requests are received by the established timeline, must they be added to the next regularly scheduled City Council meeting or may the Subcommittee place on a different meeting date if the agenda already has several substantive items scheduled?
2. If the Rules Subcommittee is unable to meet, should any Councilmember Agenda Item Requests still be placed on the next regularly scheduled Council meeting or should staff bring these requests forward to the next Rules Subcommittee meeting?
3. Should the number of agenda item requests be capped at a certain number on any one Council agenda?
4. Is a more detailed explanation needed of how the request is directly tied to one of the established Council Priority Areas?
5. Does the Rules Subcommittee have discretion on determining if an item is urgent or does the Subcommittee need to place it on the next regularly scheduled City Council meeting?
6. May a majority of the Council add an item to a future agenda during a Council meeting or must an Agenda Item Request Form be submitted first?

Per the approved Subcommittee document, the Rules Subcommittee shall meet every other week on Fridays, 10 days in advance of regular City Council meetings. If the Subcommittee is unable to meet, the draft City Council agenda will be considered approved by the Subcommittee and shall be posted 6 days in advance of the City Council meeting, in accordance with the City's Open Government Ordinance.

The Rules Subcommittee does not review agendas for Special City Council meetings held in-lieu of regular meetings. Would the Council like to change this for Special City Council meetings that are scheduled at least a month in advance?

Staff is suggesting that the scope document be amended to clarify that the Agenda Item Request Form will be submitted without any substantive staff analysis, including fiscal review, legal review and policy review. The City Attorney will perform a preliminary review to ensure that the item is appropriate for Council consideration and does not conflict with any existing federal and state laws and regulations.

Also, staff would like to clarify the two-step process: 1) at the meeting where the item is first considered, the requesters will be able to explain their request to the full Council; and 2) if a simple majority of the City Council supports further study of the item, then a full staff analysis will be prepared and brought back to Council at a future meeting, as directed by the City Council, in coordination with the Rules Subcommittee and City Manager.

Recommendation:

Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda.

Attachments:

Rules Subcommittee Scope Document

Rules Subcommittee

Purpose

The Rules Subcommittee shall represent the Council in guiding and setting the agendas for regular City Council meetings. The Rules Subcommittee shall also make recommendations to the City Council to support effective City Council meeting management.

Subcommittee Members

The Rules Subcommittee shall be comprised of two members of the Council. As the presiding officer of the City Council, the Mayor shall be one of the members of the Rules Subcommittee and will be on the Subcommittee for a two year term. The other member of the Subcommittee shall be appointed by the Mayor with the approval of the City Council on an annual basis. The other Subcommittee member shall not serve two consecutive years but may be re-appointed to the Subcommittee after a one year break.

Meeting Frequency

The Rules Subcommittee shall meet every other week on Fridays, 10 days in advance of regular City Council meetings. If the Subcommittee is unable to meet, the draft City Council agenda will be considered approved by the Subcommittee and shall be posted 6 days in advance of the City Council meeting, in accordance with the City's Open Government Ordinance.

Meeting Agenda

The Subcommittee Agenda will be as follows:

- I. Call to Order/Roll Call
- II. Pledge of Allegiance
- III. Public Forum
- IV. Approval of Subcommittee agenda
- V. Council Agenda Setting
 - a. Review final agenda for the next regular City Council meeting including consent calendar, and Agenda Item requests from Councilmembers, and provide direction on order of discussion items.
 - b. Review and provide input and direction on the draft agenda of the subsequent regular City Council meeting.
 - c. Review major discussion items listed in a rolling six month City Council agenda topics list, including any items added to this list from prior Subcommittee meetings, and provide direction on prioritization of items.
- VI. Other Discussion Items to support effective City Council meetings such as criteria for consent calendar and order of consent calendar items if pulled, time check during meetings, and delegation of authority to City Manager.
- VII. Adjournment

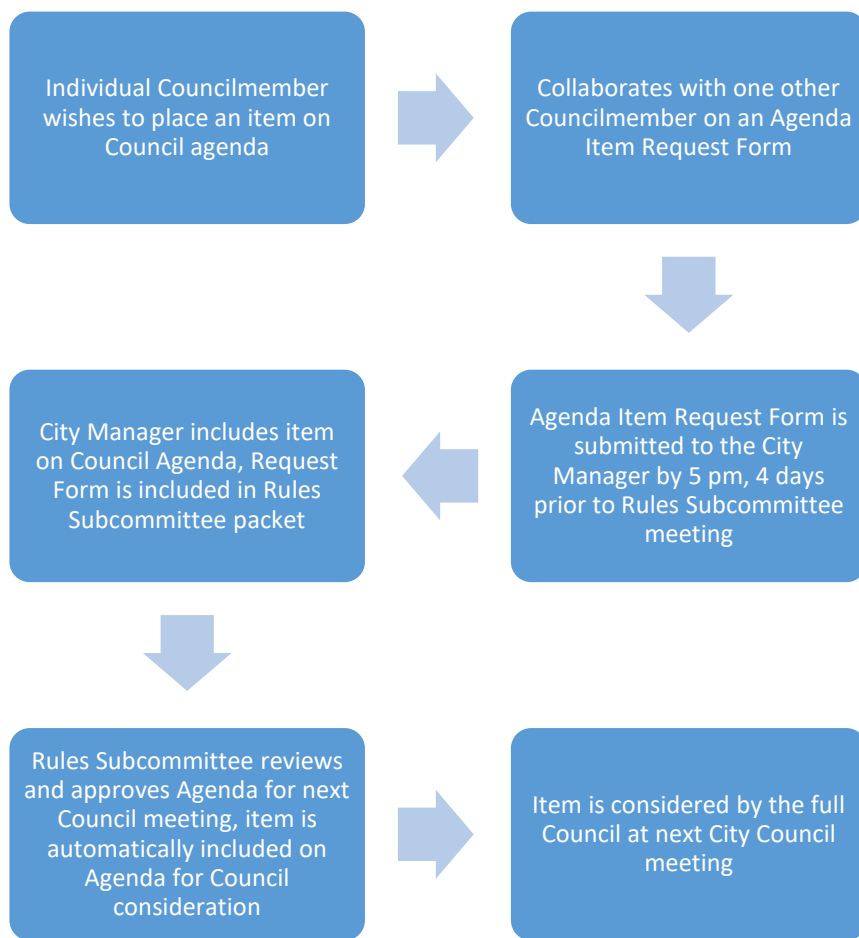
Requests to Add Agenda Items

Any two Councilmembers working together are able to request items be added to a Council Agenda. Any request shall be submitted through an Agenda Item Request Form and shall include the following:

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2. Name of Item
3. Date request is submitted
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7. Timeframe within which the item would need to be heard

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Meeting Management – Consent Calendar

The Rules Subcommittee shall review items on Consent Calendar based on the criteria established for items to be on the Consent Calendar, the criteria includes the following:

1. Contracts for projects in approved Five Year CIP
2. Routine contracts for ongoing City operations
3. Reports to be submitted to other agencies
4. Grant requests and awards
5. Miscellaneous items that do not involve major policy or program decisions

The Rules Subcommittee recommends that any items pulled off consent calendar be heard last or at a subsequent Council meeting, depending upon the number of speakers and the anticipated length of the items that have been scheduled for discussion during that particular meeting.

A no vote, abstention, or formal recusal due to conflict of interest can be recorded without pulling an item off the consent calendar.



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

10/01/2019

Agenda Item No. 14



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION





CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Discuss clarifications related to the scope of the Rules Subcommittee and provide direction to staff on next steps
Category:	Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Steve McHarris, 408-586-3059 Chris Diaz, 408-586-3041
Recommendation:	Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda

Background:

At the April 16, 2019 City Council meeting, Council approved the formation of a new Rules Subcommittee, comprised of Mayor Tran and Vice-mayor Dominguez. The Rules Committee met on May 10 and May 30 and an interim check in to solicit further Council direction was done at the June 11 City Council meeting. Subsequently, on June 18, 2019, the Council reviewed and approved the draft scope and guidelines of the Subcommittee. Council asked that the Rules Subcommittee be considered a pilot program for nine months, at which time it would return to Council for further direction and if directed by Council, would be incorporated into the Milpitas Municipal Code. Thus, it should be noted that at this time, the scope and guidelines of the Subcommittee is a policy document and not a legal one.

The Rules Subcommittee has been meeting since August 9 and it has been noted that there are a few items that need further clarification to enable the Rules Subcommittee to provide direction on the Council agenda, as originally intended. In addition, at the September 20, 2019 Rules Subcommittee, there was a discussion about the interpretation of the process for adding an item to the Council agenda. Thus, the City Attorney and City Manager indicated that the scope of the Subcommittee would be brought before the full City Council for discussion and to provide direction to staff on potential changes to the scope of the Subcommittee.

Council Agenda Item Request

The current process for requests to add agenda items is *any two Councilmembers working together are able to request items be added to a Council Agenda. Any request shall be submitted through an Agenda Item Request Form and shall include the following:*

1. *Names of the two Councilmembers submitting request*
2. *Name of Item*
3. *Date request is submitted*
4. *Item description and why it is being requested for Council consideration*
5. *Whether item is an urgent need and why*
6. *Alignment with Council Priority Area(s),*
7. *Timeframe within which the item would need to be heard*

If two Councilmembers request an item be added to the Council agenda, the item will be added to the next draft Council agenda and come to the Rules Subcommittee for informational purposes. The request needs to be submitted to the City Manager, City Clerk, and City Attorney by 5:00 pm, five days prior to the Rules Subcommittee meeting.

