



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, FEBRUARY 18, 2020
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 (6:00 – 7:00 PM)

a) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to California Government Code §54956.9(d)(1)

Alok Jain, et al. vs. City of Milpitas, et al; Santa Clara County Superior Court, Case No. 18CV325365

b) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to California Government Code §54956.9(d)(1)

Vibha Shah v. City of Milpitas, et al/City of Milpitas v. Kenneth Louis Kaldy, et al; Santa Clara County Superior Court, Case No. 18CV322398

c) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to California Government Code §54957.6

Agency designated representatives: Mayor Rich Tran

Unrepresented Employee: City Manager

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

PUBLIC FORUM (7:05 – 7:15 PM)

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 or

less. 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 AND FUTURE AGENDA ITEMS (7:15 – 7:30 PM)

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

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

APPROVAL OF AGENDA

CONSENT CALENDAR (7:30 – 7:35 PM)

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

C1. Receive City Council Calendars of Meetings for February and March 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council meeting minutes drafted for the February 4, 2020 Regular Meeting (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: approve draft meeting minutes for the February 4, 2020 City Council meeting.

C3. Adopt Ordinance No. 304 Adding Subsection 7.02 to Chapter 9 (Parks) of Title V Relating to the Milpitas Skate Park (Staff Contact: Renee Lorentzen, 408-856-3409)

Recommendation: Waive the second reading and adopt Ordinance No. 304 adding Subsection 7.02 of Chapter 9 (Parks) of Title V of the Milpitas Municipal Code relating to the Milpitas Skate Park.

C4. Adopt a Resolution Approving the Award of a Sole Source Contract to Locution Systems Inc. for Fire Station No. 2 Replacement, Project No. 3447 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a resolution approving the award of a sole source contract to Locution Systems Inc. for the Fire Station No. 2 Replacement, Project No. 3447, and authorizing the interim City Manager to execute a contract for the procurement and installation of the Locution fire alerting system in the amount of \$97,377.

C5. Adopt a Resolution Approving and Authorizing the City Manager to Execute an Amendment to the Agreement with CentralSquare Technologies for the Sole Source Purchase of Community Development Software Upgrade for an Amount Not to Exceed \$433,437.21 for the Term Period February 19, 2020 to February 18, 2025 (Staff Contact: Mike Luu 408-586-2706)

Recommendation: Adopt a Resolution approving and authorizing the City Manager to execute an Amendment to the Agreement with CentralSquare Technologies for the sole source purchase of Community Development software upgrade for an amount not to exceed \$433,437.21 for the term period February 19, 2020 to February 18, 2025.

C6. Receive report on Bids and Award Construction Contract to Redwood Construction and Equipment, Inc. in the amount of \$1,715,652 for the Citywide Parks and Playgrounds Rehabilitation Project (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations:

- (1) Receive report on bids and award construction contract to the lowest responsible bidder submitting a responsive bid, Redwood Construction and Equipment, Inc., in the amount of \$1,715,652.00 for the Citywide Parks and Playgrounds Rehabilitation Project, subject to annual appropriations.
- (2) Authorize the Public Works Director to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$50,000 for the Citywide Parks and Playgrounds Rehabilitation Project.

C7. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with Water Systems Optimization, Inc. for Water Loss Technical Assistance for a Total Amount Not to Exceed \$160,756 (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve and authorize the City Manager to execute Amendment No. 2 to the professional services agreement with Water Systems Optimization, Inc. for water loss technical assistance for a total amount not to exceed \$160,756.

C8. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a New Total Amount Not to Exceed \$296,250 (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a new total not to exceed \$296,250.

C9. Approve and Authorize the City Manager to Execute an Agreement with Urban Field Studio to Provide Consulting Services related to the Transit Area Specific Plan (TASP) 2020 Update (Staff Contact: Ned Thomas, 408-586-3273)

Recommendation: Approve and authorize the City Manager to execute the Agreement with Urban Field Studio to provide consulting services related to the Transit Area Specific Plan (TASP) 2020 Update.

C10. Receive Summary Report on Assembly Bill 291 and Senate Bill 378 and Consider Authorizing Letters of Support (Staff Contact: Christopher Diaz, 408-586-3040)

Recommendation: Receive summary report on Assembly Bill 291 and Senate Bill 378 and consider authorizing letters of support.

C11. Per Mayor's Recommendation, Appoint One New Arts Commissioner and Move Alternate Member of Science, Technology and Innovation Commission to Voting Member (Contact: Mayor Tran, 408-586-3029)

Recommendation: Mayor Tran recommends the City Council confirm his appointments to:

- (1) Move current Alternate No. 1 Guy Haas into a voting position on the Science, Technology and Innovation Commissioner position (vacancy created by resignation of Jaime Hallera), into a term that will expire at the end of January 2023.

- (2) Newly appoint Benjamin Tang to the Milpitas Arts Commission into a vacant term that will expire in October of 2021.

C12. Per Recommendation of Mayor Tran, Appoint Vice Mayor Nuñez to the Santa Clara Valley Transportation Authority (VTA)'s Northeast Group of Cities, representing Milpitas and serving on the VTA Board of Directors from the Group (Contact: Mayor Tran, 408-586-3029)

Recommendation: Per the recommendation of Mayor Rich Tran, appoint Vice Mayor Bob Nuñez to the Santa Clara Valley Transportation Authority (VTA)'s Northeast Group of Cities, representing the City of Milpitas and requesting to serve on the VTA Board of Directors, effective immediately. Direct staff to notify the Northeast Group of cities in advance of its March 4 meeting, and the SCVTA staff of the City Council authorized change of representative.

C13. Consider the Appointment of Steve Belong to Serve on the Milpitas Planning Commission (Contact: Mayor Tran, 408-586-3029)

Recommendation: Per Mayor Tran and recommendation of Councilmember Dominguez, move to appoint Steve Belong to a term of three years on the Milpitas Planning Commission in a term that will expire in December 2022.

C14. Authorize and Approve Travel for Councilmember Anthony Phan and Interim City Manager Steve McHarris (Staff Contact: Steve McHarris, 408-586-3059)

Recommendations:

- (1) Authorize and approve travel for Councilmember Anthony Phan, and Interim City Manager Steve McHarris to attend the Local Government Commission *2020 Yosemite Policymakers Conference: Building Livable Communities* in Yosemite National Park, CA scheduled March 5 – 8, 2020, for a total combined estimated amount up to \$3,500.
- (2) Authorize and approve travel for Interim City Manager Steve McHarris to attend the International Council of Shopping Centers *Annual Conference & Deal Making* in Monterey, CA scheduled March 10, 2020, for a total amount of \$95.

PUBLIC HEARING (7:35 – 7:50 PM)

15. Conduct a Public Hearing and Introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 6, 13, and 53 to establish regulations for Short-Term Rentals (Staff Contact: Daniel Degu, Sr.. 408-586-3054)

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 State CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) and 15308 (Actions by Regulatory Agencies for Protection of the Environment).
- (3) City Attorney shall read aloud title of Ordinance No. 38.835.
- (4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10 for a zoning amendment in Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards,” Section 13 “Special Uses” and Section 53 “Off-Street Parking Regulations.”

COMMUNITY DEVELOPMENT (7:50 – 8:15 PM)

- 16.** Receive an Update on The Pines Pilot Parking Permit and Transit Area Specific Plan On-Street Parking Program Projects and Provide Direction to Staff (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Receive an update on The Pines Pilot Parking Permit and Transit Area Specific Plan On-Street Parking Program projects and provide direction to staff.

- 17.** Receive Preview of Draft Economic Development Strategy Framework (Staff Contact: Alex Andrade, 408-586-3046)

Recommendation: Receive preview of the draft Economic Development Strategy Framework from the Office of Economic Development; and obtain City Council feedback regarding the draft Economic Development Strategy Framework.

LEADERSHIP AND SUPPORT SERVICES (8:15 – 9:30 PM)

- 18.** Receive and Accept Report on the City's Communication Function Study (Staff Contact: Walter Rossmann, 408-586-3111)

Recommendation: Receive and accept a report on the City's communication function.

- 19.** Review Fiscal Year 2019-20 Second Quarter Financial Status Report, Mid-Year Budget Amendments, and Adopt a Resolution Amending Resolution No. 1626, the Classification Plan, to Approve and Adopt the Pay Schedule Titled "All Job Classifications/Salary Table" and Approve the Three Position Changes (Staff Contact: Walter Rossmann, 408-586-3111)

Recommendations: Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending December 31, 2019; approve FY 2019-2020 Mid-Year Budget Amendments; and, adopt a Resolution amending Resolution No. 1626, the Classification Plan, to approve and adopt the pay schedule titled "All Job Classifications/Salary Table" and approve three position changes.

- 20.** Approve and Authorize the City Manager to Execute the Agreement with Chandler Asset Management for a Five Year Contract Amount Not to Exceed \$790,000 for Investment Services (Staff Contact: Walter Rossmann, 408-586-3111)

Recommendation: Approve and authorize the City Manager to execute the agreement with Chandler Asset Management for a five year contract amount not to exceed \$790,000, with the first year of the contract in the amount of \$150,000, for investment services to manage the City's pooled portfolio, subject to the annual appropriation of funds.

REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees and Agencies (9:30 – 10:15 PM)

- 21.** Receive Report of City Council Rules Subcommittee (Contacts: Mayor Tran, 408-586-3029 and Councilmember Dominguez, 408-586-3031)

Recommendation: Hear report from the two members of the City Council Rules Subcommittee, with any comments from the January 31, 2020 meeting (joint meeting with full City Council). Members may review agenda items requested at the Subcommittee Meeting (see meeting minutes draft).

22. Hear Request of Councilmember Phan and Mayor Tran for Support of “Laura’s Law” (Contacts: Councilmember Anthony Phan, 408-586-3032 and Mayor Tran, 408-586-3029)

Recommendation: Hear request of Councilmember Phan and Mayor Tran for support of “Laura’s Law” and consider directing staff to send letter of support to the County.

23. Adopt a Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women (Contacts: Councilmember Dominguez, 408-586-3031 and Councilmember Phan, 408-586-3032)

Recommendation: Adopt a resolution in support of the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

COMMISSION REPORT (10:15 – 10:45 PM)

24. Approve Economic Development and Trade Commission Work Plan for Fiscal Year 2019-2020 and receive a Trade Progress Report (Staff Contact: Alex Andrade, 408-586-3046)

Recommendation: Approve proposed Fiscal Year 2019-2020 Economic Development and Trade Commission Work Plan; and, receive an International Trade Progress Report.

NEXT AGENDA PREVIEW

25. Receive Preview List of Agenda Items for the March 3, 2020 Regular City Council Meeting (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive list of anticipated agenda items for the March 3, 2020 City Council meeting.

ADJOURNMENT (11:00 PM)

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.

MILPITAS CITY COUNCIL CODE OF CONDUCT

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

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: 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 City website. City Council agendas and related materials can be viewed online: 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.

January 2020						
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March 2020						
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Milpitas City Council Calendar

February 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)	4 12:00 PM-Santa Clara VTA Monthly Briefing - Northeast Group (RT) 5:30 PM-Closed Session 7:00 PM-City Council	5 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (BN)	6 5:30 PM-Milpitas Chamber of Commerce Board (CM) 5:30 PM-Santa Clara VTA Board of Directors (RT)	7	8 2:00 PM-Black History Month Flag Raising & Film Screening (Cesar Chavez Plaza)
			League of CA Cities -City Managers Conference Interim City Manager Steve McHarris			
9	10 4:30 PM-Economic Development and Trade Commission (KD)	11	12 4:30 PM-City Council Transportation Subcommittee (RT/CM) 6:00 PM-Project Sentinel Drop-In Clinic 7:00 PM-Silicon Valley Clean Energy Board of Directors (CM) 7:00 PM-Planning Commission	13 4:00 PM-Treatment Plant Advisory Committee (CM) 7:00 PM-Youth Advisory Commission (AP) 7:00 PM-Cities Assoc of SCC (CM)	14	15
16	17 PRESIDENT'S DAY  CITY HALL CLOSED	18 6:00 PM-Closed Session 7:00 PM-City Council	19 6:00 PM-Energy and Environmental Sustainability Commission (BN)	20	21 3:30 PM-City Council Rules Subcommittee (RT/KD)	22 12:30 PM-Mtg with Congressman Khanna (RT/BN)
23	24 7:00 PM-Special Arts Commission (CM) (Library) 7:00 PM-Science, Technology, and Innovation Commission (BN)	25 1:30 PM-Senior Advisory Commission (AP) 3:00 PM-City Council Housing Subcommittee (BN/CM)	26 6:00 PM-Project Sentinel Drop-In Clinic 7:00 PM-Project Sentinel Informational Workshop 7:00 PM-Planning Commission	27 4:00 PM-City Council City/MUSD Collaborative Subcommittee (RT/CM)	28 12:00 PM-City Council Finance Subcommittee (RT/CM) 2:00 PM-Community Development Block Grant Subcommittee (BN/KD)	29

February 2020						
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April 2020						
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Milpitas City Council Calendar

March 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	3 12:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group ?:00 PM -Closed Session 7:00 PM -City Council	4 7:00 PM -Community Advisory Commission (BN)	5 5:30 PM -Santa Clara VTA Board of Directors 5:30 PM -Milpitas Chamber of Commerce Board (CM)	6 ?:00 -City Council Rules Subcommittee	7
				Yosemite Policymakers Conference (3/5-3/8) (City Manager and AP)		
8	9 4:30 PM -Economic Development and Trade Commission (KD)	10 ICSC Conference (Monterey) City Manager McHarris	11 6:00 PM -Project Sentinel Drop-In Clinic 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM) (Cupertino)	12 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 4:00 PM -Treatment Plant Advisory Committee (CM) 7:00 PM -Cities Association of Santa Clara County (CM) 7:00 PM -Youth Advisory Commission (AP)	13 *2:00 PM -City Council Finance Subcommittee (RT/CM)	14
15	16 7:00 PM -Science, Technology, and Innovation Commission (BN) 7:00 PM -Library and Education Commission (CM)	17 ?:00 PM -Closed Session 7:00 PM -City Council	18 6:00 PM -Energy and Environmental Sustainability Commission (BN) ULI UrbanPlan for Communities Workshop (BN/KD/CM & City Manager)	19 6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	20	21
22	23 7:00 PM -Arts Commission (CM)	24 ?:00 PM -Special Council Meeting: CIP Study Session	25 6:00 PM -Project Sentinel Drop-In Clinic 7:00 PM -Project Sentinel Informational Workshop 7:00 PM -Planning Commission	26	27 ?:00 -City Council Rules Subcommittee (RT/KD)	28
29	30 TBD -Cesar Chavez Flag Raising Ceremony (Cesar Chavez Plaza)	31  Cesar Chavez Day City Hall Closed				

**Finance Subcommittee will meet only as needed*

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of:	Regular Meeting of the Milpitas City Council
Date:	Tuesday, February 4, 2020
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	Vice Mayor Nuñez called the meeting to order at 5:38 PM. City Clerk Mary Lavelle called the roll. PRESENT: Vice Mayor Dominguez, Councilmembers Montano, Nuñez and Phan ABSENT: Mayor Tran was absent at roll call and arrived in Closed Session.
CLOSED SESSION	City Council convened in Closed Session to discuss four items (two existing litigation matters and two labor negotiation items). At the dais, Mayor Tran called to order the open session/regular meeting at 7:24 PM.
ANNOUNCEMENT	City Attorney Chris Diaz stated there was no reportable action out of Closed Session.
PLEDGE	Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.
INVOCATION	Councilmember Montano offered remarks to start the meeting.
PRESENTATION	Mayor Tran presented a signed Key to the City to outgoing CEO of Silicon Valley Leadership Group (SVLG) Carl Guardino, alongside Councilmembers. Mayor Tran presented six commendations to companies and individuals involved with the successful Milpitas Manufacturing Day held on October 4, 2019.
PUBLIC FORUM	Anu Nakka from Sinnott Elementary PTA invited all to a STEM event in February. Rob Means, 1421 Yellowstone resident, thanked the Mayor for placing PRT (personal rapid transit) on the Transportation Subcommittee agenda. Vice Mayor Nuñez asked the City Attorney about participation in the Subcommittee meeting. Jackie Romero, resident, said one minute was not enough time to make public comment. Frank DeSmidt announced upcoming Milpitas Rotary Club and Milpitas Chamber of Commerce events in March. Voltaire Montemayor, resident, complimented Mr. Guardino's tenure at SVLG.
ANNOUNCEMENTS	Councilmember Phan requested, for February 18, that the City Council consider implementation of support for "Laura's Law" and develop policies related to conservatorship and mental health treatment. He also requested for a future meeting in March, that the City Council discuss having a responsible construction ordinance. Mayor Tran stated his support of both items proposed by Mr. Phan.

Councilmember Dominguez requested to add a policy in alliance with helping the unhoused population including transitional housing and how Milpitas residents would have the ability to fill those units first. She asked what the city policy was on implementing future housing development, and inquired how the city was tracking its homeless population.

Mayor Tran asked the City Attorney to comment on state law requirements on how persons were chosen for affordable housing units. Mr. Diaz stated he would bring these items back to the Council.

Vice Mayor Nuñez asked if the housing item could go to the Housing Subcommittee first.

Councilmember Montano asked staff to bring back information to the Housing Subcommittee on making Sango Court's 100% affordable units available for Milpitas residents first.

Mayor Tran summarized that there was consensus to bring the first two topics back to Council and to send the third topic to the Housing Subcommittee.

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.

Vice Mayor Nuñez asked for item no. C8 (fee waiver request for Nuñez Foundation) to be removed from the agenda.

APPROVAL OF AGENDA

Motion: to approve the City Council agenda, as amended with removal of agenda item no. C8

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

CONSENT CALENDAR

Motion: to approve the consent calendar including items no. C1 – C7, no. 12 and 13 (with item no. C8 removed from the agenda above)

Mayor Tran asked to remove item no. C9 from consent.

Councilmember Phan requested to add items no. 12 and no. 13 (Commission work plans) onto the consent calendar.

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

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| C1. Council Calendar | Received the calendar of upcoming meetings for the month of February 2020. |
| C2. Meeting Minutes | Approved City Council meeting minutes of January 21, 2020. |
| C3. Adopt Ordinance | Waived second reading and adopted Ordinance No. 38.838 amending Milpitas Municipal Code Title X (Zoning, Planning, and Annexation, Chapter 10 (Zoning) to allow zoning designation change of certain parcels within the zoning map. |
| C4. Two Resolutions –
McCandless Well and Park | Adopted Resolution No. 8940 approving Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR) for Project No. 5102 McCandless Park, Project No. 7076 Well Upgrade - McCandless Well, and Project No. 2005 Penitencia Creek Pedestrian Bridge.

Adopted Resolution No. 8941 approving project plans and specifications for Project No. 7076 Well Upgrade - McCandless Well; and awarded a construction contract for the base bid and |

authorized the interim City Manager to execute the contract with Pacific Coast Well Drilling, Inc. in the amount of \$884,620; and authorized the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$265,000.

C5. Resolution

Adopted Resolution No. 8942 (a) granting acceptance of public improvements for the Centre Pointe Subdivision at 1463, 1515, 1557 & 1585 Centre Pointe Drive, Tract 10363, Public Improvement Plan No. 2-1218 and 2-1218 SD; and (b) approving a reduction in the faithful performance bond to \$97,800, which shall be subject to and in effect for the duration of a one-year warranty period.

Granted authorization to the City Engineer to release the performance bond after the one-year warranty period, without further City Council action - provided all required warranty work is completed to the satisfaction of the City Engineer.

C6. Resolution

Adopted Resolution No. 8943 declaring weeds on specific properties to be public nuisances and setting a public hearing date on March 3, 2020.

C7. Training Grant for Police

Accepted the CA Governor's Office of Emergency Services, Public Safety Communications Division, California 9-1-1 Emergency Communications Branch, Annual Training Allotment of up to \$10,000 for Fiscal Year 2019-20; and, approved a budget appropriation of \$10,000 from California Governor's office of Emergency Services, Public Safety Communications Division, California 9-1-1 Emergency Communications Branch.

C8. Fee Waiver Request –
Nuñez Foundation

Item was removed from the agenda.

9. Rename Park

This topic was removed from consent calendar and Recreation Services Director Renee Lorentzen provided history to date on the request to update the Al Augustine Jr. Park in the Sunnyhills neighborhood to include "Sunnyhills" in its name.

Mayor Tran invited speakers to the podium.

Mr. Augustine's daughter spoke to the City Council about the park name and significance of the Sunnyhills neighborhood in Milpitas.

Henry Nichols, resident, was pleased with the recommendation for the updated name and was glad to add "Sunnyhills" to the name of the park.

Councilmember Montano commented in support of the park name change. She offered a slightly different name: "Sunnyhills Albert Augustine Jr. Memorial Park."

Victor Valleneva, Sunnyhills resident, spoke in agreement with Councilmember Montano.

Guy Haas, resident, spoke in favor of having Sunnyhills at the beginning of the park name.

Jackie Romero, Sunnyhills resident, spoke in favor of the name change for the park.

Allyson McDonald, resident and president of Sunnyhills Neighborhood Association, thanked the Council for bringing this park name change to a vote.

Voltaire Montemayor, resident, spoke in support of the park name change.

Urvishkumar Mehta, resident, addressed process for changing the name of any one park.

Rob Means, resident, reminded City Council about a letter submitted in favor of park name change, from Sunnyhills Neighborhood Association.

Vice Mayor Nuñez asked what would be involved to change the name and staff responded.

Mayor Tran and Councilmember Dominguez expressed support for the park name change, and she wanted to add a historical plaque about Mr. Augustine at the park.

Councilmember Montano mentioned the need for a plaque designating site of the UAW Hall in Sunnyhills neighborhood, and other sites of historical reference.

Vice Mayor Nuñez asked if the Parks, Recreation and Cultural Resources, and Arts, Commissions would be involved with historical markers. Staff replied that was to be determined. He wanted this Sunnyhills park to be prioritized over other parks' historical markers.

Councilmember Montano referred to the prior Council Subcommittee on Facilities Naming, and wanted to bring it back so matters like this one would be referred there first.

Motion: to approve renaming Albert Augustine Jr. Memorial Park to “Sunnyhills Albert Augustine Jr. Memorial Park” and bring back having historical park markers at named parks, and restore the City Council Facilities Naming Subcommittee

Motion/Second: Councilmember Montano/Councilmember Phan

AYES: 5

NOES: 0

COMMUNITY SERVICES

10. SVCE update

Silicon Valley Clean Energy Chief Executive Officer Girish Balachandran provided an update to City Council upon one year of service in the city of Milpitas, and discussed possibilities on the restructuring of Pacific Gas & Electric company.

Mayor Tran invited speakers from the audience.

Allysson McDonald, resident, was pleased with the energy option from SVCE while concerned about PG&E restructuring and potential Municipal Utility District plans.

Rob Means, resident, commented on PG&E.

Voltaire Montemayor, resident, felt precaution was necessary regarding PG&E.

Urvishkumar Mehta, resident, knew what the alternatives were for clean energy and keeping infrastructure costs low.

Vice Mayor Nuñez thanked Mr. Balachandran and asked about San Jose Mayor Liccardo's plan on regional utility formation, and electric bikes. Mr. Balachandran replied. Mr. Nuñez wanted staff to look into a program for e-bikes use by high schoolers, who start their own business.

Councilmember Montano reminded all she served on the Board of Directors of SVCE.

Councilmember Phan commented on PG&E, monitoring its performance, cost savings, liabilities and related issues for SVCE.

Mayor Tran thanked Mr. Balachandran and Deputy Public Works Director Elaine Marshall.

11. ESCO savings

Public Works Director Tony Ndah introduced the update on the Preliminary Energy and Water Savings Conservation Measures pertaining to the Energy Service Company (ESCO) Investment Grade Audit being implemented by Engie Services U.S. Inc. Mr. Ndah described four groups of measurement for the energy savings.

Representatives from Engie, John Paul Jewel and Steve Sealy, reported on the four groups to the City Council.

Mayor Tran asked staff to take into consideration the potential of a new police building in the future, while considering solar at that site.

Mayor Tran noted his support for five conservation measures: 5 (Energy Management Systems), 6 (HVAC Upgrades), 7 (High Efficiency Transformers), 9 (Irrigation Controls), and 11 (Water Meter Upgrades).

Vice Mayor Nuñez asked about elimination of gas used in homes and a plan could for that. He asked to have a field trip to visit sites with “Smart City” technology.

Councilmember Phan suggested using smart meters for the water service system.

Councilmember Dominguez described visiting Costa Rica where there was 100% renewable energy. She recommended Micro Power Systems in city creeks and to track the City’s ecological footprint.

Councilmember Montano asked how street lights were assessed. Mr. Ndah said a consultant and staff reviewed every street light in the city’s inventory.

Councilmember Dominguez felt the interior and exterior building lighting could be improved, providing safety through environmental design.

Mayor Tran thanked staff and the consultant for work on energy savings.

COMMISSIONS

- | | |
|----------------------|---|
| C12. PRCRC Work Plan | Item was added to consent calendar. The Parks, Recreation and Cultural Resources Commission work plan including the Sister Cities Cultural and Community Relationship program was approved. |
| C13. STIC Work Plan | Item was added to consent calendar. The Science, Technology and Innovation Commission work plan was approved. |

NEXT AGENDA

- | | |
|-------------------------|---|
| 14. Preview next agenda | Received a list of agenda items for the February 18, 2020 City Council meeting.

City Manager Steve McHarris stated that a few items would be deferred to later City Council meeting agendas. An item previously requested by Councilmember Dominguez would be placed on the next agenda. |
|-------------------------|---|

ADJOURNMENT

Mayor Tran adjourned the regular City Council meeting at 11:01 PM, in memory of his nephew.

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Ordinance No. 304 Adding Subsection 7.02 to Chapter 9 (Parks) of Title V Relating to the Milpitas Skate Park
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2020
Staff Contact:	Renee Lorentzen, Recreation and Community Services Director, 408-856-3409
Recommendation:	Waive the second reading and adopt Ordinance No. 304 adding Subsection 7.02 of Chapter 9 (Parks) of Title V of the Milpitas Municipal Code relating to the Milpitas Skate Park.

Background:

Ordinance No. 304 was introduced at the January 28, 2020 City Council special meeting. The Ordinance has been updated and is now ready for its second reading and adoption.

Fiscal Impact

None

Recommendation

Waive the second reading and adopt Ordinance No. 304 adding Subsection 7.02 of Chapter 9 (Parks) of Title V of the Milpitas Municipal Code relating to the Milpitas Skate Park.

Attachment

Ordinance No. 304 for adoption

REGULAR

NUMBER: 304

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ADDING SUBSECTION 7.02 TO CHAPTER 9 (PARKS) OF TITLE V OF THE
MILPITAS MUNICIPAL CODE RELATING TO THE MILPITAS SKATE PARK**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of January 28, 2020, upon motion by Councilmember Montano and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas has dedicated the Milpitas Skate Park facility at the Milpitas Sports Center Complex for the purpose of skateboarding, rollerblading and other recreational activities using non-motorized wheeled devices; and

WHEREAS, skateboarding, rollerblading and other recreational activities using wheeled devices are inherently hazardous recreational activities; and

WHEREAS, the City of Milpitas desires to establish facility use regulations to ensure safe use of the Milpitas Skate Park; and

WHEREAS, the City of Milpitas desires to limit its liability by clearly communicating safe use regulations to the public.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 9, SECTION 7

Title V, Chapter 9, Section 7 of the Milpitas Municipal Code is hereby amended to add subsection V-9-7.02, to read as follows:

V-9-7.02 - Use of the Milpitas Skate Park, located at the Milpitas Sports Center Complex

7.02-1 The purpose of this subsection V-9-7.02 is to provide regulations governing the conduct of Milpitas Skate Park users for the purpose of enforcement and administration in addition to the general regulations in Chapter 9.

7.02-2 The following regulations shall apply at the Milpitas Skate Park:

1. Users are required to wear helmets, knee pads and elbow pads at all times in the skate bowls.
2. Non-city provided obstacles, ramps or jumps are not allowed.
3. Skate Park use is on a first-come, first-served basis. The facility is open to all skateboarders, roller skaters, cyclists, wheelchair users and others operating non-motorized, wheeled devices.
4. Users under twelve (12) years of age must be accompanied by a parent or guardian.
5. Unsafe or reckless behavior is not allowed.
6. Glass is not allowed.
7. Drinking or eating on the skate surface is not allowed.
8. Smoking and vaping are not allowed.
9. Animals are not allowed in the skate bowls.

10. Users of the Skate Park do so at their own risk. The City provides no on-site supervision. The City shall not be liable for any injuries or damage resulting from the use of this facility.

SECTION 3. SEVERABILITY

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

SECTION 4. EFFECTIVE DATE AND POSTING

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving the Award of a Sole Source Contract to Locution Systems Inc. for Fire Station No. 2 Replacement, Project No. 3447
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2019
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Adopt a resolution approving the award of a sole source contract to Locution Systems Inc. for the Fire Station No. 2 Replacement, Project No. 3447, and authorizing the interim City Manager to execute a contract for the procurement and installation of the Locution fire alerting system in the amount of \$97,377.

Background:

The 2019-2024 Capital Improvement Program includes Project No. 3447 for the replacement of Fire Station No. 2 located at 1263 Yosemite Drive. The Fire Station project is in the design phase, and construction of new Fire Station No. 2 is anticipated to start summer 2020.

On December 4, 2018, the City Council approved a resolution approving the cooperative purchase of Motorola Solutions, Inc. dispatch console equipment and the sole source purchase of a matching Locution systems Inc. fire alerting system. The Locution system installed at the four City Fire Stations provides a network-based alerting system matched to the Silicon Valley Regional Communications System (SVRCS), which is a countywide radio interoperability and public safety radio and data communications network the City of Milpitas agreed to jointly fund to improve public safety and emergency services.

The installation of the Locution alerting system equipment in all fire stations has been completed.

Analysis:

As part of the Fire Station No. 2 replacement project, the Locution equipment installed at the existing station No. 2 will be relocated and re-installed in new fire station with additional features to alert staff of a system call including wall mounted LED night vision illuminator, ceiling mounted strobe lighting, and an EZ zone alerting solution to alert specific rooms and bedrooms within the Fire Station as opposed to alerting the entire Fire Station. Staff recommends the continued use of the Locution fire alerting equipment system, and the relocation of the equipment into the new Station No. 2 so that all four fire stations operate the same with the matching dispatch console equipment.

The relocation and continued use of the Locution fire alerting system equipment to the replacement Station No. 2 is in the City's best interest for the following reasons:

- Implementation cost savings
- Provides matching systems at all four fire stations and ensures system communication
- Maintains continuity of the warranty
- Simplifies scheduling, system operation, and deployment
- Minimizes dispatch center disruption and implementation time by using a single one vendor
- Locution Systems Inc. is the sole source manufacturer, supplier, and installer for the City's Locution fire alerting system

In accordance with the requirements of Public Contract Code section 3400(c)(2), (3), City staff has determined that the Locution fire alerting system is the only device meeting City requirements for the reasons set forth above, and Locution Systems Inc. is the sole source distributor and installer for the equipment **(Attachment 2)**.

City Council is requested to adopt a resolution approving Locution Systems Inc. as the City's Sole Source provider and installer for the fire alerting system for Fire Station No. 2.

Staff negotiated a fee with Locution Systems Inc. in the amount of \$ 97,377.00 to procure and install the fire alerting system at the new replacement Fire Station No. 2. The fee is considered reasonable for the project scope.

Policy Alternative:

Alternative: Deny sole source purchase of the Locution fire alerting system.

Pros: None.

Cons: It is recommended that the network-based fire alerting systems at all four fire stations is the same and provided by the same vendor to avoid communication discrepancies and for consistency in operation all all stations.

Reason not recommended: It is important that the new replacement Fire Station No.2 continue to use the same Locution fire alerting system as the other stations to maintain the continuity of the maintenance, warranty, and vendor responsibility for the operation. This will enhance and support emergency responses for fire units.

Fiscal Impact:

There is sufficient funding available in the budget for Project No. 3447 Fire Station No. 2 Replacement project to award the construction contract to Locution System Inc. As of December 31, 2019, the available Project funding is as follows:

Available Project Budget	\$ 3,905,837.00
Summary of Estimated Tenant Improvement Cost	
Construction Contract	\$ 97,377
Administration and Inspection	\$ 20,000
Total Estimated Cost	\$ 117,377

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt a resolution approving the award of a sole source contract to Locution Systems Inc. for the Fire Station No. 2 Replacement, Project No. 3447, and authorize the interim City Manager to execute a contract for the procurement and installation of the Locution fire alerting system in the amount of \$97,377.

Attachments:

1. Resolution
2. Locution System Inc. Sole Source Letter
3. Construction Contract with Locution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO APPROVE THE
AWARD OF A SOLE SOURCE CONTRACT TO LOCUTION SYSTEMS INC. FOR THE FIRE
STATION NO. 2 REPLACEMENT, PROJECT NO. 3447, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE CONTRACT FOR THE PROCUREMENT AND
INSTALLATION OF FIRE ALERTING SYSTEM IN THE TOTAL CONTRACT AMOUNT OF
\$97,377**

WHEREAS, in 2018, the Milpitas City Council adopted a resolution approving the cooperative purchase of Motorola Solutions, Inc., dispatch consoles equipment and sole source purchase of a matching Locution Systems Inc. fire alerting system; and

WHEREAS, the Locution fire alerting system provided for each of four fire stations is a network-based alerting system specifically matched to the Silicon Valley Regional Communications System (SVRCS), which is a countrywide radio interoperability and public safety radio and data communications networks that the City of Milpitas agreed to jointly fund to improve public safety and emergency services; and

WHEREAS, the installation of the Locution fire alerting system equipment in all fire stations has been completed; and

WHEREAS, as part of the Fire Station No. 2 replacement project, the Locution equipment installed at the existing Station No. 2 will be relocated and re-installed in the new fire station with additional features to alert staff of a system call including wall-mounted LED night vision illuminator, ceiling-mounted strobe lighting, and an EZ zone alerting solution to alert specific rooms and bedrooms within the Fire Station as opposed to alerting the entire Fire Station; and

WHEREAS, the relocation and continued use of the Locution fire alerting system equipment to the replacement station no. 2 is in the City's best interest for the following reasons:

- Implementation cost saving
- Provides matching systems at all four fire stations and ensures system communication
- Maintains continuity of the warranty
- Simplifies scheduling, system operation, and deployment
- Minimizes dispatch center disruption and implementation time by using a single one vendor

WHEREAS, in accordance with the requirements of Public Contract Code section 3400(c)(2), (3), the City has determined that the Locution fire alerting system is the only system meeting City requirements for the reasons set forth above; and

WHEREAS, Locution Systems Inc. is the sole source distributor and installer for the system; and

WHEREAS, staff recommends the adoption of a resolution approving Locution Systems Inc. as the Sole Source provider and installer for the fire alerting system for Fire Station No. 2; and

WHEREAS, staff recommends the City Council approve the award of a sole source contract to Locution Systems Inc. and authorize the City Manager to execute the contract in the total amount of \$97,377 for the procurement and installation of the Locution fire alerting system for the Fire Station No. 2 Replacement, Project No. 3447; and

WHEREAS, sufficient funds are available in the Project budget to award the fire alerting system contract in the amount of \$97,377;

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. Based on the foregoing, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby awards the sole source contract for the Locution fire alerting system for the Fire Station No. 2 Replacement, Project No. 3447, to Locution Systems Inc. and authorizes the City Manager to execute the contract and related documents in the total contract amount of \$97,377 for the Project.

PASSED AND ADOPTED this _____ day of _____, 2020, 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



1626 Cole Blvd., Suite 325
Golden, CO 80401
303 301 7300
FAX 303 384 9014
www.locution.com

December 30, 2019

Lyhak Eam, City of Milpitas
455 E Calaveras Blvd.
Milpitas, CA 95035

To Whom It May Concern:

This is to confirm that Locution Systems, Inc. of Golden, Colorado, is currently the only manufacturer, Distributor, retailer or provider of an automated voice dispatching system that provides a digitally recorded and complete word and phrase-based human voice automated voice dispatch message that provides capabilities at the levels required for Fire and EMS emergency dispatching. This automated alerting technology has been developed by Locution specifically for alerting and dispatching Fire and EMS station personnel. Keys to this technology, shared by no other station alerting system, are:

1. The system does not require a multi-second hearing adaptation period to reach understanding of a full dispatch announcement. This is because it is word and phrase-based human voice.
2. The system is the only such system that provides full dispatch announcement understandability to the high level required by Fire/EMS departments. This is also due to its being word and phrase-based human voice.
3. The system is the only system that provides allowance for 99% accuracy. Each street name, incident, and unit name are specifically run through a record/review process at Locution Operations with a final review process at the department. Each element can be matched precisely to the required way it needs to be said, including special pronunciations.

All three points above: minimal interpretation lag, very high understandability, and high announcement accuracy are required for EMS and Public Safety Operations in order to prevent the potential for an unacceptable number of location deployments, while still providing very quick turnout times. No other station alerting system provides all three of the above, a requirement for acceptable automated Fire and EMS dispatch operation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Glenn Neal', is written over a horizontal line.

Glenn Neal, President
Locution Systems, Inc.

CITY OF MILPITAS
CONSTRUCTION CONTRACT
FIRE STATION NO.2 ALERTING SYSTEM

1. PARTIES AND DATE.

This Contract is made and entered into this 18th day of February 2020 by and between the City of Milpitas, a public agency and public corporation of the State of California ("City") and Locution Systems, Inc, a CORPORATION with its principal place of business at 1616 Cole Boule, Suite 325, Golden, Colorado 80401 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing fire station alerting system for the City of Milpitas Fire Station No. 2 related construction 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 it is familiar with the plans of City. The following license classifications are required for this Project: License C-7 Low voltage systems

2.3 Project. City desires to engage Contractor to render such services for the FIRE STATION NO.2 ALERTING SYSTEM ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Insurance Requirements (Exhibit "G")
- Addenda
- Change Orders executed by the City

- 2018 Edition of the Caltrans Standard Specifications, Excluding Division I (Sections 1-9)
- 2018 Edition of the Caltrans Standard Plans
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract within 60 WORKING DAYS, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, 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 the sum of Two Thousand Dollars (\$ 2,000) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and 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 Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work 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 Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any

additional personnel performing the work governed by this Contract on behalf of Contractor 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 under this Contract 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, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of Ninety Seven Thousand Three Hundred Seventy Seven Dollars (\$97,377.00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract

which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in

effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. 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 any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. 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.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted, nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of

Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. 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.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local 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.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage

City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Consultant 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 paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, 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, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. 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 Contract or the Work, 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 Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If 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 Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor

shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 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). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their 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.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim.

Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

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

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

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

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

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than

\$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, 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. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct 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 required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 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 covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers 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, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized 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 not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "G" (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 provided evidence satisfactory to the City that the subcontractor has secured all insurance required therein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by Civil Code section 9550, as it may be amended from time to time, or otherwise specifically requested by City as set forth in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and

in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 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 effected bond within (ten) 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 Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. 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.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's 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 Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor 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.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any

other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Locution System, Inc.
1626 Cole Boulevard, Suite 325
Golden, CO 80401
Attn: Glenn Neal

CITY:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: City Manager

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option,

terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. 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.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. 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 Contract. 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 Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, 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 Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to 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 Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged

violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Wage Theft Prevention.

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

3.17.21.2 BY SIGNING THIS CONTRACT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS CONTRACT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS CONTRACT.

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

days during the term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.17.21.4 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.

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

3.17.21.6 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 Contract and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF MILPITAS
AND LOCUTION SYSTEM, INC**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 18th of February, 2020

CITY OF MILPITAS

Approved By:

Steven G. McHarris
Interim City Manager

Date

Approved:

Walter C. Rossmann, Risk Manager/
Finance Director

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved As To Content

Steven Erickson
Engineering Director/ City Engineer

LOCUTION SYSTEM, INC

Signature

Name

Title

Date

EXHIBIT “A”
SERVICES / SCHEDULE

EXHIBIT “B”
PLANS AND SPECIFICATIONS

EXHIBIT “C”

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit “F” to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor’s bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

LOCUTION SYSTEM, INC

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

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

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

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

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

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

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

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

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

EXHIBIT “F”
PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

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

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

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

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate)

Title _____

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

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

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

Date of Document

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

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

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

_____ (the "Project"); and

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

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

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

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

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

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

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

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "G"

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 G. 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.

☒ 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:

☒ 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 combined single limit 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 combined single limit 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):

___ 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 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.

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. 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.

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.

Cyber Liability Insurance

☐ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

☐ Bid Bond
☒ Performance Bond
☒ 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.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

☒ **Additional Insured Status and Primary/Non-Contributory Language:**

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

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.

☐ **Loss Payee Status – 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.

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.

X 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving and Authorizing the City Manager to Execute an Amendment to the Agreement with CentralSquare Technologies for the Sole Source Purchase of Community Development Software Upgrade for an Amount Not to Exceed \$433,437.21 for the Term Period February 19, 2020 to February 18, 2025
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contacts:	Chris Schroeder, 408-586-3161, and Mike Luu 408-586-2706
Recommendation:	Adopt a Resolution approving and authorizing the City Manager to execute an Amendment to the Agreement with CentralSquare Technologies for the sole source purchase of Community Development software upgrade for an amount not to exceed \$433,437.21 for the term period February 19, 2020 to February 18, 2025.

Background:

The City and CRW Systems (CRW) (now CentralSquare Technologies) entered into an agreement in May 2006 to implement the TRAKiT software (now Community Development). The primary purpose of the software is to issue and track building permits. Staff competitively evaluated different software packages for electronic permitting from a variety of different companies. At that time the City chose CRW since it was determined to have the best price and service. The software system is currently in use by the Building Safety and Housing Department, Planning Department, and Engineering Department. Many staff hours of training and development have gone into implementation of CRW – TRAKiT. The May 2006 agreement has been amended from time to time to purchase new versions of the software, support and licenses.

Analysis:

Due to the extensive nature of such a large-scale implementation of an electronic permitting system, migration to a new system would be very disruptive. As such, staff believes continuing service with CentralSquare Technologies is in the best interest of the City. The City's Purchasing Agent designated CentralSquare Technologies as the "Sole Source" provider of the Community Development software and its maintenance in accordance with Municipal Code Section I-2-3.09 "Sole Source Procurement." This designation will be active for the five-year term of this upgrade agreement from February 19, 2020 through February 18, 2025. The amendment's total cost of the software upgrade project is \$433,437.21. This includes installation, licensing cost and annual maintenance cost, training hours for staff, professional services, and custom reports development at \$185,960.00 for the first year. For each additional year, the annual cost for maintenance for year one is \$57,000 which is included in the project. However, the net annual maintenance cost is only approximately \$16,000 because the City is currently paying \$41,000 in annual maintenance cost for the current system. With the higher annual maintenance cost, the City will receive support for advanced GIS and advanced Analytic modules. There is a 3% increase to the annual maintenance for years 2-4 and a 4% increase for year five.

Policy Alternative:

Alternative: Do not authorize the City Manager to execute the amendment to the agreement with CentralSquare Technologies.

Pros: It would result in cost savings.

Cons: There would be no new features and product enhancements to the current version.

Reason not recommended: If the City does not approve the upgrade, the City would to acquire a new system which would be both cost prohibitive and negatively impact the departments of Building Safety and Housing, Planning, and Engineering. The product is tightly integrated with other software used by the City and, as such, migrating to another core product would require integrating all the peripheral products. At a near future date, the product will no longer be supported by CentralSquare Technologies.

Fiscal Impact:

Funding for the software upgrade is available in Information Technology Department's budget for fiscal 2019-2020 in the amount of \$185,960. For each additional year, the annual cost for maintenance for year one is \$57,000 which is included in the project. However, the net annual maintenance cost is only approximately \$16,000 because the City is currently paying \$41,000 in annual maintenance cost for the current system. With the approval of this contract, the net annual maintenance cost for years 2-5 will be included in the development of future budgets.

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt a Resolution approving and authorizing the City Manager to execute an Amendment to the Agreement with CentralSquare Technologies for the sole source purchase of Community Development software upgrade for an amount not to exceed \$433,437.21 for the term period February 19, 2020 to February 18, 2025.

Attachments:

- 1) Resolution
- 2) Exhibit A to the resolution: Price Quote including Amendment to agreement
- 3) 2006 Agreement between City of Milpitas and CRW Associates

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A
SOLE SOURCE PURCHASE AND AMENDMENT TO THE AGREEMENT WITH CRW
SYSTEMS (NOW “CENTRALSQUARE TECHNOLOGIES”) TO IMPLEMENT AN UPGRADE
TO THE TRAKIT SOFTWARE (NOW “COMMUNITY DEVELOPMENT”) FOR A TOTAL
AMOUNT NOT TO EXCEED \$433,437.21 FOR THE TERM PERIOD OF FEBRUARY 19, 2020
THROUGH FEBRUARY 18, 2025**

WHEREAS, the City of Milpitas entered into an agreement in May 2006 with CRW Systems (“CRW”), to implement an electronic building permit issuance and tracking software system known as “TRAKiT”, which has been amended from time to time to keep the software up to date; and

WHEREAS, periodically, the TRAKiT building permit issuance and tracking software system needs to be upgraded due to technological and software changes; and

WHEREAS, the current version of the City’s existing TRAKiT software system is version 2014, which is no longer eligible to receive such bug fixes, programming changes and new functionalities which are only being released to the latest supported version; and

WHEREAS, the TRAKiT software system needs to be upgraded to Community Development v20.1 in order to be eligible to receive such bug fixes, programming changes and new functionalities; and

WHEREAS, on August 2018 CRW was purchased by CentralSquare Technologies, through a merger of Superion, Trittech, Zuercher, and Aptean which is now the developer and owner of the proprietary software for the TRAKiT building permit issuance and tracking software system for the City of Milpitas and is the only source for the installation, training and maintenance service and of the software upgrade to Community Development v20.1.

WHEREAS, the price quoted by CentralSquare Technologies for this installation, training and maintenance service is a total not-to-exceed amount of amount of \$433,437.21 over a five-year term period from February 19, 2020 through February 18, 2025.

WHEREAS, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement), the City’s Purchasing Agent has determined that CentralSquare is the only source for the installation, training and maintenance service to upgrade the City of Milpitas’ TRAKiT building permit issuance and tracking software system.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. CentralSquare Technologies is approved as the sole source provider for the upgrade of the City of Milpitas’ TRAKiT building permit issuance and tracking software system pursuant to Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement).

3. The City Council hereby approves the Amendment to Agreement with CentralSquare Technologies (formerly CRW Systems) for the implementation of the upgrade to the TRAKiT building permit issuance and tracking software system for an amount not to exceed \$433,437.21, and for a term period from February 19, 2020 to February 18, 2025. The City Manager is authorized to execute the Amendment to Agreement, a copy of which is attached hereto as **Exhibit A**, subject to any revisions as deemed necessary by the City Attorney.

PASSED AND ADOPTED this ____ day of _____, 2020, 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

Exhibit A

Superion, a CentralSquare Company

Add-On Quote

Quote Prepared For:

Phuong Nguyen, Community Svcs.
City of Milpitas
455 E. Calaveras Blvd
MILPITAS, CA, 95035
408-586-2709

Date: 01/06/20

Quote Number: Q-00020926 Valid Until:
02/28/20

Quote Prepared By:

Johnny Rivera, Account Manager
CentralSquare Technologies
1000 Business Center Drive
Lake Mary, FL 32746
Phone: +14073043107 Fax:
jonathan.rivera@centralsquare.com

Thank you for your interest in our company and our software and services solutions. Please review the below quote and feel free to contact Johnny Rivera with any questions.

Subscription Fees

Product Name	Quantity	Subscription Fee
Community Development: Advanced Premise Subscription	1	40,000.00
Fusion Subscription Premise	1	3,000.00
Total		43,000.00

Third-Party Subscription Fees

Product Name	Quantity	Subscription Fee
AnalyticsNOW	1	7,500.00
VoiceTRAK	1	6,500.00
Total		14,000.00

Professional Services Installation & Configuration

Product Name	Amount
Community Pro Installation	7,920.00
GIS Advanced	10,800.00
Total	18,720.00

Development & Conversion

Product Name	Amount
Community Pro Development	38,700.00
Community Development Geo Update Routine	4,000.00
Community Development Land Data Conversion	7,200.00
Prof Svc-Financial Batch Export	6,400.00
Total	56,300.00

Consulting

Product Name	Amount
Community Pro Consulting	4,320.00
Total	4,320.00

Training

Product Name	Amount
Community Pro Training	28,080.00
Total	28,080.00

Project Management

Product Name	Amount
Community Pro Project Management	21,060.00
Community Development Geo Update Routine	480.00
Total	21,540.00

Total Professional Services	128,960.00
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Summary

Product/Service	Amount
Subscription Fees	43,000.00
Professional Services	128,960.00
Subtotal	171,960.00 USD

Third-Party Subscription Fees

	14,000.00	
Subtotal	14,000.00	USD
Total	185,960.00	USD

See Product notes in the Additional Information Section

Payment terms as follows, unless otherwise notated below for Special Payment Terms by Product:

Do not pay from this form. Customer will be invoiced for the fees set forth after execution.

If applicable, annual Access, Subscription and/or Cloud/Hosting Fees will be invoiced annually after the initial term. There will be a 3% increase in subscription fees annually after the initial term for the first 3 years and then a 4% increase thereafter annually. Payment for subscription fees will be billed as follows:

Year 1: Initial term included in project cost (\$57,000), Year 2: \$58,710, Year 3: \$60,471.30, Year 4: \$62,890.15 and Year 5: \$65,405.76.

Maintenance Service and Support Fees (including third party products) are included with purchase for the initial term and will be invoiced annually after the initial term.

License, Start-up and Third Party software and/or hardware Fees are due at execution.

Training Fees and Travel Expenses are due as incurred. All other Professional Services will be as incurred (Time and Materials).

Custom Modifications and Third Party Product Implementation Services fees are due 50% on execution of this Quote and 50% due upon invoice, upon completion.

Pricing for professional services provided under this quote is a good faith estimate based on the information available at the time of execution. The total amount may vary based on the actual number of hours of services required to complete the services. If required, additional services can be provided on a time and materials basis at CentralSquare's then-current hourly rates for the services at issue. For training and on-site project management sessions which are cancelled at the request of Customer within fourteen (14) days of the scheduled start date, Customer is responsible for entire price of the training or on-site project management plus incurred expenses.

Additional Terms:

This form constitutes a supplemental order and amendment to the existing Agreement (the "Agreement") by and between CentralSquare and Customer. Unless otherwise stated below, all terms and conditions as stated in the Agreement shall remain in effect.

Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately.

Travel expenses shall be governed by the CentralSquare Travel Policy.

Preprinted conditions and any terms stated on purchase orders or other documents submitted hereafter by Customer are of no force or effect, and the terms and conditions of the Contract and Agreement and any amendments thereto shall control unless expressly accepted in writing by both parties.

If applicable, Third party hardware/software maintenance and any applicable warranty provisions will be provided by the third party manufacturer(s). The return and refund policy of each individual third party hardware/software supplier shall apply. In the event that a manufacturer changes any of these respective policies or prices, CentralSquare reserves the right to adjust this proposal to reflect those changes if they occur prior to execution.

Any shipping charges shown are estimated only and actual shipping charges will be due upon invoice, upon delivery. Delivery is defined as either a) electronic delivery, by posting it on CentralSquare's network for downloading, or similar electronic file transfer method, or (b) physical shipment, such as on a disc or other media transfer method. Physical shipment is on FOB- CentralSquare's shipping point, and electronic delivery is deemed effective at the time CentralSquare provides Customer with access to download the CentralSquare Solutions.

Comments:

Quote includes User Site License for TRAKiT/Community Development.

The following customizations (1-4) the City of Milpitas has in TRAKiT.Net today, will be provided as a part of Community Development Base:

1-Additional column under Plan Review tab called "Review group"

2-online payment for plan checks under review will not change the status of permit to issued and there won't be any issued date. The logic was built that if the status is Plan Check, keep the status as plan check and do not generate an issued date and only post the fees paid. This customization was paid and implemented, and we lost it during one of the updates.

3-Extend the permit expiration date after the inspection was passed.

4-Change the status to "final" and generate a final date after the result of final inspection was "pass".

5-All the subfolders under custom reports for Milpitas were created by SQL DAT file. if we are not able to use DAT file anymore, we would like to maintain the list and folder/subfolders.

The City will be able to utilize those Crystal reports outside of TRAKiT/Community Development. In order to leverage these reports within Community Development, they would need to be recreated in Cognos or SSRS.

Phuong Nguyen, Community Svcs.
City of Milpitas

Authorized Signature: _____

Printed Name: _____

Date: _____

Additional Information Section

Product Notes:

AGREEMENT
FOR THE INSTALLATION AND USE OF
PERMIT, PLANNING, AND CODE ENFORCEMENT SOFTWARE

This Agreement is entered into this 4th day of May, 2006 by and between the City of Milpitas, (hereinafter "CLIENT") and CRW ASSOCIATES, a d.b.a. of CRW Systems, Inc., (hereafter "CRW") for the installation of a permit and code enforcement software, and other services, as specifically provided herein (hereafter referred to as "the Project").

IN CONSIDERATION of the covenants as set forth in this Agreement, CLIENT and CRW agree as follows:

A. SCOPE OF SERVICES / SCOPE OF WORK

A.1. PROJECT DESCRIPTION:

The Project is more specifically defined as follows: Installation of an automated permit management, project tracking, code enforcement, and/or business license tracking software system, and related subsystems.

A.2. AGREEMENT CONTENTS:

This Agreement includes the following Exhibits:

- Exhibit A. Project Scope of Work.
- Exhibit B. Project Milestone and Payment Schedule.
- Exhibit C. Project Cost Summary
- Exhibit D. Software License
- Exhibit E. System Acceptance Testing
- Exhibit F. Software Escrow Agreement

A.3. COMMENCEMENT DATE / SCOPE OF WORK:

A.2.1. The commencement date for the services to be provided by CRW shall be the date upon which CRW is in receipt of all of the following: (a) a fully executed original of this Agreement, (b) written notice to proceed provided by CLIENT. CRW shall not be obligated to perform any work pursuant to the Project, including labor or materials, prior to the commencement date as defined herein.

A.2.2. A Scope of Work, with itemized pricing of various items associated with the Project is attached hereto as Exhibits A, B and C, and incorporated herein by this reference. Subject to CLIENT'S duties and responsibilities provided in Section C below, the time periods set forth in Exhibits A and B shall be adhered to. The time periods indicated are provided as a general understanding of the estimated time period in which various Project items will be completed. It is not intended to impose strict deadlines for completion of all or any part of the work.

A.2.3. The time schedule provided in Exhibit B, Project Milestone, is based in large part on the assumption that CLIENT will provide all necessary information to CRW in a timely manner in accordance with Section C of this Agreement.

B. DUTIES AND OBLIGATIONS OF CRW

B.1. SCOPE OF WORK:

B.1.1 After the commencement date, CRW shall perform the following services:

- (1) Install Permit Management, Code Enforcement, Business License Tracking, and Project Tracking software.
- (2) Provide data conversion of CLIENT'S existing data and incorporate data into CRW system.
- (3) Provide hands-on, Administrator Training, as specifically provided herein.
- (4) Provide on-site, hands-on, User Training, as specifically provided herein.
- (5) Provide remote access support during Annual Maintenance period. CLIENT to provide local workstation with remote connection and appropriate remote access software.

B.1.2. CRW shall install software and provide all services in a workmanlike manner in accordance with the Scope of Work, subject to the terms and conditions as stated in the Agreement. Any additional services must be evidenced by a written modification of this Agreement, or change request pursuant to Section C of the Agreement. Services to be provided do not include hardware.

B.2. IMPLEMENTATION:

CRW shall perform implementation services including setup of permit/project/case types, fee formulas, valuation schedules, using data provided by CLIENT to CRW. CRW shall provide custom report development for up to three (3) custom reports and up to three (3) custom forms as designated by CLIENT.

B.3. DATA CONVERSION:

CRW shall provide database conversion services necessary to convert the CLIENT's existing permit database to CRW system format. The source information for data conversion shall be limited to ASCII, Access or dBase-formatted data provided by CLIENT to CRW within 30 days of project commencement date.

B.4. ADMINISTRATOR TRAINING:

CRW shall provide training for designated System Administrators. The training will be conducted at a location to be determined by CRW. Registration for three (3) CLIENT staff are included in Exhibit C, Cost Summary.

B.5. USER TRAINING:

CRW shall provide training as further defined herein for Permit Trak, Code Trak, Business Trak, and Project Trak software. Training will be conducted at CLIENT offices.

B.6. MAINTENANCE AND SUPPORT:

CRW shall provide the following maintenance and support services to CLIENT during the twelve (12) month time period following payment of Annual Maintenance and Technical Support fees. Annual Maintenance and Technical Support fees are waived for the first twelve (12) month period following System Acceptance of software, as defined in Exhibit E.

B.6.1. Trakit software modifications to correct bugs or errors that are reported to CRW by CLIENT.

B.6.2. Trakit software updates that are posted from time to time by CRW on web site (www.crwassoc.com/support). Updates may be downloaded and installed by CLIENT onto CLIENT's network.

B.6.3. Technical support via telephone. CRW reserves the right to restrict phone access to CLIENT-designated System Administrators. Toll-free phone access is provided by CRW (888-279-2043).

B.6.4. Technical support via web form on CRW web site (www.crwassoc.com/support).

B.6.5. Trakit Software enhancement requests may be submitted by CLIENT to CRW. Enhancement requests will be reviewed by CRW and may be incorporated into future releases. CLIENT understands that submittal of enhancement request does not obligate CRW to provide software modification.

B.6.6. CLIENT may register for and enroll in CRW training classes for System Administrators or Users. Registration fees may vary from time to time. Registration for three (3) CLIENT staff are included in Exhibit C Cost Summary.

B.7. NOT RESPONSIBLE FOR DAMAGES DUE TO UNFORESEEN DELAYS:

Neither CLIENT nor CRW shall be responsible for any damages resulting from delays outside of its reasonable control, including, but not limited to, (a) failure of CLIENT to furnish timely information; (b) failure of CLIENT to approve or disapprove of CRW's work, and/or (c) strikes, lockouts, accidents, or acts of GOD.

C. DUTIES AND RESPONSIBILITIES OF CLIENT:

C.1. INFORMATION TO BE PROVIDED BY CLIENT:

C.1.1. CLIENT will provide all information necessary for CRW to establish the permit software control files, including but not limited to:

1. Current valuation and fee structures
2. Current Permit, Project, License, and Case types designations and categories
3. Examples of all current reports used by the CLIENT relating to permit management.
4. Any exceptions to the typical permit process, or any special permit processing requirements.

C.1.2. The CLIENT will provide CRW with access to CLIENT workstations and disk space for installation of the software.

C.1.3. The CLIENT will ensure and provide that staff who will be trained in the use of CRW software will have sufficient basic knowledge of permit processing and MS-Windows functions.

C.2. CLIENT COOPERATION:

C.2.1. CLIENT understands that timely completion of the Project is dependent in significant part upon the timely cooperation of CLIENT in providing information to CRW necessary to complete the project, including, but not limited to: (a) Data obtained from CLIENT'S present system to be incorporated into the new CRW system; and (b) information relative to desired permit forms to be incorporated into the CRW system.

D. COMPENSATION

D.1. CRW COMPENSATION AND FEES:

CLIENT agrees to compensate CRW for software and professional services rendered under this Agreement for the total contract price of **\$ 325,500 [Three Hundred Twenty Five Thousand Five Hundred Dollars]**, which amount shall include all labor, materials, taxes, insurance and all other costs associated with the Project, except any specific optional items identified in Exhibit C, Project Cost Summary. Total Contract Price does not include any changes to the work as may be requested by CLIENT and incorporated into the project pursuant to a written request by CLIENT as provided in section E of this Agreement.

D.2. TERMS OF COMPENSATION

CRW will submit invoices for work performed according to the payment schedule shown in Exhibit C, Cost Summary. CLIENT agrees to notify CRW of any disputed invoice within ten (10) business days of receipt of such invoice. Failure of CLIENT to pay undisputed invoices within 30 days of receipt will subject CLIENT to a late payment fee computed at a periodic rate of 1.0% per month of the amount past due, representing an annual percentage rate of 12%, which late fee shall be applied to any unpaid balance.

E. CHANGES AND ADDITIONS TO THE WORK

E.1 REQUIREMENT OF WRITTEN CHANGE ORDERS:

CLIENT may request CRW to perform additional services not covered by the specific Scope of Work as set forth in Exhibit A of this Agreement. Any such requests shall be submitted in writing, and shall be signed by the Client Representative, as identified in I1.1 of this Agreement, and an authorized representative of CRW. Such signed requests shall include (a) a description of the additional services to be performed, and (b) the agreed upon price for such services. Any such requests signed by the Client Representative, or other authorized agent of CLIENT, shall be deemed authorized by CLIENT and shall bind CLIENT to its terms.

E.2. PAYMENT FOR ADDITIONAL WORK:

Any such additional work performed by CRW shall be added to the contract price and billed in accordance with the Cost Summary as outlined in Exhibit C of this Agreement. CRW will not commence any additional services for the CLIENT until written authorization has been given by CLIENT and approved by CRW, as provided above.

F. INDEMNIFICATION AND INSURANCE

F.1. INDEMNIFICATION:

F.1.1. CRW shall indemnify, defend and hold harmless CLIENT from and against any claims, based upon infringement of any United States copyright trademark or patent by the Software. CLIENT agrees to notify CRW of any such claim promptly in writing. CLIENT agrees to cooperate fully with CRW during such proceedings. CRW shall defend at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, CRW may replace, in whole or in part, Software with a substantially compatible and functionally equivalent computer program or modify Software to avoid the infringement.

F.1.2. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in substantial part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly or in substantial part from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have not contributed in substantial part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

F.1.3. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

F.2. INSURANCE:

CRW, shall at CRW's own expense, purchase, maintain and keep in force during the term of this Agreement (unless otherwise stated below) such insurance as set forth below. All insurance policies provided under this Agreement shall be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the term of this Agreement.

F.2.1. Worker's Compensation as required by law, Employers Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit.

F.2.2. Commercial General Liability Insurance - \$1,000,000.00 Limit.

F.2.3. Professional Liability Insurance - \$500,000.00 Limit. Professional Liability insurance will be in force for thirty-six (36) months from commencement date. Professional Liability insurance shall apply to services performed by CRW staff only. Professional Liability insurance shall not apply to third-party services or services of subcontractors.

F.2.4. All policies are to be written through companies duly approved to transact that class of insurance in the State of California

F.2.5. Insurance is to be placed with carriers with a Best rating of A:VII or better.

F.2.6. CRW hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CLIENT, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies

F.3. PROOF OF INSURANCE

Within 30 days of the commencement date CRW shall deliver to CLIENT a Certificate of Insurance for Items F.2 above as proof that said insurance will remain in full force throughout the term of this Agreement.

CLIENT, its officers and agents, shall be endorsed as an additional insured under CRW's General Liability Insurance. CRW will not modify or cancel its General Liability Insurance without written notification and approval from the CLIENT.

G. TERMINATION

G.1. TERMINATION OF AGREEMENT

G.1.1. This Agreement may be terminated by CLIENT at any time, with or without cause, upon written notice to CRW. Notwithstanding the date of such notice, termination shall be effective upon receipt by CRW of such notice of termination. In the event of termination by CLIENT, CLIENT shall pay CRW for all services and materials provided to CLIENT pursuant to this Agreement up to and including the date of receipt by CRW of notice of termination.

G.1.2. In the event CLIENT terminates this Agreement, the CLIENT agrees to immediately return all source code or other materials provided to CLIENT by CRW, and to destroy, erase, and purge all software provided by CRW from any and all CLIENT computers.

G.1.3. Within 30 days of termination CLIENT agrees to provide CRW with written confirmation that all CRW software has been destroyed. Within its sole discretion, and upon reasonable notice to CLIENT, CRW shall have the right to verify that CRW software has in fact been removed or destroyed by personal inspection of CLIENT computers.