Submittal of the Agenda Item Request Form shall involve minimal to no staff work, any substantive staff work on the requested item shall commence with the approval of the full Council. Individual Councilmembers can continue to request staff work on any item requiring less than 4 hours of work, however any item requiring more than 4 hours of work will need to go through the request process and will require collaboration by two members of the Council.

Analysis:

At this time, staff is seeking Council feedback and direction on updated language to the scope of the Rules Subcommittee to further clarify the Subcommittee's role in adding items to the agenda. It should be noted that when new substantial items are directed to staff, the Council will also need to consider which current work items need to be re-prioritized in order to balance workload.

1. If requests are received by the established timeline, must they be added to the next regularly scheduled City Council meeting or may the Subcommittee place on a different meeting date if the agenda already has several substantive items scheduled?
2. If the Rules Subcommittee is unable to meet, should any Councilmember Agenda Item Requests still be placed on the next regularly scheduled Council meeting or should staff bring these requests forward to the next Rules Subcommittee meeting?
3. Should the number of agenda item requests be capped at a certain number on any one Council agenda?
4. Is a more detailed explanation needed of how the request is directly tied to one of the established Council Priority Areas?
5. Does the Rules Subcommittee have discretion on determining if an item is urgent or does the Subcommittee need to place it on the next regularly scheduled City Council meeting?
6. May a majority of the Council add an item to a future agenda during a Council meeting or must an Agenda Item Request Form be submitted first?

Per the approved Subcommittee document, the Rules Subcommittee shall meet every other week on Fridays, 10 days in advance of regular City Council meetings. If the Subcommittee is unable to meet, the draft City Council agenda will be considered approved by the Subcommittee and shall be posted 6 days in advance of the City Council meeting, in accordance with the City's Open Government Ordinance.

The Rules Subcommittee does not review agendas for Special City Council meetings held in-lieu of regular meetings. Would the Council like to change this for Special City Council meetings that are scheduled at least a month in advance?

Staff is suggesting that the scope document be amended to clarify that the Agenda Item Request Form will be submitted without any substantive staff analysis, including fiscal review, legal review and policy review. The City Attorney will perform a preliminary review to ensure that the item is appropriate for Council consideration and does not conflict with any existing federal and state laws and regulations.

Also, staff would like to clarify the two-step process: 1) at the meeting where the item is first considered, the requesters will be able to explain their request to the full Council; and 2) if a simple majority of the City Council supports further study of the item, then a full staff analysis will be prepared and brought back to Council at a future meeting, as directed by the City Council, in coordination with the Rules Subcommittee and City Manager.

Recommendation:

Discuss the Rules Subcommittee Scope Document and provide direction to staff to incorporate clarifying language related to the Subcommittee's role in adding items to the agenda.

Attachments:

Rules Subcommittee Scope Document

15. **Approve Updated City of Milpitas Facility Use Manual (Staff Contact: Renee Lorentzen, 408-586-3409 and Christopher Diaz, 408-586-3040)**

Recommendation: Approve the Updated City of Milpitas Facility Use Manual.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Updated City of Milpitas Facility Use Manual
Category:	Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Renee Lorentzen, 408-586-3409, Christopher Diaz, 408-586-3040
<u>Recommendation:</u>	Approve the Updated City of Milpitas Facility Use Manual

Background:

The City of Milpitas' Facility Use Manual is the guiding document for the general use and rules of the City's Indoor and Outdoor facilities, fields and parks (Facility). At the Special City Council Budget Study Session on March 12, 2019, Council directed staff to bring back modifications to the Facility Use Manual that would enable the use of City facilities by City Councilmembers for non-campaign related community programs and events. These modifications are located on pages 4-8 of the Manual. A copy of the full manual can be here:

<http://www.ci.milpitas.ca.gov/wp-content/uploads/2016/08/Facility-Manual-Updated-062016-FINAL.pdf>

Analysis:

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain why the event is not campaign related, and 4) document the intended public purpose. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law or if the use is inconsistent with the Councilmember's written request.

It is important to note that the focus of this update was on use of City facilities by City Councilmembers and is not intended to be a comprehensive update of the Facility Use Manual. Per the approved five-year Capital Improvement Plan, staff will be initiating a Recreation and Parks Master Plan update in fall 2019. Based on the recommendations of the master plan, staff may bring forward additional changes to the Facility Use Manual for Council consideration.

Policy Alternatives:

Alternative 1: Do not approve the updated City of Milpitas Facility Use Manual

Pros: Staff resources spent on managing individual City Councilmember program or event requests would be spent on previously approved programs and projects

Cons: City Councilmembers will not be able to request the use of City facilities for individual use.

Reason not recommended: With increasing interest in City Councilmembers being able to host programs and events in City Facilities, approved language documenting allowable use and process for approval is necessary.

Fiscal Impact:

At this time, the frequency of use and intended City Facilities are unknown, making an assumption of Fiscal Impact difficult. If the Updated City of Milpitas Facility Use Manual is approved, staff would track the rental revenue value of the facilities used for City Councilmember hosted programs and events at the resident rate. This Fiscal Impact data will be reported to the City Council mid-year.

Recommendation:

Approve the Updated City of Milpitas Facility Use Manual.

Attachments:

- 1) Draft City of Milpitas Facility Use Manual
- 2) Draft City Councilmember Program and/or Event Host Request Form

CITY OF MILPITAS FACILITY MANUAL INDOOR AND OUTDOOR FACILITIES



**PLEASE NOTE FEES AND INSURANCE REQUIREMENTS
ARE SUBJECT TO CHANGE**

Approved by City Council ~~6/21/16~~8/20/19

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GENERAL RENTAL INFORMATION

1. Rental facilities may be viewed during regular business hours, by appointment only, provided no other functions are scheduled. To make an appointment, please call the desired rental facility.

2. No phone, mail or faxed reservations are accepted.

Permits for indoor and outdoor facilities must be obtained in person at the locations listed below:

Permits for use of the Community Center, Senior Center, Sports Center, Sal Cracolice Center, Higuera Adobe, City Parks, and outdoor facilities:

Community Center: 457 E. Calaveras Blvd., Monday - Thursday, 8:00 am to 6:00 pm, Friday, 8:00 am to 5:00 pm, 408-586-3210.

Barbara Lee Senior Center: 40 N. Milpitas Blvd., Monday - Friday, 8:30 am to 4:30 pm, 408-586-3400.

Sports Center: 1325 E. Calaveras Blvd., Monday - Thursday, 6:00 am to 9:00 pm, Fridays, 6:00 am to 5:00 pm, Saturday, 8:00 am to 1:00 pm, 408-586-3225.

Permits for use of the Police Department Community Room can be obtained at:

Milpitas Police Department: 1275 N. Milpitas Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-2400.

Permits for use of the City Hall Rotunda can be obtained at:

City Clerk's Office: 455 E. Calaveras Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-3000.

Special Event permits can be obtained at:

City of Milpitas Planning Department: 455 E. Calaveras Blvd., Monday - Friday, 8:00 am to 5:00 pm, 408-586-3279.

1. Facilities may be reserved for use anytime from 7:00 am to 12:00 am midnight with the exception of the Police Department Community Room, which is available for residents only from 8:00 am to 11:00 pm. Rental fees are charged from the time you or your caterers, florists, etc. enter the facility until you exit the building. When planning your rental times, be sure to include set-up time for decorating, caterers, florist, etc. and clean up time required after event.

RESERVATIONS TIMELINE

1. The City of Milpitas, must receive a Facility Use Application, a cleaning & damage deposit and an application fee before any function may be scheduled. **All fees must be paid in the form of a cashier's check, money order, cash or credit card. Cashier's check or money orders must be payable to: City of Milpitas. No personal checks will be accepted.** Final rental fees, set-up diagram, proof of insurance (if applicable) are due 30 days prior to the rental date and must be paid in person. Any rental requests made less than 30 days requires approval by the Recreation Services Manager or authorized representative. All fees are due at the time of the reservation
2. Generally, reservations can be made according to these timelines: Milpitas Residents – Up to 1 year in advance (two forms of proof of residency required, photo ID & current utility bill); Non-Residents – Up to 6 months in advance unless stated otherwise in this manual. Resident non-profits, please see the guidelines below.

RESIDENT NON-PROFIT ORGANIZATION TIMELINE

Organizations may reserve up to three dates on one application per quarter. Milpitas-based non-profits must submit, every January, the following:

1. A current roster with 51% or more Milpitas Residents and a California State letter verifying current non-profit status.
2. A letter listing two (2) individuals authorized to make reservations, changes or cancellations.
3. A mission statement of the organization's purpose.

For Non-Profit Meetings in
January-March
April-June
July-September
October-December

Non-Profit Application Accepted
December 1
March 1
June 1
September 1

For more information regarding rental policies, please refer to the Facility Use Rules & Regulations. Should you have any questions, please call the Milpitas Community Center at 408-586-3210.

I. **PRIORITIES**

Priorities are designed to determine fee and reservation status.

- 1.1 To provide for public activities in the best interest of the Community, City facilities will be reserved in accordance with the following group priorities:

Priority I. City administered programs, including any program hosted by a councilmember for a non-campaign related community event with a wide-reaching public purpose serving the Milpitas community at-large, as determined by the City Manager in consultation with the City Attorney. Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

Any councilmember request under Priority I shall be on a form established by the City Manager. In the form, the councilmember shall state why the event is not campaign related and provide a documented public purpose consistent with state law. The City Attorney shall review the form to ensure compliance with state law. —Approval of councilmember requests under Priority I shall be approved by the City Council

- | | |
|------------------|-----------------------|
| 1. No deposit | 3. No staff fee |
| 2. No rental fee | 4. No application fee |

Priority II. Programs or activities for Senior Citizens and approved co-sponsored groups which are principally composed of local residents (51% or more), public schools located in Milpitas, the Milpitas Chamber of Commerce and governmental agencies(excluding staff trainings, poll worker trainings, staff retirement parties, staff / volunteer recognition events).