G.1.4. Any use by CLIENT of any CRW software after termination of this agreement by CLIENT without the express written authorization of CRW shall be a breach of this agreement and subject CLIENT to substantial damages.

H. OWNERSHIP OF DOCUMENTS

H.1. OWNERSHIP OF DOCUMENTS

H.1.1. All plans, specifications, reports, and other design documents prepared by CRW pursuant to this Agreement shall become property of CLIENT only after completion of the Project.

H.1.2. All source code for computer programs or modifications to programs, which are produced pursuant to this Agreement shall be deemed, and remain, the intellectual property of CRW and are protected under the copyright, patent, or other laws, of the United States as well as other jurisdictions where such programs are being used.

H.1.3. CLIENT agrees to respect CRW's purported ownership of any such proprietary rights which may exist, including patent, copyright, trade secret, trademark and other proprietary rights, in and to Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to Software, whether made by CRW or any third party. Under no circumstances shall CLIENT sell, license, publish, display, distribute or otherwise transfer to a third party Software or any copy thereof, in whole or in part, without CRW's prior written consent.

H.2. SOURCE CODE ESCROW

H.2.1. CRW shall maintain a software escrow account, as described in Exhibit F. A copy of the latest source code for the software being installed by CRW pursuant to this Agreement shall be deposited in this escrow account.

H.2.2. CRW will pay the entire cost of this source code escrow account.

H.2.3. CLIENT will be registered as a Registered Beneficiary of the Software Escrow Agreement, as defined in Exhibit F.

I. COMMUNICATION THROUGH CLIENT / CRW DESIGNATED REPRESENTATIVES:

All communication relating to project status shall be exchanged between a designated representative of the CLIENT and a designated representative of CRW as identified below.

I.1. DESIGNATED CONTRACT REPRESENTATIVES:

I.1.1. The designated representative of CLIENT and CRW Associates is as follows:

CLIENT	CRW
CLIENT: CITY OF MILPITAS Phone: () ATTN: CHRIS SCHROEDER Fax: ATTN: KEYVAN IRANNEJAD email: 455 E. CALANERAS BLVD. MILPITAS, CA 95035 408-586-3244 Fax 408-586-3261 KIRANNEJAD@C1.MILPITAS.CA.GOV	Christopher R. Wuerz, P.E. President, CRW Systems, Inc., d.b.a. CRW Associates 16980 Via Tazon, Suite 320 San Diego, CA 92127 Phone: (858)451-3030 Facsimile: (858) 451-3870 email: chris@crwassoc.com

I.1.2. If the designated representative or address of either party changes during the term of this Agreement, a written notice shall be given to the other party prior to the effective date of change.

I.2 DESIGNATED SYSTEM ADMINISTRATOR:

I.2.1. The CLIENT Representative shall identify and designate System Administrators. All communication related to day-to-day operations of the system, including system maintenance, systems problems and/or troubleshooting, shall be made to CRW only through either the designated representative of CLIENT as identified in I.1.1 above, or the System Administrators as identified below.

I.2.2. The System Administrators shall participate in all training sessions conducted by CRW as required by this Agreement, and shall become fully knowledgeable and competent to use all aspects of the system software. It is highly recommended that the designated System Administrators be someone with experience and competence with personal computers and with the business processes of the Community Development Department.

I.2.3. The System Administrator for CLIENT is designated as follows:

Name: Mary Gossman & Bardia Khadiv

J. MISCELLANEOUS GENERAL PROVISIONS

J.1. LICENSES

CRW shall obtain and maintain all business licenses as may be required by law.

J.2. STATUS OF CRW AS CONSULTANT

Throughout the term of this Agreement, CRW, its employees, subcontractors, consultants, and agents shall be considered as an independent contractor(s). Nothing in this Agreement shall be interpreted to imply an employee-employer relationship between CLIENT and CRW.

J.3. PAYMENT OF TAXES.

CRW is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes

J.4. NONDISCRIMINATION AND EQUAL OPPORTUNITY

CRW shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by CRW under this Agreement. CRW shall comply with all applicable

federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of CRW thereby.

CRW shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement

J.5. SURVIVAL

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and CRW shall survive the termination of this Agreement.

J.6. CONFLICT OF INTEREST

CRW may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place CRW in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

CRW shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

CRW hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If CRW were an employee, agent, appointee, or official of the City in the previous twelve months, CRW warrants that it did not participate in any manner in the forming of this Agreement. CRW understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and CRW will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CRW will be required to reimburse the City for any sums paid to the CRW. CRW understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

CRW certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of CRW) in connection with procuring this Agreement, nor has CRW agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

J.7. MEDIATION OF DISPUTES:

Prior to the commencement of any litigation arising out of this Agreement, both CRW and CLIENT agree to participate in good faith in non-binding mediation of any dispute or claim, which remains unresolved after informal discussions. Both CRW and CLIENT shall negotiate in good faith to select a qualified mediator.

J.8. ATTORNEY'S FEES:

In the event that any legal proceeding is instituted by either CRW or CLIENT to enforce the terms of this Agreement or to determine the rights of CRW or CLIENT, the prevailing party in said legal proceeding shall be entitled to recover its reasonable costs and attorney's fees.

J.9. APPLICABLE LAW:

This Agreement, its interpretation and all work performed thereunder shall be governed by the laws of the State of California. Venue for the enforcement of this agreement shall lie exclusively in Stanislaus County, California.

All claims, disputes, and other matters in question arising out of, or relating to, this agreement or the breach thereof shall be resolved in the Superior Court of Stanislaus County, California, and all parties hereto specifically waive any "venue privilege" they may have in any other jurisdiction.

J.10. BINDING ON SUCCESSORS:

All the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

J.11. DUE AUTHORITY:

CLIENT represents and warrants that the person executing this Agreement on behalf of CLIENT is an agent of CLIENT and has full and complete authority to execute this Agreement and enter into the terms and covenants provided herein, and has been designated by CLIENT to execute this Agreement on behalf of CLIENT.

CRW represents and warrants that the person executing this Agreement on behalf of CRW is an agent of CRW and has full and complete authority to execute this Agreement and enter into the terms and covenants provided herein, and has been designated by CRW to execute this Agreement on behalf of CRW.

J.12. WARRANTY OF TITLE

CRW warrants that it has good title and all proprietary rights to the Software to enable it to license its use to CLIENT free of any proprietary rights of any other party or any other encumbrance.

J.13. SERVICES WARRANTY

CRW warrants that the services provided hereunder shall be executed in a correct and competent manner consistent with the professional standards of the industry. Any error or defect in the services provided hereunder shall be corrected by CRW at no additional cost to the CLIENT.

J.14. ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreement between CRW and CLIENT. Any prior agreements, promises, proposals, negotiations or representations—oral or written—not expressly set forth herein shall be of no force or effect. In the event of a conflict between the terms and conditions of this Agreement and any document incorporated by reference, the terms and conditions of this Agreement shall prevail. This Agreement may be modified or amended only by written agreement signed by both CRW and the CLIENT.

J.15. AGREEMENT AS OFFER

~~This Agreement shall be valid only if it is signed by both CLIENT and CRW, and a signed original has been received by both parties on or before May 1, 2006~~

CLIENT
City of Milpitas, California

CRW SYSTEMS, INC.
dba. CRW ASSOCIATES
San Diego, California

Dated: 5-11-06

By: [Signature]

City Manager

Dated: 5.10.2006

By: [Signature] for Steve Mattas

City Attorney

By: Mary Lavelle

Mary Lavelle, City Clerk

Dated: 5-12-06

By: [Signature]

Christopher R. Wuerz, President
President, CRW Systems, Inc.
d.b.a. CRW Associates

EXHIBIT A

PROJECT SCOPE OF WORK

Upon receipt of a written Notice to Proceed from CLIENT, CRW shall perform the following services:

A. On-Site attendance and participation in project meetings.

Meetings: Project kick-off meeting; software installation; database installation; project implementation meetings.

B. Deliver computer software (TRAKIT) and database structures for SQL/Server database.

Deliverable: CD containing computer software; installation instructions; services to install software on CLIENT network and up to three workstations; services to train CLIENT IT staff for installation of remaining CLIENT workstations; services to install SQL/Server database and tables.

C. Provide data conversion services.

Deliverable: CD and electronic transfer (via FTP or email) of converted database; services to develop conversion software for translation; services to perform data conversion; services to install converted data; services to investigate and correct any errors uncovered during conversion balancing and/or system testing.

Applies to: Permits and Inspections; Project applications; Code Enforcement; Business Licenses.

CLIENT will provide to CRW all tables and files that are necessary for historical data conversion. CLIENT agrees to provide all necessary files and data to CRW within thirty (30) days of project commencement date.

D. Provide software training.

Deliverable: Provide System Administrator training for three (3) CLIENT staff during scheduled training at CRW office.

Deliverable: Conduct sixteen (16) days of on-site, hands-on End User training at CLIENT office. Class size is limited to eight (8) students per day. Classes shall be conducted on four (4) separate weeks, each consisting of four (4) days of instruction.

CRW to provide workstations (laptops) and networked server for all on-site classes. CLIENT to provide classroom space at CLIENT facilities.

E. Provide Project Implementation services.

Deliverable: Develop up to three (3) custom forms, and up to three (3) custom reports, as directed by CLIENT staff; provide standard (ICBO/BOCA/SBCCI or other) Valuation tables; develop custom valuations and fee formulas as directed by CLIENT staff, using information provided by CLIENT.

Deliverable: Installation of permit forms, fee tables and valuations tables in Trakit database.

Deliverable: Data import specification (using standard Trakit import function) for monthly updates of assessor records.

CLIENT to provide information regarding fee formulas, usage, permit and business license forms.

CLIENT agrees to provide all necessary custom report and custom form definitions to CRW within thirty (30) days of project commencement date.

F. Provide eTrakIt modules for web-based permit processing

Deliverable: ASP and HTML pages (source code) to provide the following functions:

1. User/password logon.
2. User logon verification.
3. Permit lookup (by Permit Number, Site address, APN, Owner name)
4. Permit status information.
5. New Inspection request.
6. New Permit application.
7. Inspection result posting (CRW to work with CLIENT to design and develop appropriate ASP/HTML web screens for real-time posting of inspection results)

G. Provide Mobile Trak module for field-ready interface

Deliverable: TrakIt module for interface to either field-ready laptop/tabletPC.

H. Provide IVR System through sub-contractor selected by CRW

I. Provide Twelve (12) months technical support and software updates/upgrades.

Applies to: TrakIt software. Time period for no-charge technical support to begin upon completion of System Acceptance, as defined in Exhibit E.

EXHIBIT B

PROJECT MILESTONE AND PAYMENT SCHEDULE

Task Item:	Projected Target Date
1. Contract Execution and Notice to Proceed	May 2006
2. Project kick-off meeting. CRW reviews project timetable and training schedule with CLIENT. CRW and CLIENT mutually adjusts schedule as necessary. CRW installs standard software with demonstration database for initial testing by CLIENT.	May 2006
3. First Payment Due. 20% of total Phase 1 contract = \$ 65,100	May 2006
4. Initial Configuration and Data Conversion. CRW delivers initial, preliminary configuration of system based on system requirements provided by CLIENT. CRW delivers initial, preliminary data conversion for CLIENT to begin review. Subsequent deliveries of configuration and data conversion will continue as necessary during the remainder of the project implementation.	Date to be determined at kick-off meeting
5. System Administrator Training. CRW trains up to three (3) CLIENT staff.	Date to be determined at kick-off meeting
6. Second Payment Due. 20% of total contract = \$ 65,100	Date to be determined at kick-off meeting
7. System Acceptance testing begins. CLIENT begins System Acceptance Testing.	Date to be determined at kick-off meeting
8. User Training Week 1 for 'power users'.	Date to be determined at kick-off meeting
9. Third Payment Due. 20% of total contract = \$ 65,100	Date to be determined at kick-off meeting,
10. System Acceptance testing ends. CLIENT completes System Acceptance Testing.	Date to be determined at kick-off meeting
11. User Training Weeks 2, 3 and 4.	Date to be determined at kick-off meeting
12. Fourth Payment Due. 20% of total contract = \$ 65,100	Date to be determined at kick-off meeting

14. Go-Live support. CRW assists CLIENT in cut-over to live operation.	Date to be determined at kick-off meeting
15. Final Payment Due. 20% of total contract = \$ 65,100	45 Days after the completion of item 14 above.

Target dates on this schedule are intended to reflect projected completion dates for the respective milestone, not contractual date deadlines.

EXHIBIT C

PROJECT COST SUMMARY

Software

1. 20 User Trakit License	\$60,000
1a. Annual Maintenance Fee	
following the first full year of implementation	\$12,000
2. eTrakit – web interface for public access	\$ 15,000
(software and implementation)	
2a. Annual Maintenance Fee	
following the first full year of implementation	\$ 1,000
3. MobileTrak – interface software for handheld or field	\$ 15,000
laptops	
(software and implementation)	
3a. Annual Maintenance Fee	
following the first full year of implementation	\$ 1,000
4. IVR Interface – API Interface for IVR System	\$5,000
4a. Annual Maintenance Fee	
following the first full year of implementation	\$ 500
TOTAL SOFTWARE COST	\$ 95,000
TOTAL ANNUAL MAINTENANCE	
Following first full year of implementation	\$ 14,500
(see	

IVR (Interactive Voice Response) System

Hardware and software to be provided by others (CRW will contract with one of our technology partners, Selectron or TeleWorks, to provide this system)	\$ 52,000
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Basic 4-port system is proposed for single department.
All required computer hardware is included in proposal.
Up to 100 professionally
City is responsible for providing phone lines (4 proposed) and
network service necessary to support the installation.

Included software functions:

1. Schedule an inspection
2. Cancel an inspection
3. Post inspection results (Inspector access only)
4. Obtain inspection results
5. Speak Site address (customer inquiry)
6. Obtain Plan Review status
7. Fax-back inspection results

Implementation and Professional Services

A. Installation and Configuration

1. Kick-Off meeting	\$8,000
2. Project meetings on-site	\$18,000
3. System Configuration and setup of basic control tables	\$60,000
4. System installation	\$5,000
5. Software Customizations	None proposed
6. Go-Live Support	\$8,000

Total Installation and Configuration costs **\$ 99,000**

B. Data Conversion

Data conversion of PTWIN (permits and inspections) records	\$30,000
Data conversion of Stanislaus County assessor records for LandTrak	\$ 5,000

Total Data Conversion Costs **\$ 35,000**

C. Training

1. End-User Training - 16 days	\$40,000
*Additional User training is available at the rate of \$ 2,500 per day.	
2. System Administrator Training -- 3 registrations for City staff	\$ 4,500
*Conducted at CRW location	
3. Report Writing Training – 3 registrations for City staff	Included

*Conducted at CRW location

Total Training Costs **\$ 44,500**

Total Implementation Costs (A-C) **\$ 178,500**

Travel and Expenses

Travel and other out-of-pocket expenses **\$ 15, 000**

Discount

Professional Discount (expires if contract not executed on or before May 1, 2006) **Less \$ 15,000**

TOTAL CONTRACT PRICE **\$ 325,500**

EXHIBIT D

SOFTWARE LICENSE AGREEMENT

This perpetual License Agreement for the use of "Community Development Software" (Software) developed and marketed by CRW is granted to CLIENT by CRW as of the date of this Agreement.

SUMMARY OF LICENSE TERMS

1. Software is marketed by CRW under the title of "*Trak It*".
2. Software provided to the CLIENT under this License allows the CLIENT to perpetually use, not own, the software.
3. Software is provided to the CLIENT as a multi-user, concurrent access license. The designated number of concurrent Users/Administrators/Observers for this license is 20. CLIENT is permitted to install Software on any and all workstations owned or controlled by the CLIENT. Software will allow a designated number of concurrent users to access the databases maintained by Software. Users attempting to access the system databases with Software after the designated number of concurrent users is logged on will be prohibited from logging on.
4. This software license shall not be sub-licensed, re-sold, assigned, transferred or otherwise distributed by the CLIENT to any other person, company or organization without the written authorization of CRW.
5. This Software, including any and all modifications, upgrades and bug fixes, is protected by the copyright laws of the United States and international copyright treaties. Unauthorized copying of the Software, including software that has been modified, merged or included with the Software, or the associated written materials (the "Documentation") is expressly forbidden. CLIENT may not remove, obscure, or alter any notice of patent, copyright, trademarks, trade secret or other proprietary rights in the Software. The Title, ownership rights, and intellectual property rights in and to this Software shall remain with CRW.
6. CRW has made reasonable checks of the Software to confirm that it will perform in normal use on compatible equipment substantially as described in the specifications for the Software. However, due to the inherent nature of computer software, neither CRW nor any individuals involved in the development or installation of the Software warrant that the Software or the Documentation is completely error free, will operate without interruption, is compatible with all equipment and software configurations, or will otherwise meet your needs.
7. CRW warrants that it has good title and all proprietary rights to the Software to enable it to license its use to CLIENT free of any proprietary rights of any other party or any other encumbrance.
8. CRW warrants that its Software will perform in the manner described in the Agreement documents including CRW's Response to the CLIENT's RFP, hereby incorporated by reference as if fully contained herein and any other written user documentation for the version installed.
9. This Warranty shall commence upon date of acceptance by CLIENT as defined by Exhibit F attached hereto.
10. Neither CRW nor any of the people or companies involved in providing this license to the CLIENT may be held liable for any incidental or consequential damages caused by failures or faults of the software or its functions.
11. CRW's sole responsibilities with respect to error corrections will be to correct any defects or errors in the Software or its functions, which are brought to the attention of CRW by the CLIENT.
12. This License Agreement will remain in effect until CLIENT returns Software to CRW, or until CLIENT destroys Software.

EXHIBIT E

SYSTEM ACCEPTANCE TESTING

1. CLIENT shall commence System Acceptance tests upon written notification from CRW that system software and database conversion has been installed and is ready for System Acceptance testing. Testing shall be conducted at CLIENT site, using CLIENT computer hardware. CLIENT staff will conduct all System Acceptance Testing.

2. CLIENT shall be allowed a period of thirty (30) business days for System Acceptance Testing, beginning from the date of notification as provided in paragraph 1 above, and continuing, and completed, as provided in paragraphs 3 and 4 below. CLIENT shall immediately advise CRW, in writing, of any error, or perceived error, discovered at any time during the testing period.

3. Upon delivery of written notification from CLIENT to CRW of a software system or database conversion error, or other problem, has occurred, CRW shall have ten (10) business days to address and correct such error so as to render the system operable. CRW shall provide written notice to CLIENT that the error has been corrected. During the time period between notification of any error until to such time that CRW advises CLIENT of correction of such error the thirty (30) day System Acceptance test period shall be suspended. The thirty (30) day System Acceptance test period shall resume upon notice by CRW that the previously noticed errors have been corrected and once the corrections have been made available to the CLIENT.

4. CRW shall provide written notice to CLIENT when the thirty (30) day System Acceptance test period has expired. Thereafter, CLIENT shall have five (5) business days to provide CRW with written notice of any remaining errors or problems. ACCEPTANCE SHALL BE DEEMED TO HAVE OCCURRED AT THE LATEST OF THE FOLLOWING DATES: (a) THE DATE WRITTEN NOTICE IS PROVIDED BY CRW TO CLIENT THAT THE FINAL PROBLEMS IDENTIFIED BY CLIENT PURSUANT TO THIS SECTION HAVE BEEN CORRECTED, OR (b) THE DATE OF NOTICE BY CRW TO CLIENT INDICATING THAT THE ACCEPTANCE TESTING PERIOD HAS EXPIRED.

5. CLIENT may begin using the software for productive use following completion of the System Acceptance tests. "Productive Use" shall include the issuance of any building permits, inspections and/or fee collection from the general public for Phase 1 work. "Productive Use" shall include the receipt of any citizen complaint or incident record from the general public for Phase 3 work.

6. CLIENT may not begin to use the software for productive use prior to completion of the System Acceptance tests. If CLIENT begins using software for productive use prior to completion of the System Acceptance test, then the system acceptance test will be deemed completed and satisfactory.

EXHIBIT F

SOFTWARE ESCROW AGREEMENT

Date of Agreement: November 21, 2003

Escrow No. 5794-MB

EscrowTech: EscrowTech International, Inc.
C7 Data Center Building
333 South 520 West - Suite 230
Lindon, UT 84042

Tel.: (801) 852-8202
Fax: (801) 852-8203

Owner: CRW Systems Inc. (dba CRW Associates)
16980 Via Tazon #320
San Diego, CA 92127

Tel.: (858)451-3030
Fax: (858)451-3870

1. *Software and Establishment of Escrow.* Owner owns, or has the right to license or distribute, the "Software" identified in Exhibit A. By this Agreement, Owner establishes an escrow of "Deposit Materials" (see Exhibit A) for the Software (the "Escrow").

2. *Beneficiaries.* Each licensee of the Software who registers under Section 3 shall be a "Beneficiary."

3. *Registration.* To register a licensee as a Beneficiary with EscrowTech:

(a) Owner and the licensee will complete and execute EscrowTech's then-current Beneficiary Registration Form.

(b) The completed and executed Beneficiary Registration Form will be submitted to EscrowTech.

(c) EscrowTech will give written notice to Owner and the licensee of receipt of the Beneficiary Registration Form.

4. *Deposit Materials.* Owner shall deposit the "Deposit Materials" (including "Updates") into the Escrow by delivering to EscrowTech the Deposit Materials described in Exhibit A. Owner warrants that it has the right to provide the Deposit Materials to EscrowTech for the purposes of this Agreement and shall indemnify EscrowTech against, and hold it harmless from, any claim to the contrary by a third

party.

5. *Encryption and Reproduction.* Owner warrants that none of the Deposit Materials will be encrypted or password protected and that all of the Deposit Materials will be in a readable and useable form (for purposes of the Permitted Use - see Section 14) and will be readily reproducible by EscrowTech for copying as needed under this Agreement (see, e.g., Section 13). Exception: If Deposit Materials are transmitted electronically to EscrowTech via FTP or other electronic transmission method accepted by EscrowTech, then such Deposit Materials may be in an encrypted format that is acceptable to EscrowTech and that can be decrypted by EscrowTech and stored in an unencrypted format on physical media (e.g., a CD ROM). It is Owner's responsibility to provide any decryption tools/keys, passwords, and information needed for decryption. It is not EscrowTech's responsibility to discover if any of the Deposit Materials are encrypted or password protected or to provide de-encryption tools/keys, passwords or information needed for decryption.

6. *Updates.* Owner shall update the Escrow by delivering to EscrowTech Updated Deposit Materials ("Updates") as described in Exhibit A. Updates shall be part of the "Deposit Materials."

7. *Deposit Procedure.* Deposit Materials shall be delivered by Owner to EscrowTech in accordance with EscrowTech's then-current deposit procedures. Duplicate copies (i.e., two sets) of all

Deposit Materials in reliable storage media should be delivered by Owner, but EscrowTech is not responsible if Owner fails to comply with this.

(a) **Deposit Inventory Form.** Owner will submit with the Deposit Materials a completed Deposit Inventory Form. Such Deposit Inventory Form shall be a representation by Owner to each Beneficiary and EscrowTech that the Deposit Materials conform to the descriptions and identifications in the Deposit Inventory Form.

(b) **Confirmation.** To confirm receipt of the Deposit Materials, EscrowTech will mail or otherwise deliver a copy of the Deposit Inventory Form to Owner and each Beneficiary.

(c) **Deficiency.** If a Beneficiary believes that the Deposit Materials, as identified in the Deposit Inventory Form, are deficient (e.g., incomplete or inadequate) or if there is some other problem, then the Beneficiary shall notify Owner and resolve the matter with Owner. It is Owner's responsibility to deposit all required Deposit Materials.

(d) **Reproducible.** It is Owner's responsibility to ensure that the Deposit Materials provided by Owner (including, without limitation those on any electronic media - e.g., CD-ROMs, magnetic tapes, etc.) are provided in a reproducible form.

(e) **Verification.** EscrowTech is not responsible for verifying the completeness, accuracy, suitability, state, format, safety, quality, or content of the Deposit Materials. However, at the request of any Beneficiary or Beneficiaries, EscrowTech may conduct technical verifications of Deposit Materials for such Beneficiary or Beneficiaries in accordance with a Technical Verification Addendum to this Agreement. The requesting Beneficiary or Beneficiaries must pay EscrowTech's then-current fees plus expenses for the technical verifications.

(f) **Designated Beneficiary Option.** If certain Deposit Materials apply only to one Beneficiary (e.g., the Software is customized for a given Beneficiary), then Owner has the option of depositing such Deposit Materials only for that Beneficiary. In making a given deposit of Deposit Materials, Owner may designate the Beneficiary in the Deposit Inventory Form. Only the designated Beneficiary will have escrow rights (and potentially release rights) with respect to these Deposit Materials. Except for this restriction, the other terms and conditions of this Agreement shall apply thereto. It is the responsibility of Owner to clearly indicate the designated

Beneficiary. Owner may designate more than one Beneficiary, and in such case each of the designated Beneficiaries will be a designated Beneficiary as described above. The Beneficiary Fee for each designated Beneficiary will be increased as provided in Exhibit B.

8. **Replacement of Obsolete Deposit Materials.** Owner may identify for EscrowTech any Deposit Materials which become obsolete, outdated or redundant and instruct EscrowTech to destroy or return the identified Deposit Materials. Such identification shall be made in writing and must be consistent with the labeling and identification used by Owner when the Deposit Materials were delivered to EscrowTech or be otherwise understandable to EscrowTech. The instructions to EscrowTech must be accompanied by written permission from each affected Beneficiary for EscrowTech to destroy or return the identified Deposit Materials in accordance with Owner's instructions. The "Deposit Materials" shall cease to include any destroyed or returned Deposit Materials.

9. **License Agreement.** Owner and each Beneficiary have entered into one or more agreements identified in the Beneficiary's Registration Form that relate to the Software. For that Beneficiary, such agreement(s) is (are) referred to herein as the "License Agreement." This Software Escrow Agreement is "supplementary" to the License Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the License Agreement are/is rejected by Owner as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Beneficiary may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the release of Deposit Materials to a Beneficiary in accordance with the provisions of this Agreement, and Owner hereby conveys and licenses to EscrowTech such rights (including intellectual property rights) as are necessary to allow EscrowTech to lawfully make such release and perform this Agreement. This license is granted as of the date of this Agreement and shall predate any bankruptcy petition subsequent to such date.

10. **Embodiments of Intellectual Property.** The Parties agree that the Deposit Materials are an

"embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). The tangible Deposit Materials and any copies thereof made by EscrowTech in accordance with this Agreement are owned by EscrowTech, but such ownership does not include ownership of any copyrights or other intellectual property in or to the Deposit Materials.

11. Release of Deposit Materials - Request of Beneficiary. A Beneficiary will be entitled to receive the Deposit Materials if the "Release Condition" described in the applicable Beneficiary Registration Form occurs. The following release procedure shall apply:

(a) **Notice to EscrowTech.** The Beneficiary shall give written notice to EscrowTech informing EscrowTech that the Release Condition has occurred, and shall request EscrowTech in writing to release the Deposit Materials to Beneficiary.

(b) **Notice to Owner.** EscrowTech shall then promptly send written notice to Owner of the Beneficiary's notice and request for release. Such notice will be sent by a "next day" or "overnight" or "priority" or "express" delivery service (e.g., Federal Express, UPS, U.S. Express Mail, etc.) or will be delivered personally.

(c) **Release and Waiting Period.** Unless there is a timely dispute or objection as provided in Section 11 (d) below, EscrowTech shall release the Deposit Materials to the Beneficiary promptly after expiration of the Waiting Period. The "Waiting Period" shall be two weeks, beginning on the date that the notice is sent by EscrowTech to Owner.

(d) **Dispute.** If Owner disputes the Beneficiary's right to the Deposit Materials or otherwise objects to their release, then Owner must give written notice of such dispute or objection to EscrowTech prior to the conclusion of the Waiting Period. If EscrowTech receives such timely notice of dispute or objection, EscrowTech will not release the Deposit Materials to the Beneficiary until the dispute is resolved by Owner and the Beneficiary in accordance with Section 19 or by court order. Such resolution will determine whether or not the Beneficiary is entitled to receive the Deposit Materials. EscrowTech has no obligation to determine whether or not the Beneficiary is entitled to the Deposit Materials.

(e) **Partial Release.** If Owner believes that the

Beneficiary is entitled to a release of only a portion of the Deposit Materials (e.g., Deposit Materials corresponding to unlicensed versions - see (f) below), it is the responsibility of Owner to indicate this in a written notice to EscrowTech and to clearly identify in such notice the portion of the Deposit Materials that should be released to the Beneficiary and what should not be released. This notice must be given promptly and must be received by EscrowTech within the above Waiting Period. If the Beneficiary believes that it is entitled to more than said portion of the Deposit Materials, then this dispute shall be resolved in accordance with Section 19.

(f) **Unlicensed Versions.** A Beneficiary is not entitled to receive Deposit Materials corresponding to Software versions not licensed or provided by Owner to Beneficiary. [For example, if the Deposit Materials correspond to versions 1.0, 2.0, 2.1 and 3.0 of the Software, but only versions 2.0 and 2.1 are licensed to the Beneficiary, then the Beneficiary is only entitled to a release of the Deposit Materials corresponding to versions 2.0 and 2.1.] If applicable, it is the responsibility of Owner under (e) above to inform EscrowTech of the specific Deposit Materials which should not be released to the Beneficiary. In the absence of such information, EscrowTech may release all of the Deposit Materials in the Escrow or all of the Deposit Materials requested by the Beneficiary under (a) above.

12. Release of Deposit Materials - Owner's Instruction. Upon receipt of notice and instruction from Owner and the receipt of the Release Fee, EscrowTech shall release the Deposit Materials to the Beneficiary designated in the instruction.

13. Copies. Because there are multiple Beneficiaries under this Escrow, any Deposit Materials released to Beneficiaries under this Agreement may be in the form of copies of the Deposit Materials. EscrowTech may copy the Deposit Materials for the purposes of this Agreement. Such copies shall be considered Deposit Materials for the purposes of this Agreement.

14. Use of Released Deposit Materials. Deposit Materials released to a Beneficiary under this Agreement may only be used by the Beneficiary as permitted in its Beneficiary Registration Form ("Permitted Use"). Owner hereby licenses the Beneficiary to practice the Permitted Use. Although Beneficiary is not entitled to receive any Deposit Materials until after a release under this Agreement, this Permitted Use license is granted as of the date the applicable Beneficiary Registration Form is first

signed by Beneficiary or Owner and shall predate any bankruptcy petition subsequent to such date. If this Agreement and/or the License Agreement are/is rejected by Owner as a debtor in possession or by a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Beneficiary may elect to retain this Permitted Use license as part of the rights it may retain in accordance with Section 365(n) of the U.S. Bankruptcy Code. This shall not negate, prejudice or limit any other rights which the Beneficiary may have.

15. **Fees.** EscrowTech shall receive the following fees and payments:

(a) **Annual Fee.** Beginning on the date of this Agreement and on each anniversary thereafter until termination of the Escrow, Owner shall pay an Annual Fee to EscrowTech in accordance with the Fee Schedule (Exhibit B). The Annual Fee is payable at the beginning of the contract year to which it is applicable.

(b) **Beneficiary Fees.** For each Beneficiary, the Beneficiary Fee will be paid to EscrowTech in accordance with the Fee Schedule (Exhibit B). The Beneficiary Fee is first payable at the time of registration. This entitles the Beneficiary to registration for the remainder of the contract year in which the Beneficiary Fee is paid. Thereafter and until the Beneficiary ceases to be a "Beneficiary" (see Section 16), the Beneficiary Fee will be paid to EscrowTech in advance for each subsequent contract year. "Contract years" are based on the date of this Agreement and anniversaries thereof.

(c) **Excess Update Fee.** Four Updates to the Escrow per contract year are included at no extra charge. If more than four Updates are made in a contract year, Owner shall pay the Excess Update Fee (see Exhibit B) to EscrowTech for each extra Update. Any deposits of Deposit Materials for designated Beneficiaries under Section 7(f) shall be deemed Updates for the purpose of this Excess Update Fee.

(d) **Release Fees.** Each Beneficiary requesting a release of any Deposit Materials under Section 11 shall pay the Release Fee (see Exhibit B) to EscrowTech. If any Deposit Materials are released to a Beneficiary at the instruction of Owner under Section 12, Owner shall pay the Release Fee to EscrowTech.

(e) **Excess Storage Charges.** If the storage requirement for the Deposit Materials exceeds two cubic feet, then Owner will pay the Excess Storage

Charge (see Exhibit B).

(f) **Increases.** The fees set forth in Exhibit B are fixed for the first three years of this Agreement. Thereafter, fees are subject to reasonable increase by EscrowTech upon written notice. EscrowTech's then-current fees shall be payable.

(g) **Costs.** Each Beneficiary shall pay EscrowTech for reasonable costs incurred by EscrowTech in releasing, copying and delivering the Deposit Materials to the Beneficiary. All other out-of-pocket costs reasonably incurred by EscrowTech in connection with this Agreement are reimbursable by the applicable Beneficiary and Owner to EscrowTech. Costs are not included in the above fees and are payable in addition to the above Fees.

16. **Termination of Beneficiary's Registration.** A Beneficiary's registration will terminate and the Beneficiary will cease to be a "Beneficiary" under this Agreement if any of the following occurs:

(a) The Beneficiary gives written notice of such termination to EscrowTech.

(b) The Beneficiary's License Agreement terminates. [If the License Agreement consists of more than one agreement and if less than all such agreements terminate, then the License Agreement shall consist of the unexpired agreements and the Beneficiary shall continue as a "Beneficiary" under this Agreement.] In the event of such termination, the Beneficiary and Owner will give written notice thereof to EscrowTech. If such notice is given by Owner, but not the Beneficiary, then EscrowTech may send notice thereof to Beneficiary and if EscrowTech does not receive a written objection from Beneficiary within three weeks after the date of EscrowTech's notice, then EscrowTech may terminate the Beneficiary's registration.

(c) The Beneficiary breaches this Agreement and does not cure such breach within 30 days of written notice of such breach, and EscrowTech gives notice of termination to the Beneficiary.

(d) The Escrow terminates.

EscrowTech will have no obligation or liability to the Beneficiary after termination of its registration. Termination of a Beneficiary's registration shall not affect the other Beneficiaries.

17. *Termination of Escrow.* Subject to Section 18, this Escrow may be terminated by either Owner or EscrowTech upon 90 days advance written notice of termination to the other Party and to the Beneficiaries. Termination will not be effective until the end of the 90 day period (and any extension pursuant to Section 18). If a Release Condition occurs and EscrowTech is given written notice thereof under Section 11(a) prior to the date of termination, then the Escrow will not terminate without the written consent of the affected Beneficiaries. Upon termination of the Escrow, the following shall apply:

(a) EscrowTech shall either return the Deposit Materials to Owner or destroy the Deposit Materials, whichever Owner requests. If destruction is requested, EscrowTech will certify in writing to Owner that such destruction has occurred.

(b) EscrowTech shall have no obligation or liability to Owner or any Beneficiary after termination.

(c) Termination of the Escrow shall not affect any rights and licenses granted to EscrowTech or a Beneficiary with respect to Deposit Materials released to (or which should be released to) the Beneficiary because of a Release Condition occurring prior to the date of termination.

18. *Establishment of Substitute Escrow.* During the 90 day period under Section 17, Owner shall establish a substitute escrow of the Deposit Materials with a third party escrow agent for the benefit of each Beneficiary. The substitute escrow must be approved by the Beneficiary, but such approval will not be unreasonably withheld or delayed. If necessary, this matter shall be resolved in accordance with Section 19. If more than 90 days is needed to establish the substitute escrow and if EscrowTech receives written notice from Owner or a Beneficiary of such need prior to the end of such 90 days, then the 90 day period under Section 17 shall be extended as reasonably necessary and the Escrow shall not terminate until EscrowTech receives written notice from Owner that the substitute escrow has been established and approved. Owner has no obligation to establish a substitute escrow if all License Agreements for all Beneficiaries have terminated or if none of the Beneficiaries request a substitute escrow within three weeks after an written inquiry thereof from Owner to each Beneficiary.

19. *Dispute Resolution.* In the event of any

dispute between any two or more of the Parties relating to this Agreement or the Escrow, they shall first seek to settle the dispute by mutual agreement. If they have not reached a settlement within one week, then any disputing Party may thereafter submit the dispute to arbitration, and if so submitted, such dispute shall be finally settled by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association or its successor. The disputing Parties shall attempt to mutually agree upon a neutral arbitrator. If the disputing Parties cannot reach such agreement, they shall request the American Arbitration Association or its successor to designate a neutral arbitrator. Any arbitration involving EscrowTech as a party shall be conducted in Salt Lake City, Utah. Any arbitration to which EscrowTech is not a party shall be conducted in Owner's city as indicated at the beginning of this Agreement. This Section does not apply to any dispute between two Beneficiaries that does not include EscrowTech or Owner as a party to such dispute. The institution of any arbitration proceeding hereunder shall not relieve any Party of its obligation to make payments under this Agreement. The decision by the arbitrator shall be binding and conclusive upon the Parties, their successors, assigns and trustees and they shall comply with such decision in good faith, and each Party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment or for the enforcement of the decision of the arbitrator hereunder. Judgment upon the award may be entered in any court having jurisdiction.

20. *Protection of Deposit Materials.* EscrowTech shall keep the Deposit Materials delivered to it in secure storage and shall keep the contents thereof confidential. If any of the Deposit Materials are damaged, destroyed or lost by fire, theft, accident, or other mishap or cause, Owner shall promptly submit to EscrowTech such Updates or replacements as are necessary to replace the damaged, destroyed or lost Deposit Materials. There shall be no Excess Update Fees charged for such Updates or replacements.

21. *Indemnification.* In the event that EscrowTech takes any action or inaction at the request or demand of Owner or a Beneficiary, then the Owner or Beneficiary making such request or demand shall indemnify and hold harmless EscrowTech and its directors, officers, employees, shareholders, and representatives from and against any and all liabilities, claims, judgments, damages, losses and expenses, including attorneys' fees, arising

out of or relating to such action or inaction.

22. **Depository Only.** EscrowTech acts hereunder as a depository only and is not responsible or liable for the completeness, accuracy, suitability, state, format, safety, quality, content, sufficiency, correctness, genuineness or validity of the Deposit Materials or any document submitted to EscrowTech or the execution of the same or the identity, authority, or rights of any person executing or depositing the same. EscrowTech is not responsible for any loss of Deposit Materials due to defective, outdated, or unreliable storage media (e.g., CD ROMs, magnetic tape, disks, etc.) or for the degradation of storage media.

23. **Uncertainty.** Notwithstanding anything in this Agreement to the contrary, if EscrowTech is uncertain as to any duty, obligation, demand, or right, EscrowTech may hold the Deposit Materials and refrain from taking any action and wait for a final resolution under Section 19 or a court order.

24. **Reliance.** EscrowTech shall not incur any liability in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by EscrowTech to be genuine and to be signed by the proper party or parties, or in acting upon any resolution under Section 19 or any court order.

25. **Extraordinary Services.** In addition to the fees and charges for the usual services of EscrowTech under this Agreement (see Section 15 and Exhibit B), EscrowTech shall be entitled to additional reasonable compensation should EscrowTech be requested or required to perform any additional or extraordinary service; and EscrowTech shall be reimbursed for any out-of-pocket expenses (including, without limitation, travel expenses and fees of counsel) reasonably incurred in connection with such additional or extraordinary services. Extraordinary services include, but are not limited to, any involvement of EscrowTech, at the request or demand of Owner or a Beneficiary, in any arbitration or litigation between Owner and the Beneficiary.

26. **Disclaimer.** ESCROWTECH MAKES NO WARRANTY NOT EXPRESSLY SET FORTH HEREIN. ANY IMPLIED WARRANTIES ARE DISCLAIMED AND EXCLUDED BY ESCROWTECH.

27. **Limitation on Liability.** FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT,

MALPRACTICE, ETC.), ESCROWTECH'S AGGREGATE LIABILITY TO OWNER AND THE BENEFICIARIES SHALL NOT EXCEED THE TOTAL FEES PAID TO ESCROWTECH UNDER THIS AGREEMENT. IN NO EVENT SHALL ESCROWTECH BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR LOSS OF PROFITS, REVENUES OR BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

28. **Interpretation.** The wording used in this Agreement is the wording chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against or in favor of any Party. Section headings are for convenience only, and do not limit or affect the provisions of this Agreement or their interpretation.

29. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties relating to the Escrow. This Agreement sets forth all the duties and obligations of EscrowTech with respect to any and all matters relating to this Agreement, the Escrow or the Deposit Materials. EscrowTech has no implied duties or obligations.

30. **Force Majeure.** Except for obligations to make payment, no Party shall be liable for any failure to perform arising from causes beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, theft, terrorism, acts of public enemies, war, insurrection, sabotage, illness, labor disputes or shortages, product shortages, failure or delays in transportation, inability to secure materials, parts or equipment, acts of God, or acts of any governmental authority or agency thereof.

31. **Governing Law.** This Agreement, the Escrow and the relationship of EscrowTech with Owner and each Beneficiary shall be governed and construed under and in accordance with the laws of the state of Utah without regard to conflict of laws principles. Furthermore, in the event of any litigation or arbitration between EscrowTech and Owner or between EscrowTech and any Beneficiary, such litigation or arbitration shall be conducted exclusively in Salt Lake City, Utah and the Parties hereby agree and submit to such jurisdiction and venue.

32. **Notices.** All notices under this Agreement shall be in writing and shall be delivered to the address indicated for the intended Party at the beginning of this Agreement or, in the case of a Beneficiary, on Beneficiary's Registration Form, or to

such substitute address as any Party may designate for itself by proper notice to the other Parties. It is the responsibility of each Party to keep the other Parties informed of its address and telephone and fax numbers (except that a Beneficiary is not obligated to keep other Beneficiaries informed of this information).

33. *Modification.* This Agreement may only be modified, amended or rescinded by a writing signed by all affected Parties.

34. *Assignment.* This Agreement may be assigned by a Party to a successor who acquires substantially all of such Party's business assets relevant to the subject matter of this Agreement. The assigning Party shall give notice thereof to the other affected Parties and shall deliver to such other affected Parties a copy of the successor's written agreement to accept or assume this Agreement.

35. *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The persons signing below represent that they are duly authorized to execute this Agreement for and on behalf of the Party for whom they are signing.

SOFTWARE ESCROW AGREEMENT
BENEFICIARY REGISTRATION FORM

Owner: CRW Systems, Inc

Escrow No. 5794-MB

Beneficiary: City of Milpitas

Tel.: 408-586-3001

Fax: 408-586-3030

Contact: City Clerk, Mary LaVelle

E-Mail: mlavelle@ci.milpitas.ca.gov

This Beneficiary Registration Form applies to the above-identified Escrow and the Software Escrow Agreement dated November 21, 2003 to which Owner and EscrowTech International, Inc. ("EscrowTech") are parties (the "Escrow Agreement").

Owner and Beneficiary have entered into one or more other agreements identified below:

**AGREEMENT FOR THE INSTALLATION AND USE OF
PERMIT, PLANNING and CODE ENFORCEMENT SOFTWARE**

Such agreement(s) (including addendums or amendments thereto, if any) is (are) referred to in the Escrow Agreement as the "License Agreement."

Beneficiary has received and reviewed a copy of the Escrow Agreement. Beneficiary agrees to the terms and conditions of the Escrow Agreement and is hereby made a Party thereto. Beneficiary is entitled to the rights and benefits of a "Beneficiary" under the Escrow Agreement and accepts the obligations of a "Beneficiary" under the Escrow Agreement.

Appendix 1, attached hereto, is part of this Beneficiary Registration Form and describes the Release Condition and Permitted Use applicable to the Beneficiary under the Escrow Agreement.

Date of this Beneficiary Registration: 5/04/2006

ACCEPTED AND AGREED TO BY BENEFICIARY AND OWNER:

Beneficiary: City of Milpitas, California

Authorized Signature

Owner: CRW Systems, Inc

Authorized Signature

5/12/06

For EscrowTech Only!

Date Received by EscrowTech: _____ EscrowTech Signature: _____

SOFTWARE ESCROW AGREEMENT
BENEFICIARY REGISTRATION FORM
APPENDIX 1

RELEASE CONDITION

The Release Condition shall be deemed to have occurred if any of the following is satisfied:

- a. Owner files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition in bankruptcy is filed against Owner and is not dismissed within 60 days thereafter.
- b. Owner defaults in its obligation to provide maintenance and support services as required by the License Agreement (or any other contract with Beneficiary), and fails to cure such default within 10 days after receiving written notice of the default from Beneficiary. The notice must describe the default and state the action which Beneficiary believes is necessary to cure the default.
- c. Beneficiary becomes entitled to a release of the Deposit Materials (i.e., source code for the Software) pursuant to the terms of the License Agreement.

PERMITTED USE OF RELEASED DEPOSIT MATERIALS:

In the event that the Deposit Materials are released to Beneficiary, the following shall apply:

- a. Beneficiary may only use the Deposit Materials to maintain, modify and enhance the Software. The maintained, modified and enhanced Software may only be used in accordance with the License Agreement.
- b. Beneficiary may not disclose the Deposit Materials to any third party and shall keep the Deposit Materials confidential, except as provided below.
- c. Beneficiary may engage the services of independent contractors (e.g., computer programmers or an outsourced maintenance service) to assist Beneficiary in exercising its Permitted Use rights. Each such independent contractor must agree in writing that it/he/she will not disclose or transfer the Deposit Materials to any other person, and will not use the Deposit Materials for any purpose other than to assist Beneficiary in exercising its Permitted Use rights. These restrictions shall not limit or negate the rights, if any, of the independent contractor with respect to materials that are similar or identical to the Deposit Materials and are lawfully received by the independent contractor from a source other than Beneficiary (e.g., a maintenance service that receives similar or identical materials from other beneficiaries or licensees).
- d. Items a., b. and c. above are subject to such additional rights or limitations as may be set forth in a provision, if any, in the License Agreement which addresses use of the released Deposit Materials by Beneficiary.

The Permitted Use is a fully paid-up license and may not be revoked, terminated or rejected without Beneficiary's written consent. This Permitted Use license also includes the right to use and copy the binary, executable and object code versions of the Software and the maintained, modified and enhanced versions of Software created from or with the Deposit Materials.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive report on Bids and Award Construction Contract to Redwood Construction and Equipment, Inc. in the amount of \$1,715,652 for the Citywide Parks and Playgrounds Rehabilitation Project (Staff Contact: Tony Ndah, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2020
Staff Contacts:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendations:	1. Receive report on bids and award construction contract to the lowest responsible bidder submitting a responsive bid, Redwood Construction and Equipment, Inc., in the amount of \$1,715,652.00 for the Citywide Parks and Playgrounds Rehabilitation Project, subject to annual appropriations. 2. Authorize the Public Works Director to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$50,000 for the Citywide Parks and Playgrounds Rehabilitation Project.

Background:

As part of the FY 2019-2024 Capital Improvement Program, Council approved Project No. 3424 – Citywide Park Rehabilitation which provides funding for the rehabilitation of City-owned parks and playgrounds throughout the City. In the Summer of 2019, the City entered into a professional services agreement with PlaceWorks, Inc., to perform a thorough safety evaluation of the playgrounds, structures, equipment and play surfaces currently installed at the City’s parks. The report generated by the consultant contained a number of recommendations which served as the basis for the scope of work of Project No. 2390 - the Citywide Parks and Playgrounds Rehabilitation (“Project”).

Analysis:

On November 26, 2019, the Purchasing Division released a Notice Inviting Bids (NIB) for the Project. The NIB was publicly noticed and advertised on the City’s website in accordance with the Milpitas Municipal Code and the Uniform Public Construction Cost Accounting Act (“Act”). Email notifications were sent to companies registered with the City via ProcureNow.com, the City’s eProcurement system, and a bid notification was placed on PublicPurchase.com. Email notification to plan rooms and contractors registered with the City were sent in accordance with the Act. Additionally, an advertisement for the NIB was placed in the Milpitas Post which ran on December 5, 2019.

Upon release, 129 firms received the solicitation notification and thirty-six (36) firms downloaded the bid notice and related contract documents. The Purchasing Division received two (2) bids by the January 9, 2020 deadline to respond to the NIB. Redwood Construction and Equipment, Inc. is the lowest responsible bidder submitting a responsive bid in the amount of \$1,715,652, which was slightly below the City’s estimate of \$1,749,000 for these services. The second bid received in response to NIB 2390 from Suarez & Muñoz Construction was for the amount of \$2,095,546.

The proposed Project would provide the fifteen City parks with much needed play structures and play surface repairs while updating the parks to current Certified Playground Safety Inspector (CPSI) standards. Work under the Project includes repair and/or replacement of sections of failed pour-in-place (PIP) play surfaces, replacing sand with engineered wood fiber (EWF), replacement of old playground structures. The City is in the process of preparing an update to the 2008 Parks and Recreation Master Plan (Master Plan), which

include a strategic plan to provide high-quality accessible parks and recreation facilities in the City. The improvements under this projects would be completed ahead of the completion of the Master Plan in order to address safety needs identified at the parks listed in the table below.

The Project will be completed in three phases over the next three fiscal years. The current expected breakdown of the work per the low bid is summarized in the table below.

Phase	Fiscal Year	City Parks	Cost Per Phase
1	FY 2019 - 20	Ben Rodgers, Community Center Playground, Foothill, Oliver Jones Memorial	\$569,296.00
2	FY 2020 - 21	Calle, Oriente, Cardoza, Dixon Landing, Hillcrest,	\$329,365.00
3	FY 2021 - 22	Augustine Memorial, Cerano, John McDermott O'toole Elms, Pinewood, Selewyne, Tom Evatt	\$816,991.00
Total Contract Cost			\$1,715,652.00

Policy Alternative:

Alternative: Direct city staff to reject all bids and not proceed with the Project.

Pros: The City would be able to use \$1,715,652 for other projects

Cons: Not proceeding with the Project would defer improvements that would update the parks to current CPSI standards.

Reason not recommended: The recommendations of the CPSI consultant to make improvements to the 15 parks were reviewed and staff believes the Project will address the items in the report and bring the City parks listed to current safety specification.

Fiscal Impact:

The cost to perform the rehabilitation of the City's parks through a construction contract with Redwood Construction and Equipment, Inc. is \$1,712,652. Staff also requests City Council approval for the Public Works Director to execute contract change orders in an aggregate amount not to exceed \$50,000 for a total construction budget of \$1,762,652 for the Project.

There are sufficient funds available in Capital Improvement Project No. 3424 and Project No. 5113 for Phase 1 of \$569,296 in Fiscal Years 2019-20.

Staff will seek Council approval for additional funding in the amount of \$1,146,356, in the next Capital Improvement Budget 2020-26 in order to complete Phases 2 and 3 of the Project.

California Environmental Quality Act:

This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Recommendations:

1. Receive report on bids and award construction contract to the lowest responsible bidder submitting a responsive bid, Redwood Construction and Equipment, Inc. in the amount of \$1,715,652.00 for the Citywide Parks and Playgrounds Rehabilitation Project, subject to annual appropriations.
2. Authorize the Public Works Director to negotiate and execute contract change orders in an aggregate amount not to exceed \$50,000 for the Project.

Attachment

Construction contract with Redwood Construction and Equipment, Inc.



CITY OF MILPITAS

MILPITAS, CALIFORNIA

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR

NIB 2390 - CITYWIDE PARKS AND PLAYGROUNDS REHABILITATION

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NIB 2390 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the City Council of the City of Milpitas ("City") invites and will receive sealed electronic Bids up to but not later than **2:00 p.m.PST on January 9, 2020** at <https://secure.procurenow.com/portal/milpitas-ca>, for the furnishing to City of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for **NIB 2390 - Citywide Parks and Playgrounds Rehabilitation** (the "Project"). At 2:15 p.m. PST on said date, Bids will be publicly opened and read aloud at the City Office. Bids received after said time shall not be accepted and/or shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.

Bids must be submitted on the City's Bid Forms. Bid Forms shall only be made available electronically at <https://secure.procurenow.com/portal/milpitas-ca>. **PAPER BIDS SHALL NOT BE ACCEPTED.** Bidders may obtain a copy of the Contract Documents, Addenda and from <https://secure.procurenow.com/portal/milpitas-ca>. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the City shall provide an electronic copy of the Contract at no charge to the contractor plan room.

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

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

A **MANDATORY** Pre-Bid Conference is scheduled for **11:00 a.m. PST on Wednesday December 11, 2019** to review the Project's existing conditions at 455 E. Calaveras Blvd Milpitas, CA 95035 in the 1st floor Committee Conference Room. Representatives of the City and consulting engineers, if any, will be present. Bidders need only to attend one Pre-Bid Conference. Questions asked by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and issued as an Addendum. Bids will not be accepted from any bidder who did not attend one of the mandatory Pre-Bid Conferences.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety

company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

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

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

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

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

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

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

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

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

For further information, contact Zachary DeVine, Buyer zdevine@ci.milpitas.ca.gov or (408) 586-3163.

END OF NOTICE INVITING BIDS

00 21 13 – INSTRUCTIONS TO BIDDERS

1. SECURING DOCUMENTS

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

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

Addenda, if any, issued during the bid period will be posted on <https://secure.procurenow.com/portal/milpitas-ca>. Failure to acknowledge addenda may make a bid nonresponsive and not eligible for award of the contract.

2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS

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

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

3. INTERPRETATION OF DRAWINGS AND DOCUMENTS

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

4. INSPECTION OF SITE; PRE-BID CONFERENCE

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

5. ADDENDA

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

6. ALTERNATE BIDS

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

7. COMPLETION OF BID FORMS

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

8. MODIFICATIONS OF BIDS

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

9. SUBCONTRACTORS

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

The successful bidder will be required to self-perform at least 51% of the work.

10. LICENSING REQUIREMENTS

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

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

11. BID GUARANTEE (BOND)

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

12. IRAN CONTRACTING ACT OF 2010

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

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

13. NONCOLLUSION DECLARATION

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

14. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

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

15. WAGE THEFT CERTIFICATION

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

16. BIDDER INFORMATION AND EXPERIENCE FORM

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

17. WORKERS' COMPENSATION CERTIFICATION

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

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

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

18. SIGNING OF BIDS

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

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

19. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be uploaded to <https://secure.procurennow.com/portal/milpitas-ca> before the time and

day set for the receipt of bids. No oral, paper or telephonic bids will be considered. No forms transmitted via e-mail, facsimile, or any other means will be considered unless specifically authorized by the City as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened.

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

20. OPENING OF BIDS

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

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

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

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

21. WITHDRAWAL OF BID

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

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

22. BIDDERS INTERESTED IN MORE THAN ONE BID

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

corporation, or other entity may submit a sub-proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime Bid on the same Project.

23. SUBSTITUTION OF SECURITY

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

24. PREVAILING WAGES

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

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

26. INSURANCE REQUIREMENTS

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

27. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

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

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

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

29. FILING OF BID PROTESTS

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

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

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

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

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

30. BASIS OF AWARD; BALANCED BID

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

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

31. AWARD PROCESS

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

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

32. EXECUTION OF CONTRACT

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

00 41 43 – BID FORMS

1.1 Bid Acknowledgement.

NAME OF BIDDER: Redwood Engineering Construction

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

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

NIB 2390 - CITYWIDE PARKS AND PLAYGROUNDS REHABILITATION

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

6. Attached is the completed Wage Theft Certification form.
7. Contractor's Certificate Regarding Workers' Compensation form.
8. Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
- F If awarded a contract, the undersigned hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within fourteen (14) days after the City provides the successful bidder with the Notice of Award.
- G Upon receipt of the signed contract and other required documents, the contract will be executed by the City, after which the City will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.
- H Bidder is an individual _____, or corporation ✓, or partnership _____, organized under the laws of the State of California.
- I Bidder represents and confirms that license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):
927020, Expires 01/31/2021, Class A

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

(SIGNATURES CONTINUED ON NEXT PAGE)

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

Executed at Redwood City, on this 9th day of January, 2020.

(Bidder's Name – Print or Type)

(Corporate Seal)

Benedict Cernay, V.P.
(Name and Title)

Ble
(Signature)

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

Name Benedict Cernay Title President

Complete Address 416 D Street, Redwood City, CA 94063

Phone (925) 819-2960 Fax (650)

Name Benedict Cernay Title V.P.

Complete Address 416 D Street, Redwood City, CA 94063

Phone (925) 819-2960 Fax (650)

Name Benedict Cernay Title Secretary

Complete Address 416 D Street, Redwood City, CA 94063

Phone (925) 819-2960 Fax (650)

Name Benedict Cernay Title Treasurer

Complete Address 416 D Street, Redwood City, CA 94063

Phone (925) 819-2960 Fax (650)

1.2 BID SCHEDULE

The project shall be completed in three phases. Each park shown below shall have its respective bid schedule completed in full. The final table shall constitute the TOTAL BASE BID PRICE totaling all total item prices.

[BID SCHEDULE CONTINUES ON FOLLOWING PAGE]

Phase 1

Ben Rodgers Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose the existing sand and replace it with Engineered Wood Fiber (EWF) as described in the specifications and shown on the plans	SF	5,000	8.14	40,700
2.	Remove and dispose the existing Little Tikes Composite Structure Equipment for 5-12 yrs. age group and <u>replace it with a new Composite Structure Equipment with the following:</u> 1. Double Slide 2. Tube Slide 3. Guard Rail 4. Arch Climber 5. Cargo Climber 6. Horizontal Circle Climber 7. Sliding Pole 8. Stairs	LS	LS	35,581	35,581
3.	a. Remove and dispose the following existing Ground Elements: Swings by Little Tikes Replace it with a new and similar equipment.	Each	One	6,835	6,835
	b. Remove and dispose the following existing Ground Elements: Free Standing Climber by Gametime Replace it with a new and similar equipment.	Each	One	7,095	7,095
4	Site restoration and clean-up	LS	LS	2,534	2,534
	TOTAL			NA	92,745

Community Center Playground Area

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1	Remove and dispose the existing, Poured-in-Place (PIP) Synthetic Safety Surface and install new Poured-in-Place Synthetic Safety Surface as described in the specifications and shown on the plans	SF	700	28.31	19,817
3	Site restoration and clean-up	LS	LS	2525	2,525
	TOTAL			MA \$	22,342

[Continued on following page]

	location				
4	Remove and dispose the following existing Composite Structure Equipment from the 2- 5 yrs. old playground area: 1. Double Straight Slide 2. Slalom Slide 3. Stairs 4. Steering Wheel 5. Arch Climber 6. Vertical Box Climber 7. Transfer Platform 8. Crawl Through 9. Bridge 10. Music Panel 11. Spiral Tube Slide 12. Composite Roof Replace the entire Composite Structure Equipment including complete installation at the same location	LS	LS	68,676	68,676
5	Slurry Seal the access road to the play area per the specification	SF	4,000	.48	1,920
6	Site restoration and clean-up	LS	LS	2,540	2,540
	TOTAL			N/A	269,310

Oliver Jones Memorial Park

Item No.	Item Description	Unit	Quantity	Unit Price \$	Amount \$
1	Remove and dispose the existing sand from the 2-5 yrs. play area and it replace with Engineered Wood Fiber (EWF) per specification.	SF	3000	9.23	27,690
2	Remove and dispose the existing Little Tikes Composite Structure Equipment for 2-5 yrs. age group and <u>replace it with a new Composite Structure Equipment with the following:</u> 1. Bubble Panel 2. Sliding Pole 3. Cargo Climber 4. Arch Climber 5. Double Slide 6. Spiral Climber 7. Stairs 8. Steering Wheel	One Complete Unit	One Unit of Composite Structure Equipment for 2-5 yrs. age group	31,880	31,880
3	Remove and dispose the existing Swings by Landscape Structures and replace it a new single bay of swings with 2-bucket style seats for 2-5 yrs. olds.			3,019	3,019
4	Remove and dispose the existing sand from the 5-12 yrs. play area and it replace with Engineered Wood Fiber (EWF) per specification.	SF	1900	10.39	19,741
5	Remove and dispose the existing Little Tikes Composite Structure Equipment for 5-12 yrs. age group consisting and <u>replace it with a new Composite Structure Equipment with the following:</u>	One -21-	One Unit of		

	1. Cargo Climber 2. Stairs 3. Arch Climber 4. Overhead Ladder 5. Corkscrew Climber 6. Double Slide 7. Sliding Pole	Complete Unit	Composite Structure Equipment for 5-12 yrs. age group.	47,685	47,685
6	Site restoration and clean-up	LS	LS	2,521 Bal 2,521	2,521
	TOTAL			N/A	132,536

[Continued on following page]

Phase 2

Calle Oriente Park

	Item Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
1.	Repair the existing PIP, Poured-in-Place Synthetic Safety Surface as described in the specifications and shown on the plans. Color to match the existing PIP color.	SF	400	7.33	2,932
2.	Roll Coat the entire existing PIP play area. Color to match the existing PIP color.	SF	2000	4.06	8,120
3.	Remove the Alligator Bench from Ground Equipment Area.	LS	LS	1,477	1,477
4.	Site restoration and clean-up	LS	LS	2,527	2,527
	TOTAL				15,056

[Continued on following page]

Cardoza Park

	Item Description	Unit	Quantity	Unit Price \$	Amount \$
1.	Remove and dispose the following existing Adventure Playground System Composite Structure Equipment for 5-12 yrs. age group: 1. Center Support 2. Composite Frame 3. Net Climber 4. Altered Item – A Frame 5. Rock Climber with Rotating Columns 6. Central Platform 7. Graduated Steps 8. Incline Rock Climber 9. Inclined Spinner 10. Rock Climbing Wall 11. Stairs Replace each of these with new equipment and install them at the same locations.	LS	LS	86,644	86,644
2.	After removal of the existing and installation of the new Composite Structure Equipment, repair the existing PIP surface for 5-12 yr. old and 2-5 yr. old play areas. Color of repaired surface to match the existing color.	SF	100	37.21	3,721
3.	Roll coat the existing PIP surface for 5-12 yr. old and 2-5 yr. old play areas. Color of repaired surface to match the existing color.	SF	4,600	2.45	11,270
4.	Site restoration and clean-up	LS	LS	5,536	5,536
	TOTAL				107,171

Dixon Landing Park

Item No.	Item Description	Unit	Quantity	Unit Price \$	Amount \$
1	Remove and dispose the existing PIP, Poured-in-Place Synthetic Safety Surface, and replace it with new PIP, Poured-in-Place Synthetic Safety Surface as described in the specifications and shown on the plans	SF	850	30.68	26,078
2	Remove and dispose the existing sand and replace it with Engineered Wood Fiber (EWf) as described in the specifications and shown on the plans	SF	2,200	10.30	22,660
3	Site restoration and clean-up	LS	LS	2,535	2,535
	TOTAL			N/A	51,273

[Continued on following page]

Hillcrest Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose the existing Engineered Wood Fiber from the playground areas and replace it with new Engineered Wood Fiber (EWF) as described in the specifications and shown on the plans	SF	2,300	7.48	17,204
2.	Remove and dispose the following existing Miracle Large Composite Structure Equipment from the 5-12 yrs. old playground area: 22. Sliding Pole 23. Wide Slide 24. Parallel Bars 25. Cargo Climber 26. Convex Loop Climber 27. Arch Climber 28. Bridge 29. Clover Loop Climber 30. Tall Slide Replace the entire Large Composite Structure Equipment including complete installation of equipment.	LS	LS	48,991	48,991
3.	Remove and dispose the following existing Small Composite Structure Equipment from the 2- 5 yrs. old playground area: 13. Tot Slide 14. Bubble Panel 15. Tot Arch Climber 16. Tot Stairs Replace the entire Small Composite Structure Equipment including complete installation of equipment.	LS	LS	BL 27,900 BL 20,000 22,211	BL 20,000 22,211
4.	Site restoration and clean-up	LS	LS	2,526	2,526
	TOTAL			N/A	90,932 BL 90,932

Phase 3

Augustine Memorial Park

	Item Description	Unit	Quantity	Price per unit \$	Amount
	<u>2-5 yrs. Play Area</u>				
1.	Remove and dispose the existing sand and replace it with Engineered Wood Fiber (EWF).	SF	400	16.18	6,472
2.	Remove and dispose the existing Poured-in-Place (PIP), Synthetic Safety Surface from and install new PIP Surface as described in the specifications and shown on the plans	SF	2,600	23.59	61,331
3.	Remove and dispose the existing 160 lf. of GI chain-link fence in 2-5 yr. play area, and replace it with a new vinyl coated steel chain-link fence per the specification and in compliant with ASTM 2049-11 (2017)	LF	160	92.07	14,731.20
	<u>5-12 yrs. Play Area</u>				
4.	Remove and dispose the existing Poured-in-Place (PIP), Synthetic Safety Surface and install new PIP Surface as described in the specifications and shown on the plans	SF	8,000	23.30	186,400
5.	Remove and dispose the existing Free Standing Slide and Sliding Pole and replace it with a new Free Standing Slide only.	Each	1	7,766.80	7,766.80
6.	Remove and dispose the existing Chin Up Bar from the Composite Structure area and replace it with a				

	new free standing Chin Up Bar in another location of the play area that does not interfere with other fall zones.	Each	One	6,905	6,905
7	Site restoration and clean-up	LS	LS	2,503	2,503
	TOTAL			N/A	286,112

Continued on following page]

Cerano Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose the existing PIP, Poured-in-Place Synthetic Safety Surface and install new PIP as described in the specifications and shown on the plans	SF	2100	27.87	58,527
2.	Remove and dispose the existing Net Climber from the 2-5 yr. old Composite Structure Equipment , and replace it with new sway net by Kompan	Each	1	4,897	4,897
3.	Remove and dispose the existing Double Slide from the 2-5 yr. old Composite Structure Equipment , and replace it with new Double Plastic Slide by Kompan	Each	1	9,952	9,952
4.	Site restoration and clean-up	LS	LS 2,513	2,522	2,522
	TOTAL			N/A	75,889

2,513

[Continued on following page]

John McDermott Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose the existing Engineered Wood Fiber (EWF) from 5-12 yrs.(1160 SF), and 2-5 yrs.(500 SF) play areas and install new EWF as described in the specifications and shown on the plans	SF	1,700	8.60	14,620
2.	Repair the damaged sections of the existing PIP surface and edges. Color of repaired surface to match the existing color.	SF	100	46.43	4,643
3.	Roll coat the entire existing PIP surface. Color of surface to match the existing color	SF	400	15.89	6,356
4.	Remove and dispose the existing Gametime Slide from the Composite Structure Equipment 5-12 yrs. play area, and replace it with a new Gametime Swerve Slide, or equal.	Each	1	12,069	12,069
5.	Site restoration and clean-up	LS	LS	2,517	2,517
	TOTAL				40,205

O'Toole Elms Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	2-5 yr. old play area: Repair the damaged sections of the existing Poured-in Place (PIP) Surface and the edges. and roll coat per specification. Color of repaired PIP to match the existing PIP.	SF	100	25.88	2,588
2	Roll coat the existing Poured-in Place (PIP) surface for the 2-5 yr. old and 5-12 yr. old play areas. Color to match the existing PIP surface	SF	2,300	2.93	6,739 6,739
3	Site restoration and clean-up	LS	LS	2,531	2,531
	TOTAL			N/A	11,858

[Continued on following page]

Pinewood Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose the existing Poured-in-Place (PIP) Surface from 2-5 yrs. old play area, and install new PIP, as described in the specifications and shown on the plans	SF	1,400	24.76	34,664
2.	Remove and dispose the existing PIP, Poured-in-Place Synthetic Safety Surface from 5-12 yr. old play area and install new PIP, as described in the specifications and shown on the plans	SF	1,600	24.65	39,440
3.	Remove and dispose the existing EWF from 2-5 yr. old play area and install new EWF, as described in the specifications and shown on the plans	SF	3,300	10.21	33,693
4.	Remove and dispose the existing EWF from 5-12 yr. old play area and install new EWF, as described in the specifications and shown on the plans	SF	6400	10.13	64,832
5.	Remove and dispose the following existing Composite Structure Equipment from 5-12 old play area, and replace and install new structures from All About Play			11,999	11,999
	5a. Spiral Slide (Duraglide Slide)	Ea	1	Be 11,999	11,999
	5b. Curved Slide (Sectional Snake Slide)	Ea	1	9,965	9,965
6.	Site restoration and clean-up	LS	LS	2,516	2,516
	TOTAL				197,109

Selewyne Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1.	Remove and dispose a) Barriers and b) Tower Climber (Chimney Climber) from the existing Composite Structure Equipment and replace and install a new Barrier and a Tower Climber:				
1a.	Barrier	Each	one	9,123	9,123
1b.	Tower Climber	Each	one	13,220	13,220
2.	Repair the damaged sections of the existing PIP surface and edges. Color of repaired surface to match the existing color.	SF	400	7.26	2,904
3.	Roll coat the entire existing PIP surface. Color of surface to match the existing color.	SF	1000	8.02	8,020
4.	Remove and dispose the existing sand and replace it with Engineered Wood Fiber as described in the specifications and shown on the plans	SF	2800	7.39	20,692
5.	Site restoration and clean-up	LS	LS	2,533	2,533
	TOTAL				56,492

Tom Evatt Park

	Item Description	Unit	Quantity	Unit Rate \$	Amount \$
1	Remove and dispose the existing, Poured-in-Place (PIP) Synthetic Safety Surface and install new Poured-in-Place Synthetic Safety Surface as described in the specifications and shown on the plans	SF	2800	30.21	84,588
2	Remove and dispose the following play equipment from the Play Structure: a) Diagonal Saucer Rope Climber b) Rocking Seat West No replacements necessary	LS	LS	1,184	1,184
3	Site restoration and clean-up	LS	LS	2,523	2,523
	TOTAL			N/A	88,295

[Continued on following page]

FINAL TABLE

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	TOTAL ITEM PRICE
1.	Phase 1 Mobilization	LS	1	49,493	49,493
2.	Phase 1 Diversion of Recyclable Waste Materials	LS	1	2,870	2,870
3.	Project Phase 1	LS	1	516,933	516,933
4.	Phase 2 Mobilization	LS	1	62,063	62,063
5.	Phase 2 Diversion of Recyclable Waste Materials	LS	1	2,870	2,870
6.	Project Phase 2	LS	1	257,309 264,432	264,432
7.	Phase 3 Mobilization	LS	1	58,161 58,161	58,161
8.	Phase 3 Diversion of Recyclable Waste Materials	LS	1	2,870	2,870
9.	Project Phase 3	LS	1	756,590 755,960	755,960
TOTAL BASE BID PRICE					1,715,652

TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES FOR NIB 2390 - Citywide Parks and Playgrounds Rehabilitation	
\$ <u>1,715,652</u>	Total Bid Price in Numbers
\$ <u>One million seven hundred fifteen thousand six hundred fifty two dollars</u>	Total Bid Price in Written Form
and zero cents	
In case of discrepancy between the written price and the numerical price, the written price shall prevail.	

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

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

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

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

1.3 List of Subcontractors

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

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

As stated in the Instructions to Bidders, Bidder is required to complete at least Fifty-One Percent (51%) of the contract value with its own forces. Bidder shall indicate the value of each subcontractor's work and the sum may not exceed the allowable amount.

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work
Repaired in-Place Asphalt Surfacing	Spectra Turf	Covina, CA	854429	1000002615	20%
Chain Link Fence	AAA Fence	Santa Clara, CA	522762	1000002526	1%
Jet Mulch Engineer INSTALLATION	Jet Mulch	Cuyahoga, CA	C27-800650	1000006584	3%
Playground Install	James Brennan	Concord, CA	1048640	1000006351	15%

TOTAL 39%

[illegible]

(Attach additional sheets if necessary)

Name of Bidder Redwood Engineering Construction

Signature:

Name and Title Bedford County V.P.

Dated 9. May. 2020

1.4 Bidder Information and Experience Form

A. INFORMATION ABOUT BIDDER

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

- 1.0 Name of Bidder: Redwood Engineering Construction
- 2.0 Type, if Entity: Corporation
- 3.0 Bidder Address: 416 D Street
Redwood City, CA 94063
(925) 819-2960
- Facsimile Number _____ Telephone Number _____
- Email Address: ben@redwoodengineering.com
- 4.0 How many years has Bidder's organization been in business as a Contractor?
11 years
- 5.0 How many years has Bidder's organization been in business under its present name?
11 years
- 5.1. Under what other or former names has Bidder's organization operated?
N/A
- 6.0 If Bidder's organization is a corporation, answer the following:
- 6.1. Date of Incorporation: 01/18/2008
- 6.2. State of Incorporation: California
- 6.3. President's Name: Benedict Cerrey
- 6.4. Vice-President's Name(s): Benedict Cerrey
- 6.5. Secretary's Name: Benedict Cerrey
- 6.6. Treasurer's Name: Benedict Cerrey
- 7.0 If an individual or a partnership, answer the following:
- 7.1. Date of Organization: N/A

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

N/A

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

N/A

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

NONE

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

Demolition, Grading, Disposal, underground utilities, drainage, paving, site improvements

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

NO

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

NO

13.0 List Trade References:

Edward A. Bacon Company
Spectraturf
Granite Rock
Cobra Trucking

14.0 List Bank References (Bank and Branch Address):

Mechanics Bank
345 Railroad Avenue
Danville, CA 94526

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

AmTrust / Liberty Insurance
ABD Insurance & Financial Services
548 Thornwood Drive, San Jose, CA 95123

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B. LIST OF CURRENT PROJECTS (BACKLOG)

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

Project Name, & Owner Contact Information	Description of Bidder's Work	Completion Date	Cost of Bidder's Work
① Softball Field Renovation Project City of Berkeley Nyles Gregory (510) 981-6684	Renovation of two (2) athletic infielders at separate Baseball Parks	March 2020	55,000
② Builders & Machado Parker Renovation City of Santa Clara Kaveh Ferozhi (408) 506-4328	Renovation & Installation of new Play Equipment at two Parks in Santa Clara	March 2020	975,000
③ Offsite Storm Water treatment Project in Emeryville Plant Construction Randy Haber (925) 766-1877	Installation of five (5) new bio retention planters at various sites in Emeryville	January 2020	800,000
④ James Kenney Park Renovation City of Berkeley Isaac Carnegie (510) 981-6432	Renovation to existing Parks including Play Equipment Installation	July 2020	992,000

C. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

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

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**Redwood Engineering Construction
Summary of Project Experience
Selected Projects**

Date of Project	Project Description	Location and For Whom Performed	Contract Value	Contact Information
2019	Playground Renovations and installation of New Playground Equipment	O'Donnell Park, City of Belmont	317,000	Daniel Ourtiague, Parks Manager (650) 235-5254
2018	Becky Temko Park Improvements and Renovations	City of Berkeley, Department of Parks and Recreation	428,000	Wendy Wellbrock (510) 981-6346
2018	Storm Drain Replacement	La Honda, Cal Trans	432,000	Fred Boohsheri (650) 222-7241
2017	Construction of Park Pathway Improvements Including three Tennis courts	City of Berkeley, Department of Parks and Recreation	228,000	Evelyn Chan (510) 981-6430
2017	Slide Repair. Drainpipe Installation on State Easement	Cedar Mills Lane, San Bruno for Cal Trans	700,000	Marcus Washington (650) 738-3804
2016	Construction of New Dog Park	City of Berkeley, Department of Parks and Recreation	274,000	Evelyn Chan (510) 981-6430
2013	Demo Site and Convert to	Backesto Park City of San Jose	768,000	Jim Barnard (408)

	New Tennis Courts			535-8350
2015	Construction of New Dog Park	Redwood City, Dept. of Parks and Recreation	450,000	Claudia Olalla (650) 780-7379
2015	Storm Drain and Culvert Repairs	Fremont Cal Trans	180,000	Siavosh Moghadam (925) 460-3519
2015	Emergency Storm Drain and Pipe Repairs	San Mateo and Belmont Cal Trans	270,000	Fred Boohshehri (650) 222-7241
2014	School Playground Site Renovations	Three (3) Schools for Berkeley Unified School District	800,000	Starla Dunn (415) 850-6428
2014	Storm Drain Repairs	City of Pleasant Hill	180,000	Ann Page (925) 671-5260

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

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

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

Project Manager, Phil Mieszowski, 85%
Project Supt., Jorge Angel, 100%
Project Foreman, Jose Cortes, 100%

2. Summarize each person's specialized education:

See resume attached

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

See resume

4. Summarize such experience:

attached

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

Additional Bidder's Statements:

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

Phil Mieszkowski, P.E.

PO Box 1342
San Mateo, CA 94401

phil@bay-con.com
(415) 760-1441

Objective	To execute complex infrastructure and energy projects in a technical and managerial role	
Experience	Bay-Con Infrastructure – San Mateo, CA President	05/2010 – Present
	Founder and managing director of this engineering, consulting, and construction firm	
	CMC Traffic Control Specialists dba CMC Construction – San Francisco, CA Vice President, Director	10/2008 – 09/2019
	- Developing business from zero in to \$15M per year in revenue - Cost estimate and execute heavy-civil construction projects ranging from \$0.25M - \$2M - Design construction traffic control systems and oversee their implementation - Directly manage 80 employees (civil engineers, laborers, operating engineers, traffic control supervisors) - Worked as a subcontractor on numerous SFWD / SFPUC construction projects	
	Mitchell Engineering – San Francisco, CA Project Manager, Project Engineer, Intern	06/2005 – 12/2010
	- Responsible for the successful completion of public infrastructure construction projects, specializing in complex hydroelectric power and pipeline work. - Developed financial forecasting software and developed and taught a MS Excel training course - Provided engineering and management services to our electrical subcontractors	
	Duggan & Rhodes, LLC – Pittsburgh, PA Construction Consultant	03/2003 – 09/2004
	- Prepared delay and disruption claims for various construction projects - Managed the work of as many as five other consultants, engineers, and administrative assistants - Designed and implemented an SQL database automating preparation of construction claims - Gained CPM scheduling, cost accounting, litigation, and project management skills	
	Defense Nuclear Facilities Safety Board – Washington D.C. Engineering Intern	05/2002 – 09/2002
	- Assisted with oversight of the Dept of Energy's nuclear waste tank corrosion inspection program - Studied nuclear reactor operations on a reactor at the University of Maryland	
Project Highlights	Carnegie Mellon University, Materials Eng. Dept. – Pittsburgh, PA Research Assistant	01/2001 – 09/2001
	Researched dislocations in silicon carbide crystals using metallography and optical microscopy	
	Carnegie Mellon University, Tepper School of Business – Pittsburgh, PA Computer Lab Manager, User Consultant, Computer Repair Technician	07/2000 – 12/2002
	SFO Design-Build Airtrain Extension and Hotel Construction - \$500k – Skanska Civil / SFO International Airport – 2018-2019	
	Van Ness Bus Rapid Transit - \$250k – Walsh Group / SFMTA – 2017-2019	
	Kaiser Oakland Hospital – \$500k – Traffic Engineer – McCarthy Builders / Kaiser Permanente <i>Designed and implemented the temporary traffic controls. For the project</i>	2010-2013
	SF Transbay Terminal Rebuild – \$100k – Traffic Engineer – Transbay Joint Powers Authority <i>Designed and inspected temporary traffic controls.</i>	2010-2019
	El Camino Sewer Repairs - \$150k – Construction Manager/Engineer – City of San Mateo DPW <i>Worked as the prime contractor on this project repairing sewer lines on El Camino Real in San Mateo. My responsibilities included design of the temporary traffic control systems, developed trench shoring plans, sewer bypass plans, and managed construction.</i>	2010

JORGE ANGEL
RESUME

EXPERIENCE

Redwood Engineering Construction
2011 – Present
Project Superintendent

Worked as Project Superintendent for Heavy Civil Construction Company

Successfully Constructed over ten (10) projects for Company varying in size and complexity. Have worked on Cal Trans Erosion Control and Drainage Projects, Worked on School Portable Classroom Projects, Worked on Generator Install Projects and other projects can be provided upon Request.

Robert A Bothman
2002 – 2011
Project Superintendent

Working as a Superintendent I have been in charge of the workforce, equipment, materials, production, and schedule for completing a variety of public works jobs. Working side by side, teaching and ensuring the proper installation of every aspect of the project, including demolition, grading, storm drainage, subdrainage, sewer, fire water, potable water, reclaimed water, irrigation systems, electrical conduits, planting, and site furnishings. I also sub-graded and prepared for structural and non-structural concrete slabs, walkways, foundations, stairs, retaining walls, seat walls, cheek walls, and CMU walls. I have had the opportunity to work with the owners, project managers, architects, engineers, and inspectors to try to keep the job on schedule and under budget. Here is a list of some notable jobs that I built.

Stagg High School Phase 2, Baseball Field and Parking Lot, Stockton CA, 5.5 mil.;
Stagg High School Phase 1, Football Stadium, Track, and Softball field, 12 mil.;
Las Positas College Aquatic Center and Soccer Complex, Livermore CA, 13 mil.;
Alhambra High School, baseball and football field renovations, Martinez CA, 6 mil.;
Burgess Park, sports complex and skate park, Menlo Park CA, 7 mill.;
Carolyn Norris Park, Playground, SanJose CA, 1mill.;

Leigh High School, track and football field, Campbell CA, 2 mil.; Prospect High School, track and football field, Campbell CA, 1.3 mil.; Portola Valley Little League Field, Portola Valley CA, 350 k.; Tully Road Little League Complex, San Jose CA, 900k.; Hoover Sports Complex, Redwood City CA, 4 mil.

FOREMAN/OPERATOR ROBERT A. BOTHMAN INC : SAN JOSE CA — 1999-2002

As a foreman I had the same job duties as a Superintendent. The jobs were smaller such as: Flickinger Park Improvements, San Jose CA, 550 k; Oak Grove High School, main entry renovation, San Jose CA, 950 k; San Lorenzo Park, soccer field improvements, San Lorenzo CA, 600 k; Oakland Raiders Training Hill, Alameda CA, 350 k; Candlestick Park Field Renovations and Drainage, San Francisco CA; College Park High School, track renovation; St. Ignatious High School Practice Field, San Francisco CA; Graystone Park, stage and trellis, San Jose CA

WAREHOUSE CLERK UNITED STATES MARINE CORPS. RESERVE — 1997-2003

I received basic training for three months and graduated squad leader, followed by my MOS school for three months where I graduated at the top of my class. As a warehouse clerk I was responsible for shipping and receiving all military gear for the Marines stationed at the Navy base in Alameda CA. This was a great experience, receiving the core values and discipline received by all Marines.

LABORER, ROBERT A. BOTHMAN INC : SAN JOSE CA — 1996-1999

I started at Robert A. Bothman as an irrigation and landscaping laborer right out of high school. I was very eager to learn, and worked my way up to Foreman in three years.

SKILLS

I am capable of building, public or private site jobs with the proper support staff and subcontractors. I am fully capable of running a demolition, grading, underground, irrigation, and landscaping crew. I am bilingual spanish and english. Currently I'm in the Operating Engineers Local 3. With proficient knowledge to operate a backhoe, excavator, mini excavator, tractor w/scrapper box and front loader, wheel loader, track loader, scraper, smooth compactor, sheep-foot compactor, dozer, trencher, forklift, reach-lift, and bobcat.. I have completed the OSHA 10 course, I'm a competent person in trenching and excavations, confined space entry, a Hilti qualified operator, and have CPR and Basic First Aid training. I am fully capable of reading and understanding the plans and specs. I am highly motivated, always eager to learn and experience new challenges.

REFERRALS

Saeed Yousuf, Robert A. Bothman Inc., Chief Operations Officer (408) 279-2277
Kieth Ulinger, Robert A. Bothman Inc. Project Manager (408) 640-1174
Ron Hopper, Construction Inspector (209) 479-3797
Adrian Simioes, Verde Design, Architect (408) 806-9842

JORGE ANGEL

EDUCATION

HAYWARD HIGH SCHOOL, HAYWARD CA - GRADUATE 1996
CHABOT COLLEGE, HAYWARD CA - AUTO CAD, BASIC ARCHITECTURE
Page

E. VERIFICATION AND EXECUTION

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

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

Name of Bidder Redwood Engineering Construction

Signature 

Name Benedict Gerney

Title U.P.

Date 9-January, 2020

1.5 Non-Collusion Declaration

The undersigned declares:

I am the U.P. of Redwood Engineering Construction, the party making the foregoing Bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 9 January 2020 [date], at Redwood City [city], California [state].

Name of Bidder Redwood Engineering Construction

Signature Benedict Cerney

Name Benedict Cerney

Title U.P.

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

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

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

Signature: Billy

Printed Name: Benedict Cerny

Title: V.P.

Firm Name: Redwood Engineering Construction

Date: 9 January 2020

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

1.7 Public Works Contractor Registration Certification

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

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

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

Name of Bidder: Redwood Engineering Construction

DIR Registration Number: 1000009849

DIR Registration Expiration: June 30, 2021

Small Project Exemption: Yes or ☒ No

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

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

Name of Bidder Redwood Engineering Construction

Signature Benedict Cerney

Name and Title Benedict Cerney, U.P.

Dated 9 January 2020

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

1.8 Wage Theft Certification

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

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

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

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

Signature: Benedict Cerrey

Printed Name: Benedict Cerrey

Title: U.P.

Firm Name: Redwood Engineering Construction

Date: 9 January 2020

1.9 Contractor's Certificate Regarding Workers' Compensation.

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

Name of Bidder Redwood Engineering Construction

Signature 

Name Benedict Cerny

Title O.P.

Dated 9 January 2020

1.10 Bid Bond

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated January 9, 20 20, for NIB 2390 - Citywide Parks and Playgrounds Rehabilitation.

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

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

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

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 6th day of January, 20 20, the name and corporate seal of each corporation.

(Corporate Seal)

Redwood Construction and Equipment, Inc.
(dba as Redwood Engineering Construction)

Contractor/Principal

By

Benedict Carney

Title

U.P.

(Corporate Seal)

The Ohio Casualty Insurance Company

Surety

By

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Angelina A. Campano, Attorney-In-Fact

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
- ☐ General

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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

Notary Acknowledgment

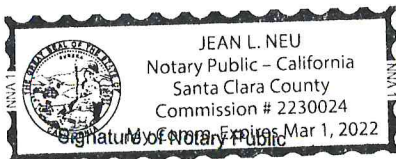
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Santa Clara

On January 6, 2020, before me, Jean L. Neu, Notary Public, personally appeared Angelina A. Campano,

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

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



WITNESS my hand and official seal.

A handwritten signature in blue ink, appearing to read 'Jean L. Neu', written over a horizontal line.

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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

END OF BID BOND



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8202547-985404**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Erin Bautista, Angelina A. Campano, Bryan D. Martin, Jean L. Neu, Debra Ann Perry, B.A. Poitevin

all of the city of San Mateo state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 8th day of November, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 8th day of November, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 6th day of January, 2020.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

00 52 13 – CONTRACT

This CONTRACT, **No. 2390** is made and entered into this ____ day of _____, 2020, by and between City of Milpitas, sometimes hereinafter called "City," and **Redwood Engineering Construction Inc.**, sometimes hereinafter called "Contractor."

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

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

NIB 2390 - CITYWIDE PARKS AND PLAYGROUNDS REHABILITATION

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

b. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **Six Hundred Forty (640)** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

c. **CONTRACT PRICE.** The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Seven Hundred Fifteen Thousand Six Hundred Fifty-Two Dollars and Zero Cents (\$1,715,652.00)**. Payment shall be made as set forth in the General Conditions.

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

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

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

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

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

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

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

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

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

i. **WAGE THEFT PREVENTION.**

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

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

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

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

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

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

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF MILIPITAS

REDWOOD ENGINEERING
CONSTRUCTION INC.

By: _____
Steve McHarris
Interim City Manager

By: _____

Its: _____

Printed
Name: _____

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

APPROVED:

By: _____
Walter C. Rossmann,
Director of Finance/Risk Manager

APPROVED AS TO FORM:

By: _____
Christopher J. Diaz, City Attorney

APPROVED AS TO SCOPE:

By _____
Tony Ndah
Director of Public Works

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

00 61 13 – BOND FORMS

1.1 Performance Bond.

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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

Notary Acknowledgment

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COUNTY OF _____

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☐ Other:

Date of Document

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

Signer(s) Other Than Named Above

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

END OF PERFORMANCE BOND

1.2 Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

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

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

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

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

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

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

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

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

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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

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STATE OF CALIFORNIA

COUNTY OF _____

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

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

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Signature of Notary Public

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☐ Guardian/Conservator
☐ Other:

Date of Document

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

Signer(s) Other Than Named Above

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

END OF PAYMENT BOND

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00 72 13 – GENERAL CONDITIONS

ARTICLE 1 DEFINED TERMS

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

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

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

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

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

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

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

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

ARTICLE 2 CONTRACT DOCUMENTS

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

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

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda or Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over Standard Drawings
5. Contract Drawings govern over Shop Drawings

C. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall always apply.

D. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Project Work among subcontractors or in establishing the extent of Work to be performed by any trade.

ARTICLE 3 PRECONSTRUCTION AND CONSTRUCTION COMMUNICATION

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

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

ARTICLE 4 CONTRACT DOCUMENTS: COPIES & MAINTENANCE

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

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

ARTICLE 5 EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK

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

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

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

ARTICLE 6 EXISTENCE OF UTILITIES AT THE WORK SITE

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

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

ARTICLE 7 SOILS INVESTIGATIONS

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

ARTICLE 8 CONTRACTOR’S SUPERVISION

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

ARTICLE 9 WORKERS

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

ARTICLE 10 INDEPENDENT CONTRACTORS

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

ARTICLE 11 SUBCONTRACTS

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

ARTICLE 12 VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

ARTICLE 13 REQUESTS FOR SUBSTITUTION

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

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

ARTICLE 14 SHOP DRAWINGS

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

ARTICLE 15 SUBMITTALS

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

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

ARTICLE 16 MATERIALS

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

ARTICLE 17 PERMITS AND LICENSES

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

ARTICLE 18 TRENCHES

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

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

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

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

ARTICLE 19 DIVERSION OF RECYCLABLE WASTE MATERIALS

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

ARTICLE 20 REMOVAL OF HAZARDOUS MATERIALS

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

ARTICLE 21 SANITARY FACILITIES

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

ARTICLE 22 AIR POLLUTION CONTROL

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

ARTICLE 23 LAYOUT AND FIELD ENGINEERING

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

ARTICLE 24 TESTS AND INSPECTIONS

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

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

ARTICLE 25 PROTECTION OF WORK AND PROPERTY

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

ARTICLE 26 CONTRACTOR'S MEANS AND METHODS

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

ARTICLE 27 AUTHORIZED REPRESENTATIVES

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

ARTICLE 28 HOURS OF WORK

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

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

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

ARTICLE 29 PAYROLL RECORDS; LABOR COMPLIANCE

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

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

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

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

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

ARTICLE 30 PREVAILING RATES OF WAGES

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

ARTICLE 31 PUBLIC WORKS CONTRACTOR REGISTRATION

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

ARTICLE 32 EMPLOYMENT OF APPRENTICES

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

ARTICLE 33 NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

ARTICLE 34 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

ARTICLE 35 LABOR/EMPLOYMENT SAFETY

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

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

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

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

ARTICLE 36 INSURANCE

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

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

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

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

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

ARTICLE 37 FORM AND PROOF OF CARRIAGE OF INSURANCE

- A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City’s Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a “follow form” endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

- B. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.
- C. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- D. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- E. City reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- F. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

ARTICLE 38 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within **ten (10) Days** of the date stated in the City's Notice to Proceed and shall be completed by Contractor specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period

between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed as determined by the City. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- B. **Inclement Weather.** Extension of Time Due to Weather Delays: The City and Contractor mutually agree that excusable delay events associated with the occurrence of inclement weather will be based only on conditions that were not foreseeable at the time the Contract was entered into. The Contractor's construction schedule shall include an allowance for the following schedule of expected weather delay days. If the Contractor encounters fewer inclement weather days per month or in total than shown below, then the City has the right to use the unencountered balance of days as an offset against any other claims for excusable delays or Owner-caused delays. Actual inclement weather days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled work day. All Contractor claims for excusable delay due to excessive inclement weather shall be for critical path work only and must be supported by a Time Impact Analysis as described in Article 42. No additional compensation will be granted for an excusable delay.

Month	Calendar Days
January	6
February	6
March	7
April	4
May	3
June	1
July	0
August	1
September	2
October	2
November	3
December	5
Total Annual Inclement Weather Days	40

- C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the City in writing of causes of delay. The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.

- D. **No Damages for Reasonable Delay.** The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of the City pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 39 SCHEDULE OF VALUES, COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms Approved by the City:

- A. When requested by the Engineer, and within ten (10) Days of Notice to Proceed with the Contract, the Contractor shall provide a Schedule of Values consisting of a detailed estimate giving a complete breakdown of the Contract price for each lump sum bid item in the Contract.
- B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the City to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- D. Following the City's Acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request.
- E. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

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

ARTICLE 40 PROGRESS ESTIMATES AND PAYMENT

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section

B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

- B. The Contractor shall provide an updated project schedule with each payment request.
- C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 - 2. Defective work not remedied.
 - 3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
 - 4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 - 5. Damage to another contractor or a third party.
 - 6. Amounts which may be due the City for claims against Contractor.
 - 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 - 8. Failure to provide update on construction schedule as required herein.
 - 9. Site cleanup.
 - 10. Failure to comply with Contract Documents.
 - 11. Liquidated damages.
 - 12. Legally permitted penalties.
- D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as

soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.

- F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

ARTICLE 41 SECURITIES FOR MONEY WITHHELD

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

ARTICLE 42 CHANGES AND EXTRA WORK.

A. Contract Change Orders.

1. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. Contractor shall promptly execute changes in the Work as directed in writing by the City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation shall be presented in writing. No claim will be considered after the Work in question has been completed unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.
3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract,

and shall be subject to all terms, conditions, and provisions of the original Contract.

4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.
5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the work, including Additional Work, promptly and expeditiously.
6. Contractor shall make available to the City any of the Contractor's documents related to the Project immediately upon request of the City, as set forth in Article 52.
7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

B. Contract Price Change.

1. Process for Determining Adjustments in Contract Price.
 - a. Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the City, unless the City requests that proposals be submitted in less than seven (7) Days.
 - b. Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
 - c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the City.
 - d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the City, including but not limited to estimates and quotations from subcontractors or material suppliers, as the City may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.
 - e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the City has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the City's estimate. If the change is issued

based on the City's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the City's estimate was in error.

2. Unit Price Change Orders.

- a. When the actual quantity of a Unit Price item is found to vary from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents. Contractor shall immediately inform the Engineer when the actual quantities vary from estimated quantities.
- b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.
- c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.
- d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in City's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.

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

- a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the City shall determine the materials cost, at its sole discretion.
- c. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

4. Time and Materials Change Orders.

- a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.
- b. Timely and Final Documentation.
 - i. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's Representative for an approval signature **each day** Additional Work is performed. Failure to get the City's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The City's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of City's agreement to Contractor's entitlement to the cost.
 - ii. T&M Daily Summary Sheets. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within **three (3) Days** of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional

Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.

iii. T&M Total Cost Summary Sheet. Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within **seven (7) Days** following completion of City approved Additional Work. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

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

i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.

- d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- i. Trade discounts available to the purchaser shall be credited to the City notwithstanding the fact that such discounts may not have been taken by Contractor.
 - ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the City's Representative.
 - iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.
 - iv. If, in the opinion of the City's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project site less trade discounts.
 - v. The City reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on City furnished materials.
- e. Equipment.
- i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.
 - (a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

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

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

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

ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the City for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the City's Representative. Contractor may furnish cost data which might assist the City's Representative in the establishment of the rental rate.

iii. Contractor-Owned Equipment.

(a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

(b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then City shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to the City that the

equipment could be actively used on another project.

- (i) All equipment shall, in the opinion of the City's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
- (ii) Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
- (iii) Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

i. Invoices for Special Services. When the City's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the City's Representative.

ii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.

- iii. When the City determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.
- g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
 - i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;
 - ii. Office Expenses. Expenses of Contractor's principal and branch offices;
 - iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
 - iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
 - vi. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
 - vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

- ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
 - x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
- i. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide City with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as City may reasonably request.
 - ii. For Work performed by the Contractor's forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
 - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor's Net Cost.
 - iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
 - v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional

compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.

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

unilateral Change Order, and providing such supporting documentation for its position as the City may require.

C. Change of Contract Times.

1. The Contract Times may only be changed by a Change Order.
2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.
3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless City's Representative allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.
4. City may elect, at City's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.
5. Use of Float and Critical Path.
 - a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the City or the Contractor.
 - b. Contractor shall not be entitled to compensation, and City will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.
6. Contractor's entitlement to an extension of the Contract Times is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the City-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
 - a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or

Supplier shall be deemed to be delays within the control of Contractor.

- b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by the City), Acts of God, acts or failures to act of utility owners not under the control of City, or other causes not the fault of and beyond control of City and Contractor, then Contractor shall be entitled to a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.

- c. Utility-Related Delays.

- i. Contractor shall immediately notify in writing the utility owner and City's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.
- ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.

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

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

Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

8. No Damages for Reasonable Delay.
 - a. City's liability to Contractor for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
 - b. City and City's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices City's and City's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.
10. Contractor's submission of daily construction reports and schedule updates in accordance with these Contract Documents is required for the evaluation of the merits of time extension request. Failure of the Contractor to submit daily construction reports and schedule updates shall constitute a waiver of its right to seek a time extension or additional compensation.

ARTICLE 43 FINAL ACCEPTANCE AND PAYMENT

- A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Acceptance. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other

evidence of insurance, certificates of inspection, marked-up record documents (as-builts), and other documents required by the Contract Documents, the City shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

C. Final Payment.

1. Application for Payment. Upon execution of the Notice of Completion, Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by: all documentation called for in the Contract Documents, including but not limited to a fully completed Conditional Waiver and Release on Final Payment
2. City's Review of Application and Acceptance. If, on the basis of the City's observation of the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the City is satisfied that the Work has been completed and Contractor has satisfied all other requirements for final payment, the City will process the final payment application. Otherwise, the City will return the payment application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application for payment.
3. Payment Becomes Due. Within sixty (60) Days after the presentation to the City of the proper and complete final application for payment and accompanying documentation, the amount recommended by the Engineer, less any sum the City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by the City to Contractor.

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

ARTICLE 44 OCCUPANCY

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

ARTICLE 45 INDEMNIFICATION

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

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.
- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

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

ARTICLE 46 PROCEDURE FOR RESOLVING DISPUTES

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

- A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 42 "Changes and Extra Work" has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 42, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.
- C. **Supporting Documentation.** The Contractor shall submit all claims in the following format:
1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
 2. List of documents relating to claim:
 - Specifications
 - Drawings
 - Clarifications (Requests for Information)
 - Schedules
 - Other
 3. Chronology of events and correspondence
 4. Analysis of claim merit

5. Analysis of claim cost
 6. Time Impact Analysis in CPM format
- D. **City's Response.** Upon receipt of a claim pursuant to this Article, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement.
1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
 2. Within 30 Days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- E. **Meet and Confer.** If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- F. **Mediation.** Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
 4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- G. **Procedures After Mediation.** If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- H. **Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title

3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

- I. **Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**
- J. **Non-Waiver.** The City's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

ARTICLE 47 CITY'S RIGHT TO TERMINATE CONTRACT

A. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its Surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.
2. In the event that the City serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the City written notice of Surety's intention to take over and commence performance of

the Contract within 15 calendar days of the City's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the City's service of said notice upon Surety; then the City may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

3. In the event that the City elects to obtain an alternative performance of the Contract as specified above: (1) the City may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the City in the event of such suspension is hereby created against any property of Contractor taken into the possession of the City under the terms hereof and such lien may be enforced by sale of such property under the direction of the City Council without notice to Contractor. The proceeds of the sale after deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the City against Contractor, the balance will be paid to Contractor or Contractor's legal representatives.); and (2) Surety shall be liable to the City for any cost or other damage to the City necessitated by the City securing an alternate performance pursuant to this Article.

B. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the City determines that a termination is in the City's interest.
2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the Effective Date of such termination.
3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice.
 - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

- d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
 - f. Submit to the City's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience."
- 4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
- 5. In the event that the City exercises its right to terminate this Contract pursuant to this clause, the City shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:
 - a. All actual reimbursable costs incurred according to the provisions of this Contract.
 - b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of the City's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.
- C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

ARTICLE 48 WARRANTY AND GUARANTEE OF WORK

- A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.
- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.
- C. In addition to the warranty set forth in this Article, Contractor shall obtain for City all warranties that would be given in normal commercial practice and assign to City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final Acceptance of the Project by the City as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

- E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.
- F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- H. Acceptance of Defective Work.
 - 1. If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
 - 2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by City.
 - 3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
 - 4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to City.
- I. City May Correct Defective Work.
 - 1. If Contractor fails within a reasonable time after written notice from City's Representative to correct Defective Work, or to remove and replace rejected Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.
 - 2. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the

Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price.
 4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
 5. If the Change Order is executed after all payments under the Contract have been paid by City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
 6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to City.
 7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting Defective work.
- J. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 49 DOCUMENT RETENTION & EXAMINATION

- A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.
- C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including

computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

ARTICLE 50 SEPARATE CONTRACTS

- A. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- B. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- C. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 51 NOTICE AND SERVICE THEREOF

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

ARTICLE 52 NOTICE OF THIRD PARTY CLAIMS

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

ARTICLE 53 STATE LICENSE BOARD NOTICE

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

ARTICLE 54 INTEGRATION

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

ARTICLE 55 ASSIGNMENT OF CONTRACT

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

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

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

ARTICLE 57 ASSIGNMENT OF ANTITRUST ACTIONS

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

ARTICLE 58 PROHIBITED INTERESTS

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

ARTICLE 59 CONTROLLING LAW

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

ARTICLE 60 JURISDICTION; VENUE

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

ARTICLE 61 LAWS AND REGULATIONS

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

ARTICLE 62 PATENTS

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

ARTICLE 63 OWNERSHIP OF CONTRACT DOCUMENTS

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

ARTICLE 64 NOTICE OF TAXABLE POSSESSORY INTEREST

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

ARTICLE 65 SURVIVAL OF OBLIGATIONS

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

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

A For purposes of this Project, the Engineer of Record or Engineer shall be:

Tony Ndah, Director of Public Works.

1.2 Location of the Project.

A The Project is located at the following parks:

Park: Augustine Memorial Park

Location: Cortez St. and Coelho St., Milpitas , CA. 95035

Park: Calle Oriente Park

Location: Calle Oriente, Milpitas , CA. 95035

Park: Dixon Landing Park

Location: Milmont Dr. and Jurgens Dr., Milpitas , CA. 95035

Park: Oliver W. Jones Memorial Park

Location: 721 Corinthia Dr., Milpitas , CA. 95035

Park: Ben Rodgers Park

Location: Grand Teton Dr. and Sequoia Dr., Milpitas , CA. 95035

Park: Cerano Park

Location: Murphy Ranch Rd., Milpitas, CA. 95035

Park: John McDermott Park

Location: Alvarez Ct., Milpitas , CA. 95035

Park: Cardoza Park

Location: 1525 Kennedy Dr., Milpitas , CA. 95035

Park: Foothill Park

Location: 398 Roswell Dr., Milpitas , CA. 95035

Park: Selwyn Park

Location: 228 Selwyn Dr., Milpitas , CA. 95035

Park: Hillcrest Park

Location: Fieldcrest Drive, Milpitas , CA. 95035

Park: O'toole Elms Park

Location: 700 South Abel St., Milpitas , CA. 95035

Park: Pinewood Park

Location: Starlite Dr. and Lonetree Ct. , Milpitas , CA. 95035

Park: Tom Evatt Park
Location: Machado Ave., Milpitas , CA. 95035

Park: Milpitas Community Center
Location: 457 Calaveras Blvd., Milpitas , CA. 95035

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

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

1.4 Site Data.

[RESERVED]

1.5 Pre-Purchased or Pre-Negotiated Material.

[RESERVED]

1.6 Designation of City's Representative.

A Unless otherwise modified by City, City's Representative shall be:

Danny Lopez, Public Works Manager

1.7 Project Retention

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

1.8 Liquidated Damages Due to Contractor Delay.

- A Time is of the essence. Should Contractor fail to complete all or any part of the Work within the time specified in the Contract Documents, City will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, City shall therefore be entitled to **Five Hundred Dollars and Zero Cents (\$500.00)** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.
- B Liquidated damages may be deducted from progress payments due to Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent City, in case of Contractor's default, from terminating the Contractor.

1.9 Utility Outages – Notices to Residents.

- A Should Contractor's operations require interruption of any utility service, Contractor shall notify City at least ten (10) Days prior to the scheduled outage. Contractor will notify all impacted residents on a form provided by City at least seven (7) Days prior to the scheduled outage.
- B Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Schedule Constraints.

[RESERVED].

1.11 Safety Programs.

[[RESERVED].

1.12 Coordination with Other Contractors.

[RESERVED].

END OF SPECIAL CONDITIONS

01 00 00 – GENERAL REQUIREMENTS

PART 1 GENERAL

1.1 DESCRIPTION

- A. The rehabilitation of fifteen (15) City of Milpitas parks. The project shall included the removal and replacement of poured-in-place surface materials, removal of sand, installation of fencing, installation of new fitness and play equipment and installion of engineered wood fiber all done in accordance with relevant requirements, standards, and guidelines.

PART 2 [RESERVED]

PART 3 EXECUTION

3.1 LAYOUT OF WORK AND QUANTITY SURVEYS

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

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

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

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

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

- C. Surveying

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

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

3.2 SCHEDULE

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

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

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

3.3 TEMPORARY FIELD OFFICE

[RESERVED].

3.4 PROTECTION OF WORK AND PROPERTY

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

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

3.5 SITE CONDITIONS SURVEYS

A. Work Included.

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

B. Submittals.

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

C. Site Condition Written Documentation.

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

D. Photographs & Video Recording.

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

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

E. Video Recording.

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

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures pavement. Contractor shall provide the Engineer with

an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

I. Soils Compaction Testing.

1. All soils compaction testing will be done by a licensed geotechnical engineer furnished by the City. Soils compaction testing will be done for all footings and foundations prior to placement of rebar or concrete.
2. For pipeline construction, soil compaction testing will be done at 100-foot intervals or as ordered by the project soils/geotechnical report at the bottom of the trench prior to placement of pipe bedding; at the top of the pipe bedding above the pipe; every two vertical feet of trench backfill or as otherwise ordered by the project soils/geotechnical report; at the top of the trench backfill, which could be the bottom of the pavement section; and at the top of the aggregate base prior to pavement construction.

3.6 SUBMITTAL REQUIREMENTS FOR MANUALS AND RECORD DRAWINGS

A. General. The Contractor shall furnish all materials and perform all Work required for furnishing submittals to City in accordance with Contract Documents. The Contractor shall submit Project Record Drawings, Technical Manual, Spare Parts, and other required items within 5 days following completion of project construction, and prior to Contractor's request for Project Acceptance.

B. Technical Manuals.

1. The Contractor shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff.
2. The Technical Manual shall be subdivided first by specification section number; second, by equipment item; and last, by "Category." The Contractor shall furnish to City four (4) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.

- C. Spare Parts List - The Contractor shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The Contractor shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.
- D. Record Drawings
1. The Contractor shall maintain one record set of Drawings at the Site. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
 2. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.
 3. Record drawings shall be accessible to City's Representative at all times during the construction period. The record drawings shall be kept up to date and will be checked by the City prior to each progress payment. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.
 4. Upon Completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to City's Representative. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals and Record Drawings shall be included in Contractor's bid and distributed in the Schedule of Pay. No additional compensation shall be made to the Contractor for this Work.

3.7 MATERIALS

A. Materials to be Furnished by the Contractor

1. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by City's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.
2. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform City's Representative, in writing, the date the material is to be manufactured.
3. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate City's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

3.8 LOCAL CONDITIONS AND REQUIREMENTS

A. Access to Work and Haul Routes

1. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Contractor. Contractors anticipated Haul Routes shall be in compliance with the City's approved Truck Routes available from the Engineer.
2. Access, Damage, Restoration. The Contractor shall make his own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site.
3. The Contractor shall maintain and repair any damage arising out of Contractor's operations to all roads used during construction of the

Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Contractor shall conduct a photograph and/or video survey of the roadway with a copy submitted to City's Representative.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.
- B. Power. Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of the Engineer to perform in a safe and satisfactory manner the Work required by the contract.
- C. Construction Water.
1. Construction water shall not be used for purposes other than those required to satisfactorily complete the contract.
 2. Construction recycled water will be made available to the contractor from one of three fill locations within the city limits. If there is a need for construction recycled water during construction, the contractor shall apply for a city construction recycled water meter at the city hall finance counter prior to the beginning of work. A security deposit of \$2,000.00 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. If the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 3. Construction potable water will only be made available to the contractor if it can be demonstrated that recycled water cannot be used for the construction activities. potable water will be made available from existing city fire hydrant(s) nearest the proposed construction site as approved by the engineer, or by such other means as may be expressly approved in writing by the engineer. If there is a need for water during construction, the contractor shall apply for a city construction water meter at the city hall finance counter prior to the beginning of work. a security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. If the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 4. All required water, all work and materials required for obtaining, pumping, transporting and applying and otherwise disposing of said water shall be in an approved manner and shall be performed by, and at the expense of the contractor and no extra or separate compensation will be made thereof.

D. Operation of Existing Water Facilities

1. The Contractor shall not operate any of the existing water systems, including pumps, motors, valves, and hydrants, but shall contact the City two (2) working days in advance with a list and location of the water system facilities that will require operating, opening, stopping, or closure by the City.
2. At the option of the Engineer, the Contractor may be permitted to operate valves for the purpose of making connections to existing mains. The City will perform all notification to existing customers regarding temporary loss of service.
3. Contractor shall submit a request on City's standard form for any shut-down of existing water facilities.

E. Construction at Existing Utilities

1. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities.
2. Permission, Notice and Liability. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Traffic Control

1. General. Contractor shall abide by traffic control plans approved by the City.
2. Protections. Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and

maintained by the Contractor. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Contractor has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.

3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

G. Cleaning Up

1. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment, including all USA markings. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the duration of the project, and/or use of temporary hoses and pipelines to convey water.
2. Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, the City may do so and the cost of such clean up shall be charged back to the Contractor.

3.9 ENVIRONMENTAL QUALITY PROTECTION

A. Environmental Conditions

[RESERVED].

B. Landscape and Vegetation Preservation

1. General. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and

not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

C. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any State or Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

3. False Siting. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

D. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.

2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

3. Contractor's Liability. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

E. Dust and Pollution Control

1. Contractor shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site. Contractor shall remove construction caused debris from streets and sidewalks as directed by the Engineer.
2. Contractor shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Management of Storm, Surface and Other Waters

1. Storm water, surface water, groundwater, and nuisance, or other waters may be encountered at various times during construction of the Project. Federal and State laws require the City and its contractors to manage such waters pursuant to the requirements of California State Water Resources Control Board Order Number 2009-0009-DWQ, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. Contractor acknowledges that it has investigated the risk arising from such waters in conjunction with the Project, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
2. The Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to the San Francisco Bay Regional Water Quality Control Board Order No. R2-2015-0049 (NPDES Permit No. CAS 612008), and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof ("Construction General Permit"). Contractor must perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.
3. Compliance with Construction General Permit. Contractor must comply with all aspects of the Construction General Permit, State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, and any amendment or renewal thereof (NPDES CAS000002), for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common plan of development or sale.
 - (a) Permit registration. Unless otherwise specified in the Special Conditions, Contractor must prepare the Notice of Intent for coverage under the Construction General Permit and all Permit Registration Documents (PRDs), including but not limited to the Storm Water Pollution Prevention Plan (SWPPP), as those terms are defined in the Construction General Permit. Contractor must coordinate submittal of all PRDs with the eCity's Legally Responsible Person and/or Authorized Signatory, as those terms are defined in the Construction General Permit. The Contractor

must submit the PRDs, including the SWPPP to the City Representative for review not less than fifteen (15) Days prior to the start of on- site construction work. City will file the Notice of Intent and PRDs and pay the filing fee.

- (b) Before any Construction General Permit related documents may be submitted to the State Board or implemented on the Project site, they must first be reviewed and accepted by City. Acceptance by the City does not relieve the Contractor from ensuring such documents comply with all laws applicable laws, regulations, and orders.
- (c) Contractor must ensure that the SWPPP is developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Permit. Contractor must implement the SWPPP and all other provisions of the Construction General Permit, including the monitoring and reporting requirements, preparing and submitting all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. The SWPPP must include industry standard requirements for water quality control including but not be limited to the following:
 - (1) Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
 - (2) Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
 - (3) Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.

- (4) Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.
 - (5) Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
 - (6) Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
 - (7) Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
 - (8) Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.
 - (9) Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
- (d) City retains the right to procure and maintain coverage under the Construction General Permit for the Project site if the Contractor fails to draft a SWPPP or other Construction General Permit related document, or fails to proceed in a manner that is satisfactory to City. City reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately

maintained compliance with the Construction General Permit shall be City's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Construction General Permit, any costs or fines incurred by City in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

4. For those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing construction industry best management practices to eliminate or reduce the discharge of pollutants from construction sites, such as the best management practices set forth in the CASQA Construction BMP Handbook.
5. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
6. Contractor violations.
 - (a) Failure to implement the SWPPP or otherwise comply with the Construction General Permit or local state and federal laws is a violation of this Contract. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend – with counsel acceptable to the City – and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.
 - (b) City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.
 - (c) City may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the the laws, regulations and

policies described in this Article, or any other relevant water quality law, regulation, order, or policy.

- (d) If noncompliance with any relevant law, regulation or permit, order, or policy occurs, the Contractor shall report this to the City Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in City stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective measures required to bring activities into compliance shall be at the Contractor's expense.

7. Oil storage tanks management.

- (a) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
- (b) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
- (c) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
- (d) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Contractor shall prepare an SPCC Plan. The Contractor shall submit the SPCC Plan to the Engineer at least 30 days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112

8. Underground tank prohibition. The Contractor shall not use underground storage tanks.

9. Construction safety standards. The Contractor shall comply with the sanitation and potable water requirements of Section 7 of United States

Bureau of Reclamation's publication "Reclamation Safety And Health Standards."

10. Other Permits.

- (a) Other permits applicable to the Project are listed in the Special Conditions. The Contractor shall obtain all other necessary licenses and permits.
- (b) Monitoring. The Contractor is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.
- (c) Recordkeeping. The Contractor shall retain all records and data required by the permits for the time specified in the contract.

11. Cost. Except as specified herein, the cost of complying with this section shall be included in the Schedule of Pay Items for work which necessitate the water pollution prevention measures required by this paragraph.

END OF GENERAL REQUIREMENTS

EXHIBIT "A"
CHANGE ORDER FORM



City of Milpitas
455 E. Calveras Boulevard
Milpitas, California 93035

CONTRACT CHANGE ORDER NO. ____

Date: [INSERT]

To: [CONTRACTOR NAME]

[ADDRESS]

[ADDRESS]

Attn: [CONTRACTOR REP]

Project: [INSERT]

This Change Order covers changes to the contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for the amount agreed upon between the Contractor and City of Milpitas and set forth herein.

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1			
2			
	Totals	\$	

Original Contract Amount:	\$XX.00
Change by Previous Change Order(s):	\$XX.00
Contract Price Prior to this Change Order:	\$XX.00
Current Change Order Amount:	\$XX.00
Revised Contract Amount including this Change Order:	\$XX.00

The Contract Price and Contract Time shall be adjusted as set forth above. The undersigned Contractor approves the foregoing Change Order as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the City.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

	_____ (Signature) Contractor's Authorized Representative	_____ Date
Recommended:		

	_____ (Signature) Danny Lopez, Public Works Manager	_____ Date
Approved:		

	_____ (Signature) Tony Ndah, Director of Public Works	_____ Date
--	--	---------------

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the City of Milpitas.

Contract Change Order #

**COMPLETE DOCUMENT AVAILABLE
ONLINE AND IN CITY CLERK'S OFFICE**

Call (408) 586-3003 for copy

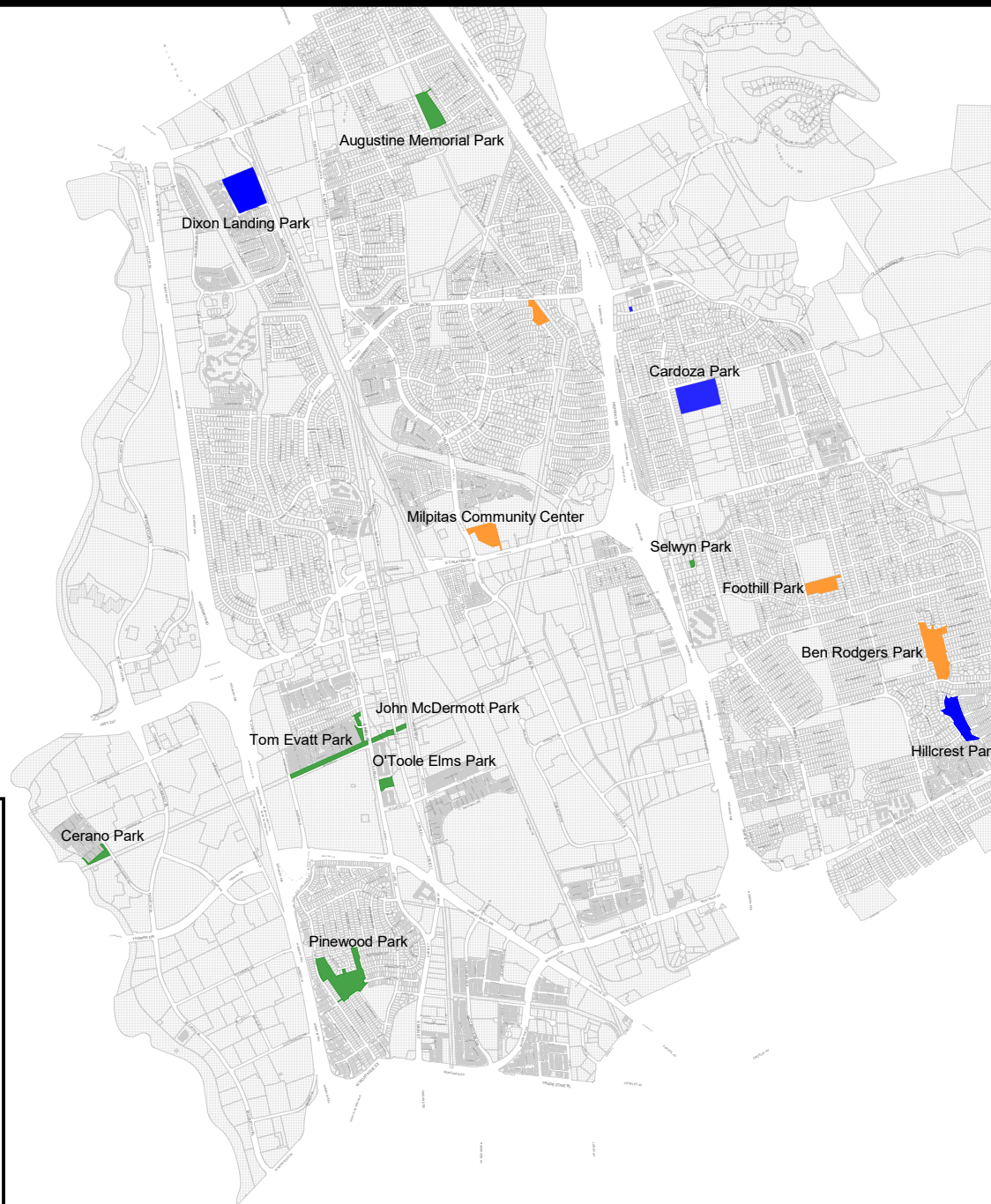


CITY OF MILPITAS

MILPITAS, CALIFORNIA

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR

NIB 2390 - CITYWIDE PARKS AND PLAYGROUNDS REHABILITATION



Legend

- FY19-20 Milpitas Community Center
- FY19-20 Ben Rodgers Park
- FY19-20 Foothill Park
- FY19-20 Jones Memorial Park
- FY20-21 Calle Oriente Park Playground
- FY20-21 Cardoza Park
- FY20-21 Dixon Landing Park
- FY20-21 Hillcrest Park
- FY21-22 Augustine Memorial Park
- FY21-22 Cerano Park
- FY21-22 John McDermott Park
- FY21-22 O'Toole Elms Park
- FY21-22 Pinewood Park
- FY21-22 Selwyn Park
- FY21-22 Tom Evatt Park

abc Labels

Citywide Park Rehabilitation (CIP 3424) - Parks and Playground Rehabilitation Project

This map is a product of the
City of Milpitas GIS



0' 260'



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute Amendment No. 2 to the Professional Services Agreement with Water Systems Optimization, Inc. for Water Loss Technical Assistance for a Total Amount Not to Exceed \$160,756.
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2020
Staff Contact:	Tony Ndah, 408-586-2602, Chris Schroeder 408-586-3161
Recommendation:	Approve and Authorize the City Manager to execute Amendment No. 2 to the professional services agreement with Water Systems Optimization, Inc. for water loss technical assistance, increasing the total not to exceed amount from \$99,490 to \$160,756.00.

Background:

The Water Leak Detection and Condition Assessment Program was approved by Council as part of the 2018-23 Capital Improvement Program, to provide funding for citywide leak detection and additional measures to reduce the volume of water loss in the distribution system.

On January 8, 2019 the City entered into a professional services agreement with Water Systems Optimization, Inc. (WSO), to assess and improve the City's water loss tracking efforts, identify and initiate water loss controls best practices, and outline a Water Loss Control Plan for the City. The term of the original agreement was from January 1, 2019 to December 31, 2019 and the initial not-to-exceed amount of the agreement was \$99,490. The original scope of work included support for the City's 2018 water audit and included the completion of leak detection on 50 miles of the City's water system.

On December 31, 2019, the City and Water Systems Optimization, Inc. entered into Amendment No. 1 which extended the term of the agreement to allow WSO to complete the leak detection tasks specified in the scope of work of the original agreement.

In an effort to better quantify water losses in the City's system, WSO recommended additional leak detection and pressure monitoring on the City's system, based on the results of the City's 2018 water audit. The proposed amendment would include additional tasks to allow the City to continue its efforts for limiting water loss in the distribution system.

Analysis:

In 2015, Senate Bill 555 was passed, which required all urban retail water suppliers to annually submit a water audit to assess water loss in the distribution system. The reports are due to the State on or by October 1 of each year and City staff worked with WSO to complete the 2018 Water Audit for submission, using the software provided by the American Water Works Association (AWWA). This top-down method takes into consideration many aspects of the system and provides a percentage of water loss for the system. The 2018 Water Audit also includes a data validity score for the City, which is used to guide decisions on the selection of water loss control planning measures recommended by the AWWA Water Loss Control Planning Guide. Based on the 2018 validity score for the City, AWWA guidelines recommend the City establish mechanisms for active leakage control and infrastructure monitoring.

The proposed contract amendment would expand the scope of the original contract to include the compilation and validation support for the City's 2019 Water Audit, which is due to the State by October 1, 2020. The Amendment also includes leak detection on an additional 50 miles of the water distribution system and active pressure monitoring of the distribution system to help monitor and reduce the occurrence of pressure surges in the water distribution system, which can compromise the physical integrity of pipes and lead to leaks.

Policy Alternative:

Alternative: Not approve and authorize the City Manager to execute Amendment No. 2 for water loss technical assistance.

Pros: The City would not spend \$61,266.00 for additional professional services related to the project.

Cons: The City would not be taking the additional steps needed to lower water loss in the distribution system, per the AWWA Water Loss Control Planning Guide, and potential leaks in the system would remain, leading to lost revenue to the City.

Reason not recommended: It is critical that the City have an understanding of system-wide water loss performance and implement a water loss control plan and to reduce the volume of water lost.

Fiscal Impact:

Cost of Amendment No. 2 of \$61,266 is available in Capital Improvement Project 7135 Water Leak Detection & Condition Assessment.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act 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 and Authorize the City Manager to execute Amendment No. 2 to the professional services agreement with Water Systems Optimization, Inc. for water loss technical assistance, increasing the total not to exceed amount from \$99,490 to \$160,756.00.

Attachment:

Amendment No. 2 to Agreement with Water Systems Optimization, Inc.

**AMENDMENT No 2
TO THE
PROFESSIONAL SERVICES AGREEMENT
WITH
WATER SYSTEMS OPTIMIZATION, INC.
FOR
WATER LOSS TECHNICAL ASSISTANCE PROJECT**

This Amendment is entered into this ____ day of _____, 2020 by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **Water Systems Optimization, Inc.**, a corporation with its principle place of business at **131 Kissling Street San Francisco, CA 94103** (hereafter referred to as "Consultant"). City and Consultant may be jointly referred to herein as the "parties." City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment.

RECITALS

WHEREAS, on January 8, 2019, the parties entered into a Professional Services Agreement for Water Loss Technical Assistance Project services for the not-to-exceed amount of \$99,490, with a term period of January 1, 2019 to December 31, 2019 (the "Agreement"); and

WHEREAS, on December 31, 2019, entered into the first Amendment to the Agreement which extended the term period from December 31, 2019 to December 31, 2020, to allow Consultant to continue technical assistance to complete Task 3 "Apparent Loss Analysis" and Task 8 "Meter Testing; and

WHEREAS, the parties now desire to further amend the Agreement to include additional tasks to the scope of services and to increase the dollar amount by \$61,266, for a new total of \$160,756.00, to allow Consultant to continue water loss technical assistance.

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

1. Section 2, entitled "Compensation" is hereby amended to read as follows:
"COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed **One Hundred Sixty Thousand, Seven Hundred And Fifty-Six Dollars and Zero Cents (\$160,756.00)** for all services to be performed during the term of this Agreement and any reimbursable costs approved in advance by the City Manager and incurred during the term and under the scope of this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for

personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

This Amendment is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

WATER SYSTEMS
OPTIMIZATION, INC.

Steven McHarris,
Interim City Manager

Kate Gasner
Vice President

Approved As To Content:

Tony Ndah
Director of Public Works

Approved:

Walter C. Rossmann
Director of Finance/Risk Manager

Approved As To Form:

Christopher J. Diaz,
City Attorney

EXHIBIT A

Scope of Services

The scope of services is amended to add the following tasks:

Task 9: Additional Leak Detection

This task will include additional acoustic leak detection surveying for 50 miles of the distribution system.

In this task, Consultant will:

- Select mileage and coordinate planning of survey
- Survey 50 miles of pipe
- Report on findings

Task 10. Pressure Logging

Complete pressure survey to provide detailed insight into the operating pressures of the distribution system.

This task includes the following:

- Calculate a refined weighted system average pressure for the AWWA Water Audit using data collected in the field
- Validate current understanding of pressure variability throughout distribution system
- Look for areas with potentially high and low pressures
- Refine pressure monitoring location recommendations
- Assess if current pressure regulating infrastructure is functioning as expected

Task 11: Water Audit Support

This task will include compilation and validation support for Milpitas 2019 Water Audit.

In this task, Consultant will:

- Compile the 2019 Water Audit
- Prepare Supporting Documentation for Validation
- Complete Level 1 Validation
- Report on 2019 Water Audit Findings

EXHIBIT B

COMPENSATION SCHEDULE

TASK	Cost
Task 9: Additional Leak Detection • Kick Off Meeting • Acousting Leak Detection Survey (50 miles) • Reporting	\$26,040.00
Task 10: Pressure Logging • Pressure Survey Design • Pressure Survey Execution • Analysis • Reporting • Expenses Estimate	\$23,196.00
Task 11: Water Audit Support • Compile 2019 Audit & Supporting Documentation • Level 1 Validation • Reporting	\$12,030.00
Additional Tasks 9 - 11 Total	\$61,266.00
Project Total (Not-to-exceed)	\$160,756.00

Consultant's key staff assigned to the Project

<u>Team Member</u>	<u>Project Role</u>	<u>Hourly Rate</u>
Kate Gasner	Project Director	\$210.00
Kim Manago	Project Manager	\$155.00
Sarah Reed-Guy	Analyst	\$140.00



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a New Total Amount Not to Exceed \$296,250
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2020
Staff Contact:	Tony Ndah, 408-586-2602, Chris Schroeder 408-586-3161
Recommendation:	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a New Total Amount Not to Exceed \$296,250.00.