1. No deposit
2. Rental fee according to Fee Schedule / Joint Use Agreement
3. Staff fee according to Fee Schedule / Joint Use Agreement
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority III. Non-profit groups that are organized for recreational, social, cultural, religious or civic purposes and whose membership is principally composed of local residents (51% or more) or who is based in Milpitas and renting no more than 3 rental dates per quarter.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority IV. Any other group, business, private school or individual resident of the City of Milpitas.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

Priority V. Any non-resident group, business or individual.

1. Facility deposit according to the Fee and Deposit Schedule
2. Rental fee according to Fee Schedule
3. Staff fee according to Fee Schedule
4. Application fee (non-refundable)
5. Any applicable insurance and processing fees that may apply

II. APPLICATIONS

~~1.A.~~ Permits for use of City facilities (indoor and outdoor) shall be issued by the City upon the approval of the City Manager or authorized representative and shall be consistent with City regulations governing such use. No blanket or on-going permits will be allowed. Applications for consecutive-day events will be considered only during minimal use periods.

~~2.B.~~ The use of those facilities shall not be inconsistent with other such use for City purposes or interfere with the regular conduct of City programs. City sponsored programs shall receive first priority over use by any other group or organization. The City reserves the right, if necessary, to preempt, or revoke permit (if previously issued) for the use if for any reason it becomes unavoidably necessary for the City to utilize said facility or facilities at the same time. If and when such action is necessary, the City will give applicants as much advance notice as possible. The City also reserves the right to revoke any approval provided to a Milpitas councilmember under Priority I if the use of the City facility violates state law or if the use is inconsistent with the councilmember's written request.

~~3.C.~~ Applications for use of indoor City facilities and parks will not be accepted more than one (1) year to the date prior to proposed use for Priorities II-IV.

~~4.D.~~ Priority V applications will not be accepted more than 6 months prior to the proposed use.

~~5.E.~~ Applications for the Milpitas Sports Center Large Gym will not be accepted more than 90 days prior to proposed use for Priorities II-V.

~~6.F.~~ For outdoor City facilities and sports fields, applications are accepted six (6) months to the date prior to the proposed use for Priorities II-IV and 90 days for Priority V.

~~7.G.~~ Applications will not be accepted with less than 30 days prior to the proposed date, unless authorized by the Recreation Services Manager or his/her authorized representative.

~~8.H.~~ In cases where the earliest date to reserve a facility falls on a weekend (Saturday or Sunday) or City holiday, reservations will be accepted on the preceding weekday. Should the preceding weekday be a City holiday, applications will be accepted on the prior workday.

~~9.I.~~ Priority III organizations may reserve up to three dates on one application per quarter and must submit an application according to the reservation schedule listed on Page 5. Groups may not use a facility without an application on file. Should additional maintenance or custodial services be required, or the group exceeds the reserved rental hours, the groups will be assessed additional fees or charges as necessary.

~~10.J.~~ Priorities II and III may reserve indoor facilities for one-time special event or party under the set Fee Schedule for Priority IV rentals / charges.

~~11.K.~~ Priority III groups may drop off Facility Use Application(s) with requested dates and times as outlined above during facility business hours.

~~12.L.~~ On the following business day, the designated City representative will review all Priority III applications with requested dates and times and distribute dates equally between any groups requesting the same dates. Should there not be an equal amount of dates available, the city representative will do a lottery pull for any extra date and

schedule accordingly. Rental applicants will be notified regarding the status of their application(s).

- ~~13.~~M. Once the facility reservations are confirmed, the groups will be required to remit payment for the applicable fees (i.e. application fee, deposit and rental fees according to the Fee Schedule) within 3 business days. Should payment not be received within 3 business days, the dates will be released. (Approved by City Council on October 16, 2007).
- ~~14.~~N. All applications for use must be signed by an adult (minimum of 18 years age) and said adult shall agree to be responsible for the facility use. Groups composed of minors 17 years of age and under must be supervised by one (1) adult for every 15 minors. All activities must have adult supervision to ensure adequate control. (Please refer to rule 6.4, regarding no alcohol at youth functions). The applicant or applicant designee must be present at all times during the rental. At the beginning of the rental, the applicant and facility staff shall meet to review the pre-facility inspection guidelines. Prior to leaving the facility, the applicant and facility staff shall confer and sign off on the facility inspection report.
- ~~15.~~O. Permits normally will not be issued for a period longer than one (1) day. Rental applicant may reserve a facility for consecutive days whenever the facility is in the periods of minimal demand. A separate deposit will be required for each rental day, and property / equipment cannot be left on the premises between rentals without approval from Recreation Services Manager or authorized representative.
- ~~16.~~P. Priority IV and V users may only reserve fields or sports facilities for three consecutive days during minimal use periods.
- ~~17.~~Q. City Facilities are closed on all holidays observed by the City of Milpitas. Reservations are not accepted for New Year's Day, Martin Luther King Jr.'s Birthday, ~~Lincoln's~~ Cesar Chavez Birthday, Presidents' Day, Easter Sunday, Memorial Day, July 4th, Labor Day, Veterans Day, Thanksgiving, Friday following Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve .
- ~~18.~~R. A staff person shall be required for an indoor/outdoor facility where permits are granted involving the opening and closing of a building. Charges for necessary City personnel will be assessed according to the Fee Schedule. If more than 150 people are scheduled to attend, additional staff may be required.
- ~~19.~~S. No rental shall begin prior to 7:00 am and all activities shall cease at 12:00 am midnight for indoor facilities, and dusk for outdoor facilities, unless prior approval has been received from Director of Recreation and Community Services or authorized representative.
- ~~20.~~T. Any falsification of information on the application will result in the loss of all fees, including the deposit.

III. FEES AND CHARGES

- ~~1.~~A. Current rates are established by the Milpitas City Council. City staff does not have the authority to deviate from these rates.
- ~~1.~~B. No reservation will be accepted without the specified non-refundable application fee and the deposit. The deposit must be in the form of a cashier's check, money order, cash, or credit card, (personal checks are not accepted). Cashier's check or money orders must be made payable to: City of Milpitas. The deposit is refundable after the rental date and will

be returned to the applicant by mail in the form of a City check approximately 30 days after the rental, unless damages, additional maintenance or services were assessed. Checks are returned to the applicant listed on the Rental Application Form. Please contact us immediately should an address changes occur. Additional insurance and fees may apply.

~~1.C.~~ Charges begin when a facility is entered for any purpose, i.e. decorating, catering, set-up etc. Groups will be assessed charges according to their reservation priority, nature of activity and/or services and staff required. Hours of use may not be changed less than 30 days prior to the rental date without staff approval. Additional insurance and fees may be required depending on the type of function. In cases where the deposit does not cover the damage, the rental applicant will be billed.

~~1.a.~~ Fees will not be pro-rated for events or activities that finish prior to the approved permitted times. Not honoring approved hours may result in suspension of facility use and additional charges.

~~1.D.~~ Rental fees shall be paid at least 30 days in advance of the rental date, or permit shall be declared invalid. Payment must be made by cashier's check, money order, cash, or by credit card. Cashier's check or money orders must be made payable to: City of Milpitas.

~~1.E.~~ Waiver of rental fees or deposits must be approved by City Council. Fees for staff, insurance, and application are not eligible to be waived. To seek a fee waiver, the rental applicant must submit a written form with the City Clerk's office at least 90 days prior to the proposed date of use. The request will be reviewed by City Council at a regularly scheduled City Council meeting.

~~1.F.~~ A Confirmed Rental must have the following:

~~1.a.~~ A completed, signed and approved Facility Use Application on file.

~~1.b.~~ Payment of appropriate Cleaning and Damage Deposit, Application Fee and applicable insurance fees (if necessary).

~~1.c.~~ Signed Important Reminders for Permit Applicants on file.

~~1.d.~~ Signed Rental Applicant Clean Up & Decorating Policies Responsibilities on file.

~~1.G.~~ Groups participating in City sponsored leagues or City co-sponsored programs, such as end of the year banquets, are exempt from fees and deposits for regularly scheduled games or activities. Fees and deposits will apply for all other use of the facilities by such groups.

~~1.H.~~ The rental applicant must come in person to request and process a facility rental cancellation for all facilities. The request must be done in writing on forms provided by the City. Mail or phone cancellations will not be accepted. Please note: All facility application cancellations will forfeit the application fee. Photo identification is required for cancellations.

~~1.a.~~ A full refund will be granted, provided a cancellation is made within 91 days or more of the rental date.

~~1.I.~~ If the cancellation is made 46-89 days prior to rental date, 50% of the deposit will be forfeited.

~~1.J.~~ If the cancellation is made with 45 days or less prior to rental date, 100% of deposit will be forfeited.

~~4.K.~~ If there are extenuating circumstances that require a cancellation within 45 days of the rental date, a refund may be approved by Recreation Services Manager or authorized representative. Evidence of extenuating circumstance may be requested for verification purposes.

~~4.a.~~ Should the City cancel said reservation, a full refund of paid rental fees will be issued.

~~4.b.~~ Should a request for a change of rental date be made, a rescheduling fee of \$100 will be charged provided the date and staff are available, and there are 30 days remaining prior to the original rental date. Changes requested 29 days or less prior to the rental date will require management approval. A new rental date cannot exceed 365 days from the original requested rental date.

~~4.c.~~ Any group not abiding by the Facility Use Rules and Regulations will forfeit entire rental deposit.

~~4.L.~~ Depending on the nature of your event (i.e. alcohol being served, attendance at event, collection of money, youth function, fundraising event open to the public which includes presold tickets, etc.) security guards and liability insurance may be required at the discretion of Recreation Services Manager or authorized representative.

IV. SET-UP/CLEAN-UP

~~4.A.~~ At least 30 days before the rental date, the user group must submit a room set-up diagram. Changes to the room set-up diagram may be made up to two weeks prior to the event.

~~4.B.~~ The rental applicant is not allowed to alter any indoor facility.

~~4.C.~~ The rental applicant is responsible for obtaining pre-approval and permission from Recreation Services staff prior to altering the sports fields in any manner (striping, temporary fencing, etc.)

~~4.D.~~ **It is required that the rental applicant check in and out with staff and complete a pre and post inspection form upon arriving/leaving the facility.**

~~4.E.~~ The rental applicant shall report any unsafe condition to Recreation Services immediately and suspend activities until corrections or repair has ensured that the situation is safe for participants or spectators.

~~4.F.~~ Rental applicant is responsible to ensure that cleanup has occurred following any rental.

~~4.G.~~ City facilities must be protected by the user from damage or mistreatment. Groups using City facilities must be responsible for the condition in which the facility and its equipment are left. Groups must leave the facility free of litter such as paper, food or drink. Failure to leave the facility in the condition it was in prior to the rental will result in the user group being charged accordingly.

~~4.H.~~ Rental applicant is responsible to ensure that clean-up has occurred following any rental. Garbage cans are provided for clean-up purposes. If the facility is not cleaned, fees will be incurred.

~~4~~I. Upon leaving the facility, each group must ensure that trash is placed in the appropriate receptacles, that restrooms and parking lots are free of litter and unwanted debris, and that the facility is returned to its original condition. Tables must be cleared and decorations removed.

~~4~~J. Should damage to City property occur, the rental applicant is responsible for all direct and indirect costs involving in the repair, replacement or clean-up caused due to the damage.

~~4~~K. _____ The City of Milpitas reserves the right to revoke or cancel any permitted use if it is deemed to be dangerous, hazardous or not in the best interest of the City of Milpitas.

~~4~~V. **DECORATIONS**

~~4~~A. _____ No decoration can be stapled, tacked or taped to any amenities (i.e. walls, windows, grounds, flag poles, or ceiling). All decorations must be freestanding and may not be placed in walkways or impede an evacuation creating a tripping hazard in any way. Nothing may be attached or hung from the Community Center Auditorium wiring, sound system or curtains.

~~4~~B. _____ All decorations must be flame retardant.

~~4~~C. _____ No confetti, birdseed or rice may be thrown in or outside any City facility.

~~4~~D. _____ Equipment in the facility may not be altered in any way without the consent of the staff on duty (i.e. moving existing equipment).

~~4~~E. No candles (including birthday cake candles), lanterns, incense or open flames are allowed in any City facility (excluding Sterno).

~~4~~F. Balloons: All balloons must be removed at the end of event or the applicant will be charged a clean-up penalty.

VI. FUNDRAISING **Priority II and III**

~~4~~A. _____ Groups wishing to use City facilities for fundraising events and/or activities will be charged according to Priority II and Priority III facility use Fee Schedule.

~~4~~B. _____ Concessions, other than City operated, will be subject to the approval of the City Manager or authorized representative and must possess a valid City of Milpitas Business License and any other applicable state, county or federal permits. Concessions will be defined as the sale of any food, beverage, souvenir item or service (i.e. face painting). Copies of said permits and licenses must be submitted a minimum of 45 business days in advance of the rental date. Food being sold to the public requires a Health Permit obtainable from the County of Santa Clara's Health Department and must be submitted to the City 30 business days prior to the rental date.

~~4~~C. _____ Any person sponsoring, promoting, operating, etc. an entertainment activity (outside), open to the public, charging admission or as described in the Milpitas Municipal Code (Title III, Chapter 5, Entertainment Event) may be required to obtain a Special Event Permit. Permit information and applications are available at the Planning Department, 455 E. Calaveras Blvd., Monday - Friday, 8:00 am - 5:00 pm. If required, the Special Event Permit must be obtained prior to receiving a fully approved rental permit.

VII. FACILITY & FIELD RULES & PROCEDURES

- 1.A. Food and beverages can be served in any non-carpeted room, with exception to the dance studio. Rooms with carpet are not permitted to have food and beverages.
- 1.B. No barbecuing or use of propane stoves is allowed outside or near all City facilities unless in a designated fire pit at the Higuera Adobe Building. At the Higuera Adobe Building, only electric charcoal starters or fluids made for the purpose of igniting charcoal may be used in the fire pit. Starters must be used according to the manufacturers' instructions.
- 1.C. Groups granted use of City facilities and fields shall use them only for such purposes as specified in their facility use permit and shall limit use to the facility requested. Groups using additional facilities will be charged in accordance with the Fee Schedule and such charges may be deducted from the deposit.
- 1.D. Groups may use certain facility and field equipment, provided it is not removed from the premises. Use of equipment must be specified in the Facility Use Application. City approval is required for any removal or change in the location of any stage rigging or other equipment, structures, enclosures or utility connections. All equipment must remain inside all designated facilities (i.e. tables, chairs, etc.).
- 1.E. The Facility Attendant is provided by the City to assist you with equipment/furniture needs and room set up. The attendant is not present in the meeting/party/field site at all times during your event. The attendant is not responsible for supervision of guests, security, law enforcement or conflict resolution. The attendant, if present, is instructed to call 911 if an emergency situation arises. Rental applicant assumes responsibility for these and other unforeseeable possible situations.
- 1.F. Any person, public or private firm, organization or corporation, who rents the facility or field that hosts a ticketed event for live entertainment, shall make an announcement of the availability of emergency exits prior to the beginning of the live entertainment.
- 1.G. The Community Center marquee is to be used for City sponsored activities only. Exceptions must be approved by City Council. To seek an exception, the applicant must submit a written request at least 90 days prior to the proposed date of use. Requests will be reviewed by the City Council at a regularly scheduled City Council meeting.
- 1.H. Facility/Field use shall not be granted:
- 1.a. To any group or individual, political or otherwise that advocates the overthrow of the United States Government or the State of California by force, violence or other unlawful means.
 - 1.b. When, for any reason, such use may not be in the interest of the City and/or community, as determined by the City Manager or authorized representative, whose decision may be appealed to the City Council whose decision shall be final.
- 1.I. Gambling, casino nights or any legal function or activity involving games of chance may be held in a City facility. The activity must, however, be open to the public and admission may not be charged. Donations may be accepted as long as access is not denied if a donation is not received.
- 1.J. The City of Milpitas is not responsible for accidents, injury, illness, or loss of group or individual property. The applicant agrees to indemnify at its own expense, and hold harmless the City, its officers, agents, volunteers, and employees from all costs, expenses, reasonable attorney fees, claims, liabilities or damages to persons or property that may arise during or be caused in any way by such use of occupancy of the facilities of the City of Milpitas. The applicant agrees to reimburse the City of Milpitas for any damage to said facilities occasioned by or growing out of the use herein requested and to abide by the rules and regulations governing such use of. The City

requires insurance coverage for certain types of rentals in accordance with the alcohol and insurance requirement guidelines. In addition, the City may, at its discretion, require user to provide at user's expense such police and/or fire protection as deemed reasonable for the protection and preservation of the public property and peace.

~~4.K.~~_____The City Manager or authorized representative, shall have the right to unrestricted access to all facilities at all times during any and all use. Groups found in violation of established City laws and ordinances or constituting a public nuisance may be required to leave the facility. The misuse of facilities, failure to conform to established regulations or other applicable City Ordinances, will be sufficient reason for termination of the function. Permits may not be transferred, assigned or sold.

~~4.L.~~Any group not abiding by all the Facility Use Rules and Regulations will forfeit entire rental deposit and paid rental fees.

VIII. SMOKING/VAPING/ALCOHOL

~~4.A.~~_____By City Ordinance, smoking is not permitted in any City facility or within 25 feet of the facility.

~~4.B.~~_____Smoking/vaping or alcohol consumption is not permissible in the Milpitas Sports Center gymnasium or on the pool deck.

~~4.C.~~_____Serving or selling alcohol must cease one hour prior to the rental end time as stated on the permit.

~~4.D.~~_____As a host of the event, if you are serving/selling alcohol, you are responsible and potentially liable for the safety of your guests at the event who are under the influence of alcohol. You should maintain strict control over alcohol service and ensure your guests are able to return safely home after the party. This is not the responsibility of the Facility Attendant.

~~4.E.~~No alcoholic beverages may be served or sold at youth oriented events. The designation of such an activity will be at the discretion of the Director of Recreation and Community Services or authorized representative. Should facility staff witness alcohol being served, consumed on the premises or in the parking lot, the party will be shut down immediately and the entire deposit and rental fees will be forfeited.

~~4.F.~~By City Ordinance, beer or wine is permissible for adults in City park picnic areas unless otherwise posted. California State law expressly forbids alcoholic beverages of any kind at Russell Middle School softball facility under any circumstances, as it is located on school property. Sale of beer, wine or other alcoholic beverages is allowed subject to the above location restrictions and upon approval of the Milpitas Police Department and the acquisition by the user group of a valid permit from the Alcoholic Beverage Control Department located at 100 Paseo de San Antonio, San Jose, CA, 408-277-1200. Alcohol permit is due 30 days in advance of the rental date. Additional insurance is required.