Background:

On July 11, 2019, the Purchasing Division released an Invitation for Bid (IFB) 2355 for monitoring, maintenance, testing, and training services at eighteen (18) City locations. Technology, Engineering & Construction, Inc. doing business as TEC Accutite is the lowest responsive bidder and was within the City's estimate for these services. The City Council approved the award and Maintenance Service Agreement with TEC Accutite on September 17, 2019.

The Maintenance Service Agreement with TEC Accutite provides the City of Milpitas Public Works Department with a dedicated and qualified contractor to perform Aboveground Storage Tank (AST) and Underground Storage Tank (UST) inspections, testing, and maintenance. Detailed inspections are required to monitor maintenance practices and to ensure that necessary repair work and maintenance are performed. Annual maintenance and certification services performed on the City's ASTs and USTs is essential to ensure that the tanks are operating in compliance with local, state, and federal regulations. Additionally, regular maintenance and testing of the fuel storage tanks is critical to ensure proper operation of the monitoring and dispensing equipment. These measures are important to prevent leaks or spills from the tanks, to protect the environment, and for worker and community safety.

Analysis:

After the contractor started work, it became apparent that the contract needed to be amended due to three sites inadvertently being left out of the scope and two tanks being misclassified in the original bid package. The recommended amendment clarifies the types of tanks for two sites in the scope of work, outlines the frequency of services required at these sites, and includes the additional three sites for inspection, testing, and maintenance service.

Further, in consideration for the increased scope of work, the amendment increases the total not-to-exceed contract amount by \$51,000 from \$245,250 to \$296,250 for the 5-year contract term.

Policy Alternatives:

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

Pros: Increased work options for City staff.

Cons: City staff has limited resources in providing these services.

Reason not recommended: The City does not have the work force or equipment to perform AST and UST maintenance and certification services. The City would need to purchase equipment and hire additional staff, which would likely delay this work. By utilizing a contractor, all of the AST and UST sites will be tested on a regular schedule to remain compliant with Title 23 of the California Code of Regulations and Title 40 of the Code of Federal Regulations Part 112 to ensure proper operation. Additionally, approving this amendment will enable the City to continue to comply with annual regulatory testing, conduct routine maintenance, and provide for unforeseen repairs.

Policy Alternatives:

Alternative 1: Direct City staff to bid the work identified in the amendment.

Pros: The three new sites would be bid out.

Cons: Bidding a small project such as this would divert staff time from other projects and would be unlikely to offer any cost savings.

Reason not recommended: Diverting staff resources to rebid these three additional sites is not likely to result in cost savings to the City. Only two bids were received in response to IFB 2355 and TEC Accutite provided a bid that was 65% lower than the other bidder, offering significant cost savings to the City.

Fiscal Impact:

Amendment No. 1 is an increase of \$10,200 per fiscal year for a total increase of \$51,000 for the five-year contract. The first year will be funded in the amount of \$59,250.00 from the FY 2019-20 operations budget of the Public Works Department. Funds for the remaining years on this agreement will be subject to the annual appropriation of funds by Council during the annual budget process.

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. Further, this action is also exempt under CEQA Guidelines Section 15301 as maintenance of existing facilities. Both Guideline citations provide an independent basis for determining that this action is exempt from CEQA.

Recommendation:

Approve and Authorize the City Manager to execute Amendment No. 1 to the Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a New Total Amount Not to Exceed \$296,250.00

Attachments:

Amendment No. 1 Aboveground and Underground Storage Tank Maintenance and Certification Services



AMENDMENT NO. 1
TO THE
MAINTENANCE SERVICE AGREEMENT
WITH
TECHNOLOGY, ENGINEERING & CONSTRUCTION, INC. dba TEC ACCUTITE
FOR
ABOVEGROUND AND UNDERGROUND STORAGE TANK
MAINTENANCE AND CERTIFICATION SERVICES

This Amendment is entered into this _____ day of _____, 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **Technology, Engineering & Construction, Inc., dba TEC Accutite**, a corporation with its principal place of business at **111 North Market Street, San Jose, CA 95113** (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment.

RECITALS:

WHEREAS, on November 14, 2019, the Parties entered into a five-year agreement for Aboveground and Underground Storage Tank Maintenance and Certification Services, for the not-to-exceed amount of \$245,250.00 (the "Agreement"); and

WHEREAS, the Parties wish to amend Section 1.03 Facilities of the Agreement to correct the site locations of two storage tanks and add three new site locations to the section, increase the total compensation in Section 3.3.1 to the not-to-exceed amount of \$296,250.00, and to revise Exhibit "C" COMPENSATION with a revised table with updated quantities of services.

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

1. Amend Section 1.03 Facilities by deleting it in its entirety and replacing it with the following:

1.03 Facilities (Revised January 2020)

The Contractor shall provide services at the following facilities:

Underground Fuel Tanks			
Site Name	Address	Type	Capacity (gallons)
Berryessa Storm Pump Station	731 Folsom Circle	Diesel UST	1,000
Corporation Yard	1265 N Milpitas Blvd	Gasoline UST	12,000
Corporation Yard	1265 N Milpitas Blvd	Diesel UST	12,000
Jurgens Storm Pump Station	345 Jurgens Drive	Diesel UST	2,000
Penitencia Storm Pump Station	944 LaHonda Drive	Diesel UST	1,000
Pinewood Well	227 Lonetree Court	Diesel UST	1,000
Aboveground Fuel Tanks			
Site Name	Address	Type	Capacity (gallons)
Bellew Storm Pump Station	418 Murphy Ranch	Diesel AST GenSet	1,450
California Circle Storm Pump Station	1735 California Circle	Diesel AST	1,000

City Hall	455 E Calaveras Blvd.	Diesel AST GenSet	200
Fire Station 1	777 S Main Street	Gasoline AST	1,000
Fire Station 1	777 S Main Street	Diesel AST	1,000
Fire Station 1	777 S Main Street	Diesel AST GenSet	300
Fire Station 2	1263 Yosemite Drive	Diesel AST	1,000
Fire Station 3	45 Midwick Drive	Diesel AST	500
Fire Station 4	775 Barber Lane	Diesel AST	2,000
Fire Station 4	775 Barber Lane	Diesel AST GenSet	62
Gibraltar Water Pump Station	641 Gibraltar Court	Diesel AST	10,000
Gibraltar Water Pump Station	641 Gibraltar Court	Diesel AST GenSet	350
Main Lift Sewage Pump Station	1425 N. McCarthy Blvd.	Diesel AST	2,000
Manor Storm Pump Station	349 Marylinn Drive	Diesel AST GenSet	400
McCarthy Storm Pump Station	1001 N. McCarthy Blvd	Diesel AST	2,000
Milpitas Sports Center	1325 E Calaveras Blvd	Diesel AST GenSet	643
Murphy Ranch Storm Pump Station	801 Murphy Ranch	Diesel AST	2,000
Oak Creek Storm Pump Station	1521 McCarthy Blvd.	Diesel AST	2,000
Wrigley Ford Storm Pump Station	75 Marylinn Drive	Diesel AST	500
Zone 2 (Ayer) Water Pump Station	1429 E. Calaveras Blvd	Diesel AST	1,000

2. Amend Section 3.3.1 Compensation by adding \$51,000.00 for a new total not-to-exceed amount of \$296,250.00.
3. Exhibit C hereby deleted in its entirety and replaced with Exhibit C (Revised January 2020), attached hereto and incorporated herein by this reference.
4. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

This Amendment No. 1 is executed as of the date first written on page one.

APPROVED BY:
CITY OF MILPITAS

TECHNOLOGY, ENGINEERING &
CONSTRUCTION, INC.
DBA TEC ACCUTITE

Steve McHarris, Interim City Manager

Signature of Authorized Representative

APPROVED AS TO FORM

Name of Authorized Representative

Christopher J. Diaz, City Attorney

Title of Authorized Representative

APPROVED:

Walter C. Rossmann
Director of Finance/Risk Manager

APPROVED AS TO SCOPE:

Tony Ndah
Director of Public Works

Exhibit "C"
COMPENSATION (Revised January 2020)

Description	Quantity	Unit	Total	Unit Cost	Revised Total
Monthly Inspection (UST)	6	each	72	\$100.00	\$7,200.00
Annual Monitoring System Certification (UST/AST)	26	each	26	\$400.00	\$10,400.00
Annual Overfill Prevention Equipment Inspection (UST/AST)	26	each	26	\$350.00	\$9,100.00
Annual Spill Container Testing (UST)	6	each	6	\$50.00	\$300.00
SB 989 Triennial Secondary Containment Testing (UST)	6	each	6	\$900.00	\$5,400.00
Annual Designated Operator Employee Training (UST/AST)	1	each	1	\$350.00	\$350.00
Annual Secondary Containment Testing (AST)	20	each	20	\$500.00	\$10,000.00
Integrity Testing (AST)	20	each	20	\$750.00	\$15,000.00
Annual Gasoline Dispensing Facility Testing (Corporation Yard & Fire Station 1)	2	each	2	\$250.00	\$500.00
Annual California Air Resources Board Vapor Recovery Certification (Corporation Yard & Fire Station 1)	2	each	2	\$500.00	\$1,000.00
Total					\$59,250.00



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Agreement with Urban Field Studio to Provide Consulting Services related to the Transit Area Specific Plan (TASP) 2020 Update
Category:	Public Hearings-Community Development
Meeting Date:	2/18/2020
Staff Contacts:	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, TASP Manager, 408-586-3292 Chris Schroeder, Purchasing Agent, 408-586-3161
Recommendation:	Approve and authorize the City Manager to execute the Agreement with Urban Field Studio to provide consulting services related to the Transit Area Specific Plan (TASP) 2020 Update.

Background:

In 2008, the City Council first adopted the Transit Area Specific Plan (TASP) for the area surrounding the future Milpitas Transit Center where BART, light rail and other public transit services were planned to converge. The TASP, amended once in 2011, anticipated that the nearly 100 primarily privately-owned properties, which had been generally developed over several decades with commercial and industrial facilities, would be transformed to a walkable transit-oriented community within the larger Milpitas community. The TASP envisioned a 20-year buildout of 7,109 housing units, 993,843 square feet of office development, 287,075 square feet of new retail space and 350 hotel rooms, along with substantial and significant public improvements to facilitate the benefits of mobility, vitality and livability of the Plan area.

To date, projects that have been entitled, are under construction, or are complete and occupied include 6,955 housing units, 9,260 square feet of office and approximately 185,000 square feet of retail space. One approved project includes a hotel with up to 175 rooms, but no hotel rooms have been completed to date. Of the total 347 acres with the TASP boundaries, nearly 168 acres (48%) have yet to be redeveloped in accordance with the TASP guidelines and standards. These remaining properties represent substantial opportunities for further investment and potential new development in light of the unique relationship and proximity to the Transit Center as well as an enriched synergy among existing uses and activities in the area. With BART service expected to begin sometime in 2020, now is an ideal time to reassess the goals and accomplishments of the TASP and make adjustments in response to current market conditions and community needs.

Analysis:

In anticipation of an update of the TASP to make the best advantage of the remaining potential that is governed by underlying current and future development metrics and pressures, the City circulated a Request for Proposals (RFP) in Fall 2019 and interviewed three well qualified consulting firms from among the five that submitted proposals. A panel of City staff members from various departments selected Urban Field Studio, with its technical subconsultants M-Group, EPS, W-Trans, Lexington Planning, ICF environmental services, and BKF Engineers to prepare the TASP Update. Selection criteria included consultant experience with similar projects, familiarity with the City of Milpitas, proposed timeline and scope of work, and proposed cost estimate. Urban Field Studio was selected based on depth of experience, innovative approach to planning and public outreach, previous and ongoing work in Milpitas by subconsultants, and quality of work exhibits.

Staff has prepared a contract that establishes a professional services agreement between the City and Urban Field Studio for services that include a scope of work to cover approximately 15 months at a budgeted at

of up to \$540,000. Urban Field Studio will invoice the City on a monthly cycle, and each invoice will include a detailed progress report that indicates the amount of budget spent on each task. The consultant team will inform the TASP Update Manager regarding any out-of-scope work needed, and any overage that requires additional funds would return to the Council for approval of a contract amendment. The proposed Schedule of Charges/Payments (Exhibit B) includes funds for CEQA analysis based on assumptions regarding the level of analysis needed. Additional funds may need to be appropriated once a final scope for the environmental analysis under CEQA can be determined based on the draft plan update.

Urban Field Studio was founded in 2014 as a spinoff by several partners who had worked together for six prior years at Field Paoli Architects. With a main office in San Francisco, consulting services will be guided by Principal Jane Lin from the East Bay Office in Piedmont. The Project Manager will be Christina Paul, AICP, affiliated with M-Group, which has offices and provides planning services throughout the Bay Area. Note that EPS, the economic and financial consultant firm, has an ongoing relationship with the City, having been involved in the TASP since its inception in 2008. They prepared the recent nexus update for the recent Transit Area Development Impact Fee (TADIF) adjustment.

The TASP update will look at both the opportunities for greater or targeted development and the desirability of protecting and enhancing some existing uses within the plan area. In addition, the comprehensive planning work will look at nearby areas to assess whether the inclusion of new land areas within the boundaries of the TASP would be beneficial internally to the TASP community and to the City generally. The TASP update will also include a comprehensive assessment of infrastructure needs within the TASP boundaries and provide guidance on adjusting the TADIF to ensure a fair and equitable fee structure. Strategic changes to the TASP boundaries and adjusting the development potential of remaining undeveloped parcels in the TASP area will be key to positioning the City to meet its Regional Housing Needs Assessment (RHNA) numbers, which are expected to be significantly higher than past cycles. The new RHNA numbers will be released by the ABAG later this year, and the City will then need to update its General Plan Housing Element before 2022.

Policy Alternative:

Alternative: Do not authorize the interim City Manager to execute an agreement with Urban Field Studio to update the TASP document, policies and standards.

Pros: This action would avoid expending revenues associated with the TASP planning process.

Cons: Eliminating the TASP update would limit the opportunities for enhanced development in a manner consistent with and complementary to the policies and standards that have been put in place.

Reason not recommended: Failure to update the TASP would leave a substantial number of privately-held development parcels in limbo, and acreage available for higher density housing within now-established residential neighborhoods would likely remain un-redeveloped. The City would miss a significant opportunity to respond to new RHNA numbers and provide for future housing needs. New TASP policy incentives and the imminent opening of BART present a great opportunity to develop office employment in concert with a re-evaluation of retail needs and locations and a reassessment of public infrastructure needs and shared costs.

Fiscal Impact:

The cost to provide planning services for the TASP is covered by development impact fees generated by development activity within the TASP area. The TASP Update is a budgeted CIP project.

California Environmental Quality Act:

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

Recommendation:

Approve and authorize the City Manager to execute the Professional Services Agreement with Urban Field Studio to provide consulting services related to the Transit Area Specific Plan (TASP) 2020 Update.

Attachment:

Professional Services Agreement with Urban Field Studio, including Scope of Work

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 2020 (“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 **Urban Field Studio**, a Limited Liability Partnership, with its principal place of business at **2169 Folsom Street, M304, San Francisco, CA, 94110** (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:

Transit Area Specific Plan 2020 Update (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. 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 **Five Hundred Forty Thousand Dollars and Zero Cents (\$540,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

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 of Performance.

The term of this Agreement shall be **from the Effective Date of this contract to December 31, 2021**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement. The performance of work shall be generally in accordance with the Activity Schedule provided as Exhibit C.

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. 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 field notes, drawings and specifications, written reports and other documents 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 in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

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. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign **Christina Paul of M-Group** 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

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Ned Thomas, Planning Director

CONSULTANT:

Jane Lin

Principal in Charge

Urban Field Studio

2169 Folsom Blvd, M304

San Francisco, CA 94110

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.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND URBAN FIELD STUDIO**

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:

Ned Thomas, Planning Director

URBAN FIELD STUDIO

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

SCOPE OF SERVICES

Urban Field Studio will be working with technical sub-consultants M-Group, EPS, W-Trans, Lexington Planning, ICF environmental services, and BKF Engineers to prepare the TASP Update.

Phase 1: Kickoff, Visioning, and Project Management

Task 1.1. Project Kick Off Meeting and Tour

The project begins with a kick-off meeting and site tour with all consultants (the Team) and City staff (Staff). Staff will be led by the City's TASP Manager. The Team will come to the meeting ready to determine the schedule, generate a list of needs for existing conditions, and gather initiating information from Staff. The Plan Boundary and Focal Area will also be discussed at this first meeting. The Team will work closely with the City to examine the plan area boundaries and determine whether or not it is advantageous to expand the plan area, including the pros, cons, and plan process implications of various options. Even though the plan area boundary may shift after this period, this will minimally allow the Team to surface and discuss major options. The Project Manager will work with City staff to prepare the kick-off meeting logistics.

Consultants Involved: ALL

Task 1.2 Check in Meetings/Calls

There will be regular check-in calls with project managers and occasional check-in meetings with the Team as needed, anticipated to be about 2 times a month.

Consultants Involved: ALL

Task 1.3 Community Engagement Approach Meeting/Memo

Outreach for the project begins in this first phase with the development of a Community Engagement Approach. A separate meeting about the Community Engagement Approach will follow after the kick-off meeting. This meeting will be an opportunity to coordinate with the Public Relations and Website Staff. The agenda for this meeting is to coordinate the project website, determine the stakeholders and groups we will reach out to, outreach format, timing, and messaging. The Community Engagement Approach Memo will summarize and detail the outreach plan with descriptions of all outreach activities, schedule of events, process and timing for releasing collateral and project information materials, as well as team implementation roles.

Generally, Staff will distribute and provide communication for the Public Meeting. The Team will provide graphic materials as needed. The Team will provide content for a Project Website updates. Staff will take emails and comments from the project website. The Team will develop draft and final workshop materials. The Team will revise these materials based on one round of consolidated edits from the City. The Team will work with the City to locally produce meeting materials like posters, if desired. Materials can include:

- Event announcements (digital only)
- Posters (digital only)

- Plan for temporary landscape or streetscape installations
- Materials needs list
- Sign-in sheets
- Comment cards

The Team will provide a brief input summary memo for public meetings as well as photo documentation.

Consultants Involved: UF, M-Group

Deliverable: Community Engagement Approach Memo

Task 1.4 Project Management

The Team will provide strong, hands-on project management throughout the planning process. This includes ongoing contact with the internal planning team as well as project administration to review project concepts and keep the project on schedule and budget. This subtask includes internal and external project coordination and management activities, including meetings, emails and phone calls with City Staff. This subtask also includes internal coordination and management between Team members.

Consultants Involved: UF, M-Group

Task 1.5 Project Website

The project website will be a central reference point for communicating, archiving, and collecting information from community members. The team will work with Staff to identify the best hosting platform and process to maintain the website. This may be on the City site or a standalone site. The Team will either provide information and documentation for upload on the City's site or develop the site on another platform. It is assumed that the City will be the conduit for feedback gathered through the website. Content for the project website can include the outreach schedule, major deliverables and milestones, project updates, videos of public sessions, and public commentary, and it can be used in email newsletters, websites, and social media.

Consultants Involved: UF, M-Group

Deliverable: Project Website Launch

Phase 2: Existing Conditions

Task 2.1 Stakeholder Interviews

The Team will interview City Staff, Council Members, stakeholders (property owners, business owners, and community members identified by the City) and representatives from the Great Mall and the VTA in person, or by phone if necessary, consolidated into a two-day period. A summary of findings will be part of the Existing Conditions Report.

Consultants Involved: UF, M-Group, EPS

Task 2.2 Public Survey

The Team will work with City Staff to develop and distribute a simple online survey designed to focus specifically on future opportunities for the TASP area. The Team will develop the survey instrument in order to obtain information from the community on issues to be considered during the update process. The results of the survey will be collected and analyzed by the Team to be included in the Existing Conditions Report.

Consultants Involved: UF, M-Group

Task 2.3 Developer Engagement

Together with City and Staff, the Team will attend three meetings with major local developers and landowners, including one meeting of the City's Community Development Roundtable (convened by the City and made up local developers), one with VTA representatives, and one with Great Mall representatives. A SWOT (Strengths Weaknesses Opportunities and Threats) analysis will be used during the forum. A summary of findings will become part of the Existing Conditions Report.

Consultants involved: UF, EPS, M-Group, LEX

Task 2.4 Existing Conditions Report

The Team will develop an inventory and evaluation of the TASP area's existing conditions, focusing particularly on the changes since the existing plan was developed. This will include a review of existing and available data, plans, maps and reports that relate to the TASP area and the areas it relates directly to, including identifying public projects and improvements that have occurred since the last TASP as well as needs for future public projects and improvements. The results of this analysis will be compiled into an Existing Conditions and Opportunities Presentation/Report. The report will include a SWOT analysis of the current and projected conditions in the TASP area and will synthesize key findings in the format of a detailed PowerPoint presentation. The report will be highly graphic and include approximately 60 slides.

It is anticipated that the report will include the following topical sections:

1. Introduction and Executive Summary - This section will be an overall summary of the report that will include an introduction, executive summary, major findings, issues and opportunities.
2. TASP Update Approach - This is an overview of the way the team will reformat the TASP including a review of the TOC, Schedule, and strategy.

3. Community Input - this will be a summary of our outreach approach and findings from stakeholders [MGroup]
4. SWOT Analysis
5. TASP Area/Milpitas Changes - Urban Field Team will work with City Staff to prepare a section of the presentation/report highlighting key recent changes in Milpitas and the TASP area, especially as it may inform the direction for future planning and design. This would include looking at land uses, existing development policy, and summarizing the development that has occurred to date. [UF/MGroup/LEX]
 - a. Table of development per EIR
 - b. Table of Land Use Acreage at Buildout, compared with original TASP
 - c. Updated Map of Land Uses, Zoning
6. Map Boundaries and Opportunity Areas: This section highlights the opportunity areas and suggests boundaries for the TASP.
 - a. Updated Map of Site Context, Aerial
 - b. Map of Opportunity Sites
7. Demographics - The analysis will summarize demographic trends in both the TASP area and the city as a whole. The demographics includes a projection of school demand. [EPS]
 - a. Table of Projected Student Enrollment and impact on MUSD
8. Limited Market Analysis - The report will summarize the economic existing conditions analysis, including the Limited Market Analysis: Residential and Commercial Market Trends. Inclusion of 5-, 10-, and 20-year projections. An overview of economic needs and trends. [EPS]
 - a. Table of Projected New Development in the TASP
9. Design Summary and Sense of Place - describes the look, feel and character of existing buildings, plazas, streets, pathways and other public spaces. This will identify landscape and architectural patterns and themes to be preserved, character elements to emphasize and barriers to be addressed. [UF]
 - a. Transit Area Development
 - b. Zoning/ Building Massing
 - c. Street System
 - d. Bicycle Network Map
10. Transportation - This section will summarize and analyze existing transportation and mobility facilities, including: transportation, circulation, access, and parking; regional auto and rail access; bus service; bicycle and pedestrian facilities; and the City's TDM program. [UF, WTrans]
 - a. Updated Map of Transportation System and Transit Service
 - b. Update with new BART information

11. Urban Realm - this will focus on streets, connections, and the design of public spaces, including location of sites. [UF]
 - a. Evaluate pedestrian circulation improvements that serve workday and weekend travel patterns to and from the Transit Station
 - b. Table of Public Park Space Required and Provided
 - c. Revisit of Trail Widths and Setbacks
12. Infrastructure - This section will summarize information on the existing condition of infrastructure, including water, sewer, electrical, telecommunications, natural gas, cable television, wireless and fiber optics. [BKF]
13. Summary of City Tools for Implementation - This is a summary of the BIP, collected fees, and how effective, or ineffective, existing tools have been to implement the desired development. [EPS]
14. CEQA Concerns - The report will summarize the status of the CEQA process, as well as preliminary analysis on areas in which the plan will likely mitigate potential impacts. [ICF] The team will also identify the parts of the existing TASP that will be addressed in the EIR.

15. Next Steps

Consultants Involved: All

Deliverable: Existing Conditions Report in a Presentation Format

Phase 3: TASP Framework

Task 3.1 Plan Framework Strategy Session

A key part of updating the plan will be a focused strategy session amongst the Staff and Team that will take place over two days. Preparing for the strategy session includes a thorough review of the Existing Conditions report and a list of Staff developed questions. There is limited Staff involvement the first day as the team generates as many ideas as possible with key specialists dropping in for specific topics. A presentation will be provided in the middle of the second day to Staff department heads, key stakeholders, and consultants, followed by a discussion of the ideas generated.

Following the Strategy Session, the Team will be compiling a list of proposed Amendments to the TASP. The team will be thinking about:

1. What to keep from the original TASP
2. The new TASP boundaries
3. Economic Opportunities and Constraints
4. Development Strategies and Scenarios
5. Land Use Strategies
6. Multi-Modal Transportation Opportunities (improved Ped Bike connections)
7. Streetscape and Open Space (sideway and pathway enhancements)
8. Placemaking and Physical Improvements
9. Combined Infrastructure and Public Realm Opportunities
10. Planning Policy Levers - Zoning
11. Tools for Implementation

Consultants involved: All

Deliverable: Proposed Amendments to the TASP and Session Summary Memo

Task 3.2 City Council and Planning Commission Meetings

There will be three City Council Meetings (or alternatively City Council Work Sessions) in Phase 3. (There will be two more City Council Meetings after January 2021 in Phase 5 that are Task 5.1). There will be up to three Planning Commission meetings to provide updates and receive recommendations from the Commission to the City Council.

- Council Meeting #1 will be a brainstorming session working off of initial ideas proposed for the TASP Framework Strategy Session (Task 3.1).
- Council Meeting #2 will follow community input and TASP Framework Development and will test ideas for the TASP Update
- Council Meeting #3 will follow community input on Zoning Updates to seek City Council Approval of zoning changes and the TASP Framework Plan.

Staff and the consultants will prepare a presentation for each meeting. Staff will help prepare handouts and responses to questions prior to the meeting, if needed.

Staff and the consultants will prepare presentations and other informational materials, as needed, for Planning Commission meetings.

Consultants involved: UF, M-Group, EPS, and (optionally) subconsultants as needed by topic

Deliverable: Presentations for each Meeting

Task 3.3 TASP Update Community Meeting

This Public Meeting will present the results of the survey and TASP Framework ideas and provide an opportunity for feedback to the general public. Ideally, this public meeting will be scheduled after BART opens. This is an opportunity to test the initial direction of any ideas from the TASP Framework Strategy Session and Council input. The details of this will be provided in the Community Engagement Approach Memo.

Consultants involved: UF, M-Group

Deliverable: Materials for Public Meeting as described in the Community Engagement Approach Memo

Task 3.4 Development of TASP Framework

The Team will develop ideas for the TASP Framework through topical meetings internally and in check-ins with the City. The topics will be based on the approach developed in Task 3.1. A summary of these meetings will be provided to Staff to mark progress. At times these topical meetings may include Staff. The TASP Framework is a document with the following preliminary contents (subject to change based on findings in Task 3.1):

1. Economic Development Opportunities Areas
2. Incentives for Commercial Office and Affordable Housing Development
3. Projected Amount of Development
4. Public Realm Improvements and Precedents
5. Land Use Modelling
6. Address Affordable Housing
7. Scenario Building
8. Update Design Guidelines
9. Planning Policy Framework and Amendments
10. Commercial Retail Policy Framework
11. Parking Policy Framework
12. Circulation Planning
13. Infrastructure Analysis
14. Basic Infrastructure Program Amendment
15. Infrastructure Financing and Implementation

Consultants involved: All

Deliverable: Public TASP Framework Document to be posted on the Project Website and presented at a Public Meeting and City Council.

Task 3.5 TASP Update Open House

This Community Open House will occur shortly after City Council Meeting #2. Input and feedback on ideas will be collected through post-it comments and on comment cards to be included in the TASP Framework Development. The details of this will be provided in the Community Engagement Approach Memo.

Consultants involved: UF, M-Group

Deliverable: Materials for Public Meeting as described in the Community Engagement Approach Memo

Task 3.6 Private Stakeholder Meetings

The Team will prepare materials to engage private developers or other key stakeholders identified by the City and solicit input for the TASP Update and meet with VTA, Great Mall, and the City Community Development Roundtable at separate meetings, preferably scheduled closely together. The input gathered will be summarized and incorporated into the TASP Framework ideas.

Consultants involved: UF, M-Group, EPS

Task 3.7 Policy Update

The Team will produce a List of Proposed Amendments to the TASP and Zoning including justification for changes that will be presented to the City Council for Approval.

Consultants involved: UF, M-Group, LEX

Deliverable: List of proposed amendments to the TASP with explanation and justification

Task 3.8 Notice of Preparation of Supplemental EIR

ICF will prepare a draft Notice of Preparation (NOP) for review by the City. The NOP will meet the content requirements of CEQA Guidelines Section 15082. After receiving the City's comments, ICF will provide an NOP suitable for public release and submittal to the State Clearinghouse. ICF will also prepare the State Clearinghouse Notice of Completion (NOC) submittal form. We assume that the NOP review period will be the standard 30 days required by CEQA. We also assume that the City will help develop an appropriate distribution list, which ICF can review, and will be responsible for mailing the NOP and filing the NOP with the County Clerk. ICF will be responsible for filing the NOP with the State Clearinghouse.

Consultants involved: ICF

Phase 4: Draft TASP Update

The Team's intended approach is to write the TASP Update in a way that is easy for developers and business owners to understand and Staff implement. The aim of this update is to have objective standards in place that are based on site test scenarios and market evaluation and carry forward the character determined for typologies within the plan. The plan will rely on graphics to explain, identify, and attract developers and to make the plan as focused and concise as possible.

4.1 Administrative Draft TASP Update

The Team will develop a comprehensive administrative draft TASP Update based on the TASP Update Approach and TASP Framework Document. The plan will be in Microsoft Word with images in a separate PDF. The plan will be approximately 100 pages long. Urban Field will respond to two rounds of consolidated edits from City Staff.

4.2 Public Draft TASP Update

The Team will review Staff comments and prepare a Public Draft TASP Update. This plan will be beautifully designed and placed into layout with rich illustrations and concise, compelling text. The Public Draft TASP Update will be presented in full layout with graphics and text placed together in a PDF format. The Team will respond to two rounds of consolidated edits from City Staff.

Phase 5: TASP Update Completion

This phase includes the adoption of the TASP Update and the completion of the EIR.

5.1 City Council Meetings

There will be two City Council Meetings (or Work Sessions) in 2021, following the first three in 2020.

- Meeting #4 will occur after the 2021 Council has convened. Material will be presented to refresh incumbents and introduce newly elected Council Members to the project and to lay the groundwork for the Final Meeting.
- Meeting #5 will be the Final Council Meeting for the TASP Update. Prior to this meeting, staff will present to the Planning Commission for a final review and recommendation.

A presentation will be prepared for each meeting by the Consultant Team. The Team can also provide comments on the Staff Report and prepare handouts prior to the meeting, if needed.

Consultants involved: UF, M-Group and (optionally) subconsultants as needed by topic

Deliverable: Presentations for each Meeting

5.2 Final TASP Update

The Team will review public comments and prepare a Final TASP Update. The Final TASP Update will be presented in PDF Format.

Notes about the Environmental Impact Report

The most important part of the environmental process for this project will be to determine what type of CEQA document will be most appropriate for the proposed project. Per CEQA Guidelines Section 15163, a Supplemental EIR is appropriate where: 1) changes to the project, changes to the circumstances under which the project is undertaken, or new information of substantial importance (which was not, and could not have been known when the EIR was certified) would result in major revisions to the previous EIR due to new or more significant impacts; and 2) only “minor additions or changes” to the previous EIR would be necessary to make the previous EIR adequate in the context of the changed circumstances. As part of project initiation ICF would consult with the project team, including the City as the CEQA lead agency, to determine whether these parameters would be met for the proposed project. If, as the project becomes more defined, it is determined that proposed updates to the Plan would result in substantial revisions to prior EIR, ICF would recommend preparation of a Subsequent, as opposed to a Supplemental EIR.

This Scope of Work preliminarily assumes a Supplemental EIR, though the environmental level of effort may be expanded to allow for a Subsequent EIR at the City’s request. Given what we know about the project to date, and recognizing that the RFP contemplates a Supplemental EIR, the following scope of work proposes preparation of a supplement to the 2008 Final Environmental Impact Report (2008 EIR) for the Milpitas Transit Area Specific Plan (TASP) to assess and mitigate, as feasible, the impacts of the proposed Transit Area Specific Plan Update (project).

If it is determined during the planning phase that the TASP Update would result in major changes to the 2008 EIR, such as new impact analyses related to the annexation of significant new areas of land into the TASP, or the addition of substantial amounts of new residential development, ICF would recommend preparation of a Subsequent EIR rather than a Supplemental EIR. Per CEQA Guidelines Section 15163, a supplement to an EIR may be distinguished from a Subsequent EIR by the following: A supplement is intended to augment a previously certified EIR to the extent necessary to address the conditions described in CEQA Guidelines Section 15162 and to examine mitigation and project alternatives accordingly. A Subsequent EIR, on the other hand, is a complete EIR which focuses on the conditions described in Section 15162. If it is determined based on the extent of proposed changes to the project that a Subsequent EIR is required, ICF would request approval of an amendment to our scope and budget.

As supported by recent CEQA case law, the Supplemental EIR analysis would focus on the potential impacts of the changes to the project and would not reassess the project as a whole. Accordingly, ICF will examine the revised project in the context of the 2008 EIR focusing on what, if any, changes to environmental impacts would result from the revisions to the project. In doing so, ICF will use an Initial-Study-like checklist designed for use on subsequent environmental reviews.

Preliminary, ICF anticipates that air quality, greenhouse gases, noise, and transportation will need to be evaluated in the Supplemental EIR. Many of the other CEQA Appendix G topics, such as hydrology and water quality and hazards and hazardous materials, are anticipated to be “scoped out” during the preparation of the checklist. Should it be determined, during the course of preparing the checklist, that the project may result in significant impacts in other topic areas, these topics would need to be evaluated in the EIR and an amended scope and cost would be provided.

In Phase 5, the EIR Tasks are the following:

Task 5.3 Prepare Project Description

ICF will develop a CEQA project description based on the proposed Plan updates, including any new policies, land use changes, and changes to the Plan boundaries. ICF will submit an Administrative Draft Project Description and a Draft Project Description for review by the City and will prepare a Final Project Description based on comments received.

Deliverables: ICF will complete the following deliverables:

Administrative Draft Project Description in MS Word and PDF formats

Draft Project Description in MS Word and PDF formats

Final Project Description in MS Word and PDF formats

Task 5.4: Prepare CEQA Checklist

ICF will prepare an environmental checklist analyzing whether the differences between the TASP (original project) and the updated TASP (revised project) would result in any new or substantially more severe impacts not disclosed in the 2008 EIR. The checklist will examine each of the CEQA environmental topics included in Appendix G of the CEQA Guidelines. A supplemental document is focused on the newly proposed action. It upgrades the program EIR as

needed to disclose the new or more severe impacts that could result from the later action. It does not re-open the analyses in the program EIR that are not related to the new or more severe impacts implicated in the action. Accordingly, each topic will be discussed to the extent that it would be affected by the changes to the project examined in the 2008 EIR. The analysis will assume that all pertinent mitigation measures identified in the 2008 EIR will continue to apply to the revised project.

This scope of work assumes the following with regard to the TASP update. Should any of these assumptions change throughout the course of developing and refining the Plan update, ICF's scope of work and cost estimate would need to be revisited and potentially adjusted.

- The majority of the residential development proposed in the Plan area has already occurred. Some additional residential capacity is expected, and the required CEQA effort will be matched with the number of units ultimately proposed in the Plan update.
- The TASP update will be focused primarily on expanding the capacity of the remaining underdeveloped acreage within the Plan area, evaluating infrastructure and open space needs and opportunities, and identifying opportunities to activate and enhance the public realm. For the purpose of this scope, we assume that a modest expansion of the Plan area may be required to achieve these objectives, and that new land annexed into the Plan area would be contiguous to the Plan area and similar in character to the existing Plan area.
- Land use densities may be increased within the existing Plan boundary and/or within an expanded TASP area.
- Existing TASP policies, 2008 EIR mitigation measures, City of Milpitas General Plan policies, and Midtown Specific Plan policies would remain applicable to all proposed development within the existing Plan area and within any areas annexed into the Plan area as a result of the Plan update as a means of avoiding or minimizing environmental impacts. If the application of additional or updated policies is required to reduce the severity of potential environmental impacts resulting from the Plan update, ICF will assist with the development of such policies, or will increase the scope of work to analyze new policies.
- Subsequent CEQA compliance may be required for future specific projects proposed under the updated TASP, if the application of Plan/General Plan policies or 2008 EIR mitigation measures cannot adequately minimize potential impacts.

If the TASP does not result in significant population growth within the Plan area or substantially increase the buildout potential of the area, the proposed Plan updates will not change the conclusions of the following topics as analyzed in the 2008 EIR, and the below topics will be scoped out. The checklist will include a summary of the conclusions in the 2008 EIR and will explain if there is a substantial change in the prior conclusions. Based on additional discussions with the project team regarding the extent of Plan updates, it may be determined that these topics may require additional analysis, or that additional topics can be scoped out from detailed review.

Biological Resources. The 2008 EIR concluded that impacts on biological resources would be less than significant with implementation of General Plan and Specific Plan policies, and it is assumed that these policies would be applied to development under the TASP update to avoid or minimize impacts. If the Plan area is expanded to include areas of potential biological sensitivity, ICF biologists will conduct online research and review existing environmental documents to identify existing biological resources (e.g., vegetation and wildlife habitat) and assess habitat suitability for special-status plant and wildlife species. If sensitive resources are found, ICF will amend our scope and budget to conduct a site visit and document existing conditions by photographing examples of dominant land cover types and potentially sensitive habitat features (e.g., trees or shrubs that provide habitat for nesting birds) and recording field notes digitally or on paper. Focused studies (e.g., formal wetland delineation or tree inventory) will not be conducted. If potentially significant impacts would occur that were not analyzed in the 2008 EIR and that could not be avoided or minimized through implementation of existing or updated Plan policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Cultural Resources. The 2008 EIR concluded that impacts on cultural resources would be less than significant with implementation of General Plan and Specific Plan policies, and it is assumed that these policies would be applied to development under the TASP update to avoid or minimize impacts. If the Plan area is expanded, ICF would conduct a records search of the Northwest Information Center (NWIC) to identify any previously recorded cultural resources and cultural resource investigations within the revised project area, and review geologic maps and historic topographic maps to determine which landforms within the program area have the potential for as-yet undocumented buried archaeological resources in order to determine whether impacts to archeological resources are likely to occur. It is expected that existing policies, which require that a qualified archeologist be on site during any ground disturbing activities, and that construction would be halted, and a mitigation plan developed in the event that resources are discovered, would sufficiently reduce impacts to archeological resources or human remains. However, if potential impacts cannot be reduced through the implementation of such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

ICF would also perform outreach to the Native American Heritage Commission (NAHC) and request that the NAHC review their sacred lands file and provide a list of Native American individuals who may have knowledge of cultural resources within the expanded Plan area. If requested by the client, this coordination can be performed in a way that would assist with satisfying the project's AB-52 and SB-18 consultation obligations. If tribal cultural resources are identified in areas where the Plan update would contemplate new development, ICF will assist the City in drafting Plan policies to avoid or minimize such impacts. If potential impacts cannot be reduced through the implementation of such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Similarly, if historic-age properties are present in the expanded Plan area, and could be impacted by the TASP update, ICF will assist the City in drafting Plan policies for the plan to avoid or minimize such impacts. If potential impacts cannot be reduced through the implementation of

such policies, this topic may need to be considered in the EIR, and a scope and budget amendment would be required.

Land Use. While changes in zoning and land use designations may occur as a part of the TASP update, it is not anticipated that these changes would result in new or more significant environmental impacts as compared to the project analyzed in the 2008 EIR. The Plan update would not physically divide an existing community, and it is not likely that any changes to the Plan would cause a significant impact due to a conflict with existing plans or policies. If the updates include an increase in the density of proposed development such that the overall development capacity of the existing Plan area is substantially increased, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Population and Housing. We do not anticipate that the types of changes proposed to the TASP are likely to displace existing housing. If little additional residential development is proposed, the TASP is not likely to result in a change in the analysis beyond what was evaluated in 2008. If the updates include an increase in the density of proposed development or increased overall development capacity of the existing Plan area, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Geology, Soils, and Paleontology. As noted above, this scope assumes that existing TASP policies, General Plan policies, and 2008 EIR mitigation measures would be applied within the existing and/or expanded TASP area to avoid or minimize impacts to the extent feasible. Additionally, while the TASP Area may be expanded with the proposed Plan update, developers of opportunity sites that are added to the Area boundaries may complete their own environmental review, including required design-level geotechnical studies during the development of the construction plans and associated recommendations. As noted in the 2008 EIR, a site-specific geotechnical investigation would be required for any site located within a seismic hazard zone.

Paleontology impacts were analyzed in the 2008 EIR in the Cultural Resources section, and impacts were determined to be less than significant with implementation of TASP policy 5.32, which requires that development projects involving ground displacement to include a requirement for monitoring by a qualified paleontologist. Such impacts also would be considered on a project specific basis for proposed development on parcels added to the Plan area. Further, construction of the revised project would adhere to the effective California Building Standards Code and City building permit requirements. Any new technical information related to geology and soils will be incorporated into the checklist.

Hydrology and Water Quality. According to the 2008 EIR analysis, hydrology and water quality impacts within the TASP area would be less than significant with implementation of General Plan and TASP policies requiring conformance with existing regulatory requirements, including, but not limited to, implementation of National Pollutant Discharge Elimination System requirements, preparation of Stormwater Pollution Prevention Plans (where required), implementation of Best Management Practices for new developments, and compliance with FEMA standards. It is assumed that development under the TASP update would be required to adhere to these requirements such that new or more significant impacts related to hydrology and

water quality would not occur. Therefore, impacts are unlikely to be greater than anticipated in the 2008 EIR.

Hazards and Hazardous Materials. It is expected that all existing General Plan, Specific Plan, and Midtown Specific Plan policies regarding safety and hazardous materials would be carried over to any future development within the Plan area, including any parcels included in the TASP Area as a result of Plan updates. No changes to the conclusions in the 2008 EIR are expected.

Energy. Energy use was analyzed as part of the Greenhouse Gases and Climate Change section of the 2008 EIR. This analysis will assess the project's potential to result in the wasteful, inefficient, or unnecessary consumption of energy resources. As part of the 2018 CEQA Guidelines Update energy was incorporated into the Appendix G Checklist; as such, energy impacts would be assessed as a standalone topic in the Checklist. The 2008 EIR concluded that implementation of TASP policies energy impacts would be less than significant. It is expected that these policies would be applied to any new development under the updated TASP, and that this impact is expected to be less than significant.

Public Services. The 2008 EIR concluded that impacts to public services, including police, fire, schools, and parks would be less than significant with implementation of General Plan, Midtown Specific Plan, and TASP policies. It is assumed that if the Plan update does not include a substantial increase in population, that the revised project would have impacts related to public services similar to the project analyzed in the 2008 EIR . Further, given that the TASP update could include expanded or enhanced open space opportunities, the Plan could ultimately result in a benefit with regard to parks and open space. If the updates include an increase in the density of proposed development or increased overall development capacity of the existing Plan area, or if the Plan area is substantially expanded, this topic may need to be analyzed in the EIR.

Utilities. The 2008 EIR concluded that impacts to utilities would be less than significant with implementation of TASP policies. These policies prescribed numerous areawide improvements that would enable and benefit future development within the Plan area. It is assumed that because the Plan update may not include a substantial increase in population, that the revised project would have impacts related to utilities similar to the project analyzed in the 2008 EIR . However, it is noted that if the TASP update contemplates significant additional development or substantial changes to previously proposed infrastructure improvements, this topic may need to be evaluated in the EIR.

Visual Resources. The 2008 EIR concluded that impacts to visual resources would be less than significant with implementation of General Plan, Midtown Specific Plan, and TASP policies. These policies include, but are not limited to, requirements that future projects with the TASP area to include design features to underground utilities, provide landscaping enhancements and setbacks, retain tree corridors, and minimize light and glare impacts. It is expected that all of these policies would be applicable to new development in the existing or expanded TASP area, and that impacts under the TASP update would be the same or similar to the impacts identified in the 2008 EIR. Further, Plan updates are expected to result in improvements to the public realm. No changes to the conclusions in the 2008 EIR are expected.

Wildfire. Wildfire is a new topic added to the CEQA Guidelines Appendix G Checklist at the end of 2018. Given the location of the project, we expect that this topic can be scoped out of the Supplemental EIR.

Deliverables: ICF will complete the following deliverables: Administrative Draft, Draft, and Final checklist in MS Word and PDF formats

5.5 Prepare Administrative Draft Supplemental EIR

ICF will prepare an administrative Draft Supplemental EIR that will evaluate the potential environmental impacts that could result from implementation of the revised project. In accordance with CEQA Guidelines Section 15162, the Supplemental Draft EIR will analyze whether modifications to the original project analyzed in the 2008 EIR, or changes in circumstances that were not known at the time of the 2008 EIR, would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Prior to beginning the analyses, ICF will provide the City with a suggested outline for review and comment.

ICF will provide the City with one electronic copy of the administrative Draft Supplemental EIR for review and comment. This scope assumes that reviewer comments will be consolidated (with any internally conflicting comments resolved). If the analysis or comments on the administrative Draft Supplemental EIR result in the need for additional analysis, a contract amendment may be required.

The administrative Draft Supplemental EIR will include the following components.

Executive Summary

This section will include a summary of the revised project that describes the 2008 EIR, the original project, and the modifications to the original project that have been proposed since certification of the 2008 EIR. This section will also summarize the Draft Supplemental EIR findings and the mitigation measures and alternatives considered. ICF will use tables where possible in order to present the information in a brief and informative manner.

Introduction

This section will discuss the CEQA process, including public review and comment, and the purpose of the Supplemental EIR. The introduction will also summarize the scoping process, including NOP comments.

This scope of work and cost estimate assumes that the resource topics listed below will not be analyzed in detail in the Draft Supplemental EIR. The Draft Supplemental EIR will include a summary of impacts that have been “scoped out” from further evaluation (via the CEQA Checklist described above), which will explain why the revised project would not result in new or greater significant with regard to the following resource topics:

- Biological Resources
- Cultural Resources
- Land Use

- Population and Housing
- Geology, Soils, and Paleontology
- Hydrology and Water Quality
- Hazards and Hazardous Materials
- Energy
- Public Services (including Parks)
- Utilities
- Visual Resources
- Wildfire

Project Description: This section will include the Project Description prepared as part of Task 3.

Environmental Setting and Impact Analysis

This section will describe the environmental and regulatory settings and provide an impact analysis for each of the resource areas described below. The impact analyses will include significance criteria, methodology, impact determination with significance conclusions, and mitigation measures, if required. In accordance with Sections 15162 and 15163 of the CEQA Guidelines, the determination of impact significance will be based on whether the modifications to the project or changes in circumstances would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects as compared to the analysis done in the Program EIR. The preliminary scope of analysis for each resource topic addressed in the Draft Supplemental EIR is presented below.

5.5.1 Transportation

Because traffic and transportation conditions have changed substantially since the 2008 EIR was prepared, and the TASP update may include changes to circulation within the existing and potentially expanded Plan area, a transportation impact analysis (TIS), and Supplemental EIR section summarizing the findings of the TIS, is recommended. In addition to the changes in circumstances within and surrounding the Plan area, and the potential for changes resulting from the TASP update, there have been regulatory updates since certification of the 2008 EIR that affect the way in which transportation impacts are analyzed under CEQA. More specifically, the 2018 CEQA Guidelines Update changed the metric for assessing transportation impacts from Level of Service (LOS) to Vehicle Miles Traveled (VMT). W-Trans will prepare the TIS for the revised project, including an analysis of VMT for the TASP update, and ICF will summarize the findings of the TIS in the Supplemental EIR.

Consultants involved: ICF, WTrans

5.5.2 Air Quality and Greenhouse Gas Emissions

The 2008 EIR evaluated air quality and greenhouse gas (GHG) impacts from the buildout of the proposed plan. While the Final EIR concluded that construction and operational emissions could result in significant air quality impacts, there have been substantial changes to air quality and GHG regulations and analytical methodologies since issuance of the Final EIR in 2008.

Additionally, since the transportation analysis would be revised, we recommend revising the Air

Quality and GHG analyses accordingly to reflect the redistribution of land uses and associated trips, as well as the potential for increased development density under the TASP update.

Accordingly, ICF proposes to quantify criteria pollutant and GHG emissions from buildout of the TASP Update (if changed compared to the original Plan), which may include 170 acres of the remaining undeveloped land within the TASP and some adjacent parcels. ICF will use the Bay Area Air Quality Management District's (BAAQMD) most recent CEQA Air Quality Guidelines to evaluate project impacts. We will describe the air quality thresholds used to identify significant impacts based on the BAAQMD's Guidelines and guidance provided by BAAQMD staff, as well as the methodology used to estimate emissions.

Where appropriate, ICF will incorporate relevant environmental setting information from the 2008 EIR into the SEIR for the TASP Update. The air quality and GHG chapters will present all new or updated regulations and background data as it applies to the project. The impact analysis for the TASP Update will assess the following:

Short-term emissions from construction: Construction-related emissions resulting from development under the TASP Update will be evaluated qualitatively. We will identify construction-related mitigation measures recommended by the BAAQMD to reduce air quality impacts from future development. This scope does not include a quantitative construction emissions analysis. If sufficient information is available to perform a quantitative assessment, and consultation with the City indicates the need to perform such an analysis, a scope and budget amendment will be required to reflect the additional effort.

Long-term emissions from operation: ICF will quantify criteria pollutant and GHG emissions from motor vehicles using vehicle miles traveled (VMT) data from the traffic consultant and the EMFAC model. Operational emissions associated with building area sources, energy and water consumption, waste generation, stationary sources (if any), and land use changes will be estimated using the CalEEMod model and land use data from the City. The analysis will quantify, to the extent feasible, emissions reductions achieved by current and new TASP sustainability policies. Emissions will be quantified under existing conditions and future buildout with and without the TASP Update. Mitigation to reduce operational criteria pollutant and GHG emissions from future development under the TASP Update will be proposed and analyzed, as necessary.

Operational air quality impacts associated with growth under the TASP Update will be evaluated by determining whether it is consistent with the most recently adopted Clean Air Plan prepared by BAAQMD, as well as with their recommended analysis thresholds. While the City has a climate action plan (CAP), it is only qualified for CEQA tiering to 2020 and therefore cannot be used to evaluate GHG emissions beyond the 2020 planning horizon. Likewise, BAAQMD's current GHG thresholds are derived from the state's 2020 GHG reduction goal, and therefore may not be appropriate to evaluate emissions generated after 2020. BAAQMD is currently working on an update to their CEQA Guidelines, which is expected to include GHG thresholds to project-level GHG emissions relative to the state's post-2020 GHG reduction targets. Because the regulatory environment for GHG emissions is frequently evolving, the significant threshold(s) for evaluating long-term GHG impacts for the TASP Update will be finalized at the

time of analysis preparation. The ultimate GHG threshold(s) will be selected in close coordination with BAAQMD and consider all applicable case law and air district and expert agency guidance.

Health effects from criteria pollutant emissions: Potential regional and localized health effects from increased criteria pollutant emissions generated during construction and operations will be generally described, as well as modeling limitations of quantitatively correlating project-specific emissions to specific health consequences. Should models or guidance become available that enables a quantitative correlation of project emissions to health impacts, a scope and budget amendment would be required.

Localized carbon monoxide hot spots: ICF will review traffic data from the transportation analysis for affected intersections and the BAAQMD's CO screening criteria to determine the need for localized CO modeling and evaluate CO impacts. If a hotspot analysis is determined to be necessary, ICF will use peak hour traffic volumes from the traffic consultant, the CALINE4 dispersion model, and the latest version of EMFAC to estimate CO concentrations at up to three (3) locations. CO impacts will be assessed comparing estimated CO concentrations to the ambient air quality standards.

Toxic air contaminants: The primary toxic air contaminants (TAC) of concern are asbestos and diesel particulate matter (DPM). The potential for asbestos from demolition will be qualitatively assessed and compliance with BCAQMD asbestos rules will be discussed. ICF will also qualitatively evaluate potential health risks associated with the TASP Update, which includes an evaluation of exposure of sensitive receptors to existing and planned sources of TACs, including DPM. ICF will identify and discuss goals, policies, and objectives to minimize potential health-related impacts. This scope does not include a dispersion modeling analysis of TAC. If sufficient information is available to perform a quantitative health risk assessment, and consultation with City indicates the need to perform such an analysis, a scope and budget amendment will be required to reflect the additional effort.

Odors: ICF will identify locations of potential odor sources and identify any goals, policies, and objectives to minimize potential odor impacts.

Consistency with Climate Change Regulations: ICF will qualitatively evaluate the project's consistency with state and local climate change plans and regulations, including the City's CAP, Senate Bill (SB) 32, and Executive Order B-55-18.

5.5.3 Noise

The Milpitas Transit Area Specific Plan (TASP) Final EIR evaluated noise impacts from buildout of the proposed plan. Assuming that under the TASP update land use densities may be reconfigured or increased, and trip distribution may be altered such that new or increased noise and vibration impacts could occur, ICF proposes to prepare a noise and vibration impact analysis for the TASP update.

The analysis will employ standard noise and vibration modeling techniques consistent with the requirements of the City of Milpitas General Plan Noise Element and the City's noise ordinance. Where appropriate, ICF will incorporate relevant environmental setting information from the

2008 Final EIR into the SEIR for the TASP Update. Similarly, components of the 2008 Final EIR analysis that are applicable to the analysis of that TASP Update will also be incorporated into the impact analysis section, where appropriate. The impact analysis for the TASP Update will assess the following:

- Exposure of existing noise sensitive land uses noise and vibration associated with demolition and construction activity for future development under the Plan (qualitative analysis).
- Exposure of existing noise sensitive land uses to changes in traffic noise resulting from Plan implementation (quantitative analysis).
- Exposure of existing noise sensitive land uses to operational noise from future projects under the Plan, as applicable (qualitative analysis).

In the regulatory setting, the discussion will focus on City of Milpitas noise standards and guidance. Other noise and/or vibration criteria, such as guidance from the California Department of Transportation (Caltrans) the Federal Transit Administration (FTA), may also be summarized in the document, as appropriate.

In the existing conditions discussion, ICF will generally identify existing sources of noise in the Plan area, along with existing noise-sensitive in the Plan area. Existing noise conditions in the Project area will be described based on information in the City of Milpitas General Plan Noise Element and based on noise monitoring and traffic noise modeling. Although the 2008 Final EIR included existing noise measurements in the Plan area, these are from 2005. Due to the age of these measurements, it is assumed that they are no longer representative of the existing noise environment in the project area. Existing noise levels in the Plan area will be characterized based on noise monitoring to be conducted at selected locations, as follows:

- Short-term (15 minutes or less) noise monitoring will be conducted at up to three locations in the Plan area.
- Continuous long-term monitoring (24 hours or more) will be conducted at up to three locations in the Project area.

Operational traffic noise will be evaluated at up to a maximum of 20 roadways segments under the following conditions using the Federal Highway Administration Traffic Noise Model (TNM), and average annual daily traffic data to be provided by the Project traffic consultant:

- Existing
- Existing plus Project
- Cumulative
- Cumulative plus Project

Traffic noise will be evaluated in terms of how project-related traffic noise increases may affect existing noise sensitive land uses in the Plan area. Traffic noise impacts on future sensitive land uses will also be evaluated if there is a substantial exacerbation of existing traffic noise levels. It is assumed that traffic data provided by the traffic consultant will include average annual daily traffic (ADT) volumes, posted speeds, and heavy truck percentages for each roadway segment

analyzed. Non-traffic operational noise resulting from plan implementation will be analyzed qualitatively based on operational data provided by the City. Construction noise and vibration will be evaluated qualitatively, as was done in the current version of the TASP, based on standard construction noise and vibration modeling methods and general information about the types of projects expected to be developed under the Plan.

CEQA significance thresholds will be defined based on City of Milpitas noise standards and other applicable noise standards, as appropriate. The significance of noise impacts will be assessed based on predicted noise exposures and the defined CEQA significance thresholds. Where significant noise impacts are identified, Policies from the current version of the TASP will be applied to reduce potential impacts. Where policies would not reduce impacts to less-than-significant-levels, mitigation to reduce impacts to a less than significant level (where feasible and reasonable) will be identified. Noise mitigation will be described at a level of detail appropriate for environmental review and not at a design level of detail. Any noise reduction measures identified in these studies will be required to be incorporated into individual projects developed under the Plan, where applicable. Depending on the identification of potentially significant impacts, future individual projects under the Plan may be required to perform additional noise analyses.

Alternatives: This section will evaluate a reasonable range of alternatives, in accordance with CEQA. This scope of work and cost estimate assume that up to three alternatives will be analyzed, including the required no-project alternative.

Other CEQA Considerations: This section will discuss cumulative impacts and other CEQA requirements.

Supplemental EIR Preparers and References

This section will identify the people that prepared the Draft Supplemental EIR and the references cited in the Draft Supplemental EIR.

Deliverables: ICF will complete the following deliverables: Administrative Draft Supplemental EIR and Appendices (electronic Word and PDF files and up to five (5) hard copies)

5.6 Prepare Screen check and Public Draft Supplemental EIR

Once the City has provided comments on the Administrative Draft Supplemental EIR, ICF will review the comments and make the appropriate revisions. ICF will prepare a Screencheck version of the public Draft Supplemental EIR for a final review by the City prior to release. ICF will then make any final revisions as directed by the City and prepare the Public Draft Supplemental EIR. We will provide the City with a PDF of the public review Draft Supplemental EIR that is suitable for reproduction and for posting on the City's website.

Additionally, ICF will provide the City with a draft Notice of Availability (NOA). This scope assumes that the City will be responsible for distribution and additional public notice. CEQA requires that notice be provided by one of the following methods: publication in a newspaper of general circulation, posting notice on- and off-site, or direct mailing to all property owners and occupants of properties adjoining the project site.

ICF will prepare and deliver 15 copies of the public Draft Supplemental EIR and a Notice of Completion form to the State Clearinghouse for distribution to state agencies. The copies will consist of 15 printed copies of the Executive Summary and 15 electronic copies of the full Draft Supplemental EIR on CDs.

Deliverables: ICF will complete the following deliverables:

Screencheck version of the Public Draft Supplemental EIR (electronic Word and PDF files)

Public Draft Supplemental EIR (electronic Word files and PDF suitable for reproduction and posting on the City's website, and up to ten (10) printed copies as requested by the City)

Notice of Availability (electronic Word and PDF files)

5.7 Respond to Comments, Prepare Final Supplemental EIR, and Complete Administrative Record

Responses to Comments

ICF will review the comments and discuss the comments and appropriate revisions with City staff. It is anticipated a conference call will suffice to discuss comments, but ICF staff can meet with City staff if requested.

ICF will prepare draft written responses to the comments received on the public Draft Supplemental EIR. We will provide these for review by the City and incorporate the City's revisions, if any, into the responses for the Final Supplemental EIR.

Administrative Final Supplemental EIR and Public Final Supplemental EIR

The Final Supplemental EIR will include the following sections: Introduction; Executive Summary table (revised version of impacts and mitigation measures table from the Draft Supplemental EIR; comments and written responses; an errata containing any revisions to the text of the Draft Supplemental EIR made in response to comments; and references. If a public meeting is held during the public review period of the Draft Supplemental EIR and verbal comments are accepted, ICF will arrange to have a court reporter present.

ICF will prepare an administrative draft of the Final Supplemental EIR for the City's review and comment. We will revise the administrative version in accordance with the City's direction and prepare a Screen check Final Supplemental EIR. The Screen check Final Supplemental EIR will then be revised to reflect any comments, and a Public Final Supplemental EIR suitable for certification by the City Council will be prepared.

Mitigation Monitoring or Reporting Program

ICF will prepare a mitigation monitoring or reporting program (MMRP). The MMRP will be prepared in tabular format, listing each mitigation measure identified in the Supplemental EIR, the time period for implementation, implementation responsibility, and monitoring responsibility. The MMRP will be developed with input from City staff to determine appropriate responsible parties. ICF will provide a draft version of each MMRP to the City for review and will incorporate any requested revisions prior to completing the final versions.

Administrative Record

ICF will compile the Administrative Record by assembling background documents, relevant e-mail records, correspondence, and/or telephone notes that are cited in the Supplemental EIR. Prior to the publication of the EIR, ICF will submit the Administrative Record for the project to the City on a CD or DVD to retain for the City's records.

Deliverables: ICF will complete the following deliverables:

- Administrative Final Supplemental EIR (electronic Word and PDF files and up to printed copies as requested by the City)
- Screen check Final Supplemental EIR (electronic Word and PDF files and up to printed copies as requested by the City)
- Public Final Supplemental EIR (electronic Word files and PDF suitable for reproduction and posting on the City's website, and up to ten (10) printed copies as requested by the City)
- Draft and Final MMRPs (electronic Word and PDF files and printed copies as requested by the City)
- One electronic copy on CD or DVD of the Administrative Record, to be submitted to the City for filing.

5.8: Findings and Notice of Determination

Findings

ICF will draft findings pursuant to CEQA Guidelines Section 15091. This will enable the City to take actions on the revised project (and adopt a Statement of Overriding Considerations, if needed) based on the environmental clearance provided by the Final Supplemental EIR.

Notice of Determination

ICF will prepare the Notice of Determination (NOD) after project approval and will file the NOD with the State Clearinghouse. This scope assumes that the City will file the NOD with the County Clerk and will provide a check with the necessary California Department of Fish and Wildlife and County Clerk filing fees.

Deliverables: ICF will complete the following deliverables:

- *Draft and Final Findings*
- *Draft and Final NOD*

For the purpose of the EIR, ICF will manage the associated tasks and maintain communication with City staff and the entire project team. ICF project management will be responsible for coordination activities, will maintain QA/QC requirements for document preparation, and will monitor schedule and performance for all work tasks. Project management subtasks also include maintaining internal communications among ICF, with City staff, and other team members, through emails and frequent phone contact, as well as the preparation of all correspondence. The Project Manager will coordinate internal staff, project guidance, and analysis criteria. ICF team members will attend and participate in meetings as needed. This scope assumes ICF's attendance at two team meetings and two public hearings.

Task 5.9 EIR Certification

The final Task in the TASP Update is the EIR Certification. The Final Plan will be posted on the City Website alongside the completed EIR.

Optional Tasks

Optional Task 1: Project Review/ Additional Private Stakeholder Meetings

In order to stick to the plan, we anticipate a continued advocacy for the vision, elements, and guidelines for the plan. The Team offers design review of incoming applications in the TASP Area to ensure a high level of quality and design consistent with TASP Update.

Project reviews could happen at any time. For the TASP Update, it is possible to review past or current projects before the end of Phase 3 to incorporate lessons learned into design guidelines. If after, we can continue to advocate for better design.

Scope and Billing Assumptions

The following assumptions were used to develop the scope of work and associated budget:

- The service will be billed on a “Percent Complete by Task” basis.
- Meetings will be scheduled back-to-back where possible to ensure travel efficiency
- All document comments from the City will be consolidated for each document, meaning that all comments will be delivered on one copy of the document, and comments will be screened in order to ensure there is no conflicting direction
- The City will provide up-to-date GIS data on parcels in and surrounding the plan area
- The City will be responsible for scheduling and noticing each meeting, though Urban Field will assist with strategy and noticing materials for public meetings.
- The City will be responsible for printing all materials with the exception of large-scale posters, which Urban Field will produce as necessary for meetings if requested by the City.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant.

Phase 1: Kickoff, Visioning and Project Management		
1.1	Project Kickoff Meeting and Tour	
1.2	Check in Meetings/Calls (2x/month)	
1.3	Community Engagement Approach Meeting/Memo	
1.4	Project Management	
1.5	Project Website Development and Updates	
	Subtotal	\$45,000
Phase 2: Existing of Conditions		
2.1	Stakeholder Interviews	
2.2	Online Public Survey	
2.3	Developer/Stakeholder Forum (attend 3 meetings)	
2.4	Existing Conditions Report	
	Subtotal	\$70,000
Phase 3: TASP Framework		
3.1	TASP Framework Strategy Session	
3.2	City Council/Planning Commission Meetings (3 total in Phase 3)	
3.3	TASP Update Community Meeting	
3.4	Development of TASP Framework	
3.5	TASP Update Open House	
3.6	Private Stakeholder Meetings	
3.7	Policy Update	
3.8	EIR Notice of Preparation	
	Subtotal	\$190,000
Phase 4: Draft TASP Update		
4.1	Administrative Draft TASP Update	
4.2	Public Draft TASP Update	
	Subtotal	\$40,000
Phase 5: TASP Update Completion		
5.1	City Council Meetings (2 total in Phase 5)	
5.2	Final TASP Update	
5.3	EIR Project Description	
5.4	CEQA Checklist	

5.5	Admin Draft EIR	
5.6	Screen check and Public Draft EIR	
	5.7 Record Respond to Comments, Prepare final Supplemental EIR and Complete Administrative	
5.8	Findings and Notice of Determination	
5.9	EIR Certification	
	Subtotal	\$180,000
	Subtotal of Fees	\$525,000
Other		
6.1	Reimbursables	\$15,000
	Subtotal	\$540,000

EXHIBIT C - Activity Schedule

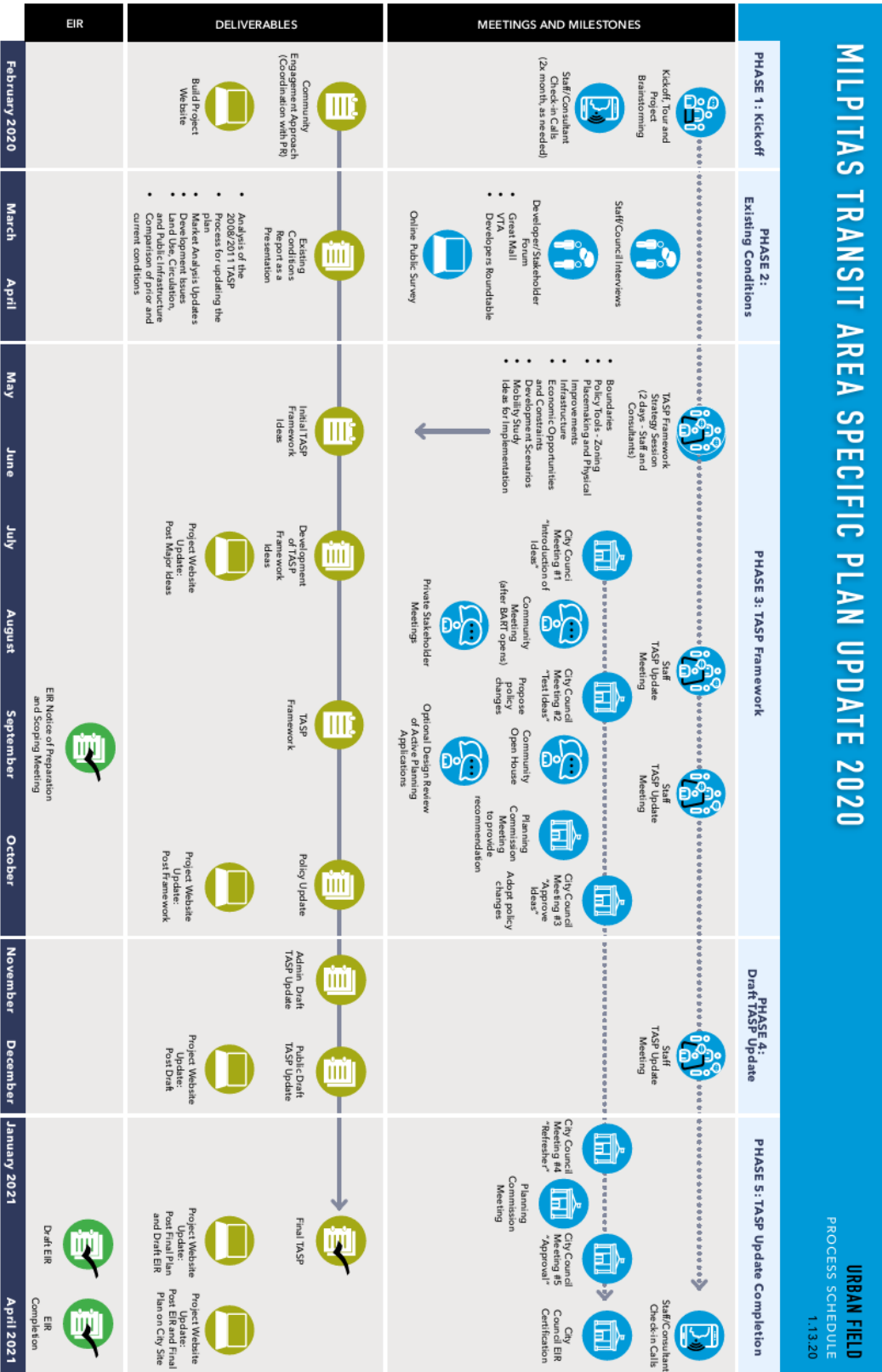


EXHIBIT “D”

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 combined single limit 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 combined single limit 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):

 X 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 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.

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. 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.

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.

Cyber Liability Insurance

____ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- ____ Bid Bond
- ____ Performance Bond
- ____ 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.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an

endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

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.

___ **Loss Payee Status – 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.

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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Summary Report on Assembly Bill 291 and Senate Bill 378 and Consider Authorizing Letters of Support
Category:	Leadership and Support Services
Meeting Date:	2/4/2020
Staff Contact:	Christopher J. Diaz, City Attorney, 408-586-3040
Recommendation:	Receive summary report on Assembly Bill 291 and Senate Bill 378 and consider authorizing letters of support.

Background:

City Council has expressed a desire to receive reports on legislative efforts that may be of interest to and/or affect the City of Milpitas. Assembly Bill 291 and Senate Bill 378 are two such legislative bills being brought to City Council's attention for consideration of letters of support.

Analysis:

Assembly Bill 291 – Introduced by Assembly Member Kansen Chu

AB 291 would establish a new state fund and a framework for funding for emergency preparedness planning for cities.

The California Office of Emergency Services ("Cal OES") is responsible for the state's emergency and disaster response services. AB 291 would establish a new state fund, the "Local Emergency Preparedness and Hazard Mitigation Fund" to support staffing, planning, and other emergency mitigation priorities to help local governments meet emergency management, preparedness, readiness, and resilience goals. The bill would require Cal OES to establish a committee to adopt guidelines identifying eligible uses of the funds for the mitigation, prevention, preparedness, response, and recovery phases of emergency management. Cal OES would distribute the funds to lead agencies, which then impose various requirements on and further distribute those funds to local governments. Local governments must maintain their local hazard mitigation, multiyear training and exercise, and threat and hazard identification and risk assessment plans to be eligible to receive the state funding. AB 291 has passed in the Assembly and is currently in the Senate.

According to Assemblymember Chu, the following entities have expressed support for the bill: League of California Cities, California Fire Chiefs Association, Fire Districts Association in California, California Emergency Services Association, City of San Jose, County of Santa Clara, and the California Tribal Business Alliance.

Senate Bill 378 – Introduced by Senator Scott Wiener

SB 378 proposes to hold PG&E and other utilities financially accountable for Public Safety Power Shutoffs. The bill provides that utilities may not bill customers for certain costs resulting from a power shutoff, cannot profit from a power shutoff, and that any loss from a blackout must be borne by a utility's shareholders rather than ratepayers. Additionally, utilities must notify cities and counties as early as possible of pending power shutoffs. The bill tasks the California Public Utilities Commission ("CPUC") with establishing a procedure that enables businesses, individuals, and local governments affected by a power shutoff to recover their costs accrued during a shutoff from utilities in a timely manner.

The bill further requires utilities to regularly report to the CPUC on the condition and maintenance of, and the safety risk posed by, its equipment, which include transmission and distribution lines. Lastly, if the CPUC determines that a utility failed to act reasonably and prudently in implementing a power shut off, the utility may be fined a penalty of \$250,000 or more per 50,000 customers affected for every hour that a power shutoff is in place. The utility's shareholders would be exclusively responsible for paying this penalty. The bill passed in the Senate and is currently in the Assembly.

According to Senator Wiener, the following entities and individual have expressed support for the bill: City of San Jose; California Association of Food Banks; City of Berkeley; City of Dublin; City of Livermore; City of Oakland; City of Pleasanton; City of San Ramon; County of Alameda; Food Bank of Contra Costa and Solano Counties; Mayor London Breed, City and County of San Francisco; San Francisco Public Utilities Commission; and the Town of Danville.

Fiscal Impact: None identified at this time.

California Environmental Quality Act: N/A

Recommendation: Receive summary report on Assembly Bill 291 and Senate Bill 378 and consider authorizing letters of support.

Attachments:

Copy of AB 291, as amended 1/23/2020
Copy of SB 378, as amended 1/21/2020

AMENDED IN ASSEMBLY JANUARY 23, 2020

AMENDED IN ASSEMBLY APRIL 30, 2019

AMENDED IN ASSEMBLY APRIL 22, 2019

AMENDED IN ASSEMBLY MARCH 25, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 291

Introduced by Assembly Member Chu

January 28, 2019

An act to add Article ~~21~~ 23 (commencing with Section ~~8669~~ 8669.8) to Chapter 7 of Division 1 of Title 2 of the Government Code, relating to emergency services.

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as amended, Chu. Local Emergency Preparedness and Hazard Mitigation Fund.

The California Emergency Services Act creates within the office of the Governor the Office of Emergency Services, which is responsible for the state's emergency and disaster response services, as specified. Existing federal law requires a state mitigation plan as a condition for disaster assistance and authorizes the Federal Emergency Management Agency to condition mitigation grant assistance upon state, local, and Indian tribal governments undertaking coordinated disaster mitigation planning and implementation measures.

Existing law requires the Office of Emergency Services, in coordination with all interested state agencies with designated response roles in the state emergency plan and interested local emergency management agencies, to jointly establish by regulation a standardized

emergency management system for use by all emergency response agencies.

This bill would establish a Local Emergency Preparedness and Hazard Mitigation Fund ~~to to, upon appropriation by the Legislature,~~ support staffing, planning, and other emergency mitigation priorities to help local governments meet emergency management, preparedness, readiness, and resilience goals. ~~The bill would, upon appropriation by the Legislature, require the Controller to transfer \$500,000,000 to the fund.~~ The bill would require the Office of Emergency Services to establish the Local Emergency Preparedness and Hazard Mitigation Fund Committee under the Standardized Emergency Management System Advisory Board. The bill, on or before July 1, ~~2020, 2021,~~ would require the committee to adopt guidelines identifying eligible uses of the funds ~~by establishing an outline of standard activities distributed pursuant to these provisions~~ for the mitigation, prevention, preparedness, response, and recovery phases of emergency management that supports the development of a resilient community. The bill would require, upon appropriation by the Legislature, the Office of Emergency Services to receive \$1,000,000 annually and each county to receive \$500,000 annually for specified purposes. The bill would require the Office of Emergency Services to distribute funds to lead agencies, subject to certain requirements and restrictions, as specified. The bill would require lead agencies to further distribute those funds to local governments pursuant to a specified schedule for specified purposes, and impose various requirements on local governments that receive funds pursuant to these provisions. The bill would include related legislative findings.

The California Disaster Assistance Act limits the state share for any eligible project to no more than 75% of total state eligible costs, except that the state share shall be up to 100% of total state eligible costs connected with certain events. That act requires the director to administer its provisions.

This bill would prohibit the director from using funds received by a local government pursuant to the provisions of this bill to calculate the allocation amounts for the local government pursuant to the California Disaster Assistance Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 21 (commencing with Section 8669) is~~
2 ~~added to Chapter 7 of Division 1 of Title 2 of the Government~~
3 ~~Code, to read:~~

4 ~~SECTION 1. Article 23 (commencing with Section 8669.8) is~~
5 ~~added to Chapter 7 of Division 1 of Title 2 of the Government~~
6 ~~Code, to read:~~

7
8 ~~Article 21.23. Local Emergency Preparedness and Hazard~~
9 ~~Mitigation Fund~~

10
11 ~~8669.~~

12 ~~8669.8. The Legislature finds and declares all of the following:~~

13 ~~(a) To protect public health and safety and the environment, it~~
14 ~~is necessary to establish a high level of preparedness in counties,~~
15 ~~cities, and special districts to respond to disasters. The~~
16 ~~establishment of a high level of preparedness at the local~~
17 ~~government level is of statewide concern because of the possibility~~
18 ~~of catastrophic disasters striking the citizens of the state especially~~
19 ~~as the state faces the impacts of climate change.~~

20 ~~(b) The establishment of a local disaster preparedness fund is~~
21 ~~the basis for achieving the stable funding necessary to maintain a~~
22 ~~high level of local preparedness and readiness, including the~~
23 ~~ongoing evaluation and hazard mitigation of existing risks before~~
24 ~~a disaster strikes, that the citizens of the state deserve and need.~~

25 ~~(c) The funds generated pursuant to this article should be~~
26 ~~available to eligible local governments in order to provide~~
27 ~~flexibility to manage hazard mitigation programs, develop needed~~
28 ~~emergency operations plans and response procedures, establish~~
29 ~~emergency management facilities, and provide necessary training~~
30 ~~as the local hazards and state of preparedness may dictate.~~

31 ~~(d) The funds generated pursuant to this article should be~~
32 ~~administered to benefit the overall state of preparedness of all~~
33 ~~eligible local government agencies, to enhance regional planning~~
34 ~~and response and hazard mitigation, and to ensure a high degree~~
35 ~~of accountability to the public and its elected representatives.~~

36 ~~8669.1.~~

37 ~~8669.81. For purposes of this article, the following definitions~~
38 ~~apply:~~

1 (a) “Director” means the Director of Emergency Services.

2 (b) “Fund” means the Local Emergency Preparedness and
3 Hazard Mitigation Fund established pursuant to Section ~~8669.2~~.
4 ~~8669.82~~.

5 (c) “Committee” means the Local Emergency Preparedness and
6 Hazard Mitigation Fund Committee established pursuant to Section
7 ~~8669.3~~. ~~8669.83~~.

8 (d) “Board” means the Standardized Emergency Management
9 System Advisory Board.

10 (e) “Eligible local government” means a local government with
11 responsibilities to respond or assist in response to disasters,
12 consistent with local emergency plans.

13 (f) “Lead agency” means the lead agency of an operational area.

14 (g) “Local government” means a city, county, city and county,
15 or special district.

16 (h) “Operational area” has the same meaning as set forth in
17 Section 8559.

18 (i) “Hazard mitigation” ~~means an action taken to reduce or~~
19 ~~eliminate the long-term risk to human life and property from natural~~
20 ~~hazards and improve community emergency preparedness and~~
21 ~~resilience. has the same meaning as defined in the most current~~
22 ~~version of the State of California Emergency Plan.~~

23 ~~8669.2.~~
24 ~~8669.82.~~ The Local Emergency Preparedness and Hazard
25 Mitigation Fund is hereby created within the State Treasury.
26 Moneys in the Local Emergency Preparedness and Hazard
27 Mitigation Fund shall be ~~available~~ *available, upon appropriation*
28 *by the Legislature*, for purposes of distributing funds pursuant to
29 this article to support, staffing, planning, and other emergency
30 mitigation priorities to help local governments meet emergency
31 management, preparedness, readiness, and resilience goals. ~~Upon~~
32 ~~appropriation by the Legislature, the Controller shall transfer five~~
33 ~~hundred million dollars (\$500,000,000) annually to the fund.~~

34 ~~8669.3.~~
35 ~~8669.83.~~ (a) The Office of Emergency Services shall establish
36 the Local Emergency Preparedness and Hazard Mitigation Fund
37 Committee under the supervision of the Standardized Emergency
38 Management System Advisory Board.

39 (b) The committee shall include the following representatives:

40 (1) The director or the director’s appointee.

~~(2) A representative from the California Emergency Services Association.~~

~~(3) A representative from the California State Association of Counties.~~

~~(4) A representative from the League of California Cities.~~

~~(5) From~~

(2) The following representatives that each of the three Office of Emergency Services Mutual Aid Administrative Regions shall select:

~~(A) One representative from a city with a population of 300,000 or more.~~

~~(B) One representative from a city with a population of less than 300,000.~~

~~(C) One representative from a city within the region that is not also a person serving on the commission pursuant to subparagraph (A).~~

(A) One representative of a city with a population among the 10 largest in the state and one representative of a county with a population among the 10 largest in the state.

(B) One representative of a city that both has a population not less than 100,000 and is not represented pursuant to subparagraph (A) and one representative of a county that both has a population not less than 100,000 and is not represented pursuant to subparagraph (A).

(C) One representative of a city with a population less than 100,000 and one representative of a county with a population less than 100,000.

(D) One representative of a special district.

~~(E) One representative from a county with 700,000 or more in population.~~

~~(F) One representative from a county with less than 700,000 in population.~~

~~(G)~~

(E) One representative from a tribal government.

(F) For purposes of this paragraph, population shall be based on the most recent estimate of population data determined by the Demographic Research Unit of the Department of Finance.

~~(6)~~

(3) The Director of CAL FIRE or the director's designee.

~~(7)~~

(4) The Executive Director of the Seismic Safety Commission or that person's designee.

~~(8)~~

(5) The Chief Executive Officer of the California Earthquake Authority or that person's designee.

(c) The committee members selected pursuant to subdivision

(b) shall each serve a term of two years.

~~8669.4.~~

8669.84. (a) The committee shall report to the board. The board shall meet every six months to hear committee reports.

(b) On or before July 1, ~~2020~~, 2021, the committee shall adopt guidelines identifying eligible uses of the funds ~~by establishing an outline of standard activities consistent with Section 8669.86~~ for the mitigation, prevention, preparedness, response, and recovery phases of emergency management that supports the development of a resilient community.

~~8669.5.~~

8669.85. (a) To receive funds pursuant to this article, an eligible local government shall maintain their local hazard mitigation ~~plan and updated annually~~, *plan, multiyear training and exercise plan, and threat and hazard identification and risk assessment plan*, in accordance with regulations adopted by the Office of Emergency Services. *If a local government does not have any of these plans, it may use funds allocated from the Fund to develop a plan.* ~~The update to the local hazard mitigation plan updates to these plans~~ shall form the work plan for the local government. The local government work plans, together, shall become part of an operational area work plan and shall guide the use of all funds allocated from the ~~Local Emergency Preparedness and Hazard Mitigation~~ Fund to jurisdictions within an operational area. The work plan shall contain measurable disaster preparedness and hazard mitigation goals and objectives.

(b) (1) The lead agency for an operational area, as identified by the agreement that establishes the operational area, shall forward annually a copy of the updated work plan and shall submit a biennial report on work plan projects to the Office of Emergency Services.

(2) Within 160 days following a proclaimed emergency, the Governor and the Legislature may request an operational area to

1 report on how funds allocated pursuant to this article contributed
2 to the area's response.

3 ~~8669.6.~~

4 8669.86. (a) A local government that receives funds pursuant
5 to this article shall identify in the work plan how the funds are to
6 be used, in the following categories:

7 (1) ~~Funding-Implementing~~ hazard mitigation projects, including,
8 but not limited to, the following:

9 (A) Physical projects that will reduce risk or loss from
10 earthquakes, floods, ~~fire, fires~~, or other disaster agents.

11 (B) Local share requirements for state or federal hazard
12 mitigation grants.

13 (2) ~~Development of-Developing~~ emergency operations plans,
14 protocols, procedures, field operation guidance, or similar planning
15 and response tools, including establishment and maintenance of
16 emergency supply stockpiles.

17 (3) Upgrading or establishing emergency facilities from which
18 the agency can manage personnel and resource response to an
19 emergency or disaster. For purposes of this paragraph, "emergency
20 facilities" includes, but is not limited to, emergency operations
21 centers and communications systems used for coordination within
22 a jurisdiction or between jurisdictions.

23 (4) Training in emergency management and disaster response,
24 including, but not limited to, ensuring that staff can address
25 emergency preparedness and response needs for ~~the most~~
26 ~~vulnerable community members to ensure cultural and linguistic~~
27 ~~competency in disaster preparedness. For purposes of this~~
28 ~~paragraph, "vulnerable community members" includes seniors,~~
29 ~~children, and individuals with language barriers; those projects~~
30 ~~that serve the access and functional needs population, as defined~~
31 ~~in subdivision (b) of Section 8593.3.~~

32 (b) At the end of each fiscal year, an eligible local government
33 shall confirm that funds were used for programs in the categories
34 described in subdivision (a), and shall submit appropriate
35 documentation to the lead agency with an annual update to the
36 eligible local government's element of the work plan.

37 ~~8669.7.~~

38 8669.87. (a) (1) A local government that receives funds shall
39 submit reports to their respective operational area, and the

1 operational area shall forward the reports to the Office of
2 Emergency Services.

3 (2) The Office of Emergency Services shall present reports
4 forwarded to it pursuant to paragraph (1) to the committee. The
5 committee may make recommendations for improvement *of the*
6 *eligible projects and programs, improvement of the reporting*
7 *structure*, and may withhold future project allocations if it
8 determines program funds are not being appropriately spent.

9 (b) The Office of Emergency Services shall, upon appropriation
10 by the Legislature pursuant to Section 8669.2, Legislature, receive
11 one million dollars (\$1,000,000) annually and each county shall
12 receive five hundred thousand dollars (\$500,000) annually for
13 administrative costs and other purposes to implement this article.
14 Subject to paragraph (2) of subdivision (a), the Office of
15 Emergency Services shall distribute the remaining funds, on an
16 annual basis, to the lead agency of an operational area. The lead
17 agency of the operational area shall agree to manage and control
18 funds received pursuant to this article, in compliance with this
19 article. The lead agency shall distribute the funds as follows:

20 (1) ~~Sixty percent of the funds to the operational area lead agency~~
21 ~~and all eligible cities within the operational area on a per capita~~
22 ~~basis, based on a formula to be developed by the committee that~~
23 ~~factors a community's high hazard risk factors based on maps~~
24 ~~produced by the Office of Emergency Services in the State Hazard~~
25 ~~Mitigation Plan that identify areas of the state with the most~~
26 ~~vulnerable populations with earthquake, flood, and fire hazards.~~
27 ~~Funding distributed pursuant to this paragraph may be carried over~~
28 ~~to subsequent fiscal years as long as projects are ongoing. for direct~~
29 ~~distribution to cities and unincorporated areas within the~~
30 ~~operational area on a per capita basis, with a minimum distribution~~
31 ~~amount of one hundred thousand dollars (\$100,000).~~

32 (2) ~~Fifteen percent via a competitive grant process established~~
33 ~~by the lead agency to eligible special districts, local or tribal~~
34 ~~governments, and nonprofit, faith-based, and other voluntary~~
35 ~~organizations active in disaster preparedness within the operational~~
36 ~~area. for high risk zones with high hazard risk factors based on~~
37 ~~maps produced by the Office of Emergency Services in the State~~
38 ~~Hazard Mitigation Plan that identify areas of the state with the~~
39 ~~most vulnerable population, including people that are located in~~

1 *areas with earthquake, flood, and fire hazards and have access*
2 *and functional needs or social vulnerabilities.*

3 ~~(3) Twenty-five percent to an operational area trust fund~~
4 ~~established for projects of common benefit to two or more eligible~~
5 ~~local governments within the operational area for purposes of this~~
6 ~~article. All local governments within the operational area shall~~
7 ~~mutually agree upon projects of common benefit that qualify under~~
8 ~~this paragraph. distributed per capita, per operational area to~~
9 ~~establish a competitive grant process agreed upon by all~~
10 ~~jurisdictions within the boundary of each county to support projects~~
11 ~~of common benefit for two or more eligible local governments.~~
12 ~~Funds can be used to support projects that include unincorporated~~
13 ~~counties, cities, special districts, tribal governments, and nonprofit,~~
14 ~~faith-based, and other voluntary organizations active in disaster~~
15 ~~preparedness.~~

16 (c) (1) The operational area and local governments within the
17 operational area shall determine mitigation and preparedness
18 stakeholders, and shall facilitate the coordination and input from
19 government departments on cross-departmental and
20 cross-jurisdictional projects identified in the respective local hazard
21 mitigation plan.

22 (2) The amount of state funds received by a local agency within
23 an operational area shall not be reduced by any other local agency
24 within the operational area due to an allocation from the fund or
25 an operational area trust fund.

26 (d) (1) To be eligible to receive funds pursuant to this article,
27 a local government shall do the following:

28 (A) Commit to continuing to contribute local funds equal to the
29 average of that amount that was committed over the last five years
30 to emergency management staffing, preparedness, readiness, and
31 resilience.

32 (B) Create and update, on an annual basis, *a work plan that*
33 *addresses projects or programs identified in a local hazard*
34 *mitigation plan, a multiyear training and exercise plan, or a*
35 *threat hazard identification and risk assessment plan* that identifies
36 how funds received pursuant to this section shall be spent on
37 emergency mitigation, prevention, preparedness, response, and
38 recovery. The work plan shall contain measurable emergency
39 management, preparedness, readiness, resilience, and hazard
40 mitigation goals and objectives. The work plan shall be reviewed

1 by the lead agency, and submitted to the Office of Emergency
2 Services.

3 (C) Submit an annual report to the lead agency outlining
4 expenditures and progress toward the local hazard mitigation plan
5 goals.

6 (2) A local government that receives funds pursuant to this
7 section shall not use those funds to supplant current emergency
8 management funding.

9 (e) An operational area or other recipient of funds pursuant to
10 this article may use a percentage of funds received, consistent with
11 federal emergency preparedness grants, for the purposes of
12 management and administration costs.

13 (f) The director shall not use funds received by a local
14 government pursuant to this section to calculate the allocation
15 amounts for the local government pursuant to Article 4
16 (commencing with Section 8685) of Chapter 7.5.

O

AMENDED IN SENATE JANUARY 21, 2020

AMENDED IN SENATE JANUARY 6, 2020

AMENDED IN SENATE SEPTEMBER 6, 2019

AMENDED IN SENATE MARCH 25, 2019

SENATE BILL

No. 378

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Kalra)

(Coauthor: Senator Wilk)

(Coauthors: Assembly Members Chiu, Cunningham, Eggman, Lackey, Levine, and Mark Stone)

February 20, 2019

An act to add Sections 592, ~~707.3, 707.5~~, 748, 776.7, 911.3, and 2111.5 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as amended, Wiener. Electrical corporations: deenergization events: procedures: allocation of costs: reports.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires every public utility to furnish any reports required by the commission. *Existing law requires the commission to establish the Wildfire Safety Division within the commission to undertake specified tasks. Existing law, effective July 1, 2021, transfers all functions of the Wildfire Safety Division to the Office of Energy Infrastructure Safety.*

This bill would require each electrical corporation ~~with more than 2,500,000 electrical service connections in California~~ to annually submit a report to the ~~commission, the Office of Emergency Services, the Department of Forestry and Fire Protection, the Independent System~~

~~Operator, and county governments within its service territory Wildfire Safety Division and, after June 30, 2021, to the Office of Energy Infrastructure Safety, that includes the age, useful life, and condition of the electrical corporation's equipment, inspection dates, and maintenance records for its equipment, investments to maintain and improve the operation of its transmission and distribution facilities, and an assessment of the current and future fire and safety risk posed by the equipment.~~

~~Existing law requires the commission to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, as specified, to govern the conduct of an electrical corporation relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct, associated rules, and enforcement procedures by January 1, 2013.~~

~~This bill would prohibit the commission from allowing an electrical corporation to recover in rates costs associated with the electrical corporation's opposition to the consideration, formation, implementation, or expansion of a local publicly owned electric utility, electrical cooperative, or microgrid, self-generation, or distributed resource program or policy or to other efforts to expand the electrical service options available to consumers. The bill would require the commission to ensure that an electrical corporation does not market against those efforts, except through an affiliate that is funded exclusively by the electrical corporation's shareholders, and would impose other related requirements on the commission.~~

~~Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Existing law requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communications infrastructure.~~

~~Existing law establishes an independent Public Advocate's Office within the commission with the goal to obtain the lowest possible rate for service consistent with reliable and safe service levels.~~

This bill would require the commission, in consultation with the ~~Department of Consumer Affairs, Public Advocate's Office~~, on or before June 1, 2021, to establish a procedure for customers, local governments, and others affected by a deenergization event to recover costs accrued during the deenergization event from an ~~electrical corporation with more than 2,500,000 electrical service connections in California.~~ *corporation, within specified time periods.* The bill would require an ~~electrical corporation with more than 2,500,000 electrical service connections in California, corporation~~, on or before June 1, 2021, to create a fund, of an amount to be determined by the commission, for the recovery of costs accrued by ~~establish a memorandum account to track expenses paid to~~ customers, local governments, and others ~~during for claims resulting from~~ a deenergization event. ~~The bill would require that money be paid into the fund exclusively by the electrical corporation's shareholders, would prohibit expenses paid by the fund from being recovered either directly or indirectly in rates, and would require that those expenses be borne exclusively by the shareholders of the electrical corporation.~~ *The bill would require the commission to establish rules to determine whether the expenses paid can be recovered from ratepayers.* The bill would prohibit an electrical corporation ~~with more than 2,500,000 electrical service connections in California~~ from billing customers for any nonfixed costs during a deenergization event or from charging customers increased amounts after a deenergization event in order to offset losses accrued during a deenergization event. The bill would require, on or before June 1, 2021, that any profit accrued by an ~~electrical corporation with more than 2,500,000 electrical service connections in California corporation~~, due to a deenergization ~~event event that is determined by the commission to have been undertaken in an unreasonable or imprudent manner~~, be remitted or credited to its ratepayers, ~~while and that~~ any loss be borne by the electrical corporation's shareholders.

This bill would require an electrical corporation ~~with more than 2,500,000 electrical service connections in California~~ to provide notification of a pending deenergization event as early as possible to the cities and counties within its service territory and to other local governmental entities upon their request, and to share information relating to a deenergization event with local governmental entities, as specified.

This bill would require the commission to biennially produce a report on the economic, environmental, public health, and public safety impacts

of deenergization events, using information provided by electrical corporations ~~with more than 2,500,000 electrical service connections in California~~ and independent analysis.

Existing law provides for the imposition of fines and civil penalties for the violation of the California Constitution, statutes, or an order, decision, or requirement of the commission by a public utility.

~~This~~

If the commission determines that the electrical corporation failed to act in a reasonable and prudent manner in its implementation and execution of a deenergization event, this bill would provide that an electrical corporation is subject to a civil penalty of not less than \$500,000 \$250,000 per 50,000 affected customers for every hour that a deenergization event is in place, and would require that the penalty be borne exclusively by the electrical corporation's shareholders.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime, when a penalty has not otherwise been provided.

Because the provisions of this bill would be a part of the act and would require action to be taken by the commission to implement its requirements, and because penalties are not provided for certain of the bill's requirements, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 592 is added to the Public Utilities Code,
- 2 to read:
- 3 592. (a) The commission shall direct each electrical corporation
- 4 ~~with more than 2,500,000 electrical service connections in~~
- 5 ~~California to submit an annual report to the commission, the Office~~
- 6 ~~of Emergency Services, the Department of Forestry and Fire~~
- 7 ~~Protection, the Independent System Operator, and county~~
- 8 ~~governments within its service territory~~ *Wildfire Safety Division*

and, after June 30, 2021, to the Office of Energy Infrastructure Safety, that includes all of the following:

(1) The age, useful life, and condition of the electrical corporation's equipment.

(2) For all equipment subject to inspection, the date of the most recent inspections.

(3) The maintenance records for the electrical corporation's equipment.

(4) A list of the electrical corporation's investments made in the preceding year to maintain and improve the operation of its transmission and distribution facilities.

(5) An assessment of the current and future fire and safety risk posed by the equipment.

(b) ~~The commission~~ *Wildfire Safety Division, or after June 30, 2021, the Office of Energy Infrastructure Safety*, shall post each submitted report on its internet website.

(c) For purposes of this section, "deenergization event" has the same meaning as defined in Section 748.

~~SEC. 2.—Section 707.3 is added to the Public Utilities Code, to read:~~

~~707.3.—(a) The commission shall not allow an electrical corporation to recover in rates costs associated with the electrical corporation's opposition either to the consideration, formation, or implementation of a new local publicly owned electric utility or electrical cooperative, or to the expansion of an existing local publicly owned electric utility or electrical cooperative.~~

~~(b) The commission shall do all of the following:~~

~~(1) Ensure that an electrical corporation does not market against the consideration, formation, implementation, or expansion of a local publicly owned electric utility or electrical cooperative, except through an affiliate that is funded exclusively by the electrical corporation's shareholders.~~

~~(2) Require that an electrical corporation's marketing against the consideration, formation, implementation, or expansion of a local publicly owned electric utility or electrical cooperative be conducted by an affiliate of the electrical corporation and not by a marketing division of the electrical corporation, subject to affiliate transaction rules to be developed by the commission.~~

~~(3) Limit an electrical corporation's affiliate's use of support services from the electrical corporation's ratepayer-funded~~

1 divisions, and ensure that an electrical corporation's affiliate is
2 allocated the costs of any permissible support services from the
3 electrical corporation's ratepayer-funded divisions on a fully
4 allocated embedded cost basis, with the corporation providing
5 detailed public reports of such use.

6 (4) Ensure that an electrical corporation's affiliate does not have
7 access to competitively sensitive information.

8 SEC. 3. Section 707.5 is added to the Public Utilities Code, to
9 read:

10 707.5. (a) The commission shall not allow an electrical
11 corporation to recover in rates costs associated with the electrical
12 corporation's opposition to the consideration, formation,
13 implementation, or expansion of a microgrid, self-generation, or
14 distributed resource program or policy or to other efforts to expand
15 the electrical service options available to consumers.

16 (b) The commission shall do all of the following:

17 (1) Ensure that an electrical corporation does not market against
18 the consideration, formation, implementation, or expansion of a
19 microgrid, self-generation, or distributed resource program or
20 policy or against other efforts to expand the electrical service
21 options available to consumers, except through an affiliate that is
22 funded exclusively by the electrical corporation's shareholders.

23 (2) Require that an electrical corporation's marketing against
24 the consideration, formation, implementation, or expansion of a
25 microgrid, self-generation, or distributed resource program or
26 policy, or against other efforts to expand the electrical service
27 options available to consumers, be conducted by an affiliate of the
28 electrical corporation and not by a marketing division of the
29 electrical corporation, subject to affiliate transaction rules to be
30 developed by the commission.

31 (3) Limit an electrical corporation's affiliate's use of support
32 services from the electrical corporation's ratepayer-funded
33 divisions, and ensure that an electrical corporation's affiliate is
34 allocated the costs of any permissible support services from the
35 electrical corporation's ratepayer-funded divisions on a fully
36 allocated embedded cost basis, with the corporation providing
37 detailed public reports of such use.

38 (4) Ensure that an electrical corporation's affiliate does not have
39 access to competitively sensitive information.

~~SEC. 4.~~

SEC. 2. Section 748 is added to the Public Utilities Code, to read:

748. (a) For purposes of this section, “deenergization event” means an intentional, temporary termination of electrical service to an area for the purpose of reducing or eliminating the risk of wildfires resulting from the operation of the electrical grid or related facilities.

(b) (1) On or before June 1, 2021, the commission, in consultation with the ~~Department of Consumer Affairs, Public Advocate’s Office,~~ shall establish a procedure to do both of the following:

(A) To enable customers and others affected by a deenergization event to recover costs accrued during the deenergization event from an electrical corporation ~~with more than 2,500,000 electrical service connections in California within two weeks of the end of~~ *within the utility bill encompassing the dates of* the event.

(B) To enable local governments affected by a deenergization event to recover costs accrued during the deenergization event from an electrical corporation ~~with more than 2,500,000 electrical service connections in California within two weeks of billing the~~ electrical corporation for those costs.

(2) Costs recoverable under this section *may* include, but are not limited to, assets, revenue, and wages lost as a direct result of a deenergization event, medical bills, travel expenses, lodging costs, and other incidental expenses incurred as a direct result of a deenergization event, and local government planning and response activity costs directly related to a deenergization event.

(c) On or before June 1, 2021, the commission shall require an electrical corporation ~~with more than 2,500,000 electrical service connections in California to create a fund, of an amount to be determined by the commission, to fund recovery of costs accrued by to establish a memorandum account to track expenses paid to~~ customers, local governments, and others ~~during for claims resulting from a deenergization event. Moneys shall be paid into the fund exclusively by the electrical corporation’s shareholders, and expenses paid by the fund shall not be recoverable either directly or indirectly in rates and shall be borne exclusively by the shareholders of the electrical corporation. The commission shall~~

1 *establish rules to determine whether the expenses paid can be*
2 *recovered from ratepayers.*

3 (d) ~~An electrical corporation with more than 2,500,000 electrical~~
4 ~~service connections in California~~ shall not bill customers for any
5 nonfixed costs during a deenergization event, including with the
6 intent of subsequently reimbursing the customers, and shall not
7 charge customers increased amounts after a deenergization event
8 in order to offset losses accrued during a deenergization event.

9 (e) Beginning on or before June 1, 2021, the commission shall
10 require any profit accrued by an electrical corporation ~~with more~~
11 ~~than 2,500,000 electrical service connections in California~~ due to
12 a deenergization event *that the commission determines to have*
13 *been undertaken in an unreasonable or imprudent manner* to be
14 remitted or credited to its ratepayers and any loss to be borne by
15 the electrical corporation's shareholders.

16 ~~SEC. 5.~~

17 *SEC. 3.* Section 776.7 is added to the Public Utilities Code, to
18 read:

19 776.7. (a) ~~An electrical corporation with more than 2,500,000~~
20 ~~electrical service connections in California~~ shall provide
21 notification of a pending deenergization event as early as possible
22 to the cities and counties within its service territory and to other
23 local governmental entities upon their request.

24 (b) An electrical corporation shall share ~~any~~ information relating
25 to a deenergization event, including information relating to the
26 duration, timing, and location of the deenergization event, impacted
27 facilities, and affected customers, with all local governmental
28 entities within its service territory.

29 (c) An electrical corporation shall share ~~any~~ location-specific
30 information relating to a deenergization event, including
31 information relating to the duration, timing, and location of the
32 deenergization event, impacted facilities, and affected customers,
33 with all local governmental entities with jurisdiction over that
34 location.

35 (d) For purposes of this section, "deenergization event" has the
36 same meaning as defined in Section 748.

37 ~~SEC. 6.~~

38 *SEC. 4.* Section 911.3 is added to the Public Utilities Code, to
39 read:

911.3. The commission shall biennially produce a report on the economic, environmental, public health, and public safety impacts of deenergization events, using information provided by electrical corporations with more than 2,500,000 electrical service connections in California and independent analysis. For purposes of this section, “deenergization event” has the same meaning as defined in Section 748.

~~SEC. 7.~~

SEC. 5. Section 2111.5 is added to the Public Utilities Code, to read:

2111.5. An electrical corporation with more than 2,500,000 electrical service connections in California is subject to a penalty of not less than ~~five hundred thousand dollars~~ *two hundred fifty thousand dollars (\$250,000)* for every hour that a deenergization event is in place, multiplied by the sum of the number of full sets of 50,000 customers affected plus one for any ~~remainder.~~ *remainder, if the commission determines that the electrical corporation failed to act in a reasonable and prudent manner in its implementation and execution of the deenergization event.* Penalties remitted pursuant to this section shall be borne exclusively by the electrical corporation’s shareholders. For purposes of this section, “deenergization event” has the same meaning as defined in Section 748.

~~SEC. 8.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Per Mayor's Recommendation, Appoint One New Arts Commissioner and Move Alternate Member of Science, Technology and Innovation Commission to Voting Member (Contact: Mayor Tran, 408-586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contact:	Mayor Rich Tran, 408-586-3029
Recommendation:	Mayor Tran recommends the City Council confirm his appointments to: 1) Move current Alternate No. 1 Guy Haas into a voting position on the Science, Technology and Innovation Commissioner position (vacancy created by resignation of Jaime Hallera), into a term that will expire at the end of January 2023. 2) Newly appoint Benjamin Tang to the Milpitas Arts Commission into a vacant term that will expire in October of 2021.

Background: Mayor Tran would like to make recommendations in order to fill current vacancies on two City of Milpitas Commissions.

On the Science, Technology and Innovation Commission, the Mayor recommends moving the current Alternate No. 1 Guy Haas into the vacant voting Commissioner seat, recently vacated by former Commissioner Jaime Hallera. This would result in the STIC having two vacant Alternate Member positions to be filled.

On the Milpitas Arts Commission, the Mayor recommends appointing Benjamin Tang to fill one of two vacant voting Commissioner seats, following two recent resignations. This action would result in one vacant Commission seat along with two vacant Alternate Member positions to be filled.

Recommendation: Mayor Tran recommends the City Council confirm his appointments to:

- (1) Move current Alternate No. 1 Guy Haas into a voting position on the Science, Technology and Innovation Commissioner position (vacancy created by resignation of Jaime Hallera), in a term that will expire at the end of January 2023.
- (2) Newly appoint Benjamin Tang to the Milpitas Arts Commission into a vacant term that will expire in October of 2021.

Attachment:

Copies of Arts Commission applications

COMMISSION APPLYING FOR:

Arts Commission

City Clerk's Office

FEB 07 2020

RECEIVED

Title

Mr.

Name

Benjamin Tang

Address Type

Residence

Address

1248 Creighton Court

City

Milpitas

Postal/Zip Code

95035

Mobile Number

(669) 293-5863

E-Mail Address

tang.benjamin94@yahoo.com

City

Milpitas

Postal / Zip code

95035

College, Professional, Vocational, or other schools attended

San Jose State University

Major Subject

Fine Arts

Degree

Bachelor

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

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

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

I have studied different forms of art at San Jose State University such as 3D modeling, painting, charcoal, digital drawing, and animation, and graduated with a bachelor degree in fine arts.

Date

Feb 06, 2020

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



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

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

APR 16 2019

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COMMISSION APPLYING FOR: Arts Commission
Title Mr.
Name Minh Nguyen
Address Type Residence
Address 2042 Skyline Dr.
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 410-2157
E-Mail Address mtn_51576@yahoo.com

Present Employer Business and Realtor Agent
Other Phone (408) 410-2157
Business Address (Optional) 2042 Skyline Dr.
City Milpitas
Postal / Zip code 95035

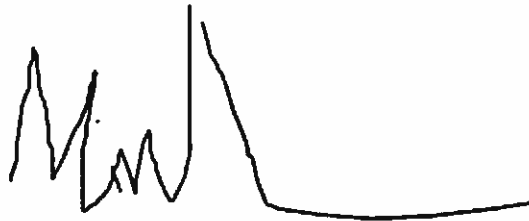
Occupation Business man
Education: If Youth Advisory Commission
applicant, indicate your grade/school: Engineer
College, Professional, Vocational, or other
schools attended San Jose State University
Major Subject Electronic
Degree BS

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

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

Date Apr 16, 2019

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



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

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Per Recommendation of Mayor Tran, Appoint Vice Mayor Nuñez to the Santa Clara Valley Transportation Authority (VTA)'s Northeast Group of Cities, representing Milpitas and serving on the VTA Board of Directors from the Group (Contact: Mayor Tran, 408-586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/18/2020
Contact:	Mayor Rich Tran, 408-586-3029
Recommendation:	Per the recommendation of Mayor Rich Tran, appoint Vice Mayor Bob Nuñez to the Santa Clara Valley Transportation Authority (VTA)'s Northeast Group of Cities, representing the City of Milpitas and requesting to serve on the VTA Board of Directors, effective immediately. Direct staff to notify the Northeast Group of cities in advance of its March 4 meeting, and the SCVTA staff of the City Council authorized change of representative.

Background:

Mayor Rich Tran has served as the City of Milpitas' representative to the Northeast Group of Cities (Sunnyvale, Santa Clara and Milpitas) of the Santa Clara Valley Transportation Authority (VTA) since January of 2019. From the group of cities, he was appointed to serve in a two-year term on the VTA Board of Directors. Mayor Tran wishes to resign from that position and recommends Vice Mayor Nuñez to serve in that position for the City of Milpitas.

The next meeting of the Northeast group of cities is scheduled on Wednesday, March 4, 2020. The next meeting of the VTA Board of Directors is scheduled on Thursday, March 5, 2020.

If the City Council affirms the Mayor's recommendation for Vice Mayor Nuñez to serve anew on the VTA Board of Directors via the Northeast group of cities, this action will be conveyed to the group. The Northeast group then would be required to notify the VTA Board of Directors in writing of its recommendation for replacement of the Milpitas Board member for the remainder of the two-year term through 2020.

Recommendation:

Per the recommendation of Mayor Rich Tran, appoint Vice Mayor Bob Nuñez to the Santa Clara Valley Transportation Authority's Northeast Group of Cities, representing the City of Milpitas and requesting to serve on the VTA Board of Directors, effective immediately. Direct staff to notify the Northeast group of cities in advance of its March 4 meeting, and the SCVTA staff of the City Council-authorized change of representative.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Appointment of Steve Belong to Serve on the Milpitas Planning Commission
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/18/2020
Contact:	Mayor Rich Tran, 408-586-3029
<u>Recommendation:</u>	Per Mayor Tran and recommendation of Councilmember Dominguez, move to appoint Steve Belong to a term of three years on the Milpitas Planning Commission in a term that will expire in December 2022.

Background:

Pursuant to Government Code Section 40605, an elected mayor, "with the approval of the city council, shall make all appointments to boards, commissions, and committees..." All appointees to the Planning Commission must be residents and registered voters in Milpitas and may not hold any other public office or employment in the government of the City of Milpitas.

The term of office for each member of the Milpitas Planning Commission is three years, commencing on the first day of January and concluding on the 31st day of December of the third year thereafter. In accordance with the Planning Commission bylaws, a Planning Commissioner whose term has expired may continue to serve an "extended" term until a successor is appointed. New appointees then complete the unexpired portion of the normal term of the appointed seat. Members of the Milpitas Planning Commission may serve up to three consecutive three-year terms.

The following table shows the status and expiration date of each current Commissioner's term of service.

Member	Term Expiration	Status
Timothy Alcorn	Dec. 2021	Current
Bill Chuan	Dec. 2020	Current
Sudhir Mandal	Dec. 2019	Extended
Demetress Morris	Dec. 2019	Extended
Evelyn Chua	Dec. 2021	Current
Steve Tao	Dec. 2021	Current
Ricardo Ablaza	Dec. 2020	Current

Analysis:

Any resident interested in serving on the Planning Commission must submit an application and questionnaire response to the City Clerk. The Clerk confirms each applicant's current voter registration and provides a list of qualified applicants to the Planning Director. The Planning Director reviews the list and provides input to

Mayor. The Mayor may ask for additional input from the Council and/or invite additional members of the community to submit applications.

Six Milpitas residents have submitted applications in the past 12 months for consideration for Council appointment or reappointment to the Planning Commission:

Name	Notes	Registered Voter
Russell Bargstadt	Director of Operations, DeVry Institute B.S., Electronics; Pines HOA; Zanker PTA	Yes
Steve Belong	15 years construction experience; state-certified; union representative in four counties	Yes
Demetress Morris	Served previous term on Planning Commission	Yes
Ha Phan	Vice Chair, Library and Education Advisory Commission	Yes
Kyle Roach	She works for A3 by Airbus, employed in field of Human Resources	Yes
Thomas Valore	Retired financial planner, CFO - Milpitas Chamber of Commerce	Yes

Councilmember Dominguez has recommended resident Steve Belong to complete the remainder of the 3-year Planning Commission term currently filled by Sudhir Mandal. This term will expire in December 2022. Mr. Mandal has served with distinction on the Planning Commission for the past 12 years, including two years as Chair.

Fiscal Impact:

Appointments to City Commissions will result in no new fiscal impact.

Recommendation:

Per Mayor Tran and recommendation of Councilmember Dominguez, move to appoint Steve Belong to a term of three years on the Milpitas Planning Commission in a term that will expire in December 2022.

Attachment:

6 current applications & questionnaires for Milpitas Planning Commission



CITY OF MILPITAS PLANNING COMMISSION APPLICATION

City Clerk's Office

FEB 04 2020

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Thank you for your interest in serving on the City of Milpitas Planning Commission. The Planning Commission advises the City Council on matters related to land use, development, and planning permit decisions. Milpitas Municipal Code requires a Planning Commissioner to be a resident of the City of Milpitas and a registered voter. Planning Commissioners typically serve three-year terms and may serve up to three consecutive terms.

This Application is intended to provide basic information about your background and experience in relation to the work of the Planning Commission. City staff and members of the City Council will review this information and make recommendations to the Mayor for possible appointment to the Planning Commission. In addition to this Application form, applicants are required to complete the attached Supplemental Questionnaire.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr. ☐ Mrs./Ms.

Milpitas Resident? Yes

Registered voter? Yes

Personal Information:

Steve

Belong

Name: First Middle Last

366 North Park Victoria Dr.

Address: Number Street (apt. # if needed) Milpitas, CA 95035

408-427-7160

Steve.Belong@dc16sj.org

Phone Number(s)

E-mail Address

Union Representative

IUPAT DC16

Occupation

Present Employer

2149 Oakland Rd. S.J. 95131

408-427-7160

Business Address

Business Phone

Education:

College, Professional, Vocational, or other schools attended

Major Subject

Certificate or Degree?

<u>Calaveras Hills H.S.</u>	<u>Gen. Ed.</u>	<u>Diploma</u>
<u>DC16 JATC San Leandro</u>	<u>Floring Construction</u>	<u>State Certificate</u>

Experience:

Briefly describe any personal experience or work in the community that you believe would be an asset to your service on the Planning Commission (additional information may be attached):

15 years in the Construction industry. 11 years as an installer and also as a job runner & foreman. The last 4 years being a Union Rep. for 1300 member in four Counties.

I hereby certify that all statements contained in this application are true and that I am a registered voter and a resident of the City of Milpitas. If appointed, I have enough time to devote to this responsibility and will attend the required meetings.

[Signature]

Signature

1-30-2020

Date

Note: All Commission Applications are Public Record. Applications will be kept on file by the City Clerk for one year.

Please Mail or drop off your completed application and supplemental questionnaire to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

Phone: (408) 586-3001 - Fax: (408) 586-3030 - E-mail (mlavelle@ci.milpitas.ca.gov)

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PLANNING COMMISSION APPLICATION SUPPLEMENTAL QUESTIONNAIRE

City Clerk's Office

FEB 04 2020

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(Please type or print responses below or use a separate sheet of paper).

1. Why are you interested in serving on the Planning Commission?

With 15 years of Construction experience I hope to utilize that experience in making Milpitas a safer & efficient community.

2. What do you think are important skills or attributes for a Planning Commissioner, and why?

To have knowledge and experience in building & developing. To have seen what works & does not work other locations would bring value to our community.

3. How will your personal or work experience contribute to your role as a Planning Commissioner?

I've seen a lot of successful projects as well as projects that have failed. I think the input from someone who has been on projects all over the country and had first hand experience working on them brings value to the committee about industry standards.

4. From your viewpoint, what are the most pressing land use or development issues in Milpitas?

Being able to develop with out causing more traffic constraints. Also to redevelop areas that are not being used up to there potential.

5. How would you typically prepare for a Planning Commission meeting?

Review & familiarize myself with plans & notes

6. What do you see as the different roles of City staff, the Planning Commission, and City Council?

City Staff gets the plans & Blue prints

Planning Commission Reviews & gives recommendations

City Council reviews & makes final decision.

registered
voter ✓

COMMISSION APPLYING FOR: Planning Commission
Title Mr.
Name Russel C Bargstadt
Address Type Residence
Address 1307 Stardust Way
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 910-9655
E-Mail Address russel.c.bargstadt@raytheon.com

City Clerk's Office
MAR 11 2019
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Present Employer Raytheon
Other Phone (408) 522-3484
City Sunnyvale
Postal / Zip code 94086
Occupation Director of Operations
College, Professional, Vocational, or other schools attended DeVry Institute
Major Subject Electronics
Degree Bachelor of Science

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

Name of Organization Pines HOA
Name of Organization PTA (Zanker Elem)

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

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

Long term Milpitas resident (1991). Served on Pine HOA in many capacities including President, VP and board member from 1992 until 2014. Thorough understanding of project management, budgets, requirement definition, contracts and negotiation. My job includes interfacing and working with contractors, trades, and real estate brokers so I have a familiarity those processes and areas of expertise. I am pro responsible growth and believe we must encourage and support economic growth with in the city. Common sense and thoughtfulness will be my trademark. I have no conflicts of interest with the position

Date Mar 08, 2019

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



NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov), mail or drop off your completed application and supplemental questionnaire to:
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

PLANNING COMMISSION **SUPPLEMENTAL QUESTIONNAIRE**



(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?

In the past I have been very active in my microcosm community (Starlite Pines), representing our views/needs to the Planning Commission and City Council and in the school district as my kids moved through it. My work and kids extra-curricular activities made it impossible to commit for a few years but circumstances have changed and I am able to re-engage. Community service is a responsibility to me and I am seeking opportunity to serve my community in an area I have interest in and believe I can provide value to

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.

The General Plan is just that, it is a frame work created to provide long term guidance and facilitate cohesive consistent decisions to meet a vision of the future. Zoning Ordinances control the type of activity and population density of specific areas, this impacts quality of life. Planning ensures compliance to zoning, fairness to petitioners and fit to the plan and community. Planning should weigh community impact, preferences and best interest against development desires. All three should work together to provide guidance to the City Council for the benefit of the community at large and the future

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

My job requires interface with contractors, space planning for the company, oversite of construction projects as required, working with architects, contractors, and the trades (construction, electricians, plumbers, HVAC etc), EHSS requirements and basic awareness of codes. I am well versed in proposal analysis and contract negotiations. I have excellent people and collaborative skills and a desire to see my community thrive. I am objective and analytical with solid common sense. I listen.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be best resolved?

Sane and reasonable growth vs traffic/infrastructure capacity. We have to balance desire to build high density near public transportation with the reality that not everyone who has access uses it. The growth will and should happen, we should levy requirements on Builders to help offset the cost of the infrastructure improvements and need to think creatively about solutions. One thought that comes to mind, could we use round-a-bouts instead of stop signals in intersections like Abel and Great Mall Drive or Calaveras and Abbott or Park Victoria and Landess or near any of the schools to alleviate drop off pressure

Affordable housing – we should preferentially target people that provide services to our community, i.e. teachers, fire/police, retail/hospitality workers, and etc who cannot afford to live in the community they serve, with creative and mutually beneficial alternatives

5. Do you have a long-term vision of how you think the City should develop?

I think we need to have our eyes open to the need for infrastructure improvement as population and inevitably traffic increases. We must also be open to and encourage business growth to increase our tax base so we can afford the population growth. Milpitas has some great advantages in terms of cost and location we should be exploiting that

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

We need to ensure we are getting any available and applicable County, State and Federal money that may be able to be used to help

We should seek community involvement to insure that all good and diverse ideas are being explored. I would be willing to create and chair a planning commission subcommittee to facilitate this or participate if something similar already exists

A program of below market housing with City right of first refusal to buy back at a controlled price increase relative to the market should owner choose to sell. This would keep a growing inventory of affordable housing, remove the risk of people buying and flipping in a few years and potentially reduce the pressure to continually have to find new alternatives. It would require the City to manage and monitor that inventory. We successfully did this on a small scale at a company I previously worked at in the late 80's. It allowed new college grads the ability to buy, build some equity and trade up with minimal effort on the part of the company

Another alternative would be to require that rental projects that have mixed use, retail under living space, maintain units that are specifically for the people that will be employed in the project when complete (retail, service employees) Giving occupancy and rent preference to those residents

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

Staff are the experts, front line contact for petitioners and advisors to the commission and council

Commission reviews plans for relevance and fit in the community and the general plan, works with petitioners, staff and the community to create an acceptable project plan if possible and makes recommendation of approval or denial to council

Council has final word and approves or denies



CITY OF MILPITAS PLANNING COMMISSION APPLICATION

City Clerk's Office
JAN 13 2020
RECEIVED

Thank you for your interest in serving on the City of Milpitas Planning Commission. The Planning Commission advises the City Council on matters related to land use, development, and planning permit decisions. Milpitas Municipal Code requires a Planning Commissioner to be a resident of the City of Milpitas and a registered voter. Planning Commissioners typically serve three-year terms and may serve up to three consecutive terms.

This Application is intended to provide basic information about your background and experience in relation to the work of the Planning Commission. City staff and members of the City Council will review this information and make recommendations to the Mayor for possible appointment to the Planning Commission. In addition to this Application form, applicants are required to complete the attached Supplemental Questionnaire.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

☐ Mr. ☒ Mrs./Ms. Milpitas Resident? Yes Registered voter? Yes

Personal Information:

Name: First Middle Last
Demetress Morris
Address: Number Street (apt. # if needed)
2151 Mesa Verde Drive Milpitas, CA. 95035
Phone Number(s) E-mail Address
(408) 935-8074 Demetress1@aol.com
Occupation Present Employer

Financial Advisor WFG
Business Address Business Phone
675 N. 1st St Suite 100, San Jose, CA 95112 (402) 216-0181

Education:

College, Professional, Vocational, or other schools attended	Major Subject	Certificate or Degree?
Grand Canyon University	Applied Management	Bachelor of Science
Grand Canyon University	Business Leadership	Master of Science

Experience:

Briefly describe any personal experience or work in the community that you believe would be an asset to your service on the Planning Commission (additional information may be attached):

I have served on the planning commission for several years now and most recent this year as Vice-Chair. My service within the community has extended to Chair of School Site Council (SSC) to board member of other organizations dealing with diversity. I continue to be the head of Flame Keepers working with students and families of color. Additionally, I have served on the Community Board

Advisory Council (CBAC), Parent Teacher Association (PTA) as Treasury, Employment Screen Board MHS, WASCO Accreditation, ESL steering committee, Parents of Milpitas (POM) special education, and with the Milpitas Foundation for Education (MFFE).

I hereby certify that all statements contained in this application are true and that I am a registered voter and a resident of the City of Milpitas. If appointed, I have enough time to devote to this responsibility and will attend the required meetings.

Demetress Morris December 7, 2019
Signature Date

Note: All Commission Applications are Public Record. Applications will be kept on file by the City Clerk for one year.

Please Mail or drop off your completed application and supplemental questionnaire to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

Phone: (408) 586-3001 – Fax: (408) 586-3030 – E-mail (mlavelle@ci.milpitas.ca.gov)



PLANNING COMMISSION APPLICATION SUPPLEMENTAL QUESTIONNAIRE

(Please type or print responses below or use a separate sheet of paper).

1. Why are you interested in serving on the Planning Commission?

I desire to have a voice in the decision-making process that helps shape our community. Especially, with all the upcoming changes to Milpitas as it pertains to development and the transit area of our city. I enjoy serving my community in a capacity that is both tangible and recognizable by other community members. Furthermore, over the years as a Planning Commission, I have acquired the needed expertise to be effective in the position that also provides me an opportunity for learning.

2. What do you think are important skills or attributes for a Planning Commissioner, and why?

The most important skill for a Planning Commissioner is the capability to listen with the intent of understanding what one is seeking to be conveyed to Him/her. It is essential to have a working knowledge and/or understanding of community issues as they correlate to city ordinances. One of the attributes that best serve a commissioner is the ability to be fair & unprejudiced as well as prepared to address the motions that come before the city. The reason why is it allows one to communicate more effectively and from an analytical perspective.

3. How will your personal or work experience contribute to your role as a Planning Commissioner?

My personal and work experience will contribute to my role as a Planning Commissioner by allowing me to apply leadership skills with financial savvy. With these skills, I can build unanimity through compromise and a common sense approach that helps others appreciate that comments or actions are not to be taken personal but part of the procedure that results in positive change.

4. From your viewpoint, what are the most pressing land use or development issues in Milpitas?

I believe the most pressing issues and development concerns are dealing with land use and zoning. Milpitas only has so much land at its disposal, so we have to be sure that we are making good decision concerning various parcels for future use.

5. How would you typically prepare for a Planning Commission meeting?

I would typically prepare for a Planning Commission meeting by reviewing the staff report, doing some research on the developer and the parcel, speaking or meeting with the appropriate stakeholders, and outlining questions for review by staff or applicant.

6. What do you see as the different roles of City staff, the Planning Commission, and City Council?

A Planning Commissioner is appointed government board charged by city council mandated by the state with oversight of boundaries of the various zoning districts and appropriate regulations to be enforced within city limits. The city council is responsible for approving and/or setting policy and staff ensures that the information is available, executable, and understood by all.

COMMISSION APPLYING FOR: Planning Commission
Title Ms.
Name Ha Phan
Address Type Residence
Address 940 Coventry Way
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 666-6415
E-Mail Address cbay12@yahoo.com

City Clerk's Office

JAN 21 2020

RECEIVED

College, Professional, Vocational, or other schools attended Univ of Phoenix SJ

Major Subject Business

Degree MBA

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

Name of Organization Milpitas Executive Lions International Club

Member 2nd Vice President

Name of Organization Boys scouts of America

Member BSA Leader

Name of Organization Milpitas Police Department

Member Volunteer

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

Date Jan 21, 2020

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

Ha Phan

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

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mary Lavelle

From: Phan Hà <cbay12@yahoo.com>
Sent: Tuesday, January 21, 2020 6:27 AM
To: Mary Lavelle
Subject: Re: CITY OF MILPITAS COMMISSION APPLICATION - Receipt

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

HA T. PHAN
940 COVENTRY WAY
Milpitas, CA 95035
Phone 408-666-8415
cbay12@yahoo.com

Objective
A position in the financial industry, with an emphasis on accounting and auditing

Ability Summary
Experience in analyzing financial information and preparing financial reports to determine and maintain record of assets, liabilities, profit and loss, tax liability, and other financial activities within an organization.

Employment History
Accountant
06/2006 - 02/2016 Bandai Namco Games America Inc 1740 Technology Dr # 600, San Jose, CA
Managed full cycle of Accounts Payables including monthly close, annual 1099 report, property tax filing and Fixed Assets, Sales/Use tax Efile.

Education and Training

Completion Date	Issuing Institution	Location	Qualification	Course of Study
06/2004	University of Phoenix	San Jose, CA	Master's Degree	MBA

Occupational Licenses & Certificates

Certification Title	Issuing Organization	Completion Date	Expiration Date
Tax preparer	CTEC	07/2015	10/2016

Honors & Activities
Honors awards on company team work, leaderships skills, and Milpitas citizenship

Additional Information
Available to start work immediately after college graduation in early June

References Available on Request

<https://www.caljobs.ca.gov/folders/ind/indResume.sch?indResume=cbay12@yahoo.com>

Resume attached

On Jan 21, 2020, at 6:16 AM, Phan Hà <cbay12@yahoo.com> wrote:

✓ registered voter

COMMISSION APPLYING FOR: Planning Commission

Title Ms.

Name Kyle Roach

Address Type Residence

Address 49 Terfidia Ln

City Milpitas

Postal/Zip Code 95035

Mobile Number (408) 580-4288

E-Mail Address kroach24@outlook.com

City Clerk's Office
OCT 22 2019
RECEIVED

Present Employer A^3 by Airbus

Occupation HR Specialist

College, Professional, Vocational, or other schools attended Heald Business School

Major Subject Business Administration

Degree AAS

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

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

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

I bring a sense of open mindedness, logic, and Common Sense. My work within the HR field allows me to work with people on a variety of levels from all different walks of life, socio-economic backgrounds, and standing within the communities.

Two years ago I started my business called the Straight Talk Diva where I help women transition from a place of being not sure of their selves to a place of confidence, self-assured, empowered. I also am a human Capital Management Consultant where I can go into a business and assist them with their cultural needs and to provide a strategy of how to implement workplace morale , how to get employees to understand how to bring their outside passions to their inside production.