IX. PARKS/PICNIC AREA RULES & REGULATIONS

~~4.A.~~_____Reservations for park picnic areas must be made at least three (3) business days in advance.

~~4.B.~~_____Park picnic reservations that cannot be held due to inclement weather will be issued a full refund, minus processing fees. The rental applicant is responsible for contacting the Community

Center Office within two (2) business days after the scheduled event to initiate the credit.

~~1.C.~~ Park reservations that are transferred to a new date within 30 days of the reservation will be charged a \$20 Park Reservation Transfer fee and may require management approval.

~~1.D.~~ Park reservation cancellations must be made 30 days prior to the rental date and will receive a credit minus the application and processing fees.

~~1.E.~~ All City of Milpitas Municipal Codes regarding City Parks must be strictly adhered to.

X. GYMNASIUM RULES & REGULATIONS

~~1.A.~~ Gymnasium facilities will only be rented to groups for sporting activities or programs. Requests for non-sports related activities will not be granted. Insurance will be required.

~~1.B.~~ No food or beverages are allowed in the Milpitas Sports Center gymnasium.

~~1.C.~~ Gymnasium participants must wear athletic type shoes. (Hard soles or black soles are not permitted on the gymnasium floor.)

~~1.D.~~ Locker room facilities are not available.

~~1.E.~~ Minors are not allowed inside the facilities without proper adult supervision.

~~1.F.~~ No other type of equipment is allowed inside the gyms without prior consent of the Director of Recreation and Community Services or his/her designee. No equipment other than fixed pieces of equipment are available.

~~1.G.~~ Access is limited to that portion of the facility as agreed upon in the permit. All other areas are restricted.

~~1.H.~~ Recreation and Community Services staff shall be notified immediately of any maintenance problems or concerns, including vandalism and theft.

~~1.I.~~ All garbage must be disposed of properly. Any wet spills must be taken care of promptly and thoroughly.

~~1.J.~~ The facility should be left in the condition in which it was found.

~~1.K.~~ Total gym capacity is not to exceed 600. Bleacher capacity is not to exceed 305 seated spectators.

~~1.L.~~ Use of the scoreboard is NOT included in the established hourly rental fee. The scoreboard must be operated by Recreation and Community Services staff, no exceptions. User groups wishing to use the Scoreboard must put in the request with Recreation and Community Services staff at least 30 days in advance. Additional staffing fee will apply.

XI. POOL RULES & REGULATIONS

- ~~1.A.~~ _____ Smoking/vaping or alcohol consumption is not allowed in the aquatics facility.
- ~~1.B.~~ _____ All pool users and patrons must wear appropriate swim attire. No jeans, cut-off shorts, leotards or any other extra articles of clothing are allowed (CA. Health Code #65838).
- ~~1.C.~~ _____ Youth Locker Rooms are available for shower and changing use.
- ~~1.D.~~ _____ No personal floatation devices, no floatation devices attached to the swim suits or inflatable pool toys of any kind allowed.
- ~~1.E.~~ No diving allowed.
- ~~1.F.~~ No running allowed. Please walk at all times.
- ~~1.G.~~ _____ All children under 7 years of age swimming in the yard or meter pool must have an adult attendant in the water with them at all times.
- ~~1.H.~~ _____ Changing on the Pool Deck is NOT allowed. All parents must change their children in the Youth Locker Rooms or Family Changing Room.
- ~~1.I.~~ No food or drink is allowed on the pool deck, except in the designated areas. Glass containers are not allowed.

Lifts are available for individuals with disabilities. Please contact Recreation and Community Services staff at (408) 586-3225 if assistance is needed with utilizing accessible equipment.

XII. SPORTS CENTER ARTIFICIAL TURF FIELDS RULES & REGULATIONS

- ~~1.A.~~ _____ An approved rental permit is required to use the turf fields.
- ~~1.B.~~ _____ Food and beverages, including gum, seeds, nuts, candy or sports drinks are prohibited. Water only. Glass bottles or containers are prohibited.
- ~~1.C.~~ _____ Any cleats that are used must be rubber; no metal spikes.
- ~~1.D.~~ _____ Chairs, umbrellas, tents, flags and other outdoor furniture are not allowed on the field.
- ~~1.E.~~ Spectator seating is only allowed in designated areas off of the field.
- ~~1.F.~~ No driving of stakes.
- ~~1.G.~~ _____ Lining or marking of the field is not allowed without prior written approval from the City.
- ~~1.H.~~ _____ Smoking and tobacco products are prohibited.
- ~~1.I.~~ Dogs and pets of any kind are prohibited on the synthetic turf.
- ~~1.J.~~ Barbecues are prohibited.
- ~~1.K.~~ _____ Bikes, roller blades, skateboards, strollers, motorized vehicles and high-heeled shoes are prohibited.
- ~~1.L.~~ Training drills & devices:

- ~~4.M.~~ To insure optimum performance of the turf fields, we recommend that repetitive training drills and activities be rotated to prevent continuous wear at a single location.
- ~~4.N.~~ Training devices should be used with caution. Sleds and various training devices should be used off the main field of play, such as D zones, end zones (if no inlaid logos appear) and areas away from the main boundaries of play where the panels run parallel to the field and no inlaid markings appear.
- ~~4.O.~~ Tire flipping is not allowed.
- ~~4.P.~~ Remove training devices from the field after each use.
- ~~4.Q.~~ Lining or marking of turf *with* prior written approval from the City of Milpitas: Before beginning to paint on your field, consult with the Sports Center Recreation Supervisor for guidance on specific types of paint to use, recommended suppliers, machines and proper PSI machine settings.

XIII. PUBLIC BASKETBALL COURT RULES

- ~~4.A.~~ Basketball Court hours are dawn-dusk daily.
- ~~4.B.~~ Basketball Courts are for recreational purposes and are available on a drop-in basis. Courts should be used in two-hour increments and must be forfeited if another group/individual is waiting.
- ~~4.C.~~ Amplified music including car and portable radios are prohibited.
- ~~4.D.~~ The Milpitas Police Department may stop basketball play based on complaints.

XIV. TENNIS COURT RULES & ETIQUETTE

- ~~4.A.~~ City-Sponsored Programs have first priority on tennis courts at all times.
- ~~4.B.~~ Court Time Limit: Courts must be relinquished to players waiting after one hour of play for singles or 1 hour 30 minutes for doubles.
- ~~4.C.~~ Waiting Players should state their intent of play to current occupants upon arrival.
- ~~4.D.~~ Maximum of four (4) players per court.
- ~~4.E.~~ No single player may use the court when others are waiting.
- ~~4.F.~~ Tennis courts are for tennis and pickleball only. No other sports or games should be played on the courts. Absolutely no roller skates, roller blades, skateboards and bikes are allowed.
- ~~4.G.~~ Food, glass objects or alcoholic beverages are NOT allowed on the courts. All food and drinks must be left outside the tennis court fence.
- ~~4.H.~~ Smooth soled tennis shoes only. No knobby, blacked soled, sports cleats (baseball, soccer, football) or street shoes.

- ~~4~~I. No instructional aids allowed (i.e ball machines, etc.) unless prior approval has been received from the Director of Recreation and Community Services or authorized representative.
- ~~4~~J. Conducting any business or concession within any City Park is prohibited except by permit MMC 1-9-4.01 (i.e. private tennis lessons, selling food or beverages, etc.) and appropriate licenses or permits are required.
- ~~4~~K. _____ Smoking is prohibited within 25 feet of tennis courts.

XV. POLICE DEPARTMENT COMMUNITY ROOM

For rental of these facilities, please contact the Police Department at (408) 586-2400.

- ~~4~~A. _____ Rental hours are 8:00 am to 11:00 pm.
- ~~4~~B. _____ Use of the facility shall be primarily for resident groups or individuals. Non-resident group or non-resident individual use will not be permitted.
- ~~4~~C. _____ No alcohol is permitted in the facility.
- ~~4~~D. _____ No parties may be scheduled in the facility.
- ~~4~~E. Exceptions to any policy or regulation are subject to the approval of the Chief of Police or authorized representative. The applicant must submit exception requests in writing. Decisions of the Chief of Police or authorized representative may be appealed to the City Manager and if not satisfied, to the City Council, whose decision shall be final.

XVI. CITY HALL BUILDING, PLAZA AND GROUNDS

For rental of these facilities, please contact the City Clerk's Office at (408) 586-3001.

- ~~4~~A. _____ No food is allowed in Council Chambers.
- ~~4~~B. _____ No tents or structures are allowed on the grass.
- ~~4~~C. _____ Chairs and tables are available on a first come, first serve basis, and due to the amount of rentals at the facility, may not be available for use. Should this occur, it is the rental applicant's responsibility to provide their own tables and chairs. Please Note: Samples of chairs and tables must be approved 45 days prior to the event.
- ~~4~~D. _____ Access to the parking garage is restricted.
- ~~4~~E. Flag ceremonies in the Plaza Area are limited to ground ceremonies only and require prior City Council approval.
- ~~4~~F. All facility rentals require staffing. The number of staff (Maintenance and Information Services) is to be determined by the City Manager or authorized representative on a per event basis.

~~4.G.~~ All City Hall Buildings, Plaza and Ground permits are subject to Chapter 100, Title I of the Milpitas Municipal Code and all uses must be approved by the City Manager.

~~4.H.~~ No political fundraising is allowed at the City Hall Building, Plaza, and Grounds.

~~4.I.~~ No amplified or “live” music is allowed in the rentable outdoor facilities due to the disruption of the surrounding facilities.