Date Oct 21, 2019

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

Kyle Roach

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

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

CITY OF MILPITAS PLANNING COMMISSION APPLICATION

City Clerk's Office

MAR 13 2019

RECEIVED



NOTE: Milpitas Municipal Code, Title I Chapter 500, requires "at all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas." Also, all applicants are required to complete a **SUPPLEMENTAL QUESTIONNAIRE** in addition to this application form.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr.

Are you a registered City of Milpitas voter? YES

☐ Mrs./Ms.

How long have you lived in Milpitas? 30 yrs

Name:

THOMAS
First

JOHN
Middle

VALORE
Last

Address:

670 CARDIFF PLACE

Number

Cell

Street (apt. # if needed)

Milpitas, CA 95035

Telephone Number(s)

408-946-0703

408-892-3991

tventerprise@comcast.net

e-mail address

Present Employer

RETIRED

Business Telephone

Business Address

FINANCIAL ADVISOR
Occupation

Education:

College, Professional, Vocational, or other schools attended

Major Subject

Date

Degree

<u>USC</u>	<u>Sys Mgmt</u>	<u>02/71</u>	<u>MS</u>
<u>NYU</u>	<u>AERO ENG</u>	<u>02/64</u>	<u>BS</u>

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

Date	Name of Organization	Officer / Member
	<u>Milpitas Chamber of Commerce</u>	<u>CFO 17yrs</u>
	<u>MUSD Bond Oversight Committee</u>	<u>Member</u>

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

Over the past six or seven years I have attended virtually all City Council and School Board meetings in an effort to stay informed regarding the direction of the City

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

Thomas J. Valore
Signature

03/13/2019
Date

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

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov), mail or drop off your completed application and supplemental question

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

357

PLANNING COMMISSION

SUPPLEMENTAL QUESTIONNAIRE



(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?

Such a position would afford me the opportunity to give back, in a significant manner, to my community which has served me well these past many years.

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.

The cities growth is guided by a hierarchy of plans the top most of which is the General Plan, currently in the process of being updated. Below the General are the specific plans which provide a greater degree of specificity for given areas of the city. Zoning ordinances should reflect the proscriptions of the plans or be changed accordingly so as not to be an impediment to developments in consonance with the plans. Planning entities such as the Planning Commission and the City planning staff should be guided by such document as they proceed through the decision-making process and in framing their recommendations to the City Council.

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

I spent twenty years in the Air Force principally in System Acquisition Management. My last assignment was a Program Manager where I started and managed what became a roughly 1 billion-dollar acquisition known as TRIGS. Subsequently, I worked as a senior manager in the Aerospace Industry. And concluded my work career as a Certified Financial Planner for twenty years. Thus, I am comfortable with the decision-making process and not intimidated by either high powered people or large dollar projects. Just as important I recognize the importance of boundaries in keeping containment.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be best resolved?

The traffic congestion in Milpitas has become progressively worse in recent years and related to this is parking. An alternative route must be constructed connecting I880 and I680 to eliminate the press of traffic clogging our major thorough fares every week day. Obviously, State and more likely Federal aid/support will be required to accomplish such an under taking.

The construction of some strategically located parking structures within the city may be the only answer to the parking problem doing a better job of assuring that new developments will no further add to the problem.

5. Do you have a long-term vision of how you think the City should develop?

Smart development must be an imperative in that land is scarce and at a premium and the impacts of new developments are in all likelihood complex and potentially far reaching and thus the decision-making process must recognize this situation. Growth for the sake of growth or mere income growth is not in the long-term interest of the City or its residents. Improvement/enhancement should be what guides future development. Beautification may be another way to state it. Destination centers which provide cultural activities as well as high quality restaurants would serve to keep residents within the city for entertainment.

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

This unquestionably is a major problem for which there is no easy answer and will require a complex response to achieve any amelioration. I believe we will need to work on a regional basis in attacking the issue since it is a regional issue. I also believe it will take major investments by the city, and hopefully with added county and support, to increase the affordable housing stock

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

City staff needs to provide appropriate research to enable the Planning Commission to make an informed decision regarding developments proposed by developers. The decisions of the Planning Commission then become recommendations to the City Council which is responsible for making the final decision to approve or not any development of consequence.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize and Approve Travel for Councilmember Anthony Phan and Interim City Manager Steve McHarris.
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contact:	Steve McHarris, 408-586-3059
Recommendations:	1. Authorize and Approve Travel for Councilmember Anthony Phan, and Interim City Manager Steve McHarris to attend the Local Government Commission 2020 <i>Yosemite Policymakers Conference: Building Livable Communities</i> in Yosemite National Park, California Scheduled on March 5 – 8, 2020, for a total combined estimated amount up to \$3,500. 2. Authorize and Approve Travel for Interim City Manager Steve McHarris to attend the International Council of Shopping Centers <i>Annual Conference & Deal Making</i> in Monterey, California Scheduled on March 10, 2020, for a total amount of \$95.

Background:

The Local Government Commission holds its Yosemite Policymakers conference each March in Yosemite, California. This popular conference is scheduled for March 5 – 8, 2020. The Councilmember and Interim City Manager's attendance at this conference will provide them and other California's policymakers with tools and innovative solutions to address community needs. This year's conference will be no different with its focus on Building Livable Communities. The preliminary agenda is attached to this report.

The International Council of Shopping Centers holds its various events in a different city nationwide. One of the events will take place on March 10 – 11, 2020 in Monterey, California. Attendees will discover the industry innovations reshaping the Northern California retail and real estate industries. The preliminary agenda of events is attached to this report.

Analysis: The City of Milpitas Travel and Expense Policy requires all travel for the elected officials and City Manager be approved by City Council. Council approval of this request will allow Councilmember Phan and Interim City Manager McHarris to garner additional knowledge from other city's elected officials to share with their colleagues. Continued participation and attendance in regional conferences and events is a way to ensure that the Milpitas community is fully represented at the regional, state, and national levels.

Policy Alternatives: Not applicable

Fiscal Impact:

The estimated expenses for the Yosemite conference in Yosemite, including the registration fee, are \$1,750 for each attendee. The Monterey event expense is \$95 for registration.

To date, Councilmember Phan has a remaining balance of \$4,028 in his Individual Elected Official allocation of \$5,000 for Conferences/Meetings/Memberships to cover the travel expenses related to the Yosemite conference. Sufficient funds are in the City Manager's Office for Conferences/Meetings/Memberships to cover the Interim City Manager's travel expenses for both events.

California Environmental Quality Act: Not applicable

Recommendations:

1. Authorize and Approve Travel for Councilmember Anthony Phan, and Interim City Manager Steve McHarris to attend the Local Government Commission *2020 Yosemite Policymakers Conference: Building Livable Communities* in Yosemite National Park, California, scheduled on March 5 – 8, 2020, for a total combined estimated amount up to \$3,500.
2. Authorize and Approve Travel for Interim City Manager Steve McHarris to attend the International Council of Shopping Centers *Annual Conference & Deal Making* in Monterey, California Scheduled on March 10, 2020, for a total amount of \$95.

Attachments:

Draft conference agenda for Yosemite Policymakers

Draft conference agenda for ICSC Monterey

Council budget tracking

Travel and Training FY 19-20 Budget Tracking for Council

Mayor Tran				
	Training/Travel Event	FY19-20 Amount Expended/Estimated	Total \$ 26.92	Remaining Balance \$ 4,973.08
1	Annual Conference of Mayors, Hawaii (FY19-20 expense only - Uber)	\$ 26.92		

Vice Mayor Nuñez				
	Training/Travel Event	FY19-20 Amount Expended/Estimated	Total \$ 1,971.21	Remaining Balance \$ 3,028.79
1	SPUR Seminar - Sunnyvale's Cityline Takes Shape	\$ 10.00		
2	League of California Cities 2019 Annual Conference & Expo in Long Beach from 10/16-10/19	\$ 570.95		
3	The Future of Downtown San Jose (SVBJJ)	\$ 115.00		
4	League of California Cities 2020 New Mayors and Councilmembers Academy in Sacramento from 01/22-01/24	\$ 1,275.26		

Councilmember Dominguez				
	Training/Travel Event	FY19-20 Amount Expended/Estimated	Total \$ 1,708.11	Remaining Balance \$ 3,291.89
1	SVO Study Mission Trip to Nashville, TN from 9/3/19 - 9/6/19 (FY19-20 expense only - Southwest Airlines Flight Change)	\$ 512.96		
2	League of California Cities 2019 Annual Conference & Expo in Long Beach from 10/16-10/19	\$ 1,195.15		

Councilmember Montano				
	Training/Travel Event	FY19-20 Amount Expended/Estimated	Total \$ 2,435.42	Remaining Balance \$ 2,564.58
1	2019 Annual Sustainable Groundwater Planning in CA Conference - Lodging	\$ 747.15		
2	League of California Cities 2019 Annual Conference & Expo in Long Beach from 10/16-10/19	\$ 1,179.76		
3	Law Seminars International - Public Records Act	\$ 50.00		
4	League of California Cities 2020 New Mayors and Councilmembers Academy in Sacramento from 01/22-01/24	\$ 1,205.66		

Councilmember Phan				
	Training/Travel Event	FY19-20 Amount Expended/Estimated	Total \$ 2,626.37	Remaining Balance \$ 2,373.63
1	League of California Cities 2019 Annual Conference & Expo in Long Beach from 10/16-10/19	\$ 971.81		
2	Yosemite Policymakers Conference	\$ 1,654.56		



Yosemite 2020 Conference Agenda

The Great Pivot: California at the Crossroads

All conference sessions will be held in the Yosemite Valley Lodge, Garden Terrace.

THURSDAY, MARCH 5

6:00 PM *Conference Registration*

7:30-9:00 PM **Opening Remarks: Crossroads for Policymakers**
Kate Meis, Executive Director, Local Government Commission

Kickoff Plenary, Powering the Pivot: Energy Evolution and Revolution
Martha Guzman Aceves, Commissioner, California Public Utilities Commission (invited)
Sam Liccardo, Mayor of San José (invited)

FRIDAY, MARCH 6

9:30 -10:15 AM **Community Choice: Local Strategies for a Safer, More Resilient Energy Future**
Beth Vaughan, Executive Director, California Community Choice Association (invited)

10:15-11:30 AM **Moving the Public: Engaging Support to Turn the Tide on Transportation Emissions**
Denny Zane, Founder and Executive Director, Move LA (confirmed)
Carl Guardino, President/CEO, Silicon Valley Leadership Group (confirmed)

11:30 AM-7:30 PM *Conference Break*

7:30-9:00 PM **Taking Shelter: Building Affordable Housing and Homelessness Solutions**
Christopher Ward, Councilmember District 3, City of San Diego (confirmed)

SATURDAY, MARCH 7

8:00-9:00 AM *Continental Breakfast*



9:00-10:30 AM **Communities without Compromise: Advancing Housing and Climate Progress**
Nikky Mohanna, Principal, Mohanna Development (confirmed)
Jason Elliott, Chief Deputy Cabinet Secretary at Office of Governor Gavin Newsom (invited)

10:30-10:45 AM *Networking Break*

10:45 AM-12:00 PM **Recovery and Resiliency: Forward Thinking Community Development**
James Gore, Supervisor, Sonoma County (confirmed)

12:00-1:00 PM *Lunchtime Discussions (boxed lunch)*

1:00-5:00 PM *Conference Break*

5:00-6:45 PM Networking Reception

6:45-9:00 PM **Public Well-Being: Creating Communities that Foster Health**
Nadine Burke Harris, Surgeon General of California (invited)

SUNDAY, MARCH 8

8:00-9:00 AM *Continental Breakfast*

9:00-11:00 AM Regional Roundtables

11:00-11:15 AM Conference Wrap-Up

11:15 AM Conference Adjourns

Monterey Conference & Deal Making

Schedule

Tuesday March 10, 2020

7:30am - 6:00pm

Registration

8:15am - 9:15am

ICSC First-Timers, New Member and Student Orientation

8:15am - 9:15am

Continental Breakfast

9:00am - 4:00pm

Deal Making

9:00am - 4:00pm

Retailer Central

9:15am - 9:30am

Welcome and Introduction to the Program

9:30am - 10:15am

Redeveloping the Mall for 2020

Hear how malls are drawing customers back in by repurposing former department stores and working with traditional broker...

10:15am - 11:00am

Session II : Google Transit Village

Learn about Google's plans to transform 60 acres of downtown San Jose into a massive office hub and an ambitious mixed-u...

11:00am - 11:45am

Session III

12:00pm - 12:45pm

Lunch Served

1:00pm - 1:15pm

ICSC Update

1:15pm - 1:45pm

Keynote Presentation

2:15pm - 3:00pm

Special Industry Groups

I. Property Management MODERATOR Bill Andrews, CSM, Vice President Asset Management, Inter-Cal Real Estate Corp. II. L...

4:30pm - 6:00pm

Member-Hosted Reception

Monterey Conference & Deal Making

Schedule

Wednesday March 11, 2020

8:00am - 9:00am

Continental Breakfast

8:00am - 12:00pm

Registration

8:00am - 9:00am

Women's Breakfast

8:00am - 12:00pm

Deal Making

8:00am - 12:00pm

Retailer Central

9:00am - 10:30am

Retailers' Runway

12:00pm - 12:00pm

Conference Adjourns



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 6, 13, and 53 to establish regulations for Short-Term Rentals (Staff Contact: Daniel Degu, Sr. 408-586-3054)
Category:	Public Hearings-Community Development
Meeting Date:	2/18/2020
Staff Contact:	Daniel Degu, Sr. 408-586-3054
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 State CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) and 15308 (Actions by Regulatory Agencies for Protection of the Environment). 3) City Attorney shall read aloud title of Ordinance No. 38.835. 4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10 for a zoning amendment in Section 2 "Definitions," Section 4 "Residential Zones and Standards," Section 6 "Mixed Use Zones and Standards," Section 13 "Special Uses", and Section 53 "Off-Street Parking Regulations."

BACKGROUND:

Short-term rentals (STRs) allow partial to entire-home rentals to lodgers seeking short-term accommodations, often through online rental marketplaces, for a consecutive period of 30 or fewer days. The STR industry, including Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), has grown over eight hundred percent (800%) since 2011, according to Host Compliance, a leading provider of short-term rental compliance monitoring and enforcement solutions for local governments, and totaled an unprecedented eight million rental listings worldwide in 2017.

According to Host Compliance, approximately 341 STRs were available within Milpitas as of November 2018. Of the 341 STRs available, roughly 235 STRs were single-family homes, 85 STRs were multi-family homes, and 21 STRs were unknown property types. Furthermore, 197 STRs of the 341 STRs available were partial home rentals while 126 STRs were entire-home rentals.

The Milpitas Municipal Code currently defines STRs as hotels generally and does not allow them in any residential zoning district. The City Council has the authority to regulate or prohibit STRs within City limits, and consistent with the City Council's Economic Development and Job Growth priority, staff explored issues related to STR policies and options through community engagement and subsequent City Council direction.

Council Direction

On February 26, 2019, City Council directed staff to return to the City Council with a recommendation to adopt an ordinance that would permit STRs under local regulations. Additional City Council feedback to staff included:

- 1) "... amend the zoning code to make STRs an allowed or conditionally allowed use," and "... choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools."
- 2) "... explore a Voluntary Collection Agreement with Airbnb for collection of the City's transient occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform."

On April 30, 2019, City Council approved and authorized the City Manager to execute a Voluntary Collection Agreement with Airbnb for the collection of the City's TOT on residential STRs, with authority granted to the City Attorney to negotiate terms with Airbnb. A Voluntary Collection Agreement with Airbnb simplifies the remittance process for hosts using the Airbnb hosting platform and enables compliance with the City's current transient occupancy tax (TOT) regulations. Airbnb estimated that there were approximately 210 hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, the FY 2019-20 Adopted Budget as approved by Council includes an estimate of \$260,000 in annual TOT receipts from the Airbnb agreement.

On January 24, 2020, after several months of engagement, the City concluded negotiations with Airbnb toward execution of a Voluntary Collection Agreement. City staff concluded negotiation of an acceptable Voluntary Collection Agreement with Airbnb and has initiated the contract execution process at the time that this staff report was prepared. TOT collection by Airbnb is expected to begin on March 1, 2020. Due to the timing of finalizing the agreement, the estimated annual TOT revenue amount of \$260,000 will not be received. Therefore, as part of the FY 2019-20 Second Quarter Financial Status and Mid-Year Budget Amendments staff report scheduled for February 18, 2020, staff recommends adjusting the TOT revenue estimate downward.

Public Comment/Outreach

Four community meetings on STRs were held on December 13, 2018, January 17, 2019, August 7, 2019, and August 15, 2019. City staff provided an oral presentation and answered questions from attendees. Some of the general comments received from community members included:

- Support for allowing STRs, noting that it provides opportunities for supplemental income, revenue and promotes tourism;
- Questions about existing business license requirements and potential safety requirements such as smoke detectors and fire extinguishers;
- Concern regarding the rental restriction period for un-hosted stays and how a limit of 180 or 60 days per calendar year will reduce income generation for the operator; and
- Allowing Accessory Dwelling Units (ADUs) to be used as STRs.

On December 28, 2018, the City launched a community survey on STRs through various media platforms, including the City's website, Nextdoor and Facebook, flyers and the City's local access government channel. Exhibit E (attached) provides a summary of the survey results, summarized as follows:

- 86.7% of survey respondents believe STRs give an alternative to standard hotel and motels;
- 73.3% of survey respondents believe STRs provide additional income;
- 64.9% of survey respondents are generally supportive of STRs; and
- Survey respondents believe the top 3 potential issues surrounding STRs are parking, safety, and noise.

On January 14, 2019, staff engaged the Economic Development & Trade Commission to provide background information on STRs. Staff reviewed current and proposed regulations pertaining to STRs in Santa Clara County, including the City of Milpitas, and potential regulations that the City Council could consider for adoption.

On April 8, 2019, and June 10, 2019, staff re-engaged the Economic Development & Trade Commission to present recommended STR regulations and to solicit feedback from Commission members. Several Commissioners provided insightful feedback such as implementation of an STR pilot program and recommended supplemental regulations related to City oversight, use restrictions, and good-neighbor rules, all of which are integrated into Ordinance No. 38.835 for City Council consideration.

On June 26, 2019, the Planning Commission held a lawfully-noticed public hearing to solicit public comment and consider the proposed Short-Term Rental Ordinance, take public testimony, and make a recommendation to the City Council on the proposed Ordinance. The Planning Commission considered and adopted Resolution No. 19-020 recommending that the City Council adopt a Zoning Ordinance Amendment to regulate short-term rentals of residences within the boundaries of the city, plus, made the following four recommendations:

- To conduct additional public outreach between June 26, 2019 and August 20, 2019;
- To facilitate conversations between Airbnb (and other platforms) and neighbors who are reporting negative impacts from short-term guests of whom are being inconsiderate and causing problems for Milpitas residents;
- To change the maximum un-hosted amount of days from 180 days to 60 days; and
- To review the short-term rental pilot program after the first year of implementation.

Following the public hearing on June 26, 2019, City staff continued to monitor and track short-term rental activities in response to the Planning Commission's input and concerns. City staff from several departments, in conjunction with the Planning Department and City Attorney's Office, met regularly to develop a revised regulatory program that enhanced the overall public health, safety, and general welfare of the citizens of Milpitas.

On January 29, 2020, the Planning Commission held a second lawfully-noticed public hearing to solicit public comment and consider a revised proposed Short-Term Rental Ordinance, take public testimony, and make a recommendation to the City Council on the proposed Ordinance. The Planning Commission considered and adopted Resolution No. 20-002 recommending that the City Council adopt a revised Zoning Ordinance Amendment to regulate short-term rentals of residences within the boundaries of the city.

ANALYSIS:

Current Regulations

As highlighted in the Background section above, the City's municipal code currently defines STRs as hotels. Broadly defined in terms of individual sleeping or living units for paying temporary guests, this definition for hotels covers inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, and mobile homes.

The City's current code also requires businesses to obtain a business license and regulates STRs by requiring the operators to collect and remit TOT for lodging provided for 30 or fewer days.

Current Regulations Throughout Santa Clara County

To date, there is no standard practice amongst municipalities in regulating STRs, although the variables are relatively consistent. Several municipalities in Santa Clara County have followed suit by adopting local policies regulating STRs.

The Cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering regulations for STRs, while the Cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga either lack regulations for STRs or prohibit the use entirely. Exhibit D (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs.

Staff has identified the following eight (8) regulations that are consistently addressed by Santa Clara County municipalities with STR regulations. Staff has also provided an analysis that compares the City's proposed regulations to the eight (8) regulations commonly applied by Santa Clara County municipalities to STRs.

- 1) Impose TOT registration and compliance on STRs.

Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. The City is exploring contracting with a third-party vendor to monitor STR listings, operate a hotline for residential complaints, and provide initial compliance communications with STR operators.

- 2) Require a business license or annual license fee.

Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. Most business licenses are valid for one year and must be renewed annually.

- 3) Require a Short-Term Rental Permit.

Staff Comment: This permit would enable the City to obtain basic information, including operator's full name, exact address, and location of the STR unit. It would also specify the City's regulations for operating a STR business.

- 4) Require a local contact person.

Staff Comment: The local contact person shall be available during the term of any stay to respond to complaints or emergencies.

- 5) Limit the number of days allowed per year.

Staff Comment: Municipalities in Santa Clara County have taken varied stances (e.g., unlimited, 60, 90, or 180 days per year). Typically, un-hosted rental days per year are significantly less than the number of days allowed for hosted rentals.

- 6) Limit the number of guests at one time.

Staff Comment: Municipalities in Santa Clara County have taken varied stances. (e.g., a maximum occupancy limit of two (2) persons per bedroom plus one (1) additional person).

- 7) Limit the number of STRs allowed at one address or parcel.

Staff Comment: Some Cities only allow one unit per parcel to be used as an STR. For example, if a home has an accessory dwelling unit (ADU), the primary dwelling is only allowed to operate as an STR.

- 8) Address on-site and off-site parking requirements.

Staff Comment: Some municipalities require STR parking off-street or limit the number of vehicles.

Proposed Ordinance Amendments

Staff recognizes that STR uses are widespread and continue to operate without a permit throughout Milpitas. While the proposed STR ordinance would allow STRs to continue operating in residential and mixed-use zoning districts, the program would also establish operating standards to address parking, noise, and other potential negative impacts.

Ordinance No. 38.835 seeks to achieve the following purposes and goals:

1. Allow STRs in residential and mixed-use zoning districts while preventing the loss of housing stock;
2. Preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors; and
3. Provide a registration mechanism for the City to track and enforce these requirements as needed and ensure appropriate collection of transient occupancy taxes.

Goal 1: Allow STRs While Preventing Loss of Housing Stock

Proposed Regulation(s)

- Permitted Zoning Districts. STRs are permitted in dwelling units in the R1, R2, R3, R4, R5, MXD, MXD2, and MXD3.
- Hosted Rentals Only. An Operator may only conduct a Hosted Rental. A “Hosted Rental” means a Short-Term Rental Unit where an owner or operator is occupying the dwelling unit during the short-term rental period.
- Nonconforming Dwelling Units. STRs are prohibited within all nonconforming dwelling units.
- Permitted in Primary Dwelling Units Only. STRs are not permitted within accessory structures and buildings, accessory dwelling units (ADUs), guest house accessory buildings, recreational vehicles, supportive housing, and senior housing units.
- Rentals per Dwelling Unit. A maximum of one STR rental is permitted per dwelling unit at any given time.

Goal 2: Preserve Residential Character

Proposed Regulation(s)

- Maximum Occupancy. The daytime and overnight occupancy of the STR is limited to a maximum of two persons per bedroom plus one additional person. The operator shall not allow the STR to be used for any gathering where the number of persons will exceed the permitted maximum occupancy limits.
- Exterior Alterations. The exterior of the dwelling unit must not be altered such that the structure may be recognized as serving a nonresidential use.
- Alternative Contact Person. The alternative contact person must be available 24-hours per day, 7 days per week, to respond to complaints. The alternative contact person must be able to respond in-person to complaints within 60 minutes.
- Trash and Refuse. Trash and refuse must be stored outside of public view, except in proper containers for the purpose of collection by the City’s authorized waste hauler on scheduled trash collection days.
- Signage. Signs that advertise the availability of the STR unit are prohibited.

- Commercial and Assembly Uses Prohibited. Use of the STR for any other commercial uses or assembly uses such as weddings, corporate events, or parties, is prohibited.
- Parking Requirements. One off-street parking space must be provided for the STR. Any parking space in excess of the required number of parking spaces for the primary dwelling unit pursuant to Section 53 “Off-Street Parking Regulations” may be used for the STR. The parking space must comply with all development standards set forth in Section 53 “Off-Street Parking Regulations.”

Goal 3: Provide a Registration Mechanism

Proposed Regulation(s)

- Required Permits. Prior to the operation of an STR, the operator must obtain a Short-Term Rental Permit. Currently, the FY 2019-20 Adopted Master Fee Schedule does not include a short-term rental permit fee. Therefore, staff intends to use the staff research fee of \$232/hour listed in the fee schedule, with a minimum fee of \$116 for the issuance of the one-time permit. A business license must also be obtained by STR operators.
- Compliance Review. The Planning Director or designee will review the Short-Term Rental Permit within one year after issuance for compliance. The Planning Director or designee will conduct a similar compliance review of Short-Term Rental Permits on an annual basis, or as needed, concurrent with renewal of the Business License for each use.
- Liability Insurance. Liability insurance is required of the Operator, or Hosting Platform on behalf of the Operator, in the amount of no less than \$500,000. Proof of liability insurance is not required if hosting activity is only handled by a hosting platform that already extends similar liability coverage.
- Good Neighbor Manual Required. The Operator must sign a manual provided by the City that summarizes general rules of conduct and all rules and regulations applicable to the use of the STR. The Operator must post the manual on the inside of the front door and door to the backyard or at conspicuous location near each door.

POLICY ALTERNATIVES:

Alternative 1: Do not approve Ordinance No. 38.835.

Pros: Not approving Ordinance No. 38.835 would allow staff to continue researching best practices in policy development and program implementation.

Cons: The use already exists and the current prohibition on STRs would require additional enforcement. Established residential neighborhoods may become more transient if the current prohibition is left unenforced.

Reason not recommended: Existing provisions in the Zoning Code do not facilitate the implementation of Council direction for preserving the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.

FISCAL IMPACT:

Implementation of the Short-Term Rental pilot program will require a permit fee and business license fee with an estimated combined revenue of \$10,000 based on Host Compliance data. In addition, to adequately enforce the new regulatory pilot program, an annual contract with a third-party vendor to monitor the program may be required.

The City successfully concluded negotiation of an acceptable Voluntary Collection Agreement with Airbnb and has initiated the contract execution process at the time that this staff report was prepared. Based on the number of hosts and annual host earnings, the FY 2019-20 Adopted Budget as approved by Council includes an estimate of \$260,000 in annual TOT receipts from the Airbnb agreement. TOT collection by Airbnb is expected to begin on March 1, 2020. Due to the timing of finalizing the agreement, the estimated annual TOT revenue amount of \$260,000 will not be received. Therefore, as part of the FY 2019-20 Second Quarter Financial Status and Mid-Year Budget Amendments staff report scheduled for February 18, 2020, staff recommends adjusting the TOT revenue estimate downward.

Depending on the regulatory framework regarding STRs that Council will adopt, staff will estimate TOT revenues related to STRs as part of the development of the FY 2020-21 budget.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that the introduction and adoption of Ordinance No. 38.835 is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for Milpitas residents to generate ancillary income from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Both of these outcomes are consistent with Land Use Element 2.a-I-5 ([m]aintain policies to promote a strong economy and provide economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). The Amendment is also consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines.

The introduction and adoption of Ordinance No. 38.835 is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environmental). Ordinance No. 38.835 does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the city.

None of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because Ordinance No. 38.835 will not result in a cumulative impact from successive projects of the same type in the same place, over time. Ordinance No. 38.835 is not an activity wherein there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; Ordinance No. 38.835 will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; Ordinance No. 38.835 will not apply to sites located on a hazardous resources; and Ordinance No. 38.835 will not cause a substantial change in the significance of a historical resource.

Finally, Ordinance No. 38.835 is exempt from CEQA under CEQA Guidelines, § 15061(b)(3), also known as the "common sense exemption," which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A "significant effect on the environment" means a substantial, or potentially substantial, adverse change in the physical conditions within the area affected by the project. Ordinance No. 38.835 would create new z

requirements for a use that is not currently allowed in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that Ordinance No. 38.835 would have a significant effect on the environment.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

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 State CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) and 15308 (Actions by Regulatory Agencies for Protection of the Environment).
- 3) City Attorney shall read aloud title of Ordinance No. 38.835.
- 4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10 for a zoning text amendment in Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards, Section 13 “Special Uses”, and Section 53 “Off-Street Parking Regulations.

ATTACHMENTS:

- A. Proposed City Council Ordinance No. 38.835 – for introduction
- B. Planning Commission Resolution No. 20-002
- C. Planning Commission Resolution No. 19-020
- D. Short-Term Rental Comparison Matrix
- E. Short-Term Rental Survey Results
- F. Smoke Alarm & Carbon Monoxide Alarm Self-Certification for Short-Term Rentals
- G. 01-29-2020 Planning Commission Memorandum
- H. 06-26-2019 Planning Commission Agenda Report
- I. 04-30-2019 Council Agenda Report + Meeting Minutes
- J. 02-26-2019 Council Agenda Report + Meeting Minutes

PLEASE NOTE:

This copy of Ordinance No. 38.835 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.835

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO SHORT-TERM RENTALS AND MAKING FINDINGS OF CEQA EXEMPTION

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

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

WHEREAS, the growing popularity of “home-sharing” and other short-term rentals, through the use of websites such as Airbnb and HomeAway, allow homeowners, landlords, and tenants to list homes, apartments, and rooms for rent at the price and duration of their choosing; and

WHEREAS, short-term rentals may reduce the supply of permanent housing stock and negatively impact the character of residential neighborhoods due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects that are a threat to the public health, safety, or welfare; related the City has a legitimate interest in preserving the long-term housing stock of the City and maintaining the character of its residential neighborhoods; and

WHEREAS, the City prohibits any uses that have been excluded from the “use tables” found throughout Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, short-term rentals are not expressly permitted or conditionally permitted by the City’s zoning ordinance in any district, so they are currently prohibited in accordance Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City Council intends to adopt a zoning ordinance permitting short-term rentals in zoning districts where residential uses are allowed, subject to the regulations contained in Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards,” Section 13 “Special Uses,” and Section 53 “Off-Street Parking Regulations” of the Zoning Code (Title XI of the Municipal Code); and

WHEREAS, on June 26, 2019, the Planning Commission of the City of Milpitas held a lawfully-noticed public hearing to consider the proposed Amendment and adopted Resolution No. 19-020 recommending that the City Council adopt the proposed Amendment; and

WHEREAS, on January 29, 2020, the Planning Commission of the City of Milpitas held a second lawfully-noticed public hearing to consider the proposed Amendment and adopted Resolution No. 20-002 recommending that the City Council adopt the proposed Amendment.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that the introduction and adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the proje

site.” The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for Milpitas residents to generate ancillary income from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Both of these outcomes are consistent with Land Use Element 2.a-I-5 ([m]aintain policies to promote a strong economy and provide economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). The Amendment is also consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environmental). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the city.

None of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time. The proposed ordinance is not an activity wherein there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Finally, this Ordinance is exempt from CEQA under CEQA Guidelines, § 15061(b)(3), also known as the “common sense exemption,” which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently allowed in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that this Ordinance would have a significant effect on the environment.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. GENERAL PLAN CONSISTENCY

The proposed Amendment supports several of the guiding principles and policies of the General Plan. First, the Amendment is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints) because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan.

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

Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definition to read as follows:

“Short-Term Rental Unit” or “Short-Term Rental” or “STR” means the use of a dwelling unit, including, without limitation, a single-family, two-family, or multiple-family dwelling unit, mobile home, or any portion of such dwellings, rented for occupancy for dwelling, lodging, or sleeping purposes for a period of 30 or fewer calendar days, counting portions of days as full calendar days.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

Title XI, Chapter 10, Section 4 “Residential Zones and Standards,” Subsection XI-10-4.02 “Residential Use Regulations,” Table XI-10-4.02-1 “Residential Zone Uses,” Section 6. Unclassified Uses, of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-4.02-1
Residential Zone Uses**

Use	R1	R2	R3	R4	R5
6. Unclassified Uses					
Agriculture ¹⁰	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course ¹¹	C	C	C	NP	NP
Live work units ¹²	NP	NP	C	C	C
Model home complex ¹³	P	P	P	P	P
Short-Term Rentals¹⁴	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

¹ Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.

² Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.

³ Licensed nursing home serving more than six persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

⁴ Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

⁵ Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

⁶ In conjunction with an existing or proposed legal single-family dwelling or duplex. Refer to Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter, for standards.

⁷ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

⁸ Permitted only in single family dwellings

⁹ Permitted only in multi-family dwellings

¹⁰ Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

¹¹ Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

¹² Allowed commercial uses to be specified through the Conditional Use Permit process.

¹³ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

¹⁴ Subject to the requirements of Subsection XI-10-13.16, Short-Term Rentals, of this Chapter.

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

Title XI, Chapter 10, Section 6 “Mixed Use Zones and Standards,” Subsection XI-10-6.02 “Mixed Use Regulations,” Table XI-10-6.02-1 “Mixed Use Zone Uses,” Section 9. Unclassified Uses, of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
9. Unclassified Uses				
Artisan Studios & Live-work units, woodworking or glassworking, plumbing or metalworking and sign shops ²	MCS	MCS	MCS	MCS
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex ¹¹	P	P	P	P
Mixed use developments ¹²	P	P	P	P
Planned Unit Development ¹³	P	P	P	P
Temporary seasonal sales ¹⁴	P	P	P	P
<u>Short-Term Rentals¹⁷</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>

1 Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

2 Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

3 Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

4 Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

5 For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

6 Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter

7 Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

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

9 Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

10 Reserved

11 Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

12 Which include only permitted uses.

13 Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

14 Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

15 New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

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

17 Only allowed within a dwelling unit, subject to the requirements of Subsection XI-10-13.16, Short-Term Rentals, of this Chapter.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 "Special Uses," Subsection XI-10-13.16 "Short-Term Rentals" of the Milpitas Municipal Code is hereby added to read as follows:

XI-10-13.16 – Short-Term Rentals

- A. Purpose. The purpose of this Subsection is to regulate the establishment and operation of short-term rental units ("STRs"). As such, the City desires to give special consideration to preserving the residential character of neighborhoods, preventing long-term residential uses from being replaced with STRs, and protecting all neighborhoods from potential adverse impacts caused by the operation of STRs.
- B. Definitions. For purposes of this Subsection, the following definitions apply:

1. “Alternative Contact Person” means a natural person, whether the owner, local property manager, or agent of the owner, who is available twenty-four hours per day, seven days per week to respond to complaints regarding the condition, operation, or conduct of occupants of a short-term rental unit.
2. “Applicant” means a person applying for or renewing a Short-Term Rental Permit. “Applicant” may be the “Owner” or “Operator.”
3. “Bedroom” means “Bedroom” as defined in Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code.
4. “Dwelling unit” means “Dwelling unit” as defined in Subsection XII-1-2.04 “Definitions” of the Milpitas Municipal Code.
5. “Good Neighbor Manual” means a manual prepared by the City regarding the general rules of conduct to be followed when operating a Short-Term Rental Unit.
6. “Hosted Rental” means a Short-Term Rental Unit where an Owner or Operator is living and present in the dwelling unit during the short-term rental period.
7. “Hosting Platform” means business or person that provides a means through which an Operator may offer a dwelling unit, or portion thereof, for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange short-term rentals, whether the Short-Term Rental Transient pays rent directly to the Operator or to the Hosting Platform.
8. “Operator” means a natural person who is the Owner, lessee, or Owner’s agent to act on the Owner’s behalf to insure compliance with this Subsection.
9. “Owner” means “Owner” as defined in Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code.
10. “Short-Term Rental Unit” or “Short-Term Rental” or “STR” is defined by Subsection XI-10-2.03 “Definitions” of the Code.
11. “Short-Term Rental Permit” means a permit to establish a Short-Term Rental Unit.
12. “Transient” means “Transient” as defined in Subsection III-13-2.03 “Transient” of the Milpitas Municipal Code.
13. “Un-hosted Rental” means an STR where an Owner or Operator is not living and present in the primary dwelling unit during the short-term rental period.

C. Applicability.

1. This section applies to Short-Term Rental Units as defined in Subsection XI-10-13.16(B)(10).
2. Permitted Zoning Districts. STRs are permitted in dwelling units in the R1, R2, R3, R4, R5, MXD, MXD2, and MXD3 Zoning Districts, subject to the requirements of this Subsection XI-10-13.16.
3. Nonconforming Dwelling Units. STRs are prohibited within all nonconforming dwelling units, except those that are legal nonconforming with respect to the parking standards of Section 53 “Off-Street Parking Requirements.” If a dwelling is legal and nonconforming only because it does not meet the parking standards of Section 53 “Off-Street Parking Regulations,” an STR may be established when parking for the dwelling unit is provided to meet the applicable requirements of Section 53 “Off-Street Parking Regulations.”
4. Permitted in Primary Dwelling Units Only. STRs are permitted in primary dwelling units only. STRs are not permitted within accessory structures and buildings, accessory dwelling units (ADUs), guest house accessory buildings, or recreational vehicles.

D. General Requirements.

1. Required Permits. Prior to the operation of a dwelling unit, or a portion thereof, as an STR, the operator must obtain a Short-Term Rental Permit pursuant to this Subsection and a business license pursuant to Title III, Chapter 1 “Business Licenses” of the Milpitas Municipal Code. A Short-Term Rental Permit may be terminated or revoked if the standards of this Chapter are not met.

2. Compliance. Occupants of the STR must comply with all applicable Federal, State, and local laws. The Operator must ensure compliance with this provision.
3. Rentals per Dwelling Unit. A maximum of one (1) Short-Term Rental is permitted per dwelling unit at any given time.
4. Off-Street Parking Requirement. One (1) off-street parking space must be provided for the STR. Any parking space in excess of the required number of parking spaces for the primary dwelling unit pursuant to Section 53 "Off-Street Parking Regulations" may be used for the STR. The parking space must comply with all development standards set forth in Section 53 "Off-Street Parking Regulations."
5. Exterior Alterations. The exterior of the dwelling unit must not be altered such that the structure appears to serve a nonresidential use either by color, materials, construction, lighting, signage, landscaping, or by other similar effects.
6. Hosted Rentals Only. An Operator may only conduct a Hosted Rental. Un-hosted Rentals are prohibited in STRs.
7. Maximum Occupancy. The daytime (7:00 a.m. to 9:00 p.m.) and overnight (9:00 p.m. to 7:00 a.m.) occupancy of the STR is limited to a maximum of two (2) persons per bedroom plus one (1) additional person. The Operator shall not allow the STR to be used for any gathering where the number of persons will exceed the permitted maximum occupancy limits.
8. Alternative Contact Person. The Owner must identify and designate an Alternative Contact Person who must be available twenty-four (24) hours per day, seven (7) days per week, to respond to complaints regarding the condition, operation or conduct of occupants of the STR. The Alternative Contact Person must respond in-person to complaints within sixty (60) minutes.
9. Trash and Refuse. Trash and refuse must be stored outside of public view, except in proper containers for the purpose of collection by the City's authorized waste hauler on scheduled trash collection days.
10. Signage. Signs that advertise the availability of the short-term rental unit are prohibited.
11. Liability Insurance. Liability insurance is required of the Operator, or Hosting Platform on behalf of the Operator, in the amount of no less than \$500,000. Proof of liability insurance is not required if hosting activity is only handled by a hosting platform that already extends similar liability coverage.
12. Commercial and Assembly Uses Prohibited. STRs are limited to dwelling, lodging, and sleeping purposes only. Use of the STR for any other commercial uses or assembly uses such as weddings, corporate events, or parties, is prohibited.
13. Transient Occupancy Tax. Either the Operator or Hosting Platform must collect and remit the transient occupancy tax ("TOT") pursuant to Title 3, Chapter 3.24 "Transient Occupancy Tax" of the Milpitas Municipal Code. The Operator must maintain records of TOT paid, even if paid by a hosting platform, for three years.
14. Good Neighbor Manual Required. The Operator must sign a manual provided by the City that summarizes general rules of conduct and all rules and regulations applicable to the use of the STR in this Subsection and the Milpitas Municipal Code. The Operator must post the manual on the inside of the front door and door to the backyard or a in a conspicuous location near each door.
15. Indemnification. To the fullest extent permitted by law, the Owner of an STR must defend, indemnify, and hold the City of Milpitas, its officials, officers, and employees free and harmless from any and all claims, demands, causes of action, damage or injury to persons or property arising out of any alleged acts, omissions, or willful conduct of the Owner, its employees, or its agents.
16. Health and Safety. It is the Operator's responsibility to assure that the STR is and remains in compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.
17. Amnesty Period. Notwithstanding any other provision of law, Short-Term Rental Units operating on or before the enactment of this ordinance shall be considered existing, unpermitted uses. An amnesty period of six (6) months after the effective date of this Ordinance, is provided to allow these existing, unpermitted uses to be legalized by conforming to the requirements of this Chapter, including compliance with operating

standards, registration, and record-keeping obligations. Transient occupancy tax payment continues to be required at all times for Short-Term Rental Units and must be collected and paid during the amnesty period. Applications to bring an existing, unpermitted Short-Term Rental Unit use into compliance shall be made on or before six (6) months from the effective date of this ordinance. Existing Short-Term Rental Units that do not conform to the requirements of this section shall cease operation within six (6) months of the effective date of this Ordinance, and shall be prohibited from resuming unless and until the use conforms to the requirements of this Chapter.

E. Application Procedure.

1. Short-Term Rental Permit. STRs are subject to a Short-Term Rental Permit, pursuant to this Subsection. An Owner or Operator must apply for and obtain a Short-Term Rental Permit before operating an STR.
2. The Planning Director makes the determination on the Short-Term Rental Permit application, based on compliance with provisions in this Subsection XI-10-13.16.
3. The application must contain the following information and documentation:
 - a. The name, address, and telephone number of the Owner of the subject short-term rental unit;
 - b. If the Applicant is not the Owner, the Applicant must demonstrate written consent of the Owner to operate a Short-Term Rental Unit on the property;
 - c. The name, address, and telephone number of the Owner's authorized agent or representative, if any;
 - d. The name, address, and 24-hour telephone number of the Alternative Contact Person;
 - e. Verification that the Alternative Contact Person can respond in person to the site of the short-term rental unit within sixty (60) minutes of notification of a complaint;
 - f. The address of the proposed STR;
 - g. The number of bedrooms in the STR;
 - h. The location and dimensions of the off-street parking space designated for the STR;
 - i. For STRs located in any area governed by a homeowners' association or community association (association) and subject to CC&Rs, the Applicant must additionally submit a copy of a letter to the association's governing board stating the applicant's intent to operate a Short-Term Rental Unit and inviting the association to submit a letter to the City stating one of the following: (1) that short-term rentals are not prohibited at the proposed unit by the CC&Rs; or (2) that a short-term rental is allowed at the proposed unit under the CC&Rs, but only under certain conditions, and a statement of whether or not the conditions here are met; or (3) that the CC&Rs do not allow short-term rentals as defined herein. The association's response is not determinative, but it is a factor that may be considered by the Planning Director;
 - j. A copy of the Good Neighbor Manual, signed by the Owner, certifying that the Owner has read and understands the guidelines for responsible operation;
 - k. The Operator must attach a copy of the "Smoke Alarm & Carbon Monoxide Alarm Self Certification" for the property to be used as a Short-Term Rental to the application in order to ensure the space has smoke alarms and carbon monoxide alarms and spark arrestors installed; and
 - l. Such other information as the Planning Director deems reasonably necessary to administer this Subsection.

F. Compliance Review. The Planning Director or the Planning Director's designee will review the Short-Term Rental Permit within one (1) year after issuance for compliance with this Subsection. The Planning Director or his or her designee will conduct a similar compliance review of Short-Term Rental Permits on an annual basis, or as needed, concurrent with renewal of the Business License for each use. Any failure to conduct a review does not waive any noncompliance or the City's right to conduct a review in the future.

G. Change in Ownership. If there is a change of property ownership, change of Owner's agent or representative, or any other change in material facts pertaining to the information contained in the Short-Term Rental Permit,

application, the new owner or new owner’s authorized agent or representative shall obtain a new Business License and notify the City prior to continuing to rent the subject unit as a short-term rental. The Planning Director or his or her designee will conduct a compliance review of the Short-Term Rental Permit for the subject property in conjunction with the application for a Business License by the new property owner.

- H. Violation of Regulations. Violation of any provision of this Chapter, including the requirement to maintain a current Business License, may result in the revocation of the Short-Term Rental Permit after notice and an opportunity for a hearing has been given to the permittee, in accordance with Subsection XI-10-63.06 “Revocation, Suspension, Modification.”
- I. Enforcement. Where prompt compliance is not forthcoming, the City may take any appropriate enforcement action to secure compliance. All remedies in the Milpitas Municipal Code are considered cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing these provisions.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53

Title XI, Chapter 10, Section 53 “Off-Street Parking Regulations,” Subsection XI-10-53.09 “Off-Street Parking by Land Use,” Table XI-10-53.09-1 “Number of Parking Spaces Required,” Section I. Residential Uses, of the Milpitas Municipal Code is hereby amended to read as follows:

**Table 53.09-1
Number of Parking Spaces Required**

Use	Minimum Parking Spaces Required
I. Residential Uses	
Single Family and Duplexes:	
3 bedrooms or fewer	2 per unit ⁴
4 or more bedrooms	3 per unit, plus 1 per each additional bedroom ⁴
Multi-Family (R3-R5 zones):	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
1 or more 2 - 3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of the total required
Boarding houses, dormitories, sororities and fraternities	1 per each room rented
Live-Work Units	<i>Single family and duplexes</i> parking requirements shall apply, plus 1.5 for the commercial component
<i>Mixed Use buildings or sites</i>	
Residential use	
Studio	1 covered per unit

1 bedroom	1.5 covered per unit
2 - 3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of total required
Commercial use	
Ground Floor Retail	1 per 250 sq. ft.
Office	If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft. If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.
<u>Short-Term Rentals</u>	<u>1 per unit</u>
Other uses	Refer to specific uses within this table
Bicycle parking	5% of total required
Mobile Homes	Refer to Section 13.07, Mobile Homes
Senior Housing	1 per unit plus 2 per manager's unit
Single Room Occupancy (SRO)	1 per unit

1 Refer to Subsection 2.03, Definitions, of this Chapter for a full description of "Commercial Services."

2 For loading and unloading: One (1) parking space per six (6) children up to five (5) spaces and thereafter one (1) space per ten (10) children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for child care homes. Tandem spaces are prohibited.

3 Exceptions for Child Care Requirements: The parking and loading/unloading requirements for child care facilities may in the Planning Commission's discretion be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles.

4 Applicable to new and existing projects being remodeled resulting in additional bedrooms submitted for approval after April 7, 2009. Existing projects or projects either entitled or submitted active planning applications prior to April 7, 2009 shall use the parking regulations in effect at the time of entitlement or application submittal. For R4, R5, MXD/MXD2/MXD3 zones, 15% guest parking is legal and conforming for projects entitled or active planning applications submitted prior to April 7, 2009.

SECTION 9. SEVERABILITY

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

SECTION 10. EFFECTIVE DATE AND POSTING

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

RESOLUTION NO. 20-002

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THAT THE CITY COUNCIL ADOPT CITY-INITIATED ZONING TEXT AMENDMENT NO. 20-002 TO REGULATE SHORT-TERM RENTALS OF RESIDENCES WITHIN THE CITY OF MILPITAS, AND MAKING CEQA FINDING OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B)(3), 15183, AND 15308

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

WHEREAS, the growing popularity of “home-sharing” and other short-term rentals, through the use of websites such as Airbnb and HomeAway, allow homeowners, landlords, and tenants to list homes, apartments, and rooms for rent at the price and duration of their choosing; and

WHEREAS, short-term rentals may reduce the supply of permanent housing stock and negatively impact the character of residential neighborhoods due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects that are a threat to the public health, safety, or welfare; related the City has a legitimate interest in preserving the long-term housing stock of the City and maintaining the character of its residential neighborhoods; and

WHEREAS, the City prohibits any uses that have been excluded from the “use tables” found throughout Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, short-term rentals are not expressly permitted or conditionally permitted by the City’s zoning ordinance in any district, so they are currently prohibited in accordance with Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City Council intends to adopt a zoning ordinance permitting short-term rentals in zoning districts where residential uses are allowed, subject to the regulations contained in Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards, Section 13 “Special Uses”, and Section 53 “Off-Street Parking Regulations” of the Zoning Code (Article XI of the Municipal Code), attached hereto as **Exhibit A**; and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, the Planning Commission hereby finds and determines that the project is exempt from CEQA review, each as a separate and independent basis, pursuant to CEQA Guidelines section 15061(b)(3) (Common Sense Exemption), section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning), and 15308 (Actions by Regulatory Agencies for Protection of the Environment); and

WHEREAS, on June 26, 2019, the Planning Commission held a duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, on January 29, 2020, the Planning Commission held a second duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

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

SECTION 1. Recitals.

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

SECTION 2. California Environmental Quality Act Findings

The Planning Commission recommends that the City Council find, under California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3) that the introduction and adoption of this Ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the “common sense exemption,” states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently regulated in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment. Accordingly, the ordinance is exempt from CEQA review.

Moreover, the Planning Commission recommends that the City Council find that the introduction and adoption of this Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of

the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes, which is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines. There are no circumstances peculiar to the project or significant new or more severe impacts that were not analyzed in the General Plan CEQA analysis that require further environmental review.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environment). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the City.

Finally, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time; the proposed ordinance is not an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57.02(G)(3))

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA19-0002:

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

The proposed zoning amendment supports several of the guiding principles and policies of the General Plan. First, the Amendment is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints) because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan.

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

The proposed Zoning Amendment will not adversely affect the public health, safety, and welfare due to regulations set forth that preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 20-002 recommending that the City Council adopt Zoning Text Amendment No. ZA19-0002 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 29, 2020.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 29, 2020, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza				
Tim Alcorn				
Sudhir Mandal				
Demetress Morris				
Bill Chuan				
Steve Tao				
Evelyn Chua				

RESOLUTION NO. 19-020

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THAT THE CITY COUNCIL ADOPT CITY-INITIATED ZONING
TEXT AMENDMENT NO. 19-0002 TO REGULATE SHORT-TERM RENTALS OF
RESIDENCES WITHIN THE CITY OF MILPITAS, AND MAKING CEQA FINDING
OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA
GUIDELINES SECTIONS 15061(B)(3), 15183, 15301, AND 15308**

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

WHEREAS, the growing popularity of “home-sharing” and other short-term rentals, through the use of websites such as Airbnb and HomeAway, allow homeowners, landlords, and tenants to list homes, apartments, and rooms for rent at the price and duration of their choosing; and

WHEREAS, short-term rentals may reduce the supply of permanent housing stock and negatively impact the character of residential neighborhoods due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects that are a threat to the public health, safety, or welfare; related the City has a legitimate interest in preserving the long-term housing stock of the City and maintaining the character of its residential neighborhoods; and

WHEREAS, the City prohibits any uses that have been excluded from the “use tables” found throughout Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, short-term rentals are not expressly permitted or conditionally permitted by the City’s zoning ordinance in any district, so they are currently prohibited in accordance with Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City Council intends to adopt a zoning ordinance permitting short-term rentals in zoning districts where residential uses are allowed, subject to the regulations contained in Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards, Section 13 “Special Uses”, and Section 53 “Off-Street Parking Regulations” of the Zoning Code (Article XI of the Municipal Code), attached hereto as **Exhibit A**; and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, the Planning Commission hereby finds and determines that the project is exempt from CEQA review, each as a separate and independent basis, pursuant to CEQA Guidelines section 15061(b)(3) (Common Sense Exemption), section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning), section 15301 (Existing Facilities), and 15308 (Actions by Regulatory Agencies for Protection of the Environment); and

WHEREAS, on June 26, 2019, the Planning Commission held a duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

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

SECTION 1. Recitals.

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

SECTION 2. California Environmental Quality Act Findings

The Planning Commission recommends that the City Council find, under California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3) that the introduction and adoption of this Ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the "common sense exemption," states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. A "significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently regulated in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment. Accordingly, the ordinance is exempt from CEQA review.

Moreover, the Planning Commission recommends that the City Council find that the introduction and adoption of this Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." The proposed Amendment to permit and

regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes, which is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines. There are no circumstances peculiar to the project or significant new or more severe impacts that were not analyzed in the General Plan CEQA analysis that require further environmental review.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15301 (Existing Facilities). Section 15301 of the State CEQA Guidelines provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Short-term rentals are uses that allow sleeping, lodging, or living within a dwelling unit, or a portion thereof. Except for duration, short-term rental uses are similar to a residential use. Since the proposed ordinance permits and regulates a use that is similar in operation to the already-allowed long-term residential uses, the proposed ordinance is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environment). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the City.

Finally, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time; the proposed ordinance is not an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, 15301, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57.02(G)(3))

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA19-0002:

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

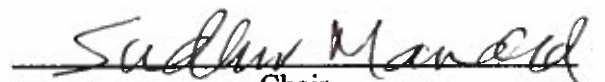
The proposed zoning amendment supports several of the guiding principles and policies of the General Plan. First, the Amendment is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints) because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan.

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

The proposed Zoning Amendment will not adversely affect the public health, safety, and welfare due to regulations set forth that preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 19-020 recommending that the City Council adopt Zoning Text Amendment No. ZA19-0002 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on June 26, 2019.


Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on June 26, 2019, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza	X			
Tim Alcorn	X			
Sudhir Mandal	X			
Demetress Morris	X			
Bill Chuan	X			
Steve Tao		X		
Evelyn Chua	X			

COMPARISON CHART OF SHORT-TERM RENTAL REGULATIONS IN OTHER SANTA CLARA CITIES

City	* -- Milpitas	* -- Cupertino	Los Altos Hills	Los Gatos	Mountain View	San Jose	Sunnyvale
Days/Year Permitted: A. Host Present B. Host Not Present	A. Unlimited B. 180 Days/Yr.	A. Unlimited B. 60 Days/Yr.	A. None Specified B. None Specified	A. 180 Nights/Yr. B. 30 Nights/Yr.	A. Unlimited B. 90 Days/Yr.	A. Unlimited B. 180 Days/Yr.	A. Unlimited B. Prohibited
Host Registration Requirements: A. Application/Permit B. License	A. STR Permit B. Business License	A. STR Permit B. Business License	A. Not Specified B. STR License	A. STR Application B. STR License	A. Annual Registration B. Business License	A. Not Specified B. Business License	A. STR Application B. Business License
Local Contact Person	Required	Required	Not Specified	Required	Required	Required	Not Required (Host Already On-site)
Airbnb Agreement	No, Currently Negotiating	Yes, 2018	No	No, Currently Exploring	Yes, 2019	Yes, 2015	Yes, 2018
Limit on STRs Per Property	One STR Rental At Any Given Time	One STR Rental Per Night	One STR Unit Per Property	One STR Unit Per Parcel	Not Specified	Not Specified	Not Specified
Parking Requirements	One off-street parking space must be provided for the STR. Any parking space in excess of the required number of parking spaces may be used for the STR. Must comply with the number of on-site parking spaces required to meet parking standards.	Must comply with the number of on-site parking spaces required to meet parking standards. STR parking to be designated in application.	On-site in approved parking areas with no overnight street parking.	On-site parking in areas without permitted on-street parking for residents. Two guest parking passes can be purchased for permitted on-street parking.	Must comply with the number of on-site parking spaces required to meet parking standards. No designated parking required for STR.	Must comply with the number of on-site parking spaces required to meet parking standards.	Not Specified
Maximum Occupancy Limits	2 times the number of bedrooms in the structure plus 1.	2 times the number of bedrooms in the structure plus 2.	Not Specified	2 persons per bedroom plus 1 additional person per unit	Not Specified	A. Host Present 3/one-family dwelling or mobile home; 2/two-family or multi family dwelling. B. Host Not Present 2/studio unit; 3/first bedroom; 2/subsequent room, not to exceed 10 total users.	4 guests per night excluding children

* Proposed Regulation.

Note: The cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering the regulation of STRs, while the cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga have no regulation in place for STRs or prohibit the use of STRs entirely. As of June 21, 2019.

Short-term Rentals in Milpitas

Should the City of Milpitas have a short-term rental policy for the City? And if so, what should it look like?

Summary Of Responses

As of February 8, 2019, 4:28 PM, this forum had: **Topic Start**

Attendees:	139	December 28, 2018, 2:18 PM
Responses:	77	
Hours of Public Comment:	3.9	

QUESTION 1

1. Please select all of the following that apply to you?

		%	Count
Milpitas resident		93.5%	72
Employee in Milpitas		9.1%	7
Homeowner		62.3%	48
Renter - single family home or multifamily/apartment		11.7%	9
Business owner		9.1%	7
Other		1.3%	1

QUESTION 2

2. Have you ever used a short-term rental service (i.e. Airbnb, VRBO, HomeAway, etc.)? (select all that apply)

		%	Count
Used it in my travels		67.5%	52
Rented a room in my home for less than 30 days		3.9%	3
Rented out my entire house for less than 30 days		1.3%	1

Short-term Rentals in Milpitas

Should the City of Milpitas have a short-term rental policy for the City? And if so, what should it look like?

		%	Count
None of the above		32.5%	25

QUESTION 3

3. What values do you see in allowing short-term rental of residential property? (select all that apply)

		%	Count
Provides additional income		73.3%	55
Gives alternatives to standard hotel and motels		86.7%	65
Other		18.7%	14

QUESTION 4

4. If allowed, what do you see as potential issues? (select all that apply)

		%	Count
Noise		47.7%	31
Traffic		26.2%	17
Safety		49.2%	32
Parking		61.5%	40
Other		43.1%	28

QUESTION 5

5. If you are NOT supportive of allowing short-term rentals in Milpitas, would you be more supportive if the owner/resident lived in the unit while it is being rented?

Short-term Rentals in Milpitas

Should the City of Milpitas have a short-term rental policy for the City? And if so, what should it look like?

		%	Count
Yes, I would be more supportive		18.9%	14
No, I would still not support allowing short-term rentals		16.2%	12
I am generally supportive of short-term rentals		64.9%	48

QUESTION 6

6. Short-term rental guests may require parking during their stays. Which of the following rules would you support to address short-term rental parking?

		%	Count
All short-term rental parking should be contained on-site (at the property) or off-site (street parking adjacent to the property)		19.5%	15
All short-term rental parking should only be contained on-site (at the property)		49.4%	38
All short-term rental property should only be contained off-site (street parking adjacent to the property)		1.3%	1
I am not concerned about short-term rental parking		29.9%	23

QUESTION 7

7. Should a local contact person be designated by the property owner (Host)? A local contact person means a person designated by the Host who shall be available during the term of any stay for the purpose of responding to complaints or taking action to resolve such complaints.

		%	Count
Yes, a local contact person should be required for short-term rentals		74.0%	57
No, a local contact person should not be required for short-term rentals.		16.9%	13
Other		9.1%	7



This Smoke Alarm and Carbon Monoxide Alarm Self-Certification for Short-Term Rentals must be signed by the property owner and submitted to the Planning Department in accordance with Milpitas Municipal Code Ordinance No. 38.835. In single family and multi-family residences (including townhomes, condominiums and apartments), installation of smoke alarms and carbon monoxide alarms are required per the California Residential Code R314 & R315 and the California Building Code section 907.2.11.

Smoke Alarms listed in accordance with UL 217, approved by the California State Fire Marshal, tested and maintained in accordance with the manufacturer's instructions, shall be installed in existing or new dwellings as follows:

- In each sleeping area;
- Outside each sleeping area, and placed so that it is approximately equal distances from all sleeping areas that are protected by that alarm, such as in a common hallway for access to multiple bedrooms; and
- In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

Alarms that no longer function shall be replaced. The installation of smoke alarms shall also comply with the following requirements:

1. Smoke alarms shall not be located where ambient conditions, including humidity and temperature, are outside the limits specified by the manufacturer's published instructions.
2. Smoke alarms shall not be located within unfinished attics or garages or in other spaces where temperatures can fall below 40°F or exceed 100°F.
3. Where the mounting surface could become considerably warmer or cooler than the room, such as a poorly insulated ceiling below an unfinished attic or an exterior wall, alarms shall be mounted on an inside wall.
4. Smoke alarms shall be installed a minimum of 20 feet horizontal distance from a permanently installed cooking appliance, except Ionization smoke alarms with an alarm-silencing switch or Photoelectric smoke alarms shall be permitted to be installed 10 feet or greater from a permanently installed cooking appliance and Photoelectric smoke alarms shall be permitted to be installed greater than 6 feet from a permanently installed cooking appliance where the kitchen or cooking area and adjacent spaces have no clear interior partitions and the 10 foot distances would prohibit the placement of a required smoke alarm or smoke detector. Smoke alarms listed for use in close proximity to a permanently installed cooking appliance can be installed in accordance with their listing.

5. Smoke alarms shall be installed not less than a 3-foot horizontal distance from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by the code.
6. Smoke alarms shall not be installed within a 36-inch horizontal path from the supply registers of a forced air heating or cooling system and shall be installed outside of the direct airflow from those registers.
7. Smoke alarms shall not be installed within a 36-inch horizontal path from the tip of the blade of a ceiling suspended (paddle) fan.

Carbon Monoxide (CO) Alarms listed in accordance with UL 2034, or combination carbon monoxide and smoke alarm listed in accordance with UL2034 and UL217, approved by the California State Fire Marshal and installed and maintained in accordance with the manufacturer's instructions shall be installed in existing or new dwellings having a fuel-fired appliance, fireplace or an attached garage with an opening communicating with the dwelling.

The alarms shall be installed at these locations:

- Outside each sleeping area, and placed so that it is approximately equal distances from all sleeping areas that are protected by the CO alarm, such as in a common hallway for access to multiple bedrooms;
- On every occupiable level, including a basement; and
- If there is a fuel-burning appliance located within a bedroom or its' attached bathroom (e.g. gas fueled fireplace insert), an alarm shall be located within the bedroom.

SHORT-TERM RENTAL SELF- CERTIFICATION

I UNDERSTAND THE ABOVE REQUIREMENTS AND CERTIFY THAT I NOW HAVE SMOKE ALARMS AND CARBON MONOXIDE ALARMS INSTALLED AS REQUIRED ABOVE.

PROPERTY OWNER NAME: _____

PROPERTY OWNER ADDRESS: _____

PROPERTY OWNER SIGNATURE _____

DATE: _____

MEMORANDUM

Office of Economic Development



DATE: January 29, 2020

TO: Planning Commission

THROUGH: Ned Thomas, Planning Director

FROM: Daniel Degu, Sr., Economic Development Coordinator

SUBJECT: Zoning Text Amendment – Short-Term Rentals – Citywide (P-ZA19-0002):
A City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals of residences within the City of Milpitas

On June 26, 2019, the Planning Commission held a lawfully-noticed public hearing to solicit public comment, take public testimony, and make a recommendation to the City Council on the proposed Short-Term Rental Ordinance.

The Planning Commission considered and adopted Resolution No. 19-020 recommending that the City Council adopt a City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals of residences within the boundaries of the city, plus, made the following four recommendations.

1. To conduct additional public outreach between June 26, 2019 and August 20, 2019. Two additional community meetings on STRs were held on August 7 and August 15, 2019.
2. To facilitate conversations between Airbnb (and other platforms) and neighbors who are reporting negative impacts from short-term guests of whom are being inconsiderate and causing problems for Milpitas residents.
3. To change the maximum un-hosted amount of days from 180 days to 60 days.
4. To review the short-term rental pilot program after the first year of implementation.