~~4.J.~~ City Council Chamber dais is not available for use.

~~4.K.~~ Use of alcohol is permissible upon approval of the City Manager or authorized representative.

ADDENDUM 1 SPECIAL EVENT RULES AND REGULATIONS EQUIPMENT RENTAL

I. CITY SPONSORED SPECIAL EVENTS

1.0 The purpose of City Sponsored Special Events is to provide the public with activities to attend within the community. Planning for each event takes place one (1) year prior to the event. These rules and regulations pertain to non-City group participation and use of City equipment for and during City sponsored, co-sponsored, public, and non-profit events.

1.1 Calendar of Events (dates and events are subject to change without notice)

Commissioner’s Recognition	April
Memorial Day Ceremony	May
Summer Concert Series	Summer Season
Movie Night Out	Varies
4 th of July Festival	July
Hot August Bites	August
Halloween Event	October
Veterans Day Ceremony	November
Tree Lighting Ceremony	December
Cultural Arts Grants	Throughout the year

II. SPECIAL EVENTS

2.0 All Special Event requests should be directed to the Director of Recreation and Community Services.

2.1 The rental applicant is required to submit a Special Event/Activity Application to the Planning Department along with their approved Recreation Services Rental Application and Permit.

2.2 All outdoor equipment (i.e. bleachers, picnic tables, barbeque pits, etc.) are not moveable and shall remain in their designated locations.

- 2.3 Additional equipment (i.e. bounce houses, chairs, additional seating, staging/platforms, etc.) must be noted on the application and pre-approved by Recreation and Community Services staff. All additional event features must be obtained independently by the rental applicant, including rental costs, fees, insurance and delivery.
- 2.6 All Recreation and Community Services equipment requests should be directed to the Director of Recreation and Community Services and should be made at least 6 months in advance of the requested rental date. Equipment use is subject to availability and approval.

ADDENDUM 2

YOUTH SPORT PRIORITY OUTDOOR SPORTS FIELD PRIORITIES ALLOCATION AND PROCESS

A-I. Tiered Structure

A-1. Tier 1: All programs administered or sponsored by the City of Milpitas Recreation and Community Services.

B-2. Tier 2: Youth and sanctioned organizations and/or groups comprised of 51% Milpitas residents.

C-3. Tier 3: Organizations and/or groups comprised of less than 51% Milpitas residents.

A-i. Required to pay full rental fees.

B-II. Specifications

a-1. The City will give field allocation priority to the sport in season.

b-2. The City will allocate fields according to age groups appropriate for field usage.
i. Age appropriateness of the fields will be predetermined by the City

c-3. The percentage of Milpitas residents will be determined by the average of the previous 3 year's season rosters.

d-4. Recreation Services will predetermine a calendar, per season, that will show a breakdown of field maintenance and available fields/times.

e-5. Recreation Services will administer the Youth Sport User Group Fee of \$10/player per season, per sport.

i. Rosters will be required mid season so that the youth groups can be invoiced.

ii. Fees must be paid in full prior to new field allocations being approved.

- ~~£.6.~~ For regular season play, it is required that a Milpitas based team be playing on the allocated fields.
- i. This does not apply for tournament play.

~~C.~~III. Locking Policy

- ~~1.~~ Our fields will be locked when they are not allocated or rented. This will assist in keeping our natural turf fields in playable condition,

**ADDENDUM 3
YOUTH SPORT INDOOR FACILITY PRIORITIES
ALLOCATION AND PROCESS**

~~1.~~I. Priorities

1. **Tier 1:** All programs administered or sponsored by the City of Milpitas.
- ~~1.~~2. **Tier 2:** Youth and sanctioned organizations and/or groups comprised of 51% Milpitas residents.
- ~~1.~~3. **Tier 3:** Youth organizations and/or groups comprised of less than 51% Milpitas residents.

~~1.~~II. Allocation Process

1. Priority will be assigned as follows:
 - ~~1.~~i. First application/Initial Allocation
 - ~~1.~~a. Based on rosters from prior 3 quarters
 - ~~1.~~b. If no rosters are available, Tier 3 will be assigned
 - ~~1.~~ii. Tiers may be reassigned with a review of rosters from 3 prior consecutive quarters
 - ~~1.~~a. Please note that due to the high demand and limited availability, should multiple groups request the same dates and times, a lottery system will be utilized to determine allocation.
- ~~1.~~2. The Indoor Sport Facility will be allocated on a quarterly basis. Applications must be submitted by the 1st of the month prior to the start of the quarter.
 - ~~1.~~i. January – March: application due December 1
 - ~~1.~~ii. April – June: application due March 1
 - ~~1.~~iii. July – September: application due June 1
 - ~~1.~~iv. October – December: application due September 1

~~1.~~III. Specifications

1. The City will give Indoor Sport Facility priority to the sport in season.
- ~~4.2.~~ Priority will be assigned according to the percentage of residents based on rosters from 3 quarters.
- ~~4.3.~~ Recreation Services will administer the Youth Sports User Group Fee of \$15 per player, per quarter, per sport.
 - ~~4.i.~~ Rosters will be required mid quarter so that the youth groups can be invoiced.
 - ~~4.a.~~ Fees must be paid in full prior to new Indoor Sport Facility allocations being approved.
 - ~~4.ii.~~ A refundable deposit of \$500 will be due upon application approval.
 - ~~4.a.~~ For additional information and guidelines on rental deposits please refer to the Facility Manual.

4.IV. Leagues

If you run games or league play, a team from your organization must be playing. This does not apply to tournaments.

4.V. Tournaments

The Indoor Sport Facility Allocation Process does not include requests for tournaments. Tournament requests should be submitted as a private rental.

CITY OF MILPITAS FACILITY & PARKS

ALCOHOL AND INSURANCE REQUIREMENT GUIDELINES FOR RENTAL GROUPS

The table below summarizes the Insurance and Alcohol Permit requirements by rental type for facilities and parks rentals.

RENTAL TYPE	FACILITY	PARK
Private use/meeting No alcohol	No insurance required	No insurance required
Private Party – no alcohol	No insurance required	No insurance required
Party or meeting serving alcohol	1. Purchase Special Events Liability Insurance and 2. Purchase Liquor Legal Liability Coverage Or 3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage	No insurance required
Public Attended Event (Please refer to the type of events that require insurance and hazard classification)	1. Purchase Special Events Liability Insurance Or 2. Provide Certificate of Insurance with	1. Purchase Special Events Liability Insurance Or 2. Provide Certificate of Insurance with

	endorsement	endorsement
Sell Alcohol	1. Purchase Special Events Liability Insurance and 2. Purchase Liquor Legal Liability Coverage Or 3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage And 4. Obtain Alcohol Permit	1. Purchase Special Events Liability Insurance and 2. Purchase Liquor Legal Liability Coverage Or 3. Provide Certificate of Insurance with endorsement to the City w/Liquor Legal Liability Coverage And 4. Obtain Alcohol Permit

The rental applicant, which opts to provide a certificate of insurance, must satisfy the minimum insurance requirement of \$2,000,000 general liability per occurrence and general aggregate. The insurance coverage must be endorsed to provide primary coverage and must name the City, its officers, agents, volunteers, and its employees as additionally insured.

The rental applicant must provide the certificate of insurance **30 days** prior to the rental date.

Please note: this information is subject to change without prior notice.



Milpitas City Council Facility Use Request Form Fiscal Year 2019-20

City Councilmember Name: _____

Program/Event Description: _____

Community Partners (if applicable): _____, _____,

I will be seeking sponsors (circle one): Yes No

Estimated Attendance: _____ (youth) _____ (adult)

Preferred Facility: First Choice: _____ Second Choice: _____

Program/Event Date Request:

Date First Choice: _____ Program/Event Hours: _____ - _____

Date Second Choice: _____ Program/Event Hours: _____ - _____

Additional City Resources Needed: (circle all that apply) *Funding* *City Staff* *Marketing*
Explanation: _____

This event is not campaign related because: _____

Intended Public Purpose Statement: _____

Councilmember Signature: _____

Date: _____

- 16. Provide direction to staff on draft Council policies for training and events (Staff Contacts: Christopher Diaz, 408-586-3040 and Ashwini Katak, 408-586-3053)**

Recommendation: Provide direction to staff on draft Council policies for training and events.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Provide direction to staff on draft Council policies for training and events
Category:	Leadership and Support Services
Meeting Date:	10/1/2019
Staff Contact:	Christopher Diaz, City Attorney, (408) 586-3040 Ashwini Kantak, Assistant City Manager, (408) 586-3053
Recommendation:	Provide direction to staff on draft Council policies for training and events

Background:

The City recognizes the importance of attending conferences and trainings to ensure members of the Council stay informed about best practices in local government and are able to represent the City at the local, regional, and national level. The purpose of the proposed Council policy for training is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for attending conferences and trainings. The Approved Fiscal Year 2019-2020 Budget includes funding of \$5,000 each for training for members of the City Council.

During the Fiscal Year 2019-2020 Budget development process, the City Council expressed an interest in individual Councilmembers having the ability and funding to host events that benefit the City and the Milpitas community, and to use City facilities for this purpose. The use of City facilities is governed by the Milpitas Facility Use Manual and updates to this Manual are being brought forward for Council consideration to enable use of City facilities by individual Councilmembers.

The proposed Council policy for events establishes City policy, guidelines and conditions for the use of funds appropriated to individual members of the City Council for hosting events, donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

Analysis:

Policy for Training

The proposed draft Council policy for training includes training objectives; general conditions of the policy, including which training the policy applies to; responsibilities of the Councilmembers and the City Manager to ensure appropriate use of the training budget; and procedures for reimbursement of expenses.