Following the public hearing on June 26, 2019, City staff continued to monitor and track short-term rental activities in response to the Commission's input and concerns. City staff from several departments, in conjunction with the Planning Department and City Attorney's Office, met regularly to develop a revised regulatory program for short-term rentals. The revisions made to the attached draft ordinance subsequent to June 26, 2019 are denoted in strikeout/underline. Below is an overview of the revisions:

- California Environmental Quality Act (CEQA): The previously approved proposed ordinance determined that the introduction and adoption of the ordinance was exempt

MEMORANDUM

Office of Economic Development



under CEQA Guideline 15301 (Existing Facilities). The revised proposed ordinance removes Section 15301 of the CEQA Guidelines primarily because Section 15301 is applicable to permanent uses and structures such as long-term residential uses and not short-term rental uses.

- Good Neighbor Manual Definition: The revised proposed ordinance includes language that requires the property owner to sign a manual that summarizes general rules of conduct and all rules and regulations applicable to the use of the short-term rentals.
- Hosted and Un-hosted Stays: The revised proposed ordinance prohibits un-hosted rentals, and an operator may only conduct a hosted rental.
- Maximum Occupancy: The revised proposed ordinance addresses daytime and overnight occupants and prohibits the operator from allowing the short-term rental to be used for any gathering where the number of persons will exceed the permitted maximum occupancy limits.
- Enforcement: The previously approved proposed ordinance did not address enforcement when prompt compliance is not forthcoming by the operator. The revised proposed ordinance authorizes the City to take appropriate enforcement action to secure compliance.
- Permitted Use: The revised proposed ordinance clarifies that short-term rentals are a permitted use with the approval of a short-term rental permit.

The revised proposed Short-Term Rental Ordinance still achieves the following purposes and goals:

1. Allow STRs in residential and mixed-use zoning districts while preventing the loss of housing stock.
2. Preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.
3. Provide a registration mechanism for the City to track and enforce these requirements as needed and ensure appropriate collection of transient occupancy taxes.

Based on the direction and input received from the City Council, Planning Commission, Economic Development and Trade Commission, referral agencies, community workshops, online survey results, and market analysis, City staff is of the opinion that proper analysis has been undertaken and that the revised proposed ordinance supports the public necessity, health, safety, and general welfare of the citizens of Milpitas.



MILPITAS PLANNING COMMISSION STAFF REPORT

June 26, 2019

APPLICATION: **Zoning Text Amendment – Short-Term Rentals – Citywide (P-ZA19-0002):** A City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals of residences within the City of Milpitas.

RECOMMENDATION: **Staff recommends that the Planning Commission: Adopt Resolution No. 19-020 approving Zoning Text Amendment (P-ZA19-0002)**

LOCATION:

Address/APN: Citywide
Area of City: Citywide

PEOPLE:

Project Applicant: City of Milpitas
Property Owner:
Project Planner: Daniel Degu, Economic Development Coordinator

LAND USE:

General Plan Designation: Citywide
Zoning District:
Overlay District:

ENVIRONMENTAL: The City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals within the City of Milpitas is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), and 15308 (Actions by Regulatory Agencies for Protection of the Environment)

Zoning Text Amendment – Short-Term Rentals

EXECUTIVE SUMMARY

On February 26, 2019, the City Council received a report from City staff on options for short-term rental (STR) regulations. Following staff's presentation, the City Council discussed regulations that allowed STRs under provisions that met the City's goals to maximize housing stock, preserve residential character, and ensure safety of residents. The City Council directed staff to return to the City Council with a recommendation to adopt an ordinance that would permit STRs under local regulations.

This proposed zoning ordinance requires an amendment to Section 2 "Definitions," Section 4 "Residential Zones and Standards," Section 6 "Mixed Use Zones and Standards, Section 13 "Special Uses", and Section 53 "Off-Street Parking Regulations" of the Zoning Code (Article XI of the Municipal Code). The proposed ordinance is consistent with the City's General Plan and all other applicable state and local laws.

City staff recommends that the Planning Commission recommend that the City Council adopt Zoning Text Amendment Resolution No. 19-020 and P-ZA19-0002, set forth as Exhibit A and B to the staff report to allow and regulate an STR pilot program based on the findings in this staff report and the attached resolution.

BACKGROUND

STRs allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a consecutive period of 30 or fewer days. The STR industry, including Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), has grown over eight hundred percent (800%) since 2011, according to Host Compliance, a leading provider of short-term rental compliance monitoring and enforcement solutions for local governments, and totaled an unprecedented eight million rental listings worldwide in 2017.

According to Host Compliance, approximately 341 STRs were available within Milpitas as of November 2018. Of the 341 STRs available, roughly 235 STRs were single-family homes, 85 STRs were multi-family homes, and 21 STRs were unknown property types. Furthermore, 197 STRs of the 341 STRs available were partial home rentals while 126 STRs were entire-home rentals.

The Milpitas Municipal Code currently defines STRs as hotels generally and does not allow them in any residential zoning district according to an interpretation by the City Attorney's Office. The City Council has the authority to regulate or prohibit STRs within City limits, and consistent with the City Council's Economic Development and Job Growth priority, staff explored issues related to STR policies and options through community engagement and subsequent City Council direction.

Council Direction

On February 26, 2019, City Council directed staff to return to the City Council with a recommendation to adopt an ordinance that would permit STRs under local regulations. Additional City Council feedback to staff included:

Zoning Text Amendment – Short-Term Rentals

1. “... amend the zoning code to make STRs an allowed or conditionally allowed use,” and “... choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools.”
2. “... explore a Voluntary Collection Agreement with Airbnb for collection of the City’s transient occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform.”

A Voluntary Collection Agreement with Airbnb simplifies the remittance process for hosts using the Airbnb hosting platform and enables compliance with the City’s current transient occupancy tax regulations.

On April 30, 2019, City Council approved and authorized the City Manager to execute a Voluntary Collection Agreement with Airbnb for the collection of the city’s transient occupancy tax (TOT) on residential STRs, with authority granted to the City Attorney to negotiate terms with Airbnb. City staff estimates that the annual transient occupancy tax collected and remitted through Airbnb would be approximately \$260,000. The City and Airbnb are currently negotiating the terms of the Voluntary Collection Agreement.

ANALYSIS

Current Regulations

As highlighted in the Background section above, the City’s municipal code currently defines STRs as hotels. Broadly defined in terms of individual sleeping or living units for paying temporary guests, this definition for hotels covers inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, and mobilehomes.

The City’s current code also requires STRs to obtain a business license and regulates STRs by requiring the operators to collect and remit transient occupancy tax for lodging provided for 30 or fewer days according to an interpretation by the City Attorney’s Office. Only one STR operator complies with the City’s existing business license and tax regulations to date.

Current Regulations Throughout Santa Clara County

To date, there is no standard practice amongst municipalities in regulating STRs, although the variables are relatively consistent. Several municipalities in Santa Clara County have followed suit by adopting local policies regulating STRs.

The cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering regulations for STRs, while the cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga either lack regulations for STRs or prohibit the use entirely. Exhibit C (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs.

Zoning Text Amendment – Short-Term Rentals

Staff has identified the following eight (8) regulations that are consistently addressed by the Santa Clara County municipalities with STR regulations. Staff has also provided an analysis that compares the City's proposed regulations to the eight (8) regulations commonly applied by Santa Clara County municipalities to STRs.

- 1) Impose TOT registration and compliance on STRs.

Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. The City is exploring contracting with a third-party vendor to monitor STR listings, operate a hotline for residential complaints, and provide initial compliance communications with STR operators.

- 2) Require a business license or annual license fee.

Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. Most business licenses are valid for one year, and must be renewed annually.

- 3) Require a Short-Term Rental Special Use Permit.

Staff Comment: This permit would enable the City to obtain basic information, including operator's full name, exact address, and location of the STR unit.

- 4) Require a local contact person.

Staff Comment: The local contact person shall be available during the term of any stay to respond to complaints or emergencies.

- 5) Limit the number of days allowed per year.

Staff Comment: Municipalities in Santa Clara County have taken varied stances (e.g., unlimited, 60, 90, or 180 days per year). Typically, un-hosted rental days per year are significantly less than the number of days allowed for hosted rentals.

- 6) Limit the number of guests at one time.

Staff Comment: Municipalities in Santa Clara County have taken varied stances. (e.g., a maximum occupancy limit of two (2) persons per bedroom plus one (1) additional person).

- 7) Limit the number of STRs allowed at one address or parcel.

Staff Comment: Some cities only allow one unit per parcel to be used as an STR. For example, if a home has an accessory dwelling unit (ADU), the primary dwelling is only allowed to operate as an STR.

- 8) Address on-site and off-site parking requirements.

Zoning Text Amendment – Short-Term Rentals

Staff Comment: Some municipalities require STR parking off-street or limit the number of vehicles.

Proposed Ordinance Amendments

Staff recognizes that STR uses are widespread and potentially operate illegally throughout Milpitas. Thus, while the proposed STR pilot program would allow STRs to continue operating in residential and mixed-use zoning districts, the program would also establish operating standards to address parking, noise, and other potential negative impacts.

The proposed ordinance seeks to achieve the following purposes and goals:

1. Allow STRs in residential and mixed use zoning districts while preventing the loss of housing stock.
2. Preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.
3. Provide a registration mechanism for the City to track and enforce these requirements as needed and ensure appropriate collection of transient occupancy taxes.

Goal 1: Allow STRs While Preventing Loss of Housing Stock

Proposed Regulation(s)

- **Permitted Zoning Districts.** STRs are permitted in dwelling units in the R1, R2, R3, R4, R5, MXD, MXD2, and MXD3.
- **Nonconforming Dwelling Units.** STRs are prohibited within nonconforming dwelling units.
- **Permitted in Primary Dwelling Units Only.** STRs are not permitted within accessory structures and buildings, accessory dwelling units (ADUs), guest house accessory buildings, recreational vehicles, supportive housing, and senior housing units.
- **Rentals per Dwelling Unit.** A maximum of one (1) STR rental is permitted per dwelling unit at any given time.
- **Rental Period Restrictions.** When the Operator is present, the STR unit may be rented for an unlimited number of days during the calendar year. When the Operator is not present, the STR unit may be rented for a maximum of 180 days per calendar year.
- **Maximum Occupancy.** Occupancy of the STR is limited to a maximum of two (2) persons per bedroom plus one (1) additional person.

Goal 2: Preserve Residential Character

Proposed Regulation(s)

Zoning Text Amendment – Short-Term Rentals

- **Exterior Alterations.** The exterior of the dwelling unit must not be altered such that the structure may be recognized as serving a nonresidential use.
- **Local Contact Person.** A local contact person must be available 24-hours per day, 7 days per week, to respond to complaints. The local contact person must be able to respond in-person to complaints within 60 minutes.
- **Trash and Refuse.** Trash and refuse must be stored outside of public view, except in proper containers for the purpose of collection by the City’s authorized waste hauler on scheduled trash collection days.
- **Signage.** All signs that advertise the availability of the STR unit are prohibited.
- **Commercial and Assembly Uses Prohibited.** Use of the STR for any other commercial uses or assembly uses such as weddings, corporate events, or parties, is prohibited.
- **Parking Requirements.** One (1) off-street parking space must be provided for the STR. Any parking space in excess of the required number of parking spaces for the primary dwelling unit pursuant to Section 53 “Off-Street Parking Regulations” may be used for the STR. The parking space must comply with all development standards set forth in Section 53 “Off-Street Parking Regulations.”

Goal 3: Provide a Registration Mechanism

Proposed Regulation(s)

- **Required Permits.** Prior to the operation of an STR, the operator must obtain a Short-Term Rental Special Use Permit.
- **Compliance Review.** The Planning Director or his or her designee will review the Short-Term Rental Special Use Permit within one year after issuance for compliance. The Planning Director or his or her designee will conduct a similar compliance review of Short-Term Rental Special Use Permits on an annual basis concurrent with renewal of the Business License for each use.

General Plan Conformance

The General Plan is the long-range planning document, providing the vision for the future development of the City. The proposed Zoning Text Amendment is in conformance with the policies and standards in the City’s General Plan, as outlined in the Table 1:

Table 1: General Plan Consistency

Policy	Conformance
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Zoning Text Amendment – Short-Term Rentals

<i>Land Use Element 2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.</i>	Consistent. The Zoning Text Amendment provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals.
<i>Housing Element Goal B-1: Maintain High Quality Residential Environments.</i>	Consistent. The Zoning Text Amendment preserves the residential character of neighborhoods and establishes operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.
<i>Housing Element Goal B-2: Preserve Housing Resources.</i>	Consistent. The Zoning Text Amendment maintains and preserves existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. The Amendment also provides temporary housing resources for visitors to Milpitas.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

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

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

The proposed Zoning Amendment is consistent with General Plan Policies (Land Use Element 2.a-I-5; Housing Element Goal B-1; and Housing Element Goal B-2). The Zoning Text Amendment regulates short-term rentals of residences while preventing the loss of housing stock; and provides a registration mechanism for the City to track and enforce regulations as needed to ensure appropriate collection of transient occupancy taxes.

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

The proposed Zoning Amendment will not adversely affect the public health, safety, and welfare due to regulations set forth that preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.

ENVIRONMENTAL REVIEW

Under California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3), the introduction and adoption of this Ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the “common sense exemption,” states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently regulated in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment. Accordingly, the ordinance is exempt from CEQA review under Guidelines section 15061(b)(3).

Moreover, the introduction and adoption of this Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. These outcomes are consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy and provide economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines. There are no circumstances peculiar to the project or significant new or more severe impacts that were not analyzed in the General Plan CEQA analysis that require further environmental review.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15301 (Existing Facilities). Section 15301 of the State CEQA Guidelines provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Short-term rentals are uses that allow sleeping, lodging, or living within a dwelling unit, or a portion thereof. Except for duration, short-

Zoning Text Amendment – Short-Term Rentals

term rental uses are similar to a residential use. Since the proposed ordinance permits and regulates a use that is similar in operation to the already-allowed long-term residential uses, the proposed ordinance is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environment). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the City.

Finally, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time; the proposed ordinance is not an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, 15301, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

PUBLIC COMMENT/OUTREACH

On December 13, 2018, and January 17, 2019, two community meetings on STRs were held. City staff provided an oral presentation and answered questions from attendees. Some of the general comments received from community members included:

- Support for allowing STRs, noting that it provides opportunities for supplemental income, revenue and promotes tourism; and
- Questions about existing business license requirements and potential safety requirements such as smoke detectors and fire extinguishers.

On December 28, 2018, the City launched a community survey on STRs through various media platforms, including the City's website, Nextdoor and Facebook, flyers and the City's local access government channel. Exhibit D (attached) provides a summary of the survey results.

On January 14, 2019, staff engaged the Economic Development & Trade Commission to provide background information on STRs. Staff reviewed current and proposed regulations pertaining to STRs in Santa Clara County, including the City of Milpitas, and potential regulations that the City Council could consider for adoption.

On April 8, 2019, and June 10, 2019, staff re-engaged the Economic Development & Trade Commission to present recommended STR regulations and to solicit feedback from Commission members. Several Commissioners provided insightful feedback and supplemental regulations

Zoning Text Amendment – Short-Term Rentals

such as city oversight, use restrictions, and good-neighbor rules, and are integrated into the proposed Short-Term Rental Ordinance for Planning Commission consideration.

Staff provided public notice of the application in accordance with local and state public noticing requirements. At the time of writing this report, there was one inquiry from the public. On June 14, 2019, the City published a public notice in the Milpitas Post. The City provided the same public notice on the City's Website, www.ci.milpitas.ca.gov and posted it at City Hall.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing;
2. Consider the exemption in accordance with CEQA; and
3. Adopt Resolution 19-020 recommending that the City Council adopt Zoning Text Amendment P-ZA19-0002, set forth as Exhibit B of this staff report.

ATTACHMENTS

- A. Resolution No.19-020
- B. Ordinance No. xx.xxx
- C. Short-Term Rental Comparison Matrix
- D. Short-Term Rental Survey Results



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Agreement with Airbnb, Inc. for the Voluntary Collection of the City's Transient Occupancy Tax on Residential Short-Term Rentals
Category:	Community Development
Meeting Date:	4/30/2019
Staff Contact:	Daniel Degu, 408-586-3054
Recommendation:	Approve and Authorize the City Manager to Execute a Voluntary Collection Agreement with Airbnb, Inc. for the Collection of the City's Transient Occupancy Tax on Residential Short-Term Rentals, with Negotiating Authority Granted to the City Attorney to Negotiate Better Terms with Airbnb, Inc.

Background:

Short-term rentals allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a consecutive period of 30 or fewer days. The short-term rental industry, including Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), have grown over eight hundred percent (800%) since 2011, according to Host Compliance, and totaled an unprecedented eight million rental listings worldwide in 2017.

According to Host Compliance, there were approximately 341 short-term rentals available within Milpitas City limits as of November 2018. Of the 341 short-term rentals available, roughly 235 short-term rentals are single-family, 85 short-term rentals are multi family, and 21 short-term rentals are unknown property types. Furthermore, of the 341 short-term rentals available about 197 short-term rentals are considered a partial home rental while 126 short-term rentals are listed as an entire home.

The Milpitas Municipal Code currently defines short-term rentals as hotels generally and does not allow them in any residential zoning district. The City Council has the authority to regulate or prohibit short-term rentals within City limits and consistent with City Council Economic Development and Job Growth priority, staff explored issues related to short-term rentals through community engagement and subsequent City Council direction.

On December 13, 2018, and January 17, 2019, two community meetings on short-term rentals were held. City staff provided an oral presentation and answered questions from attendees. Community members at these meetings were in support of short-term rentals with comments including that supplemental income from short-term rentals are good for both the residential property owner and City, and questions were asked about business license requirements and safety requirements such as smoke detectors and fire extinguishers.

On December 28, 2018, a community survey on short-term rentals was launched and disseminated through the City's website, social media such as Nextdoor and Facebook, flyers and the City's local access government channel. **Exhibit A** (attached) provides a summary of the survey results.

On January 14, 2019, staff engaged the Economic Development & Trade Commission to provide background information on short-term rentals. Staff reviewed current and proposed regulations pertaining to short-term

rentals in Santa Clara County, including the City of Milpitas, and potential regulations that the City Council could consider for adoption.

On February 26, 2019, City Council directed staff to “explore a Voluntary Collection Agreement with Airbnb for collection of the City’s transient occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform.” City staff re-engaged Airbnb officials regarding their interest in entering into a Voluntary Collection Agreement, to which they remain interested in collaborating with the City.

The City Council also directed staff to “... amend the zoning code to make (short-term rentals) STRs an allowed or conditionally allowed use, ... choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools.” City staff spanning several departments, in conjunction with the City Attorney’s Office, has been regularly meeting to develop a new regulatory program and comprehensive Short-Term Rental Ordinance to regulate short-term rentals in Milpitas, since the City Council’s direction in February 2019.

On April 8, 2019, staff re-engaged the Economic Development & Trade Commission, to present recommended short-term rental regulations and to solicit feedback from Commission members. Several Commissioners provided insightful feedback and supplemental regulations such as city oversight, use restrictions, and good-neighbor rules, which will be integrated into the proposed Short-Term Rental Ordinance for City Council consideration.

Analysis:

Initially staff intended to recommend the Voluntary Collection Agreement and the Short-Term Rental Ordinance for City Council consideration at the same Council meeting. However, staff now proposes to decouple the two aforementioned action items (Voluntary Collection Agreement and Short-Term Rental Ordinance) and will proceed with City Council consideration on just the Voluntary Collection Agreement at this meeting in order to align transient occupancy tax revenues in Fiscal Year 2019-20 budget. Staff will return to City Council in late summer or early fall of 2019 to consider the adoption of a Short-Term Rental Ordinance after receiving Planning Commission recommendation.

The proposed Voluntary Collection Agreement is between Airbnb, Inc., and the City for the collection and remittance of the City’s transient occupancy tax and sales tax. The current transient occupancy tax is 14 percent and any short-term rentals operating for 30 consecutive calendar days or fewer is subject to the current business license and transient occupancy tax regulations pursuant to Section Title III, Chapter 1 and Section Title III, Chapter 13 of the Milpitas Municipal Code. Over 45 California municipalities have executed a Voluntary Collection Agreement with Airbnb, including the cities of Cupertino, Morgan Hill, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

Key provisions of the proposed Voluntary Collection Agreement are summarized below:

- Airbnb agrees to assume the duties of collection and remittance of applicable transient occupancy taxes and applicable sales taxes on behalf of its hosts.
- The City agrees to waive the right to collect from Airbnb all applicable transient occupancy taxes and applicable sales taxes for any period or for any transaction prior to the effective date of the agreement. The draft agreement is not clear about whether this waiver applies just to Airbnb itself or to all of its hosts as well (precluding the City from collecting unpaid taxes that are currently owed by a host).
- Airbnb waives responsibility to remit applicable transient occupancy taxes and applicable sales taxes to the City for certain “registered” hosts and also waives any liability for those registered hosts’ failure to collect, report, or remit taxes.

- Airbnb agrees to assume liability for any failure to report, collect, or remit the correct amount of applicable transient occupancy taxes and applicable sales taxes to the City except as to the registered hosts.
- The City has audit rights as to Airbnb, but not as to individual hosts.
- Airbnb agrees to notify hosts that the applicable transient occupancy taxes and applicable sales taxes will be collected and remitted.

Airbnb has represented that if the Voluntary Collection Agreement is fully executed by May 31, 2019, Airbnb will be able to begin transient occupancy tax collection on behalf of its hosts on or about July 1, 2019, with revenues directly to the City on August 31, 2019. Airbnb estimated that there were approximately 210 hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, City staff estimates that the transient occupancy tax collected and remitted through Airbnb would be an additional approximate \$260,000 annually. The anticipated revenues will be part of the City's General Fund to support critical and essential City services.

If Council approves the recommendation, staff will negotiate and execute a Voluntary Collection Agreement with Airbnb while continuing to develop a new regulatory program and comprehensive ordinance to regulate short-term rentals in the city. An executed Voluntary Collection Agreement with Airbnb simplifies the remittance process for hosts using the Airbnb hosting platform and enables compliance with the City's current transient occupancy tax regulations; while the new regulatory program and comprehensive ordinance allows the City to preserve the residential character of existing neighborhoods and establish operating standards to reduce community impact.

Please note that merely entering into the Voluntary Collection Agreement will not create any new right for people to operate a short-term rental in the City. As noted above, short-term rentals are currently a prohibited use. The short-term rentals that are currently operating in the City, including those that are listed on Airbnb, are operating illegally under existing zoning ordinance. This does not prevent the City from taxing these illegal uses if they fit the legal definition of a taxpayer. In effect, operators of illegal short-term rentals still must pay applicable taxes. When the City amends its code later this year to allow and regulate short-term rentals, it will bring all short-term rentals into zoning conformance.

Fiscal Impact:

Airbnb, Inc., estimates that there were approximately 210 Airbnb hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a Milpitas host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, City staff estimates that the transient occupancy tax collected and remitted through Airbnb, Inc. would be an additional approximate \$260,000 annually. The anticipated revenues will be part of the City's General Fund to support critical and essential City services.

California Environmental Quality Act:

The proposed action — to authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. — does not itself constitute a "project" under CEQA because it would not itself affect the environment in any way. It will not allow any new use to operate, nor will it impose any new or change any existing regulation of uses. It affects only the collection and remittance of already-established taxes. Therefore, CEQA does not apply. Even if the proposed project were a project under CEQA, the proposed action would be statutorily exempt under 14 Cal. Code Regs. § 15262 (exempting feasibility and planning studies). Any amendments that staff might recommend as a result of a study would be subject to a separate CEQA analysis when the amendments go before the appropriate legislative bodies (commission and council).

Recommendation:

Approve and authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. for the collection of the City's transient occupancy tax on residential short-term rentals, with negotiating authority granted to the City Attorney to negotiate better terms with Airbnb, Inc.

Attachments:

1. Exhibit A: Short-Term Rental Survey Results
2. Exhibit B: Draft Airbnb, Inc. Voluntary Collection Agreement
3. Exhibit C: 02-26-19 Council Agenda Report + Meeting Minutes

The Vice Mayor remarked that she did not see it anywhere that Councilmembers had access to spaces (facility use), and felt the Council should have free use of public spaces or parks.

Councilmember Phan responded that as long as there was a public benefit to the event, he would support that. The City could have a set-aside fund for office of each Councilmember. Perhaps they could have the City Attorney or other sign off on that fact. Vice Mayor Dominguez said it could be on a number of uses per member, perhaps, rather than a fund.

The City Manager asked the Council to consider what was the priority of the Council's use of City facilities, and then those could come back to the Council.

At 7:07 PM, Mayor Tran opened the public hearing.

Dan Boatwright, of Castle Properties at 260 S. Main Street across from Catholic Church, referred to a current fee, on fire and water related charges on water meters. He discussed fire flow for water and wanted to ask staff to separate out residential size from other flow in order to charge the proper amount. Mr. Boatwright asked Council to give clarification to staff, and to make domestic charges separate from fire flow meter fee.

The City Manager responded that she could take this back to staff to discuss and come back at a future meeting.

Robert Marini, resident, asked about the use of parks and benefits. He referred to a candidate's use of a park and raising funds. He needed explanation from Karina Dominguez of her proposal about the use of public spaces.

Voltaire Montemayor, resident, was for the good of everybody. He supported subsidies for people, if funds were available. On the issue of false alarms, a penalty charged was alright.

Councilmember Nuñez stepped away from the meeting for a few minutes prior to the vote below.

Motion: to continue the public hearing on the Master Fee Schedule to the special City Council meeting scheduled on Wednesday, May 15, 2019 at 6:00 PM

Motion/Second:

Councilmember Phan/Vice Mayor Dominguez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nunez)

2. VOLUNTARY TAX COLLECTION AGREEMENT

Economic Development Director Alex Andrade explained the request for the City Council to approve a Voluntary Collection Agreement (or "VCA") related to collecting Transient Occupancy Tax (hotel tax or "TOT") from short term rental owners in the city.

Mr. Andrade introduced Economic Development Coordinator Daniel Degu, who described short term rentals in Milpitas and how those were regulated. Only one short term renter paid such tax presently with 341 such rentals operating in Milpitas as of November 2018. Staff anticipated revenue to be approximately \$260,000 annually. Mr. Degu described five key provisions of the proposed voluntary agreement. If it was signed by May 31, then TOT could be collected starting July 1, 2019. Staff identified six cities that had entered into agreement with the Airbnb company to date.

Councilmember Nuñez asked if Airbnb would hold the City harmless with regard to liability at sites. City Attorney Diaz replied that the city would collect tax on the short term use (similar to a hotel night stay), as required under the TOT ordinance. Private tenant use would be covered by the homeowner association and/or the renter.

Councilmember Montano asked what the other six cities were doing. Staff said the agreement (VCA) was similar for each city, which then was collecting its TOT at established rates.

Councilmember Phan focused on the key word "voluntary" on the part of Airbnb. Its goodwill brought the VCA to the City Council. He referred to relief for those folks who needed housing. Maybe this revenue could go to those

who needed rental assistance or affordable housing, instead of going to the General Fund. Funds into the Housing Authority would be valuable and/or maybe a public-private partnership for this goal, using credits perhaps.

Councilmember Montano agreed with the concept of putting funds into the Housing Authority.

Resident Robert Marini noted that Airbnb was a profitable company and so he asked why it wanted to go in on this arrangement.

Councilmember Nuñez asked the two corporate representatives Mick Del Rosario and Allison Peck if the company's stock went up or down, after the VCA agreements with other cities were signed. Mr. Del Rosario provided some context on the part of Airbnb for signing onto the agreements.

How the money was used, once collected, could be discussed at the scheduled upcoming budget study session on May 15, said the City Manager.

In response to Councilmember Montano, Ms. Peck spoke of the company's global tax policy and how Airbnb had partnered with the disaster response team at the City of San Jose recently, stating it helped to provide homes during wildfires or following other disasters.

Motion: to approve and authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. for collection of the City's Transient Occupancy Tax on residential Short Term Rentals, with negotiating authority granted to the City Attorney to negotiate better terms with Airbnb, Inc.

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

3. GENERAL PLAN STUDY SESSION PREPARATION

Councilmember Nuñez left the room and the meeting at 7:50 PM.

Planning Director Ned Thomas referred to an upcoming meeting to give a broad update on the General Plan and its status, per hired consultants for that major long term policy document including a Land Use map. He introduced Barbara Nelson, a consultant from FCS who was hired to help prepare staff and Council for the upcoming future meeting with the General Plan consultants. Ms. Nelson remarked that a City's General Plan was its "constitution for future development."

Mr. Thomas gave history on efforts to date, including formation of the Council-appointed General Plan Advisory Committee, with 14 land use alternatives at locations around the city. Maps with the alternatives were available.

Ms. Nelson then listed next milestones on the General Plan update, with four dates for actions in 2019 and the General Plan Advisory Committee (GPAC) recommendations and Land Use Alternatives report. She defined the roles of City Council and of other participants: GPAC, community, Planning Commission and city staff.

Councilmember Montano mentioned the school district also should be noted in the roles. Staff noted that Milpitas Schools Superintendent Cheryl Jordan served as a member on the GPAC.

14 opportunity areas would be discussed on May 21, and staff would seek input and direction from City Council, go over the Land Use Alternates Report and GPAC recommendations.

Mayor Tran thanked staff for work done on this topic to date.

Councilmember Phan noted progress on the GPAC since Mr. Thomas arrived at the city. He spoke of non-conforming uses and zoning within the General Plan. He wanted to incorporate some type of "Social Justice" element when forming the General Plan. Planning Manager Jessica Garner replied how that could be incorporated in the "Health and Wellness" element the City would include.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report and Provide Direction on Residential Short-Term Rental Regulation Options
Category:	Community Development
Meeting Date:	2/26/2019
Staff Contact:	Daniel Degu, 408-586-3054
Recommendation:	Discuss and provide direction regarding potential regulation for residential short-term rentals.

BACKGROUND:

Short-term rentals (STRs) allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a period of 30 or fewer days. Several online marketplaces like Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), have enjoyed a rapid rise to relevancy as a global branded peer-to-peer home-sharing industry. STR use is growing, causing local municipalities to address transitory lodging in residential neighborhoods more than ever before. Many Bay Area local municipalities in Santa Clara County (as outlined below), have faced, and are beginning to address the regulation of short-term rentals.

STRs bring numerous benefits to those who operate them, and their guests. At the same time, the intensive use of STRs in residential zoning districts has the potential to change the character of a residential neighborhood if left unregulated. The Milpitas Municipal Code currently defines STRs as hotels generally and does not allow them in any residential zoning district.

ANALYSIS:

The City Council has the authority to regulate or prohibit STRs within City limits. STRs typically provide guests with social benefits and a local experience differing from a traditional hotel or motel. STRs can also provide ancillary income to residential property owners, help expand the City's tourism and transient occupancy opportunities during peak hotel or motel occupancy times, such as major sporting events, and help stimulate commercial activity throughout the city.

As highlighted in the Background section above, the City's municipal code currently defines STRs as hotels. Broadly defined in terms of individual sleeping or living units for paying temporary guests, this definition for hotels covers inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, and mobilehomes. Furthermore, STRs are currently prohibited from operating in all five of the City's residential zoning districts, but may operate, via conditional use or by-right, in all three mixed-use zoning districts, and are conditionally allowed in three out of the five commercial zoning districts and in all three industrial zoning districts.

The City's current code also requires STRs to obtain a business license and regulates STRs by requiring the operators to collect and remit transient occupancy tax (TOT). To proactively enforce the current code requirements for STRs or to move forward with a new regulatory program could require additional staff effort, primarily because STR services do not provide basic information like an operator's full name, exact address, or occupancy rates for their listings.

Regulations for STRs can be tailored to fit the unique needs of the community. Thus far, there is no standard practice amongst municipalities, although the variables are relatively consistent. Municipalities in Santa Clara County have followed suit by taking different stances on the regulation of STRs. The cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering the regulation of STRs, while the cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga have no regulation in place for STRs or prohibit the use of STRs entirely. **Exhibit A** (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs. Staff has identified the following 8 regulations that have been consistently addressed by those local municipalities that regulate STRs.

These and others may be considered by the City Council for implementation:

1) Impose TOT registration and compliance on STRs.

Staff Comment: Already a code requirement, but not actively enforcing for STRs. The City could contract with a third-party vendor to monitor STR listings, operate a hotline for residential complaints, and provide initial compliance communications with STR operators.

2) Require an STR business license and annual license fee.

Staff Comment: Already a code requirement. Calculated to cover all the City's costs of administering an STR program.

3) Require an STR special-use permit.

Staff Comment: Would require a zoning amendment. Permit would provide the City with basic information like an operator's full name, exact address, or occupancy rates for their listings needed to identify and cite violators.

4) Require a local contact person.

Staff Comment: The local contact person shall be available during the term of any stay for the purpose of responding to complaints or emergencies.

5) Limit the number of days allowed per year.

Staff Comment: Municipalities in Santa Clara County have taken varied stances (e.g., unlimited, 60, 90, or 180 days per year). Un-hosted rental days per year are typically significantly less than the number allowed for hosted rentals.

6) Limit the number of guests at one time.

Staff Comment: The number of guests could be calculated based on two adults per room plus one additional person per STR unit.

7) Limit the number of STRs.

Staff Comment: Some cities only allow one unit per parcel to be used as an STR. For example, if a home has an accessory dwelling unit (ADU), only the primary dwelling or the ADU could be allowed for STR but not both.

8) Address on-site and off-site parking requirements.

Staff Comment: Some municipalities require that parking related to STR use be contained on-site or limit the number of vehicles.

STRs have grown over 800 percent since 2011, according to Host Compliance, and totaled an unprecedented eight million rental listings worldwide in 2017. According to Host Compliance, there were approximately 341 STRs available within our City limits as of November 2018. Of the 341 STRs available within Milpitas, roughly 235 STRs (69 percent) are single-family, 85 STRs (25 percent) are multi family, and 21 STRs (6 percent) are unknown property types. Furthermore, of the 341 STRs available about 197 STRs (58 percent) are considered a partial home rental while 126 STRs (37 percent) are listed as an entire home.

Moreover, of the 341 STRs available within Milpitas, roughly 220 STRs (64.5 percent) are listed with Airbnb as of July 2018, according to Airbnb officials. With the majority of STR operators in Milpitas utilizing Airbnb, City staff engaged Airbnb regarding entering into a voluntary tax collection agreement with the City that would result in Airbnb collecting TOT on behalf of its users and remitting the revenue directly to the City. Over 45 California municipalities have executed a tax collection agreement with Airbnb, including the cities of Cupertino, Morgan Hill, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

With City Council direction, staff will begin exploring a voluntary tax collection agreement with Airbnb for the collection and remittance of the City's TOT. Staff estimates that the City could generate an additional \$237,000 in TOT revenue annually by executing a voluntary tax collection agreement with Airbnb. This estimate is based on activity from July 2018 showing 220 active rentals in Milpitas and annual host earnings totaling \$7,700. The funds from the tax would be deposited into the City's TOT account in the General Fund.

City staff has conducted community engagement through social media such as Nextdoor, Facebook, and the city website. Two community meetings on STRs, in conjunction with ADUs, were held on December 13, 2018 and January 17, 2019. Attendees received an oral presentation from Economic Development and Planning staff and answered questions. Community members at these meetings were in support of STRs with comments including that supplemental income from STRs are good for both the residential property owner and City, and questions were asked about business license requirements and safety requirements such as smoke detectors and fire extinguishers. A community survey on STRs was launched on December 28, 2018, and was disseminated through the City's website, social media, flyers and the City's local access government channel. **Exhibit B** (attached) provides a summary of the survey results.

The City Council may choose between one of several options.

1. The City may allow STRs, but limit their use. STRs are currently a prohibited use in every residential zone, but the City may amend the zoning code to make STRs an allowed or conditionally allowed use, in which case the City's current business-license and transient-occupancy tax regulations would continue to apply. Every STR operator would have to obtain a business license and collect and remit TOT unless the City were to amend its code to remove those requirements. Also, if the City were to make STRs an allowed use, it may choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools. Amending the zoning code requires recommendation by the Planning Commission and approval by the City Council. Staff anticipates that the Planning Commission will forward its recommendation to the City Council in April 2019 and the City Council will consider ordinance adoption in May 2019.
 - a. If City Council chooses option 1, consider directing the City Manager to explore a Voluntary Collection Agreement with Airbnb for collection of the City's transient-occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform.
2. Alternatively, the City may prohibit all transitory lodgings.
3. The last option is to exempt STRs from all local regulation except the City's existing business license and TOT requirements.

POLICY ALTERNATIVES:

This item is presented for City Council information, discussion, and direction to staff regarding potential regulation for short-term rentals. No policy action is recommended at this time.

FISCAL IMPACT:

No funding is requested at this time. City staff could propose additional allocation of resources based on City Council preference for a specific short-term rental regulatory program. To the extent that the City is successful in achieving a Voluntary Collection Agreement with Airbnb for the collection of the City's Transient Occupancy Tax on short-term rentals, subject to City Council approval, general fund revenues could increase by approximately \$237,000 per year.

California Environmental Quality Act:

The proposed action — to hold a study session and direct staff to recommend new STR regulations if desired — does not itself constitute a "project" under CEQA because it would not itself affect the environment in any way. Therefore CEQA does not apply. Even if the proposed project were a project under CEQA, the proposed action would be statutorily exempt under 14 Cal. Code Regs. §15262 (exempting feasibility and planning studies). Any amendments that staff might recommend as a result of a study would be subject to a separate CEQA analysis when the amendments go before the appropriate legislative bodies (Commission and Council).

Attachments:

1. Short-Term Rental Comparison Chart
2. Short-Term Rental Survey Results

MEETING MINUTES CITY OF MILPITAS

Minutes of: Special Meeting of Milpitas City Council
Date: Tuesday, February 26, 2019
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Tran called the meeting to order at 6:01 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, and arrived at 6:05 PM.

Deputy City Attorney Heather Lee from BB&K law firm was serving as City Attorney at this meeting, in place of City Attorney Chris Diaz.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Vice Mayor Dominguez/Councilmember Nuñez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Phan)

PUBLIC FORUM

None.

1. Residential Short Term Rental Regulations

Economic Development Coordinator Daniel Degu addressed the Council on community engagement efforts regarding the issue of short term residential rentals. Staff provided a recommendation to the Council on regulation of such rentals via adoption of an ordinance. 341 short term rentals were found online, when researched by staff, which were primarily rooms in single family homes. Eight types of regulations could be considered, and the City already had two of those while they were not enforced. Further limitations were possible. Mr. Degu listed eight questions for the Council's consideration.

Mayor Tran was supportive of the agenda item and having short term rentals in the city.

Councilmember Nuñez asked for some clarifications. He thanked staff for thorough information provided. He saw opportunity for dollars to come in to the city from this regulation.

Vice Mayor Dominguez asked about costs for the use of a third party vendor. Mr. Degu replied he could look into that and get back to Council.

Councilmember Phan asked – regarding long term rentals – was there any revenue to the City? Staff replied no, if the rental was longer than 30 days (no Transient Occupancy Tax). Mr. Phan asked if there could be incentives to encourage owners of rental units to rent long term since there was a housing shortage in the area. He supported regulation of Air B'n'B type rentals, while he was concerned about the greater needs for housing in the City.

City Manager Edmonds-Mares commented on the need for fairness and equity with businesses that paid for a business license and collection of Transient Occupancy Tax. Council could maybe consider limiting the number of days per year for rentals, to help the neighborhoods.

Councilmember Montano noted the newly adopted Transient Occupancy Tax (TOT) rate at 14%, with competition for hotels and more automobiles in the neighborhoods. Economic benefits were to be gained, considering short term rentals as potentially helpful but with some drawbacks.

Vice Mayor Dominguez asked who controlled the possible 60 days versus 30 days stay at a unit, and how would it be known to collect TOT or not. She mentioned converted garages being rented out as Air B'n'B units with no permit, and wanted to know about parking constraints at these short term rentals, too.

Councilmember Montano asked if regulations were passed, would money be put into a special fund and the City Manager replied: into the General Fund. Ms. Montano suggested that money could be put into a special fund to be used for affordable housing.

Councilmember Phan asked if there could be a Housing Impact Fee for hotels and rooms rented, so as not to dilute available housing. That could be explored, such as in Redwood City.

Councilmember Nuñez asked what direction staff sought. Mr. Degu displayed a slide with three policy options for Council's consideration regarding regulation: to amend the zoning code to allow short term rentals (direct City Manager to explore voluntary collection agreement with Air B'n'B), to amend zoning code to prohibit all transitory lodgings, or to exempt short term rentals from all local regulation except business license and hotel tax. Mr. Nuñez supported Option 1 as did the Mayor.

Motion: to direct staff to return to City Council with recommendation to adopt an ordinance that would permit short term residential rentals under local regulations

Motion/Second: Councilmember Montano/Councilmember Phan

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

At this time, Deputy City Attorney Heather Lee asked the Mayor and Councilmembers for disclosure on any conflicts of interest or campaign contributions from any entity on the agenda and none were reported.

4. FY 2018-19 Mid Year Budget review & Resolution

Assistant City Manager Ashwini Kantak presented Recommended Ongoing funding requests at the MidYear for the Fiscal Year 2018-19's budget. She displayed staffing requests in four City departments: Human Resources, Fire, Police, and Recreation. Ms. Kantak listed the mid-year phase II summary of approximately \$1,000,000 in spending requests. Action on requested classification changes were sought at this meeting by Council Resolution.

Staff discussed FY 2018-19 General Fund Reserves which were healthy, along with a revised 5-year projection (which would come back to City Council soon). Urgent needs were requested for funding at this meeting, with non-urgent requests to be included in the future FY 2019-20 budget proposal.

Budget Manager Feliser Lee reviewed key upcoming dates for budget planning and development of the FY 2019-20 budget, with four recommendations.

Mayor Tran commented and was especially supportive of needs in Human Resources with regard to recruiting employees.

Regarding a request for Community Services Officers (CSO) in the Police Department, Councilmember Phan asked if it was a pilot program, and Police Chief Corpuz said no. It was a request of staff to support officers and the community, as the need was growing around the new BART station. The Chief explained further use of the CSOs, if approved and hired.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on The Pines Pilot Parking Permit and TASP On-Street Parking Program Projects and provide staff with direction
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	2/18/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Receive an update on The Pines Pilot Parking Permit and TASP On-Street Parking Program Projects and provide staff with direction.

Background:

At the January 7, 2020 City Council meeting, under the Announcements section, the City Council requested a status on The Pines pilot permit parking program, chronology of events, and requested staff report back to Council on the status on February 18, 2020.

The Pines is a single-family neighborhood of 976 homes located in the south-west area of town. The entire neighborhood is estimated to accommodate up to 2,000 on-street public parking spaces, and historically, the neighborhood has experienced problems with on-street parking space availability due to the volume of vehicles parked on streets.

The Apex and Ilara developments located across from The Pines on South Main Street were completed in 2015 and 2016 respectively. The Apex development is a 381-apartment complex with a 650 space parking garage that includes 85 visitor spaces. The Ilara apartment development has 204 units, and a 340 space parking garage with 42 visitor spaces. Soon after completion of these projects, Pines residents expressed concerns about tenants of Apex and Ilara parking on streets within The Pines and creating a problem of limited nighttime on-street parking space.

Staff began review of the on-street parking conditions with The Pines in early 2016, and this subject has been discussed with Council at multiple City Council meetings. Since 2016, staff has completed three on-street parking audits; two neighborhood surveys; three public meetings with residents and the HOA; and met with apartment management to review their resident parking requirements.

The Pines neighborhood audits revealed residents own more vehicles than registered drivers per household (3.3 vehicles), and 68% park on the street rather than their garage or driveway. During a night time parking audit in early 2016 within The Pines, staff had observed a few vehicles (less than 10) parked in The Pines displaying apartment complex parking decals. Pines residents surveyed showed limited support for a paid parking program (10%), and favorability further declined with the understanding of permit and vehicle code enforcement.

In 2017 Apex management evicted 40% of their tenants for subleasing apartment units and increasing the number of people per unit in violation of the lease agreement. Thus, it is possible the subleasing may have contributed to a small increase of on-street congestion within The Pines at that time.

In August of 2018, the Police Department performed several late-night audits of the apartment parking garages and determined the garages had a significant number of empty spaces available, and at this time, the apartment complexes were 90% occupied. Staff concluded the apartments have sufficient parking space

their tenants and guests and it would be unlikely tenants would need to find parking across the street within The Pines.

In August of 2018 the Police Department also conducted enforcement of the 72-hour maximum on-street parking duration requirement within The Pines. City ordinance requires that vehicles parked on city streets are not parked in the same spot without movement beyond 72 hours. Officers identified and marked 29 vehicles on streets within The Pines to be towed for violation of the 72-hour restriction. All but one of the 29 vehicles marked were registered to The Pines neighborhood.

Based on the audits and parking surveys completed, it appears that the apartment garages have enough parking space for their tenants, and it is unlikely the apartments increased on-street parking congestion within The Pines. Thus, the on-street parking congestion the neighborhood may experience does not appear to be a result of outside factors but is likely due to the number of vehicles owned and parked on street rather than in garages and/or on driveways.

Pilot Parking Permit Program, Project No. 3451

At the August 21, 2018 Council meeting staff presented results of the audits and parking surveys, and the Council directed staff to investigate a cost neutral parking permit program along with other ideas for staff to research and bring back for Council discussion on February 19, 2018. Council requested staff to research relinquishment of the public streets within The Pines where they would become private streets under management by The Pines HOA. This was discussed with The Pines HOA and was determined to not be feasible both due to their bylaws and because the HOA was not interested in this idea. Staff also contacted the Milpitas Unified School District and Liberty Plaza located on South Main Street to discuss allowing residents of The Pines to park in the lots of Zanker Elementary School and Liberty Plaza at night. The School District was open to the idea, however Pines residents expressed low support for these ideas when surveyed in November 2018.

On February 19, 2019, staff presented the The Pines Pilot Parking Permit Program for further Council consideration. The short-term pilot program would be implemented in the eastern half of The Pines neighborhood between Fallen Leaf Drive and Able Street which includes 407 homes. The pilot project would be at no-cost for the residents and would not exceed 6 months for the purpose of determining if on-street parking conditions improve.

The 6-month pilot program would provide up to 2 or 3 free parking permits to the 407 residents of Pines within the pilot area, and the pilot program would apply to the following streets:

- Capitol Avenue from Abel Street to Venus Street;
- Moon Court;
- Evening Star Court;
- Sun Court;
- Polaris Court;
- Woodland Court;
- Sunrise Way;
- Stellar Way;
- Moonbeam Way;
- Fallen Leaf Drive from Capitol Avenue to Greenwood Way;
- Evergreen Way;
- Greentree Way;
- Greentree Circle;
- Lonetree Court;
- Cedar Way; and
- Cedar Court.

Pilot program specifics:

- Permit program managed and administered by a City contractor;
- 6-month trial duration within the focus-area;
- Permit would be required to park on streets from mid-night to 6 AM, 7-days/week;
- 2 or 3 no-cost parking permits issued per household. Depending on the number of vehicles owned, residents may need to park vehicles in driveways, garages, or elsewhere;
- Annual parking permits would not be free if the program were to be extended beyond the 6 month period. Actual permit cost would be determined but could range from \$50 to \$100 per permit.
- Proof of vehicle registration and proof of residency on specified streets;
- Permit enforcement would be complaint driven and include one random night per week of Police patrol;
- Citations would be issued for lack of permit display, and PD will enforce all violations of the State Vehicle and Municipal Code including illegal head-in parking within cul-de-sacs and for parking longer than 72 hours in the same spot.
- Estimated cost of the pilot program is \$230,000. This is in addition to the estimated \$300,000 spent to date on consultant and staff research time.

Desired goals of the pilot program:

- Verification if parking problem is caused by residents outside The Pines;
- Determine if program improves the availability of on-street parking;
- Determine community support to continue parking permit upon completion of pilot program;
- Identify cost/benefit of administration and enforcement of parking permit program;
- Determine if parking permit program could be replicated in other areas of the city.

During the May and June 2019 Capital Improvement Program (CIP) presentations, staff provided an update on the pilot program to Council. Staff mentioned that no complaints from The Pines regarding on-street parking had been received since February 2018, and it was recommended that funding for the pilot program be pushed out to Fiscal Year 2020-21 to allow staff to continue to monitor the situation. On June 11, 2019, the 2019-24 CIP document was approved with the Pines Pilot Parking Permit Program, Project No. 3451, and \$230,000 funding was to be provided starting July 1, 2020.

TASP on Street Parking Program, Project No. 2017

The 2019-24 Capital Improvement Program includes Project No. 2017, TASP On-Street Parking Program, which was funded in FY19/20. The goals of the project are to encourage the turn-over and maximize availability of on-street parking within the TASP for residents and businesses, and to discourage BART commuters from occupying on-street parking space for prolonged periods of the day. The project provides for the installation of street signage within a 0.5 mile radius around the Milpitas Transit Station designating a daytime 4-hour time limit for on-street parking.

Transit agencies have consensus that most people would walk up to 15 minutes (1/2 mile) to get to or from a transit station stop. For this reason, the recommended time limited parking locations around the Milpitas Transit Station were limited to the 0.5 mile radius around the station. The new Milpitas Transit Center is more than 1-mile away from the Pines neighborhood, and it is estimated that it would require 20 to 30 minutes to walk from The Pines to the Milpitas Transit Center. Staff believes it is unlikely that on-street parking availability within The Pines will be impacted by BART commuters.

The City Council adopted an ordinance amendment on September 3, 2019 to designate the 4-hour time limit for on-street parking within the 0.5 mile radius around the Milpitas Transit Station effective for daytime on weekdays. Installation of 163 street signs designating the time limited parking was completed in early December 2019, ahead of VTA's opening of the Milpitas Transit Station on December 28, 2019.

Since June of 2019, staff has continued to monitor and assess on-street parking conditions within The Pines and has evaluated parking impacts within the TASP as a result of the December 28, 2019 opening of the Valley Transportation Authority Milpitas Transit Center.

- Staff conducted nighttime on-street parking surveys within The Pines the week of January 20, 2020 and determined conditions have not worsened as there was on-street parking space available.
- The Police Department conducted night surveys on weekdays and weekends of Apex, Iliara, and Centria apartment parking garages and noted ample tenant parking spaces were available between January 15 and January 21, 2020.
- In January 2020, the Police Department completed enforcement of the 72 hour on-street parking restriction in the eastern half of The Pines neighborhood, which is the location of the proposed pilot parking permit project. Officers marked 13 vehicles in violation of the 72-hour restriction. Four of the vehicles were registered to addresses in The Pines, three were registered to Centria Apartments, and the remaining were registered to various surrounding cities. Officers rechecked the vehicles 72 hours later and all of the vehicles had either left the area or were moved.

Staff concludes the overnight on-street parking conditions within The Pines have not worsened since the initial parking surveys were completed in 2018. It is recommended that the implementation of the pilot permit parking program not proceed this year (FY 2020-21), and that funding for the Pilot Parking Permit Program, Project No. 3451 be postponed until FY 2021-22 and that staff continue to monitor events. Staff also continues to monitor the parking situation around the Milpitas Transit Station and will survey the effects of the time limited parking once BART passenger service begins.

Fiscal Impact:

Upon Council direction in 2016, staff commenced work on evaluation of the on-street parking problems within The Pines, and staff time was charged to the General Fund. Expenditures to date are estimated at \$300,000. Project No. 3451 Pilot Parking Permit Program was created with the 2019-24 Capital Improvement Program and provides for the implementation of a short-term 6-month pilot permit parking program within The Pines. Funding for this \$230,000 project is from the General Fund, and funding for this project would be available July 1, 2020 unless changed to a future year.

California Environmental Quality Act:

None

Recommendation:

Receive an update on The Pines Pilot Parking Permit and TASP On-Street Parking Program Projects and provide direction to staff.

Attachment:

March 11, 2019 The Pines Pilot Permit Parking Information Memorandum

MEMORANDUM

Engineering Department



DATE: March 11, 2019

TO: Mayor and Councilmembers

THROUGH: Julie Edmonds-Mares, City Manager 

FROM: Steve Erickson, Engineering Director / City Engineer
Steve Chan, Transportation and Traffic Manager

SUBJECT: *The Pines Pilot Parking Permit Program: Additional Information Requested*

This memorandum provides additional information requested by the Council on February 19, 2019, related to The Pines Pilot Parking Permit Program.

Background

For the last several years, residents of The Pines neighborhood have expressed concerns about on-street parking impacts in the neighborhood. As a result, the Council and City staff have been working on a number of initiatives to evaluate and address such concerns, including analysis on potential causes of the parking problem.

Previous Council Action:

The Pines residents have referred to the recent building of apartment complexes in the vicinity as an issue compounding the parking impacts (Apex Apartments completed in early 2015 and Ilara Apartments completed in early 2016). On February 7, 2017, the Council directed staff to determine whether the apartments were the cause of the Pines parking problem.

<http://www.ci.milpitas.ca.gov/pdfs/council/2017/020717/agenda.pdf> (Agenda item 6)

On August 21, 2018, Council further directed staff to do provide specifics of the pilot parking permit program to The Pines residents and investigate feasibility of several alternate mitigations.

<http://www.ci.milpitas.ca.gov/pdfs/council/2018/082118/Agenda.pdf> (Agenda item 15)

<http://www.ci.milpitas.ca.gov/pdfs/council/2018/082118/Presentation03.pdf>

In response to Council direction in 2017 and 2018, staff met with The Pines HOA and residents 3 times; completed 3 on-street parking audits; completed two neighborhood surveys; and met with the apartment management to review their on-site parking practices.

Additionally, staff provided the Council with the following memorandum updates:

- [Starlite Pines Parking letter dated May 7, 2018](#)
- [Pines On-Street Parking Survey Status Memo dated April 6, 2018](#)
- [Apex and Ilara Apartments Parking Information Memo dated September 28, 2018](#)

On February 19, 2019, staff presented “The Pines Pilot Parking Permit Program” including the creation and funding of a new Capital Improvement Project for Council consideration. The concept of a pilot program, which would include 407 households, was that each household would receive 3 no-cost permits each and that permit enforcement between 12 a.m. and 6 a.m., every day of the week. <http://www.ci.milpitas.ca.gov/pdfs/council/2019/021919/package.pdf> (Agenda Item 13)

The total cost of the pilot program was estimated at \$300,000, with about \$230,000 in one-time costs that would be funded through the CIP and about \$70,000 in costs for enforcement and permit administration. As presented to Council, the estimated completion of the pilot and the subsequent analysis was estimated to be in October 2020.

Council did not approve the pilot on February 19 but instead directed staff to provide additional information and to bring the item back as part of the Capital Improvement Program discussion on March 12th.

Summary of Prior Staff and Consultant Efforts

Consultants conducted two neighborhood surveys, the results of which were presented to Council on August 21, 2018 and again on February 19, 2019.

- The first survey encompassed the entire Pines of 976 homes. The response rate was 25%
- The second survey encompassed 407 homes located closer to the apartments. The response rate was 66%.
- The first survey results showed that although 83% of those surveyed have 2 car garages, over two thirds (68%) of those surveyed park on the streets and over three quarters (76%) of those surveyed like to park across the street from their homes.
- The first survey results showed that there was an average of 3.3 vehicles per household, with more vehicles owned than there were licensed drivers.
- Just under half (49%) of those surveyed closest to the South Main/Abel Street intersection area supported a free permit parking program and only about 10% of those surveyed in the same area supported a fee-based parking permit program.

During overnight parking audits conducted by City staff, it was noted that a small number of vehicles (less than 10) parked on Pines neighborhood streets displayed permit stickers from nearby apartment complexes. **However, there was no overwhelming evidence that vehicles from apartments are the primary cause of on-street parking congestion.**

On August 6, 2018, Milpitas Police conducted enforcement of the 72-hour maximum parking duration requirement within The Pines. 29 vehicles were identified and marked to be towed for violation of the requirement that vehicles not be parked in the same spot without movement beyond 72 hours. **All but one of the 29 vehicles were registered to the Pines neighborhood.**

On January 18, 2019, city staff met with management of the Apex Apartments and discovered that Apex management had evicted approximately 40% of their tenants in 2017 for subleasing apartments in violation with their rental agreements. In short, Apex residents were increasing the number of people to each apartment to share rental costs. **It is possible the subleasing of apartments may have contributed to an increase in on-street parking congestion within The Pines soon after occupancy of the apartment development.** However, staff believes the subleasing problem has been resolved.

Milpitas Police conducted several nighttime surveys of the apartment garages last August 9, 2018 and identified 139 vacant parking spaces within the Apex garage, and 76 vacant spaces within Ilara garage. **The apartments are over 90% occupied and the garage surveys indicate the apartment complex garages have sufficient spaces available for their tenants.**

Based on data from the parking audits and surveys, the City's consultant determined a pilot parking permit program could be utilized to protect Pines neighborhood from spillover traffic. A community outreach meeting was held on January 30, 2018 to share the survey findings with residents and to present the concept of a parking permit program.

Additional Information in response to February 19 City Council questions:

1) Cost Expended to Date:

During the presentation on February 19, 2019, the Council asked staff to estimate the cost expended to date on the Pines parking subject. As stated earlier, staff first began the analysis on parking issues with The Pines toward the end of 2015. As shown below, the estimated cost expended to date is approximately \$111,000.

Resource Type	Tasks	Approx. Hours	Hourly Rate*	Cost
Consultant Services	2 parking surveys, research, analysis and community meeting	-	-	\$49,200
Engineering Staff	3 meetings w/Pines HOA, 3 meetings w/apartment management, 1 walk audit, community meeting, 4 parking supply field reviews, research, data review, analysis, consultant contract administration, 3 Council presentations, internal meetings	180	\$102	\$18,360
Planning Staff	2 meetings w/Pines HOA, 2 meetings w/apartment management, 1 walk audit, 1 community meeting, research, internal meetings	80	\$102	\$8,160
Police Staff	2 meeting w/Pines HOA, 2 meetings w/apartment management, 1 walk audit, 1 community meeting, research, field surveys, internal meetings	220	\$160	\$35,200
Total				\$110,920

* Hourly Rate = Average Department Staff Hourly Rate including pay + benefits

2) Cost Recovery:

The implementation, administration, and enforcement of a permit parking program includes several tasks that are considered one-time setup costs. If the parking permit program were to continue permanently beyond the six-month trial, the estimated annual cost of the program would be \$20,000 cost for program administration and \$90,000 for enforcement, with a total of \$110,000 annual cost.

In addition to the enforcement of parking permits, the Police Department will look for and enforce all State vehicle code requirements during the patrols. With implementation of a permit parking program, it is estimated that citations will be issued for other infractions such as Permit parking violation (\$50); Fire hydrant, crosswalk, driveway obstruction (\$50); Parking nose-in within cul-de-sac (\$50); Parking longer than 72 hours in one spot (\$50); and Unregistered vehicle parked on street (\$50).

The Police Department estimates issuance of up to 5 citations per week during initial permit parking enforcement for various infractions. However, it is expected that parking infractions would taper off as residents grow accustomed to the program and the routine enforcement of vehicle code requirements. Thus, revenue from fines is not expected to significantly offset parking permit program costs over the long term.

Resident Permit Fee:

Based upon a program cost of \$110,000, for full cost recovery, the annual resident fee for each parking permit would be \$90.09 based on a total of three permits issued per household within the 407 household area. Total permit cost per household would be approximately \$270/year.

The permit fee would increase if more than one night per week of active enforcement is provided or if the total number of permits issued is less than the projected 1,221 permits.

As noted earlier, since only 10% of survey respondents supported an annual \$25 per vehicle parking permit fee and support decreased as permit fee increased, **a full cost recovery permit program is not likely to be supported by The Pines residents.**

As requested by the Council at the February 19th Council Meeting, the proposed Pines Parking Permit CIP Project (Project No. 3451) is included in the draft 2019-2024 Capital Improvement Program document for additional discussion and consideration during the March 12th CIP Study Session.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Draft Economic Development Strategy Framework
Category:	Community Development
Meeting Date:	2/18/2020
Staff Contact:	Alex Andrade, Economic Development Director, 408-586-3046 Daniel Degu, Economic Development Coordinator, 408-586-3054
<u>Recommendation:</u>	1. Receive preview of the draft Economic Development Strategy Framework from the Office of Economic Development; and 2. Obtain City Council feedback regarding the draft Economic Development Strategy Framework.

Background:

One of City Council's identified priorities is Economic Development and Job Growth, which is vital to the health of the local economy. The Office of Economic Development's mission is to provide services and resources to the business and development communities with the purpose of attracting, retaining and expanding business and employment opportunities for residents, stimulating the local economy and expanding local retail sales, transient occupancy and commercial property tax bases while maintaining a positive balance between growth, social equity and the economic vitality of Milpitas.

On June 18, 2019, the City selected Strategic Economics as the best qualified consultant to develop a new Economic Development Strategy since the current Strategic Plan is 15 years old and out of date. An Economic Development Strategy is a policy document intended to identify specific strategies and create a work-plan to stimulate economic and business development. A roadmap will be prepared to formulate and implement a program that creates opportunities to maximize economic growth (Attachment A).

On November 12, 2019, a City Council Study Session was held to receive an update on the draft Economic Development Strategy's stakeholder/community outreach, economic context, existing conditions and to provide staff feedback on the preliminary findings of the strategy (Attachment B). The consultant team and staff are in the process of incorporating Council's comments and direction from the Study Session into work that is currently underway. Issues discussed include, but are not limited to, the following:

- **Tech/Advanced Manufacturing** – Ensure that the two main economic drivers continue to thrive for a competitive local and regional economy;
- **Innovation District** – Be proactive in developing an Innovation District near the Milpitas Transit Center to attract new and emerging technology businesses and workforce;
- **Milpitas Transit Center** – Improve access for residents, employees and shoppers to help create economic development opportunities in and around the Milpitas Transit Center;
- **Small Business** – Assist and collaborate with the small business community for economic vitality; and
- **Miscellaneous** – Workforce development, sales tax decreases, revenues, business attraction, industrial uses, permitting processes, placemaking, first/last mile solutions for transit, welcome center at the Milpitas Transit Center, Chamber partnerships, marketing, utility rates and Midtown improvement

Analysis:

The purpose of this presentation is to share the draft Economic Development Strategy Framework with Council, as a preview of the initial proposed strategies. This is another opportunity for Council to participate with staff in accepting, rejecting, refining or adding strategies. The draft strategies are categorized into eight categories and represent early ideas and concepts developed by the consultant and staff based on economic research and public feedback from stakeholders and the community. Below is an outline of the most essential strategies, which are subject to revision based on Council feedback and direction and further consultant evaluation. To view a list of entire draft strategies within the Economic Development Strategy Framework, see the attached Memorandum (Attachment C).

1. High Tech and Advanced Manufacturing Sector

- Pursue growth and retention of businesses engaged in Milpitas' highly concentrated and specialized advanced manufacturing and related research and development sector.
- Ensure land use policies and permitting processes encourage the growth and attraction of companies engaged in advanced manufacturing and research and development activities.
- Pursue opportunities to leverage existing strengths in electronics and materials science research and development, advanced manufacturing processes, and engineering to diversify the types of production and research and development activities and businesses in Milpitas. Explore creating a demonstration partnership policy for developing, testing and demonstrating innovative solutions.
- Assist in the marketing, promotion, and tenanting of available office and flex/research and development (R&D) spaces.

2. Light Industrial, Manufacturing and Warehouse Distribution

- Review policies to ensure light industrial/manufacturing uses are still allowed and supported through land use regulations and infrastructure investments. Consider creating districts in which only these uses are allowed.
- Support conversion or redevelopment of warehouse/distribution properties to office, production, and research and development uses.
- Monitor business to business sales tax collection in commercial and industrial subareas. Improve tracking of this data in recognition of the importance of this revenue source.

3. Retail and Restaurant

- Promote and support Milpitas' globally diverse mix of restaurants and retailers.
- Monitor performance of retail centers and proactively reach out to property owners and businesses if sales tax revenues decline.
- Continuously engage with Great Mall ownership to identify and address challenges and explore the property's potential to become a mixed retail, office, and/or residential anchor of the emerging transit-oriented district.
- Provide support for redevelopment/re-tenanting/upgrading of Serra Center as a mixed-use anchor for the Midtown area.