Policy for Events

The Approved Fiscal Year 2019-2020 Budget includes funding in the amount of \$25,000 for the City Council to make donations to intergovernmental agencies and non-profit organizations and to approve fee waivers for events and for individual Councilmembers to either host his/her own events or to donate to additional events and provide fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07.

Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration. Based on historical information about Council donations and

fee waivers, staff is recommending setting aside a budget of \$10,000 for the full City Council and \$3,000 for every individual member of the City Council.

The proposed policy outlines general conditions as described below:

Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the six months preceding a municipal election.

The proposed policy provides guidance about type of staff support and number of staff hours. The proposed policy also describes the responsibilities of the City Councilmembers and the City Manager and outlines the procedures for reimbursement of expenses.

Key items for Council consideration and input:

1. Allocation amounts from the total \$25,000 budget for the full City Council and individual Councilmembers.
2. Eligible expenditures for individual Councilmember funds.
3. Number of events hosted by individual Councilmembers.
4. Use of City facilities.
5. Timeframe of events hosted by individual Councilmembers with respect to municipal elections.
6. Amount of staff support hours per event and cumulative number of hours for events hosted by each Councilmember.
7. Approval Process.

Next Steps

Based on Council feedback, staff will bring forward both policies for adoption in late summer/early fall 2019.

Fiscal Impact

No additional funding is needed at this time. There may be some future fiscal impact depending on direction from the City Council about number of events and the amount of staff support time.

Recommendation:

Provide direction to staff on draft Council policies for training and events.

Attachment

Draft Council Policy for Training

Draft Council Policy for Events

CITY OF MILPITAS, CALIFORNIA

SUBJECT: COUNCIL TRAINING POLICY

PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for attending conferences and trainings. The City Council recognizes the importance of attending conferences and trainings to ensure members of the Council stay informed about best practices in local government and are able to represent the City at the local, regional, and national level.

TRAINING OBJECTIVES

- To promote regionalism and ensure that Milpitas' interests are represented at the regional, state, and national levels and receive recognition for Milpitas' contributions and accomplishments.
- To ensure that the Council is informed about best practices in local government
- To advocate for the City's interests in the state and federal legislature and with regional agencies

PROCEDURES

A. General Conditions

1. Training may be a class, seminar, workshop, or conference related to the Mayor and Councilmembers' duties except for duties on other regional boards.
2. All travel to attend conferences or training, which is not directly connected to their Council or regional representative role, must be approved by the City Council during budget adoption or at a subsequent Council meeting.
3. All travel for a class, seminar, workshop, or conference shall be limited to the actual days of the event or immediately after the event and a Councilmember shall not extend their travels for personal pleasure unless fully paid for by the Councilmember.

B. Responsibility of the Councilmember

1. Each Councilmember, with the assistance of staff, must complete the Travel and Expense Request Form prior to submitting the form to the Finance Department for processing. All travel for the Council has to be approved by the full Council.
2. A copy of the registration material must be submitted with the Travel and Expense Request Form. The travel approval by the City Council during the budget process or a copy of the Council minutes approving subsequent requests must also be attached with the form.
3. Each Councilmember is expected to provide a brief verbal or written report, within 30 days of the training, to the full Council on the benefits and outcome of the conference or training.

C. Responsibility of the City Manager

It is the City Manager's responsibility to review the training budget and travel requests during the budget process. The City Manager will provide a travel schedule for individual Councilmembers, to the extent known, to the City Council for its review and approval during the budget process. The City Manager shall track the training budget for the Mayor and each Councilmember throughout the year and provide regular updates to them.

D. Expense Reimbursement

Travel and training expense reimbursements are subject to the procedures and guidelines established under SOP No. 6-1, Travel and Expense Policy and SOP No. 6-2, Use of City Vehicles Policy.

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CITY OF MILPITAS, CALIFORNIA

SUBJECT: COUNCIL POLICY FOR EVENTS

PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for hosting or donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. This policy addresses the desire of the City Council for individual Councilmembers to be able to host events that benefit the City and the Milpitas community. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

PROCEDURES

A. General Conditions

1. The City Council has an approved budget for donations and fee waivers for intergovernmental agencies or non-profit organizations that provide Milpitas community benefit. In addition to this, each individual Councilmember shall have an approved budget for either hosting his/her own events or for donating to additional events and providing fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07. Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration.
2. Guidelines for the use of City facilities for a Councilmember hosted or sponsored program or event are outlined in the City of Milpitas Facility Use Manual (Indoor and Outdoor Facilities).
3. Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the six months preceding a municipal election.
4. Staff support for any individual Councilmember hosted events shall be limited to **x** hours, including staff time needed for facility use, unless approved by the full Council. The level of staff support, excluding general facility attendant staff, will be identified and assigned by the City Manager or his/her designee.
5. The approved budget may be used for facility rentals within the City of Milpitas, refreshments, contractual services, and supplies but cannot be used to provide gifts to event participants or to serve alcohol.

B. Responsibility of the Councilmember

1. Each Councilmember, with the assistance of staff, must complete the Event and Facility Use Request Forms and submit to the City Manager and City Attorney's office for review to ensure compliance with state law, and approval.
2. Event coordination and any purchase of refreshments and supplies for events hosted by individual Councilmembers shall be the responsibility of the individual Councilmember.
3. Each Councilmember shall submit all receipts related to the event within 30 days after the event in order to be reimbursed.
4. Each Councilmember shall provide a brief verbal report to the full Council on the benefits and outcome of the event, including event attendance.

C. Responsibility of the City Manager

It is the City Manager or designee's responsibility to review and track the events budget for each Councilmember and to provide regular updates.

D. Expense Reimbursement

Councilmembers shall submit expense reimbursement requests on Finance Department provided forms with original receipts within 30 days after the event.

xxx

17. Receive Agenda Item Request Form from Councilmembers Nunez and Phan related to Social Media (Contact: Councilmember Nunez, 408-586-3023)

Recommendation: hear request item from Councilmembers Nunez and Phan to review and develop a policy for use of social media by the Mayor and City Councilmembers.



Revised

391

AGENDA ITEM REQUEST FORM

Please complete and submit this form to the City Manager.

08/26/2019

Councilmember Nuñez



Councilmember Phan



Request Date

City Council Members Submitting Request

☐

Urgent Item

Reason for Urgency

insert text here

Time frame for the item to be heard

(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

☐

Public Safety

☐

Economic Development and Job Growth

☐

Environment

☐

Neighborhoods and Housing

☐

Transportation and Transit

☐

Community Wellness and Open Space

☒

Governance and Administration

Name of Item:

Social Media

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Review and Develop policy for the use of Social Media by the Mayor and City Councilmembers.

Social Media to mean applications that enable users to create and share content or to participate in social networking with City information.

18. Receive Agenda Item Request Form from Councilmembers Nunez and Phan Related to Proclamations and Commendations Policy (Contact: Councilmember Nunez, 408-586-3023)

Recommendation: Hear request of Councilmembers Nunez and Phan to review and codify policy for Milpitas proclamations and commendations.



Revised

393

AGENDA ITEM REQUEST FORM

Please complete and submit this form to the City Manager.

08/26/2019

Councilmember Nuñez



Councilmember Phan



Request Date

City Council Members Submitting Request

☐

Urgent Item

Reason for Urgency

insert text here

Time frame for the item to be heard

(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

☐

Public Safety

☐

Economic Development and Job Growth

☐

Environment

☐

Neighborhoods and Housing

☐

Transportation and Transit

☐

Community Wellness and Open Space

☒

Governance and Administration

Name of Item:

Proclamation and Commendation Process

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Review and Codify the policies for the development, identification and dissemination for Milpitas Proclamations and Recognitions.

19. Receive Agenda Item Request Form from Councilmembers Nunez and Phan Related to a Main Street Museum and Park (Contact: Councilmember Nunez, 408-586-3023)

Recommendation: Hear request of Councilmembers Nunez and Phan for a study on a museum and park on Main Street in partnership with a non-profit group.



Revised

395

AGENDA ITEM REQUEST FORM

Please complete and submit this form to the City Manager.

08/26/2019

Councilmember Nuñez



Councilmember Phan



Request Date

City Council Members Submitting Request

☐

Urgent Item

Reason for Urgency

insert text here

Time frame for the item to be heard

(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

☐

Public Safety

☐

Economic Development and Job Growth

☐

Environment

☐

Neighborhoods and Housing

☐

Transportation and Transit

☒

Community Wellness and Open Space

☒

Governance and Administration

Name of Item:

Community Museum and Park

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Request a study of acquisition of a museum and park on Main Street in partnership with a community non-profit organization.

20. Receive Agenda Item Request Form from Councilmembers Nunez and Phan Regarding a Community Theater (Contact: Councilmember Nunez, 408-586-3023)

Recommendation: Hear request of Councilmembers Nunez and Phan to request a study on building a community theater in the civic center area or school district property.



Revised

397

AGENDA ITEM REQUEST FORM

Please complete and submit this form to the City Manager.

08/26/2019

Councilmember Nuñez



Councilmember Phan



Request Date

City Council Members Submitting Request

☐

Urgent Item

Reason for Urgency

insert text here

Time frame for the item to be heard

(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

☐

Public Safety



Economic Development and Job Growth

☐

Environment

☐

Neighborhoods and Housing

☐

Transportation and Transit

☒

Community Wellness and Open Space

☐

Governance and Administration

Name of Item:

Feasibility Study of Community Theatre

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Request a study of building of a Community Theatre in the Civic Center Facility or a partnership with the Milpitas Unified School District on one of their properties. This would be included in the CIP.

21. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Rename Park (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Request Form, regarding the renaming of Augustine Memorial Park to Sunnyhills Albert Augustine Jr. Memorial Park.



City Clerk's Office
SEP 17 2019
RECEIVED

399

COUNCIL AGENDA ITEM REQUEST FORM

Upon submission, the Council Agenda Item Request form will be routed to the City Manager, City Attorney, and City Clerk for review and will be added to the next Rules Subcommittee meeting agenda.

September 16, 2019

Mayor Tran

Councilmember Montano

Requested Date

City Council Members Submitting Request

☐ **Urgent Item** Reason for Urgency

Time frame for the item to be heard ASAP
(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

- | | |
|--|---|
| ☐ Public Safety | ☐ Economic Development and Job Growth |
| ☐ Environment | ☒ Neighborhoods and Housing |
| ☐ Transportation and Transit | ☒ Community Wellness and Open Space |
| ☐ Governance and Administration | |

Name of Item:

Renaming Augustine Memorial Park to "Sunnyhills Albert Augustine Jr. Memorial Park."

Item Description:

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Requesting name change to reflect the community's history as the world renown "Sunnyhills" neighborhood. There is no public name in Milpitas that indicates "Sunnyhills" title. The park is more commonly referred by the community as "Sunnyhills Park." This goes back to 1965.

22. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Railroad Quiet Zone (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Item Request Form, to establish a "Union Pacific Railroad Quiet Zone."



City Clerk's Office
SEP 17 2019
RECEIVED

401

COUNCIL AGENDA ITEM REQUEST FORM

Upon submission, the Council Agenda Item Request form will be routed to the City Manager, City Attorney, and City Clerk for review and will be added to the next Rules Subcommittee meeting agenda.

September 16, 2019

Mayor Tran

Councilmember Montano

Requested Date

City Council Members Submitting Request

☒ **Urgent Item** Reason for Urgency Public Nuisance/Noise Pollution

Time frame for the item to be heard ASAP
(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

- | | |
|--|---|
| ☐ Public Safety | ☐ Economic Development and Job Growth |
| ☐ Environment | ☒ Neighborhoods and Housing |
| ☒ Transportation and Transit | ☒ Community Wellness and Open Space |
| ☐ Governance and Administration | |

Name of Item:

Union Pacific Railroad Quiet Zone

Item Description:

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Pursuant to regulations adopted by the Federal Railroad Authority ("FRA"), a public authority, such as the City, may establish a quiet zone if it equips the proposed grade crossing with adequate safety measures to overcome the decrease in safety created by silencing the train horns. The additional safety measures must be constructed at the City's own expense and must meet Federal specifications.

23. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Green Bike Lanes (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Item Request Form, regarding "Green Bike Lanes (CIP)."



SEP 17 2019

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COUNCIL AGENDA ITEM REQUEST FORM

Upon submission, the Council Agenda Item Request form will be routed to the City Manager, City Attorney, and City Clerk for review and will be added to the next Rules Subcommittee meeting agenda.

September 16, 2019

Mayor Tran

Councilmember Montano

Requested Date

City Council Members Submitting Request

☐ **Urgent Item** Reason for Urgency

Time frame for the item to be heard ASAP
(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

- | | |
|--|--|
| ☒ Public Safety | ☐ Economic Development and Job Growth |
| ☐ Environment | ☐ Neighborhoods and Housing |
| ☒ Transportation and Transit | ☐ Community Wellness and Open Space |
| ☐ Governance and Administration | |

Name of Item:

Green Bike Lanes (CIP)

Item Description:

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Request for green bike lanes to be brought back to the CIP and funded as soon as possible. Green bike lanes provide a color-based indication of road boundaries. Similarly to blue handicap parking spots providing indication where caution is significantly needed. Hundreds of residents are also advocating for this particular request.

24. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano Regarding Dumpster Days (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted on Agenda Item Request Form seeking to have City-sponsored free "Dumpster Days" for Milpitas residents.



SEP 17 2019



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COUNCIL AGENDA ITEM REQUEST FORM

Upon submission, the Council Agenda Item Request form will be routed to the City Manager, City Attorney, and City Clerk for review and will be added to the next Rules Subcommittee meeting agenda.

September 16, 2019

Mayor Tran

Councilmember Montano

Requested Date

City Council Members Submitting Request

☐ Urgent Item Reason for Urgency

Time frame for the item to be heard
(e.g., within 60 days or within 2 Council meetings)

As soon as possible

Alignment with Council Priority Area(s):☐ Public Safety☐ Economic Development and Job Growth☒ Environment☒ Neighborhoods and Housing☐ Transportation and Transit☐ Community Wellness and Open Space☐ Governance and Administration**Name of Item:**

Dumpster Days

Item Description:

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

Per request of elected officials, we are requesting the City sponsor free dumpster days so that residents can dump all types of garbage that otherwise would not fit until their standard waste bin. Seniors and the disabled would greatly benefit from the opportunity to dump items at the convenience of their neighborhood. Furthermore, with the previous free dump days gone, thousands of pounds of large waste items are accumulating in hundreds if not thousands of Milpitas residents' homes. Illegal dumping across the City is suspected to be a result from residents inability to dispose of large waste.

25. Receive Agenda Item Request Form From Mayor Tran and Councilmember Montano - Consider Renewing Sister City (Contact: Mayor Tran, 408-586-3029)

Recommendation: Hear request from Mayor Tran and Councilmember Montano submitted through the Council Agenda Request Form, seeking the renewal of Sister City relationship with city of Dagupan, in The Philippines.



RECEIVED

**COUNCIL AGENDA ITEM REQUEST FORM**

Upon submission, the Council Agenda Item Request form will be routed to the City Manager, City Attorney, and City Clerk for review and will be added to the next Rules Subcommittee meeting agenda.

September 16, 2019

Mayor Tran

Councilmember Montano

Requested Date**City Council Members Submitting Request**

☒ **Urgent Item** Reason for Urgency Sister City relationship set to expire 10/2019

Time frame for the item to be heard ASAP
(e.g., within 60 days or within 2 Council meetings)

Alignment with Council Priority Area(s):

- | | |
|---|---|
| ☐ Public Safety | ☒ Economic Development and Job Growth |
| ☐ Environment | ☐ Neighborhoods and Housing |
| ☐ Transportation and Transit | ☐ Community Wellness and Open Space |
| ☒ Governance and Administration | |

Name of Item:

Renewal of Sister City relationship with Dagupan, Philippines

Item Description:

Enter item description and why the item is being requested for Council consideration. To ensure compliance with the Brown Act, no position on the item should be included in the item description.

City of Milpitas and Dagupan City, Philippines have been Sister Cities since 2003. The relationship between the Filipino American community and Philippines is highly regarded and valued to tens of thousands of Milpitas residents. There are many benefits to renewing the relationship, such as economic development and cultural exchange. Minimizing the City's cost of the relationship will be considered.

26. **Receive Preview List for the Next Regular City Council Meeting Scheduled for October 15, 2019
(Staff Contact: Mary Lavelle, 408-586-3001)**

PREVIEW OF AGENDA ITEMS

JOINT MEETING: MILPITAS CITY COUNCIL, HOUSING AUTHORITY, and MUNICIPAL FINANCING AUTHORITY

TUESDAY, OCTOBER 15, 2019

CONSENT CALENDAR

- 1) Accept City Council calendars for October and November 2019 (Mary Lavelle)
- 2) Approve City Council meeting minutes of Sept. 24 and October 1, 2019 (Mary Lavelle)
- 3) Adopt a Resolution granting initial acceptance of and reducing the performance bond for the ADA Curb Ramp Transition Projects No. 4283 and No. 4287, and grant authorization to Director of Engineering/ City Engineer to issue a Notice of Final Acceptance and release the Performance Bond after 1 Year (Steve Erickson)
- 4) Authorize City Manager to Execute a Master Funding Agreement between City and Santa Clara VTA for 2016 Measure B State Route 237 Near Term Improvements Project (Steve Erickson)
- 5) Per Arts Commission recommendation, Approve Art Piece for Higuera Adobe Park (Renee Lorentzen)
- 6) Mayor's Recommendation to Appoint 1 new member to the Economic Development and Trade Commission (Mayor Tran)
- 7) From 9/17: Approve Findings for Payment of In Lieu Fee for 2001 Tarob Ct project (Ned Thomas)

PUBLIC HEARINGS

- 8) Approve Amendment to Conditions for Planned Unit Development - Spinnaker Pointe (Ned Thomas)
- 9) 1st reading/Introduce Ordinance No. 38.837 to amend zoning to prohibit Assembly Uses in M2 Heavy Industrial Zoning Districts (Ned Thomas)
- 10) 1st reading/Introduction of revised Ordinance No. 302 for the Rent Review Program (Sharon Goei)
- 11) Consider Adoption of Urgency Ordinance No. 303 – Just Cause Eviction protection for tenants (Sharon Goei)

COMMUNITY DEVELOPMENT

- 12) From 9/17: Pilot Rent Relief Program (Sharon Goei)
- 13) From 9/17: Housing Authority: approve Bylaws and appoint officers (Sharon Goei)

LEADERSHIP

- 14) Adopt Two City Council Resolutions to authorize Financing for Water and Sewer system upgrades, and Adopt Two Resolutions of the Municipal Financing Authority for the Issuance and Sale of Water and Sewer Revenue Bonds (Walter Rossmann)

PREVIEW NEXT AGENDA

- 15) Preview list of items for November 5, 2019 (Mary Lavelle)