4. Small Business, Entrepreneurship and Displacement Protection

- Identify areas planned for/or undergoing major reinvestment and redevelopment activity, and prioritize outreach, education about resources, and targeting of available resources to those businesses to support continued operation, prevent displacement, or assist in relocation.
- Require that new development projects provide space and/or relocation funding for local retail/restaurant businesses displaced as a result of the project.
- Leverage the Chamber of Commerce to conduct outreach to small businesses.
- Expedite and reduce the cost of permits for new and existing small businesses.

5. Innovation District and Transit-Oriented Development Strategies

- Maximize the economic benefits of BART's introduction for Milpitas' businesses through improvements to "last-mile" mobility options such as an employee shuttle, bicycle and scooter infrastructure, and pedestrian infrastructure and local transit.
- Identify and preserve high-priority office/R&D development sites in and near the Transit Area Specific Plan (TASP), including changes to land use policy.
- Pursue the creation of a Strategic Property Acquisition Revenue (SPAR) Fund to incentivize development of properties in Midtown and TASP that will help to achieve the City's economic development goals.
- Explore development partnership opportunities to add employment uses at the existing Santa Clara Valley Transportation Authority (VTA) Great Mall Transit Center and Great Mall.
- Reach out to existing business incubators, property owners and other partners to explore potential siting of incubators and co-working spaces in the TASP (potentially as an interim temporary use).

6. Amenities and Public Realm

- Modernize Milpitas' public realm by pursuing the creation of modern mixed-use district amenities targeted to pedestrians around TASP and Midtown, including strong non-automobile connections to surrounding areas.
- Allow flexible uses in business park areas to encourage placement of retail, restaurant, and recreational amenities like daycare and wellness centers for area workforce near office space.

7. City Marketing and Processes

- Develop consistent, modern branding based on City goals for business attraction and retention. This effort will align with the City's overall branding work plan.
- Address delays and challenges in City permitting processes and permitting requirements, especially regarding Certificate of Occupancy requirements for changes of business ownership.
- Continue implementation of Matrix Study recommendations through interdepartmental coordination.
- Update the City's Economic Development webpage and integrate with City's main website. Post updated marketing materials that present the City's brand once developed and assets for potential employers and businesses.

8. Workforce Development and Education Resources

- Establish regular meetings with workforce development organizations (i.e., NOVA and NextFlex) the Milpitas Unified School District and community colleges to coordinate activities around training and educational programs to prepare youth and adults for employment in growing target industries, including advanced manufacturing/high tech sectors.
- Collaborate with MUSD Board and staff leadership to develop a shared work program that clarifies Milpitas City staff roles in connecting school district programs and students with training and exposure opportunities at businesses in the city.
- Explore collaborations with regional educational resources, such as apprenticeships via the Advanced Manufacturing Bay Area Community Colleges office.
- Continue to provide support for the FlexFactor program and Manufacturing Day to expose youth to potential opportunities and to connect job-seekers with employers.

Next Steps

The Economic Development Strategy framework does not include detailed implementation actions for the strategies because it is currently in draft form. Strategic Economics will develop this content after the initial strategies are refined based on Council feedback. Subsequently, staff will present the most up-to-date Economic Development Strategy Framework to the Economic Development and Trade Commission for additional feedback. Staff anticipates returning to Council for consideration of the Economic Development Strategy and Implementation Strategy adoption in spring 2020.

Policy Alternative:

Alternative 1: Do not provide staff feedback on the draft Economic Development Strategy Framework at this time and return at a future date for adoption of the Economic Development Strategy and Implementation Matrix.

Pros: This alternative would mean that staff will return to Council in spring 2020 for adoption of the Economic Development Strategy and Implementation Matrix.

Cons: This alternative may delay the adoption of the Economic Development Strategy and Implementation Matrix and missed opportunity for City Council feedback.

Reason not recommended: It is critical for staff to obtain City Council feedback on the Economic Development Strategy Framework to ensure that Council's responses and recommendations are captured and incorporated into the draft strategies. For these reasons, Alternative 1 is not recommended.

Fiscal Impact:

The draft Economic Development Strategy is an approved Council Priority, and the project is currently underway and within budget. There is no fiscal impact in obtaining City Council's feedback regarding the draft Economic Development Strategy Framework.

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

a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation:

1. Receive preview of the draft Economic Development Strategy Framework from the Office of Economic Development; and
2. Obtain City Council feedback regarding the draft Economic Development Strategy Framework.

Attachments:

- A. 06-18-2019 Council Agenda Report and Meeting Minutes
- B. 11-12-2019 Council Study Session Agenda Report on Economic Development Strategy
- C. Strategic Economics – Economic Development Strategy Framework Memorandum



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve a Professional Services Agreement with Strategic Economics to develop an Economic Development Strategy
Category:	Consent Calendar-Community Development
Meeting Date:	6/18/2019
Staff Contact:	Alex Andrade, Economic Development Director 408-586-3046
Recommendation:	Approve and Authorize the Interim City Manager to execute a Professional Services Agreement with consultant Strategic Economics for development of an Economic Development Strategy in the amount of \$129,985.

Background:

One of City Council's identified priorities is Economic Development and Job Growth, which is vital to the health of the Milpitas local economy. The Office of Economic Development's mission is to provide services and resources to the business and development communities with the purpose of attracting, retaining and expanding business and employment opportunities for residents, stimulating the local economy and expanding local retail sales, transient occupancy and commercial property tax bases while maintaining a positive balance between growth, social equity and the economic vitality of Milpitas.

The current Milpitas Economic Strategic Plan was adopted by City Council in 2005. As a policy document, an Economic Development Strategic Plan is intended to identify specific strategies and create a work plan to stimulate economic and business development by providing a roadmap for the formulation and implementation of a program that creates opportunities to maximize economic growth. In 2005, the Economic Strategic Plan focused on improving Milpitas' image as a place to live, work and shop, improving retail opportunities, balancing housing supply for local workforce, business retention, improving employability, and diversifying the economic base since the current Plan is almost fifteen years old, an update is overdue.

An updated Economic Development Strategy is necessary to proceed with the City Council's priority of Economic Development and Job Growth. In the intervening years, significant changes have occurred, including major residential development around the new Milpitas Transit Center, a changing retail landscape and transformative innovations in technology and advanced manufacturing. The purpose of an updated Economic Development Strategy is to prepare Milpitas for a resilient and sustainable local economy that captures emerging innovation and technology, growth opportunities and establishes creative strategies to support economic vitality today and for future generations, which improves the quality of life for residents, employees and visitors alike.

Analysis:

The Office of Economic Development seeks to collaborate with a creative consultant to produce a 5-year Economic Development Strategy that is forward thinking and inclusive, resulting in positioning Milpitas as a regional and global center of business, technology and culture within the Silicon Valley. The selected consultant will establish an Economic Development Strategy based on the following goals:

1. Cultivate a strong stable and diverse local economy;
2. Achieve fiscal sustainability and maintain adequate revenues to provide quality and essential public services;
3. Encourage new development in key opportunity areas that provide high-quality work environments and competitive business locations;
4. Pursue economic development opportunities that foster and improve quality of life; and
5. Increase community workforce preparedness and cultivate an entrepreneurial environment that fosters innovation.

On May 3, 2019, the Purchasing Division released RFP No. 2335 for an Economic Development Strategy on PublicPurchase.com, the City's eProcurement website. Aside from the goals described above, the RFP's scope of work focused on a review of current economic conditions; develop an economic development work plan, community engagement, and recommendations and implementation of the City's economic development efforts. Thirty four firms were notified of the issuance of the RFP and twenty vendors downloaded the bid document. The RFP closed on May 21, 2019 and there were four proposers. Three of the four proposers met all of the criteria for the solicitation, they are:

- Economic & Planning Systems, Inc.
- Strategic Economics, Inc.
- Applied Development Economics, Inc.

The evaluation committee reviewed proposals based on the merits of the cover letter, company profile, execution plan, personnel assigned, references and proposed compensation. After an initial assessment by the evaluation committee, all three firms met with an interview panel comprised of City staff to clarify various parts of the proposals prior to a final scoring. Interviews were conducted on May 29, 2019, and scoring was finalized on the same day. The table below shows the final evaluation scores with Strategic Economics as the recommended firm.

Economic Development Strategy RFP No. 2335	Strategic Economics, Inc.	Applied Development Economics, Inc.	Economic & Planning Systems, Inc.
Evaluation Score	87.33	81.83	78.00

Staff recommends that City Council approve Strategic Economics as the most qualified consultant for the development of the City of Milpitas' Economic Development Strategy and authorize the Interim City Manager to execute a Professional Services Agreement. There are various reasons for Strategic Economics being deemed the most qualified consultant including, but not limited to, identification of forward-looking economic development growth opportunities with place-making solutions, expanding workforce development opportunities for local residents, strategies to prevent small business displacement, inclusive community engagement plans, identification of new funding sources, and attracting emerging technologies while retaining valuable industry sectors.

If the City Council approves Strategic Economics as the consultant, next steps include commencing the analysis of economic development conditions and opportunities, stakeholder interviews and community engagement, and delivery of a draft industry analysis report for review and feedback. Staff and consultant will present findings to the community and Economic Development and Trade Commission, and City Council will have an opportunity to review, provide feedback and consider the Economic Development Strategy for adoption at a future City Council meeting. Staff expects the Economic Development Strategy to be complete in the first Quarter of 2020.

The Office of Economic Development's vision for local economic development is to preserve and enhance Milpitas' business climate to ensure the City is financially stable to provide essential services and collaborate with the community in its commitment to improve quality of life. Thus, the Economic Development Strategy is important for a sustainable and healthy economy, and to achieve the City Council's priority of Economic Development and Job Growth.

Policy Alternatives:

Alternative 1: Select a different consultant.

Pros: An Economic Development Strategy would still be developed with the selection of a different consultant.

Cons: The evaluation committee determined that Strategic Economics is the most qualified vendor to develop the City of Milpitas' Economic Development Strategy based on a comprehensive evaluation of proposals.

Reason not recommended: Selecting a different vendor may result in pursuing a contract with an organization that is not recommended by the evaluation committee, which based its vendor recommendation on the merits of RFP proposals and interviews.

Alternative 2: Do not approve a consultant at this time.

Pros: The City would not spend the \$129,985 on developing an Economic Development Strategy.

Cons: The City will continue to operate without a current Economic Development Strategy potentially resulting in missed opportunities for job growth, workforce development and additional revenue generation.

Reason not recommended: The City has not updated its Economic Development Strategy since 2005. Further delaying the selection of a qualified consultant would postpone the development of an Economic Development Strategy resulting in missed opportunities for job growth, workforce development and additional revenue generation.

Fiscal Impact:

The funding for the development of an Economic Development Strategy is currently budgeted in the Office of Economic Development's contractual services budget for Fiscal Year 2018-2019.

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 and authorize the Interim City Manager to execute a Professional Services Agreement with consultant Strategic Economics for development of an Economic Development Strategy in the not to exceed amount of \$129,985.

Attachments:

Professional Services Agreement

EXHIBIT A

Scope of Work, with Task Options

Data Assumptions

Note that the scope assumes that the City will provide certain confidential data, including establishment-level employer data from the California Employment Development Department, establishment-level sales tax data, business license data, and parcel data including building characteristics and ownership. Strategic Economics will sign any necessary confidentiality agreements to view and analyze this data.

Task 1: Analysis of Economic Conditions and Opportunities

1.1: Request and Review of Existing Data and Background Materials

Prior to the kick-off meeting, Strategic Economics will review the current Economic Development Strategy and Work Program, and work completed to date as listed in the RFP. Strategic Economics will also request relevant data from the City, including GIS shape files, financial data, development projects, etc.

1.2: Kick-Off Meeting and Site Visit

Strategic Economics and Plan to Place will attend a project initiation meeting with City staff to review the scope of work and the schedule of deliverables, and meetings with stakeholders and the Economic Development and Trade Commission. During the kick-off meeting, the SE team will also begin to identify stakeholders, discuss the engagement strategy, and discuss project role and responsibilities. The kick-off meeting will be an opportunity to make refinements to the scope and schedule, if needed. After the meeting, Strategic Economics and Plan to Place will tour the city with City staff, with a special focus on the City's key economic generators and opportunity areas.

1.3: Industry Analysis

While the previous economic analysis for the General Plan Update provides an overview of economic activity and trends in Milpitas, there is a need to gain a more nuanced understanding of the types of industries and businesses that are successful, have potential for growth, or require additional support from the City.

Building on the economic and fiscal analyses completed for the General Plan Update, the SE Team will selectively analyze employment, industry, and business trends by examining local and regional Silicon Valley trends and projections using a combination of California Employment Development Department Data, County Business Patterns, City business license data (if

available), and Plan Bay Area 2040 regional employment projections. If the data is available, the SE team will also evaluate start-ups and entrepreneurial activity in the city.

These analyses will identify the city's strengths beyond the two-digit NAICS code level to gain a more fine-grained understanding of the types of businesses that drive the regional economy (e.g., computer software and hardware), those that support the regional economy (e.g., professional and business services), and those that serve local residents (e.g., convenience retail and restaurants). The task will also provide insights into Milpitas's specific strengths and weaknesses relative to the Silicon Valley region, and identify emerging technologies and innovative clusters in the city. Finally, the SE Team will also examine the sources of Milpitas's General Fund revenues and the connections between these revenues and the City's different businesses and land uses.

Task 1.4.1 Workforce Development and Jobs-Skills Match

The composition of jobs available in Milpitas may not meet the advanced skill levels of the local resident workforce, requiring many residents to commute to other cities. In this task, Strategic Economics will analyze the demographic and commute characteristics of the resident labor force in Milpitas, and identify the potential types of occupations that the City could attract that would better match their skills. The sub-tasks include:

- Analyze educational attainment of workers at jobs currently located in Milpitas and compare against resident educational attainment and occupational profiles.
- Interview NOVA and other workforce development organizations to gain current information about the jobs-skills match issues in Santa Clara County and, to the extent possible, in Milpitas. Review relevant workforce development reports and literature on workforce needs for emerging industries.
- Conduct interviews with Silicon Valley employers in the industries and clusters that have been targeted for growth and attraction in Milpitas based on Task 1.3 analysis. These interviews will be structured to reveal the location decisions of these industries vis-à-vis access to workforce/talent, and the pros and cons of locating in Milpitas.
- Describe the findings of the interviews and analyses in the Industry Analysis Report.
- Based on these findings, recommend and incorporate strategies and implementation actions in the Economic Development Strategy.

1.4.2 Preventing Displacement of Small Businesses

Strategic Economics will evaluate current conditions and recent trends affecting small businesses in Milpitas, and assess the potential risk of displacement. The assessment will include:

- Existing business mix (retail, restaurants, personal services, automobile-oriented retail, production, distribution and repair businesses, etc.) and overall business trends (change in number and composition of small businesses over time).
- Interviews with business owners, commercial brokers, and business associations.
- Retail and restaurant sales trends over time, compared to citywide trends, based on sales tax data.

Based on the analysis of trends, Strategic Economics will identify the key issues faced by small businesses in Milpitas, and their potential risk of displacement. The findings of the interviews and analyses will be described in the Industry Analysis Report.

Based on these findings, Strategic Economics will recommend and incorporate strategies and implementation actions in the Economic Development Strategy to help prevent displacement as a result of redevelopment. The recommendations may include strategies related to leveraging new development to preserve space for small businesses and implementing district-based strategies for supporting small businesses (e.g., technical assistance, marketing, grants/loans for façade or tenant improvements). The recommendations will draw on targeted research of how other jurisdictions have addressed similar challenges.

1.5: Stakeholder Interviews

Strategic Economics will facilitate a series of up to six in-person stakeholder group meetings. The stakeholders will be defined in close coordination with City staff, but could potentially include: key business representatives representing retail/restaurants, advanced manufacturing, other high tech industries; brokers, developers, hotel operators, community leaders, property owners, and City staff. In addition to gathering qualitative information and answering key questions raised in the RFP, the stakeholder groups will help to build support for the Economic Development Strategy and achieve “buy-in” from community leaders. Strategic Economics will facilitate each of the meetings, formulating specific topics and questions with the goal of gathering required information and generating ideas for potential strategies. It is assumed that City staff will contact all stakeholders to schedule and coordinate the meetings.

Task 1 Deliverables:

- Final scope of work and project schedule, defining key meetings and dates for submittal of draft and final deliverables (Word and PDF)
- Administrative draft and final draft of Industry Data Analysis Report (incorporating the findings of tasks 1.3 through 1.5)
- Summary notes from stakeholder interviews

Task 2: Develop Economic Development Strategy Report and Implementation Matrix

The SE team will then incorporate the results of the Economic Conditions and Opportunities analyses to draft an initial document framework for review by City staff. Based on feedback on the framework from City staff, the SE team will prepare an Administrative Draft of the Economic Development Strategy Report with an implementation matrix. Upon review by appropriate parties, the SE team will deliver a revised Public draft Economic Development Strategy Report and implementation matrix. Upon vetting of this public draft by the community, Economic Development and Trade Commission (EDTC), and City Council, the SE team will provide a final Economic Development Strategy Report and implementation matrix for approval by the City Council.

The plan will describe economic context, existing conditions, and future changes necessary to maintain Milpitas's competitiveness in attracting cutting edge emerging technologies, retaining and expanding existing businesses and industries, preparing the local workforce for future jobs, encouraging development activity, and sustaining the City's fiscal health. Strategies will address key issues identified by the City, including the creation of a strategic workforce development initiative and the EDTC's roles. The plan will also incorporate place-based strategies related to revitalizing Main Street, implementing the Midtown Specific Plan, attracting innovative jobs to an "innovation district" near the Milpitas Transit Center, and strategies for pursuing a Smart City Initiative. Team member Plan to Place will provide guidance on how best to roll out Milpitas's new branding efforts, and provide strategies related to future outreach to key economic development stakeholders.

The implementation matrix will identify specific prioritized actions for the next five years, with implementation guidelines, schedule, and identification of responsible parties and funding sources. The matrix will include strategies and actions for both the City as a whole and for the opportunity areas. The actions will incorporate measurable annual performance objectives, including the Office of Economic Development's new performance metrics. The Economic Development Strategy will recommend new potential sources of funding to achieve the plan's objectives, including consideration of a Strategic Property Acquisition Revenue fund, Transportation Management Association, Parking Assessment District, and a Property-based Improvement District for Midtown.

Task 2 Deliverables:

- Administrative draft Economic Development Strategy report and implementation matrix (with budget and schedule)
- Public draft Economic Development Strategy report and implementation matrix (with budget and schedule)
- Final draft Economic Development Strategy report and implementation matrix (with budget and schedule)

Task 3: Community Engagement and Meetings

The SE team will engage the community throughout the project. Through a series of two community workshops, the SE team will receive input on the Milpitas community's economic development priorities, present analytical findings and vet preliminary strategy focus areas, and present and receive feedback on the strategies and implementation actions incorporated in the Economic Development Strategy.

Task 3.1: Community Engagement Plan

At the onset of the project, Plan to Place will prepare an engagement strategy to:

- Outline project goals and objectives;

- Identify engagement activities;
- Identify target demographic and interest groups and identify methods of communication and engagement;
- Confirm coordination, facilitation and communication responsibilities; and
- Outline schedule, format, and resources for all engagement activities.

Task 3.2: Community Workshops

The SE team will prepare for and execute up to two (2) community workshops to discuss topics related to the economic development strategy. The anticipated team's roles and responsibilities include:

- Plan to Place will work with the project team to prepare an overall purpose, approach, objective and anticipated outcome of the community workshops.
- Plan to Place will prepare meeting materials including agendas, sign-in sheets and assist with interactive activities to get input on the strategies and deliverables prepared by SE.
- Plan to Place will co-facilitate each workshop.
- City staff will coordinate meeting location logistics (e.g., room, a/v equipment, refreshments).
- Plan to Place will assist with meeting logistics including room set up and break-down.
- Plan to Place will prepare summary notes.

Task 3.3: Economic Development and Trade Commission and City Council Meetings

SE will attend up to two (2) meetings with the EDTC to report on the findings of the study, refine the EDTC's roles within the Economic Development Strategy's recommendations, and to receive input on the Public draft plan. SE will also attend one (1) meeting with the City Council to present the plan findings and recommendations. The timing and content of all of these meeting will be coordinated with City staff.

Task 3 Deliverables:

- Community Engagement Plan
- Materials for each community workshop (agendas, sign in sheets, PowerPoint presentations, any feedback activity materials)
- Summary notes from each community workshop
- PowerPoint presentations for the EDTC and City Council meetings

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Special and Regular Meetings of the
Milpitas City Council**
Date: **Tuesday, June 18, 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 5:31 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 six agenda items, five as listed on the Regular Meeting agenda (a) – (e) and one listed on a Special Meeting agenda.

At 6:30 PM, City Council paused from Closed Session to go outdoors to join the City-sponsored “Juneteenth” celebration at Cesar Chavez Plaza. The Council reconvened in Closed Session.

City Council came out from Closed Session to the dais for the Open Session regular agenda at 7:46 PM.

ANNOUNCEMENT City Attorney Chris Diaz stated out of Closed Session the following Council actions:

- (1) City Council agreed by unanimous vote to approve a side letter with the Milpitas Police Officers Association regarding retiree dependents’ health care benefits. That document would be available with the City Clerk or Human Resources Director.
- (2) City Council agreed to changes, regarding the open session agenda item no. C14, on an amendment to the agreement with the law firm BB&K. A new version of the modified amendment was handed to the City Clerk and would be the version for Council action.
- (3) Regarding Agenda Item No. 19, for the appointment of Steve McHarris as interim City Manager, there was one modification to the Resolution to remove item 3.

PLEDGE Resident Voltaire Montemayor led the pledge of allegiance.

INVOCATION Councilmember Nuñez led a prayer from the dais to start the meeting.

PRESENTATIONS Mayor Tran presented:

- (1) Certificates to students for efforts on “All Hearts One Bullet” High School event to speak out and combat gun violence on school campuses, which was accepted by Nisha Porchezhiyan and Sean Nguyen.
- (2) Proclamation of *Philippines Independence Day* for June 12, 2019 was presented by Vice Mayor Dominguez to women representatives of Bayanihan Fil-Am Foundation.

PUBLIC FORUM Frank DeSmidt, Milpitas Rotary Club and Chamber of Commerce representative, announced that on Thursday, July 25 there would be the Chamber’s annual awards banquet at Embassy Suites Hotel. On September 27, at the same hotel, would be the Chamber’s Casino Night fundraiser.

George Lund, resident and property owner, would like something done about corruption at Milpitas Code Enforcement. He claimed felonies were done by that office. He’d been harassed

Councilmember Montano wished to remove item no. C11 (wet well in stormwater system) from consent.

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

- C1. Council calendars Accepted City Council calendars for June and July 2019.
- C2. August meetings Canceled the regularly scheduled City Council meeting on August 6, 2019 and called for a Special City Council meeting on August 13, 2019, due to the observance in Milpitas of National Night Out on August 6 and on the first Tuesday each August annually. Councilmember Nuñez clarified at the consent calendar vote that he desired this action to be for all future years.
- C3. Meeting Minutes Approved City Council meeting minutes of June 4, 2019.
- C4. 3 Resolutions related to employee agreements
1. Adopted Resolution No. 8886 approving a new Memorandum of Understanding between the City of Milpitas and United Public Employees of California (UPEC) Mid-Management and Confidential Unit (MidCon) covering the period of July 1, 2019 through June 30, 2023.
 2. Adopted Resolution No. 8887 approving a new Memorandum of Understanding between the City of Milpitas and the Professional and Technical Group (ProTech) of employees covering the period of July 1, 2019 through June 30, 2023.
 3. Adopted Resolution No. 8888 updating the Unrepresented Miscellaneous, Police and Fire Management Salary and Benefit Matrix covering the period of July 1, 2019 through June 30, 2023.
- C5. Resolution – Annex Property into CFD 2005-1
1. Adopted Resolution No. 8889 certifying election results and adding Tract No. 10470 to Community Facilities District 2005-1 (Annexation No. 20); and
 2. Approved Final Tract Map No. 10470, accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
 3. Approved and authorized the Interim City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Eighty-Eight Homes LLC.
- C6. Resolution – Skate Park Adopted Resolution No. 8890 approving project plans and specifications and awarded a construction contract for the Base Bid plus Add Alternates 1 and 4, authorized the Interim City Manager to execute the contract with Suarez and Munoz Construction, Inc. in the amount of \$4,579,156 for the Milpitas Skate Park and Concession/Storage/Restroom Buildings, Projects No. 5111, No. 3424 and No. 6133, and authorized the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$690,000; approved budget appropriation in the amount of \$800,000 from the General Fund Unassigned Reserves.
- C7. Resolution – Xerox Adopted Resolution No. 8891 authorizing the City Manager to execute a lease with Xerox Corporation for copier/multifunction digital devices and full service maintenance through a Cooperative Procurement Contract by Region 4 Educational Services Center for a 60-month (5 year) maximum contract amount of \$292,867.
8. RFP for Economic Development
- Economic Development Director Alex Andrade provided an overview of the Request for Proposals for an economic development strategy for the City of Milpitas.
- Councilmember Montano asked how staff would prevent displacement of small businesses, and Mr. Andrade replied that would be part of the results of the final reports. Consultant Ms. Sujata Srivastava from Strategic Economics also responded to her question.
- Vice Mayor Dominguez was concerned about displacement of those businesses and wanted to be challenged with policy or strategies that had not been done in Milpitas.

Councilmember Nuñez wanted to know how the Community Development Roundtable operated, with respect to this plan and Mr. Andrade commented. He asked additional questions on employment density near transit.

The consultant came forward stating she'd worked previously with the cities of Cupertino, Redwood City, Alameda and other Bay Area locales.

Councilmember Montano asked the difference between the economic development strategy of five years ago, and what would be done today. It seemed to her the last effort on this was only shelved. She asked staff to provide the past strategy to the consultant.

Vice Mayor Dominguez would support this request for the study while strategies and priorities were being worked on at the Economic Development Commission and by staff. The 2005 strategy was outdated so a new one was needed.

Councilmember Phan would like a Trader Joe's store in Milpitas and was excited moving forward with this strategy. He asked if the study would relate to revenue growth of the City. Mr. Phan suggested to inventory public properties or consider land banking. He liked the Smart City element and understanding infrastructure needs.

Mayor Tran was concerned that sales tax was down this past month. This strategy could help to jump start that source of revenue. Maybe urge a change and an update to retail sector. He then welcomed comments from the audience.

Tom Valore, resident, agreed there was a need for an economic development strategy, especially after being on the Board of Directors at Milpitas Chamber of Commerce. He wanted to understand why this strategy was being outsourced and not done internally by City staff.

Voltaire Montemayor, resident, noted the rating was so high, while and the need and usefulness was there. Work with good quality, with concern for expense, he said.

Motion: to approve and authorize the Interim City Manager to execute a Professional Services Agreement with consultant Strategic Economics for development of an Economic Development Strategy in the amount of \$129,985

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

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

C9. Assume First Amendment to McCarthy Ranch Development Agreements	Approved form Partial Assignment and Assumption Agreements to Embarcadero Capital Partners and Bridge Development Partners and authorized the Interim City Manager to execute the assignments, subject to minor conforming and clarifying changes approved by City Attorney.
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C10. Digital Billboard	Directed the Interim City Manager to proceed with a City Digital Billboard Guidance Study through a Professional Services Agreement.
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11. Agreement with Peninsula Pump & Equipment for Wet Well Rehabilitation	Councilmember Montano wished to comment on wet wells in the stormwater system. For these pumps, there must be a lack of debris in stormdrains, so residents needed to concentrate with the city on cleaning up streets. Public Works Director Tony Ndah explained the need for work on the wet well, and responded to her comments.
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Motion: to approve a five-year Agreement with Peninsula Pump & Equipment Inc. from the date of execution through June 30, 2024, for a total maximum compensation of \$457,800, to provide Wet Well Rehabilitation and Annual Maintenance Services, subject to annual appropriation of funds

Motion/Second: Councilmember Montano/Councilmember Phan



Attachment B CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Economic Development Strategy Study Session
Category:	Community Development
Meeting Date:	11/12/2019
Staff Contact:	Alex Andrade, Economic Development Director, 408-586-3046 Daniel Degu, Economic Development Coordinator, 408-586-3054
Recommendation:	1. Receive update on the draft Economic Development Strategy from the Office of Economic Development. 2. Provide feedback and direction to the Office of Economic Development regarding current preliminary research results of the draft Economic Development Strategy.

Background:

One of City Council's identified priorities is Economic Development and Job Growth, which is vital to the health of the local economy. The Office of Economic Development's mission is to provide services and resources to the business and development communities with the purpose of attracting, retaining and expanding business and employment opportunities for residents, stimulating the local economy and expanding local retail sales, transient occupancy and commercial property tax bases while maintaining a positive balance between growth, social equity and the economic vitality of Milpitas.

An Economic Development Strategy is a policy document intended to identify specific strategies and create a work-plan to stimulate economic and business development by providing a roadmap for the formulation and implementation of a program that creates opportunities to maximize economic growth. The current Milpitas Economic Development Strategy was adopted by City Council on February 7, 2006.

On June 18, 2019, the City selected Strategic Economics as the consultant to develop a new Economic Development Strategy. The purpose of an updated Economic Development Strategy is to prepare Milpitas for a resilient and sustainable local economy that captures emerging innovation and technology, growth opportunities with place-making solutions, strategies to prevent small business displacement, and establishes creative strategies to support economic vitality today and for future generations, which improves the quality of life for residents, employees and visitors alike.

The consultant team will establish an Economic Development Strategy based on the following goals:

1. Cultivate a strong stable and diverse local economy;
2. Achieve fiscal sustainability and maintain adequate revenues to provide quality and essential public services;
3. Encourage new development in key opportunity areas that provide high-quality work environments and competitive business locations;
4. Pursue economic development opportunities that foster and improve quality of life; and
5. Increase community workforce preparedness and cultivate an entrepreneurial environment that fosters innovation.

The purpose of this Study Session is to provide an update on the draft Economic Development Strategy and seek feedback from the Council on the current findings of the strategy. The consultant team and City staff will incorporate the Council's comments and direction from this Study Session into work currently underway. The Office of Economic Development anticipates providing the Council another update on the draft Economic Development Strategy via an Informational Memorandum in mid-December 2019 and expects adoption of the final Economic Development Strategy Report and Implementation Matrix in the first Quarter of 2020.

The Economic Development Strategy Report will describe economic context, existing conditions, and future changes necessary to maintain Milpitas' competitiveness in attracting cutting edge emerging technologies, retaining and expanding existing businesses and industries, preparing the local workforce for future jobs, encouraging development activity, and investing in the City's fiscal health.

The Implementation Matrix will identify specific priority actions for the next five years, with implementation guidelines, schedule, and identification of responsible parties and funding sources. The matrix will include strategies and actions for both the City and for the opportunity areas. The actions will incorporate measurable annual performance objectives, including the Office of Economic Development's new performance metrics. The Economic Development Strategy will also recommend new potential sources of funding to achieve the plan's objectives.

Analysis:

The current process of preparing a new Economic Development Strategy began in July 2019. The consultant team has completed approximately half of the project deliverables specified in their scope of work, which makes this an opportune time to receive vital City Council feedback and direction at this time. To date, the consultant team and City staff have completed the following tasks and milestones:

- **Kick-Off Meeting and Site Visit** – The consultant team attended a project initiation meeting with City staff to review the scope of work and the schedule of deliverables, and meetings with stakeholders and the Economic Development and Trade Commission (EDTC). During the kick-off meeting, Strategic Economics also began to identify stakeholders, discussed the engagement strategy, and discussed project role and responsibilities. After the meeting, the consultant team toured the Milpitas with City staff, with a special focus on the City's key economic drivers and opportunity areas.
- **Industry Analysis** – Since initiation of the project, the consultant team has been selectively analyzing employment, industry, and business trends by examining county-level employment and industry data. Strategic Economics is currently awaiting receipt of detailed confidential establishment data from the State of California to complete analysis of employment and industry trends for Milpitas itself. And, they have also conducted multiple interviews with commercial and industrial real estate brokers to better understand market factors that impact Milpitas' ability to attract and retain different kinds of businesses.
- **Workforce Development and Jobs-Skills Match** – Since August 2019, Strategic Economics has been analyzing demographic and commute characteristics of the resident labor force in Milpitas and identifying the potential types of occupations that the City could attract that would better match their skills. A detailed analysis of the occupational mix in Milpitas versus Santa Clara County has also been performed.
- **Preventing Displacement of Small Businesses** – Since project initiation, the consultant team has been evaluating the current conditions and recent trends affecting small businesses in Milpitas and assessing the potential risk of displacement. This task will be completed upon receipt of establishment data from the State of California, as noted in the "Industry Analysis" task above.
- **Online Survey** – An online public survey was made available to the public, targeting those that live and/or work in Milpitas, to learn about their priorities and needs as it relates to having a more diverse, healthy, and vibrant local economy. The public survey was made live on October 23, 2019 and was shared with the Milpitas Chamber of Commerce, posted onto the City website and the City's social media.

media outlets: Nextdoor and Facebook. City staff will also send the public survey to major property owners and shopping/retail centers to be distributed to their tenants and employees. The survey will close at the end of November 2019. The online survey website is www.opentownhall.com/portals/293/Issue_7961.

- **Project Website** – The Economic Development Strategy website has been active since October 24, 2019, and provides information regarding the upcoming schedule, online survey, and other resource materials. The project website is www.ci.milpitas.ca.gov/milpitas/economicdevelopmentstrategy.
- **Community Outreach** – The consultant team and City staff has been using a high-touch approach to community engagement, integrating person-to-person community outreach with frequent, multiple contacts to effectively reach as many members of the community as possible. **Attachment B** (attached) includes a high-level summary of issues and topics from all business, organization, and broader community outreach events, as highlighted below.
 - **Stakeholder Meetings and Interviews**
 - Strategic Economics conducted an extensive number of interviews since September 2019 with business community stakeholders, including high-tech businesses, Milpitas Chamber of Commerce Board of Directors and Chamber staff, commercial real estate brokers, business owners, property owners, landlord representatives, and hospitality operators. To date, there have been 5 in-person stakeholder group meetings and 11 stakeholder phone interviews.
 - **Community Engagement and Meetings**
 - On September 19, 2019, the Office of Economic Development and Strategic Economics engaged EDTC to provide a project introduction and obtain feedback from the Commission on how the City can improve its services and develop strategies to address key issues. General comments received from Commissioners included in **Attachment B**.
 - A Community Workshop that provided an overview of the draft Economic Development Strategy was held the evening of October 24, 2019. The Community Workshop was promoted through a variety of methods, including direct outreach to Great Mall, local and regional community-based organizations, social gathering places, homeowner associations, City staff, social groups such as Rotary, Kiwanis, and Executive Lions Club, business community stakeholder groups, and workforce development partners such as NextFlex, NOVA, and SEMI. The consultant team and City staff provided an oral presentation and answered questions from attendees. Community members at this meeting evaluated Milpitas' performance in several topic areas related to economic development, and expressed their priorities for issues that should be addressed in the Economic Development Strategy. This feedback is summarized in **Attachment B**.

Policy Alternatives:

This is an informational item for Council direction. The draft Economic Development Strategy is an approved Council Priority, and the project is currently underway.

Fiscal Impact:

This is an informational item for Council direction. No fiscal impact.

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 update on the draft Economic Development Strategy from the Office of Economic Development.
2. Provide feedback and direction to the Office of Economic Development regarding current preliminary research results of the draft Economic Development Strategy.

Attachments:

- A. 06-18-19 Council Agenda Report + Meeting Minutes
- B. Presentation for Study Session on the draft Economic Development Strategy



MEMORANDUM

To: Alex Andrade and Daniel Degu, City of Milpitas
From: Sujata Srivastava, Derek Braun, and Evelyne St-Louis
Date: February 7, 2020
Project: Milpitas Economic Development Strategy
Subject: Economic Development Strategy Document Framework (**interim working draft**)

This memo provides an initial framework for the Milpitas Economic Development Strategy. The framework consists of an outline of preliminary draft strategies, broken out by topic area. Strategic Economics is sharing these initial strategies for the purpose of review by staff in the Economic Development Department and subsequent discussion with Strategic Economics staff to accept, reject, refine, or add strategies. As such, the topic areas and strategies represent early ideas and concepts subject to substantial revision. The framework does not include detailed implementation actions for the strategies; Strategic Economics will develop this content after the initial strategies are refined.

The strategies in this document are broken out into the following topic areas. These topic areas can also be reconsidered as part of review and discussion.

1. High Tech and Advanced Manufacturing Sector
2. Light Industrial/Manufacturing and Warehouse/Distribution
3. Retail and Restaurant
4. Small Business, Entrepreneurship, and Displacement Protection
5. Innovation District and Transit-Oriented Development Strategies
6. Amenities and Public Realm
7. City Marketing and Processes
8. Workforce Development and Education Resources

High Tech and Advanced Manufacturing Sector Strategies

1. Pursue growth and retention of businesses engaged in Milpitas's highly concentrated and specialized advanced manufacturing and related research and development sector.
2. Ensure land use policies and permitting processes encourage the growth and attraction of companies engaged in advanced manufacturing and research and development activities.
3. Pursue opportunities to leverage existing strengths in electronics and materials science research and development, advanced manufacturing processes, and engineering to diversify the types of production and research and development activities and businesses in Milpitas.
4. Explore creating a "demonstration partnership policy" for developing, testing, and demonstrating innovative solutions to City needs.
5. Assist in the marketing, promotion, and tenanting of available office and flex/R&D spaces.
6. Ensure zoning and land use policies allow flexible reuse, reinvestment, and redevelopment of older office and research and development spaces.

Implementation Examples:

- Develop and regularly convene industry group(s) representing advanced manufacturing, medical devices, electronics, and software, with a goal of maintaining relationships with these companies and understanding emerging challenges, opportunities, and potential opportunities for city assistance.
- Preserve sites for advanced manufacturing and R&D space.
- Work with property owners and brokers to assist with marketing and leasing of vacant R&D buildings.
- Develop promotional marketing materials for brokers and site locators.
- Update the city's website with a database of major property availability.
- Leverage ongoing participation in SVEDA and other regional economic development organizations to identify new opportunities.
- Promote access to a diverse workforce as a competitive advantage.

Light Industrial/Manufacturing and Warehouse/Distribution Strategies

7. Review policies to ensure light industrial/manufacturing uses are prioritized in land use regulations and infrastructure investments.
8. Limit locations where warehouse/distribution uses are allowed.
9. Support conversion or redevelopment of warehouse/distribution properties to office, production, and research and development uses.

10. Monitor business-to-business sales tax collection in commercial and industrial subareas.

Implementation Examples:

- Update zoning code and land use policies to ensure that light industrial/manufacturing uses are preserved, and not converted into warehouse/distribution centers
- Track business to businesses sales tax data on an annual basis for each commercial and industrial subarea of the city.
- Conduct outreach to property owner of large vacant site adjacent to rail line to explore potential for redevelopment.

Retail and Restaurant Strategies

11. Assist in promotion of Milpitas's shopping districts.
12. Promote and support Milpitas's globally diverse mix of restaurants and retailers.
13. Monitor performance of retail centers and proactively reach out to property owners and businesses if sales tax revenues decline.
14. Continuously engage with Great Mall ownership to identify and address challenges and explore the property's potential to become a mixed retail, office, and/or residential anchor of the emerging transit-oriented district.
15. Provide support for redevelopment/re-tenanting/upgrading of Serra Center as a mixed-use anchor for the Midtown area.
16. Explore the creation of a property-owner/business improvement district (PBID or BID) in Midtown.
17. Explore potential to position Midtown as a community destination for local, non-chain retailers and restaurants.
18. Continue community and property owner engagement efforts to build awareness for the potential to reposition Midtown as a walkable, mixed-use district.

Implementation Examples:

- Continue to work with Better Block to identify opportunities to identify locations for an activity node on Main Street that can serve as a community gathering space and attract new businesses.
- Lead area planning efforts to revitalize Serra Center, incorporating surrounding properties owned by MUSD and Santa Clara County.
- Pursue opportunities to integrate ground-floor retail into proposed residential projects in the TASP area.

- Provide technical support for property owners and business owners on Main Street to assist with the formation of a PBID or BID.
- Work with Chamber of Commerce to establish a strategy for marketing shopping districts, and promoting locally-owned restaurants and retail.

Small Business, Entrepreneurship, and Displacement Protection Strategies

19. Identify areas planned for or undergoing major reinvestment and redevelopment activity, and prioritize outreach, education about resources, and targeting of available resources to those businesses to support continued operation, prevent displacement, or assist in relocation.
20. Ensure adequate signage and access are provided to businesses during construction projects.
21. Develop/enhance reference materials and ongoing relationships to connect small businesses with technical assistance providers and lenders.
22. Require that new development projects provide space and/or relocation funding for local retail/restaurant businesses displaced as a result of the project.
23. Leverage the Chamber of Commerce to conduct outreach to small businesses.
24. Expedite and reduce the cost of permits for new and existing small businesses.

Implementation Examples:

- Restart the small business outreach program in close coordination with Chamber of Commerce.
- For new development projects, require property owners and developers to establish a plan for relocating or accommodating small businesses that are displaced.

Innovation District, Real Estate, and Transit-Oriented Development Strategies

25. Maximize the economic benefits of BART's introduction for Milpitas's businesses through improvements to "last-mile" mobility options, including bicycle infrastructure, pedestrian infrastructure, and local transit.
26. Identify and preserve high-priority office/R&D development sites in and near the TASP, including changes to land use policy.

27. Pursue the creation of a Strategic Property Acquisition Revenue (SPAR) Fund to incentivize development of properties in Midtown and the TASP that will help to achieve the City's economic development goals.
28. Explore development partnership opportunities to add employment uses at the existing VTA Great Mall Transit Center and the Great Mall.
29. Explore opportunities to assist in development of centrally located properties in Midtown.
30. Assist in the placement of event programming and temporary "pop-up" uses in the TASP to enliven public spaces and vacant retail spaces until sufficient demand exists to maintain this vibrancy without assistance.
31. Reach out to existing business incubators, area property owners, and other partners to explore potential siting of incubators and co-working spaces in the TASP, potentially as an interim temporary use.
32. Continue to leverage City-owned properties for revenue generation and provision of community benefits.

Implementation Examples:

- Explore potential for dedicating City revenues (such as a portion of transient-occupancy tax or lease revenues from billboards), to help incentivize office development projects in the TASP.
- Continue discussions with the VTA Real Estate Department on potential for innovation district and/or office uses on VTA-owned sites in the TASP.
- Identify funding sources to add staffing capacity in the Economic Development Department for real estate activities.
- Develop a strategy for the existing portfolio of city-owned properties, including disposition and leasing agreements to generate more revenues for economic development.

Amenities and Public Realm

33. Modernize Milpitas's public realm by pursuing the creation of modern mixed-use districts with amenities targeted to pedestrians at the TASP and in Midtown, including strong non-automobile connections to surrounding areas.
34. Allow flexible uses in business park areas to encourage placement of retail, restaurants, services, and amenities near office space.

Implementation Examples:

- Identify funding sources to invest in place-making and infrastructure in the TASP and Midtown to create a more walkable environment.

- Consider allowing amenities like child care centers, gyms, and other services in office districts.

City Marketing and Processes

35. Develop consistent, modern branding based on City goals for business attraction/retention.
36. Address delays and challenges in City permitting processes and permitting requirements, especially regarding certificate of occupancy requirements for changes of business ownership.
37. Continue implementation of Matrix study recommendations through interdepartmental coordination.
38. Update the City's economic development webpage and integrate with City's main website.

Implementation Examples:

- Partner with Building Department to expedite permitting for tenant improvements for qualifying projects.
- Post updated marketing materials that present the city's brand and assets for potential employers and businesses.
- Implement recommendations from the Matrix study on permitting processes.

Workforce Development and Education Resources

39. Establish regular meetings with workforce development organizations, the Milpitas Unified School District, and community colleges to coordinate their activities around training and educational programs to prepare youth and adults for employment in growing target industries, including advanced manufacturing/high tech sectors.
40. Collaborate with MUSD Board and staff leadership to develop a shared work program that clarifies Milpitas City staff roles in connecting school district programs and students with training and exposure opportunities at businesses in the city.
41. Explore collaborations with regional educational resources, such as apprenticeships via the Advanced Manufacturing Bay Area Community Colleges office.
42. Continue to provide support for the FlexFactor program and Manufacturing Day to expose youth to potential opportunities and to connect job-seekers with employers.

Implementation Examples:

- Identify funding sources to add staffing capacity in the Economic Development Department for workforce development activities.
- Create a Workforce Development Working Group composed of the workforce board, nonprofits, MUSD, community colleges, and employers that meets regularly to discuss programs for training and education.

DRAFT



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive and Accept Report on the City's Communication Function Study
Category:	Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
<u>Recommendation:</u>	Receive and accept a report on the City's communication function.

Background:

During the FY 2019-20 budget hearings in June 2019, City Council requested that the City's Communication Function housed in the City Manager's Office be studied. Based on this direction, staff prepared a Request for Proposals which was issued on July 16, 2019. After a competitive evaluation process, the Matrix Consulting Group (Matrix) was selected to undergo the study, which started in October 2019.

Analysis:

To comprehensively assess the City's communication function and develop recommendations for a more efficient and effective communication function, Matrix interviewed key stakeholders such as the Mayor and City Councilmembers, staff from each city department, as well as the then incumbent Public Information Officer (PIO); conducted surveys of internal stakeholders on a variety of topics; completed a comparative survey assessment for public and external communications activities between the City of Milpitas and other comparable jurisdictions in the Bay Area; analyzed issues; and explored alternative service delivery options. Service delivery options explored included a centralized, decentralized, or hybrid model or fully outsourcing the function.

The attached report titled "Communications Study – Evaluation of Communications Practices" provides a profile of the City's current communication function within the City Manager's Office as well as collateral duties assigned to departmental staff; discusses 50 recommendations with various priority levels related to staffing, services, policies, and processes to streamline communication services; and details the results of comparative City survey of communications practices as well as employee surveys regarding internal and external communications. The statistically valid citywide residents' survey which is scheduled for Council review at the March 3, 2020 City Council meeting will provide insight on the effectiveness of communication to our residents.

At the February 18 City Council meeting, representatives from the Matrix Consulting Group will summarize the report in a presentation to Council and be available for Council questions.

Currently, the City is staffed for a hybrid model whereby the PIO serves as a central point coordinating and supporting a range of internal and external communications activities on behalf of the City Council, City Manager, and City departments. The PIO position is responsible for developing and disseminating citywide communications, whereas three departments (Fire, Police, and Recreation) are responsible for conducting their own communications for department-specific initiatives and programs with Recreation having a dedicated staff for marketing its recreation programs. For the Public Safety departments, Public Safety staff handle communication tasks as ancillary duties to their primary work. Beyond these departments, there are other City departments that depending upon the nature of their activities utilize staff as needed or rely upon the PIO to communicate their messages.

The City's PIO position is supported through a part-time intern. Per the comparative City survey, based upon the roles and responsibilities identified for the public information office, all cities have an in-house PIO and a full-time permanent support position. A dedicated in-house PIO position affords several benefits for the City such as:

1. Ability to disseminate a centralized and cohesive message both internally and externally that is in alignment with the city's values, mission statement, and goals;
2. Knowledge and understanding of the community
3. Support to departments beyond technical and specialized messaging; and
4. Ability to respond to critical incidents and emergencies in a timely manner.

The City could develop an even more robust communication function through the addition of a full-time permanent support position as detailed in the report.

The incumbent of the Public Information Officer position left City employment early January of 2020. The City Manager's Office has not initiated a recruitment to fill this position pending Council review of the Communication Function Study. Based on the results of the study, staff recommends moving forward with the recruitment and incorporating study recommendations and Council input on overall approach for a citywide Communications strategy.

Policy Alternative:

Not applicable

Fiscal Impact:

Not applicable.

California Environmental Quality Act:

Not applicable.

Recommendation:

Receive and accept a report on the City's communication function.

Attachment:

Communications Study by Matrix – Evaluation of Communications Practices

Communications Study – Evaluation of Communications Practices

MILPITAS, CALIFORNIA



February 6, 2020

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1 Introduction and Executive Summary

The City of Milpitas retained the Matrix Consulting Group to conduct a citywide Communications Study with the primary objective of evaluating the city's current communications business practices and identifying opportunities for improvement. This draft report summarizes our observations and recommendations regarding the city's communications function.

1 Overview of the Study

The communications function for a city is critical to ensuring that appropriate information is disseminated and distributed internally and externally. During the FY2018-19 budget process, the City of Milpitas revamped its public information communications function with the institution of a Public Information Officer (PIO) position. The role of the PIO is to provide a consistent citywide message to the residents of the community.

The purpose of this study was to conduct an evaluation of the city's internal and external communications function to determine the most cost effective organizational and staffing structure, as well as processes for the function to operate at its most effective level. This report provides specific recommendations related to all of these items as well as acknowledges the efforts that have been made by staff in the communications function and in City leadership to ensure that services are provided in the most efficient and effective manner. By completing this study, the City of Milpitas is demonstrating further commitment to a process of continuous improvement and providing a high level of service to residents and staff. Implementing the recommendations contained in this report will aid the City in its ongoing efforts to conduct operations in accordance with best practices.

2 Study Scope and Methodologies

In this study, the Matrix Consulting Group's project team utilized a wide variety of data collection and analytical techniques. The project team conducted the following data collection and analytical activities:

- Developed an in-depth understanding of issues impacting key areas. To gain understanding of the various operations, processes, organizational structure, and issues, the project team conducted interviews with the Mayor and City Council members, staff from each city department, as well as the then incumbent Public Information Officer. Interviews focused on the roles/responsibilities of communications staff, and the level of interaction and utilization of the public information function.

- The project team developed a profile document that captured staffing levels, roles and responsibilities for the communications function. This document was utilized as a base point of comparison for future analysis and comparison for all recommendations.
- Completed a comparative survey assessment for public and external communications activities between the City of Milpitas and other comparable jurisdictions in the Bay Area.
- Based on the previously mentioned activities and initial findings, the project team analyzed issues, explored alternative service delivery options, and developed recommendations to create a more efficient and effective communication function. The analysis resulted in recommendations to staffing, services, and processes to streamline the services provided and to help the City meet its goals.

The report is divided into the following chapters:

- Staffing Analysis
- Policies and Procedures
- Performance Measures
- Organizational Structure Analysis
- Cost Effectiveness
- Appendices that include copies of the following documents:
 - Profile of current operations,
 - Comparative Survey of communications practices, and
 - Employee Surveys regarding internal and external communications.

Each of these sections will provide relevant recommendations and insight into the City's communication function as it relates to the overall City's needs.

3 Summary of Recommendations

Based on the assessment and analysis, there are a variety of recommendations for each topic that are discussed in detail throughout this report. These are consolidated into the following table which shows the recommendation, priority and suggested timeframe for implementation. The recommendations are provided in the order in which they appear in the report – not in order of highest priority.

Summary of Recommendations and Implementation Plan

#	Recommendation	Priority	Time-frame
Communications Staffing			
1	The PIO should be an in-house full-time permanent position to enable the necessary understanding of the city's culture, operations, goals, and community to provide citywide communication in an effective and timely manner.	High	On-going
2	The PIO job specification should be expanded to include strategic management of the communications function such as oversight of a citywide communications team, and development of communication strategies.	High	Immediate (0-3 mos.)
3	Functional workload assignments such as initial drafting of press releases, copy-editing of staff reports and communication to city council, and drafting of emails to city employees should be transitioned from the PIO.	High	Immediate (0-3 mos.)
4	The PIO should work with the City Manager and City leadership to draft a citywide communications strategic plan. The strategic plan should be filed and reviewed with the City Council.	Medium	Short-Term (6 mos.-1yr)
5	The Citywide Communications Strategic Plan should be used by the PIO as the basis for developing an annual communications workplan, which identifies short and long-term objectives for the PIO function.	Low	Mid-Term (1-3 yrs.)
6	The City's current staffing structure of a full-time in-house PIO and part-time intern should be maintained in order to provide basic internal and external communications support.	High	On-going
7	A full-time support position with the classification of Communications Specialist should be considered for implementation in order to provide a robust external and internal communications function in-house. This would be a new classification within the City and would be developed with support from the Human Resources Department. The addition of this position would eliminate the need for a part-time intern position and contracted PIO support.	Low	Long-Term (3-5 yrs.)
Communications Policies and Procedures			
8	The City Manager's Office should formalize and adopt written policies outlining the role of the PIO and in which situations or criteria the PIO takes the lead relative to the department.	High	Immediate (0-3 mos.)
9	The policy should clearly state that all citywide mass communications such as press releases, press conferences, media appearances, and newsletters should be managed by the PIO with approval from city management.	High	Immediate (0-3 mos.)
10	The policy should clearly state that all coordinated communication efforts citywide, if initiated by other departments, should be reviewed and approved by the PIO.	High	Immediate (0-3 mos.)

#	Recommendation	Priority	Time-frame
11	The policy should identify a workflow process, which requires departments to submit all communications requests to the PIO. This can include a range of items from drafting a press release to developing a communications strategy for implementing fee increases.	High	Immediate (0-3 mos.)
12	The policies and procedures document regarding the role of the PIO should be reviewed every two years, and updated as necessary.	Low	Mid-Term (1-3 yrs.)
13	A request process for PIO and communications support should be formalized through the creation of a department communications support request form.	High	Short-Term (6 mos.-1yr)
14	The communications support request form should be incorporated into the City's intranet system to allow for departments to easily submit the form to the PIO.	High	Short-Term (6 mos.-1yr)
15	The PIO should review all communication requests daily and assign depending upon the scope of the request; more regular tasks such as social media posts and press releases should be relegated to the support position (intern); higher level tasks such as strategy and press-related inquiries should be managed by the PIO.	High	Short-Term (6 mos.-1yr)
16	The data from the request system should be tracked on an annual basis to report on workload measures, performance measures, and be utilized as part of the City's annual overhead calculation process.	Low	Long-Term (3-5 yrs.)
17	The PIO in conjunction with City Management and City Attorney should develop a detailed and comprehensive social media policy covering all aspects related to account creation, management, posting, deactivation, and development of content.	High	Immediate (0-3 mos.)
18	The social media policy should be incorporated into the workflow for the PIO, including requesting items such as approval of posts, assigning account administrators, and backup account administrators.	High	Immediate (0-3 mos.)
19	Any social media accounts which have been inactive for more than 3 months should be evaluated for deactivation by the PIO.	High	Immediate (0-3 mos.)
20	All multiple pages and accounts associated with a singular social media type should be reviewed by the PIO to determine the need for a separate page and / or account for dissemination of information.	High	Immediate (0-3 mos.)
21	The comprehensive social media policy should be reviewed and updated annually, as necessary, to ensure that all aspects of the policy are relevant and incorporate the different types of social media.	High	Immediate (0-3 mos.)
22	City Management should develop an internal administrative policy identifying a support position in each department responsible for website updates and dictating that all website content must be reviewed quarterly by each department and/or when there is a major operational change.	Medium	Short-Term (6 mos.-1yr)

#	Recommendation	Priority	Time-frame
23	An internal workflow should be developed outlining that any major changes to a departmental webpage (i.e. new page, new content, changing layout, etc.) should be reviewed and approved by the department head as well as the PIO.	Medium	Short-Term (6 mos.-1yr)
24	The PIO and/or support staff should be responsible for updates to the City Manager's webpage, as well as non-department specific webpages such as the homepage, calendar, news and announcements, etc.	High	Immediate (0-3 mos.)
25	The City Manager in conjunction with the PIO should develop an administrative policy outlining the type and frequency of external communications to the public (i.e. biweekly newsletter containing updates on city events).	High	Immediate (0-3 mos.)
26	The Public Works Department in conjunction with the PIO should work with the app developer to determine if there is the ability for in-app expansion or the ability to access the city's website through the application.	Low	Long-Term (3-5 yrs.)
27	The MyMilpitas Mobile Application should be expanded to incorporate additional types of public information such as council / board meeting agendas, job announcements, town hall meetings, etc.	Low	Long-Term (3-5 yrs.)
28	A policy and procedure should be developed regarding content inclusion and update to the MyMilpitas application. This should mimic the website content process workflow requiring approval from the department head and PIO.	Low	Long-Term (3-5 yrs.)
29	Formalized policies and procedures should be developed regarding the Government Access Channel identifying the type of content, as well as approval process for new content to be developed and published.	Medium	Short-Term (6 mos.-1yr)
30	The non-profit volunteers with oversight from the Science, Innovation, and Technology Commission should continue to manage the Public Access Channel. The Commission should as part of its annual workplan include review of public access channel content and marketing of the channel to promote content development and utilization of channel space.	High	On-going / Immediate (0-3 mos.)
31	The Video Media Specialist position should continue to report to the IT Director and serve in an IT capacity until attrition. At that point, the Video Media Specialist job classification should be reviewed and revised to incorporate reporting to the PIO and focus on content creation.	Low	On-going / Long-Term (3-5 yrs.)
32	Upon reclassification of the Video Media Specialist position through attrition, the Government Access Channel and the Public Access Channel should be reorganized under the PIO. The Public Access Channel should still have oversight by the Science, Technology, and Innovation Commission.	Low	Long-Term (3-5 yrs.)

#	Recommendation	Priority	Time-frame
33	A formal policy and procedure document related to the citywide intranet system should be developed identifying the position(s) responsible for individual departmental updates, frequency of updates (monthly), and the contents of the updates.	High	Immediate (0-3 mos.)
Communications Performance Measures			
34	The communications function should add additional workload measures to track information such as number of downloads of the application, engagement on citywide social media platform, and viewership for city tv channels.	Low	Mid-Term (1-3yrs)
35	The PIO and/or support staff (intern) should be tasked with tracking, monitoring, and compiling these statistics annually to be incorporated into the budget process.	Low	Mid-Term (1-3yrs)
36	The communications function should implement tracking of performance measures based upon workload and survey measures.	Low	Mid-Term (1-3yrs)
37	The PIO should be responsible for drafting and conducting the internal and external communication satisfaction surveys.	Low	Mid-Term (1-3yrs)
38	The PIO and/or support staff should be responsible for tracking all of the performance measures on an annual basis, including implementing an annual internal survey for employees and external survey for community residents.	Low	Mid-Term (1-3yrs)
Communications Organizational Structure			
39	The City of Milpitas should continue to utilize a hybrid communications model with staffing modifications.	High	Immediate (0-3 mos.)
40	A citywide communications team should be formalized and documented through an administrative policy.	High	Immediate (0-3 mos.)
Communications Cost Effectiveness Analysis			
41	A separate cost center and division for Communications should be created in the City Manager's office to track personnel and contracted costs.	High	Immediate (0-3 mos.)
42	The City should have a full-time in-house PIO, as there are no cost savings associated with utilizing a full-time contracted PIO.	High	On-going
43	A full-time permanent Communications Specialist position with an annual fiscal impact of approximately \$122,454 to \$148,844 is more cost effective compared to an equivalent amount of full-time support received between intern and contracted PIO support.	High	Short-Term (6 mos.-1yr)
44	The City's Cost Allocation Plan should be updated to reflect Public Information as a function of the City Manager's office.	Medium	Short-Term (6 mos.-1yr)

#	Recommendation	Priority	Time-frame
45	The costs for the communications functions in the Cost Allocation Plan should be reviewed to ensure that any one-time costs are annualized and all ongoing contracted and services costs are allocated to city departments appropriately.	Medium	Short-Term (6 mos.-1yr)
46	The allocation methodology for the communication function should be reviewed and refined to be based upon more equitable metrics such as equal allocation to all departments and/or number of projects or requests per city department per the new request system being proposed.	Medium	Short-Term (6 mos.-1yr)
47	Contracted services should be utilized for one-time, limited term, or specialized communications services and activities such as training, branding, and printing.	High	On-going
48	Contracted services related to communications should be centrally managed and coordinated through the PIO.	High	Short-Term (6 mos.-1yr)
49	The Connected Newsletter should be considered for reinstatement depending upon the results of the City's external community survey to ensure that along with being cost effective it also serves as an effective tool for disseminating important City information to Milpitas residents.	Medium	Short-Term (6 mos.-1yr)
50	If reinstated, the development of the content of the Connected Newsletter should be done in-house by the PIO and their support staff, while design, printing, and mailing should be contracted.	Low	Mid-Term (1-3 yrs.)

Overall, the various recommendations indicate that the most cost effective approach for the City to provide external and internal communications is through an in-house Public Information Officer utilizing a centralized and decentralized (hybrid) communications model. This organizational structure provides the city with the flexibility to ensure that department-specific communications are timely transmitted; yet, any citywide communications are disseminated through a centralized source.

Additionally, in order for the communications function within the City to be a robust operation, there is the need for a full-time support position (Communications Specialist) and formalized policies and procedures delineating the role of the PIO in citywide and departmental communications.

Implementing the recommendations included in this report, will help the City achieve a high-performing communications function with clearly outlined objectives, goals, and initiatives.

The detailed narrative and analysis regarding each of these recommendations is contained in the body of the following report.

2 Communications Staffing

The communications function within the City of Milpitas currently only has one full-time position dedicated – the Public Information Officer (PIO). As part of the evaluation of the communications practices, a staffing analysis was conducted to determine the following aspects:

- **PIO Job Duties:** Determining the appropriate responsibilities and duties of the PIO.
- **Communications Work plan:** Outlining the strategic focus of the PIO and the communications function.
- **PIO Support Staff:** Adding additional support within the communications function.

The following chapter analyzes these components, provides opportunities to identify areas for increased efficiency, accountability, and improvement in the support provided to city departments from the communications function.

1 PIO JOB DUTIES

The PIO currently coordinates and supports a range of internal and external communications activities on behalf of the City Council, City Manager, and city departments. A summary of job duties from the PIO job specification is provided in the following table:

PIO Job Specification Job Duties

Serve as spokesperson for the City and answer inquiries from the media, community, organizations, etc., as needed

Develop and implement an integrated strategic communications plan to advance the City's brand, broaden awareness of its programs and priorities, and increase the visibility of its key messages and programs across the community.

Work with department Directors and staff on internal and external communication opportunities.

Write, review, and analyze press releases, speeches, articles for the City Manager, Mayor, and City Council, as needed.

Coordinate and administer programs involving the community, including individuals, groups, and maintain relationships with outside agencies, organizations, associations, and other external groups. Make personal appearances as necessary while fostering community relations through public communications and public community events.

Actively engage, promote, and manage press relationships to ensure coverage surrounding City programs, special events, public announcements, and other projects.

Organize and coordinate press conferences, news releases, and public services announcements.

PIO Job Specification Job Duties

Stay abreast of new trends and innovations in the field of communications, multimedia technologies, web page design, social media, and emergency communications; manage the public information aspect of the Emergency Operations Center with other key public information officers.

Develop and control annual fiscal appropriations designated for communication activities.

Due to the fact that the PIO is a relatively new position within the City, the job specification has recently been drafted to incorporate the key components and goals of the position. As part of the comparative survey, the job descriptions and duties of other Public Information Officers were analyzed. The following table shows by each jurisdiction a list of key job duties for the PIO that were focused on strategic development and output:

Jurisdiction	Job Duty
Cupertino	Build consensus for enterprise solutions by promoting ideas persuasively, working through organizational conflict and shaping stakeholder opinions
Palo Alto	Identify challenges and emerging issues faced by the organization. Work with leadership team and staff to recognize internal and external communications opportunities and solutions, and define and execute appropriate strategies to support them
Redwood City	Create and manage a decentralized communications team to support the departments' communication needs and the development and execution of the communications strategy
Sunnyvale	Develops, implements, and updates policies and procedures for community relations, media relations, and public information

As the table indicates, these job duties indicate the high level of support and functionality that is expected from the PIO. While some of these items may not be listed as direct job duties for the PIO in Milpitas, they are part of the functional work assignments for the PIO and could be incorporated into "other duties as needed". The following chart compares the current functional work assignments to the current job duties.

Functional Work Assignments	Relates to Job Spec?
Promote and participate in city events and community engagement activities	√
Field inquiries from the press, third parties, & the general public	√
Author press releases	√
Author citywide social media posts, and monitor departmental social media pages and posts	√
Compile and edit information for the City Manager's biweekly newsletter	√
Compile and edit information on behalf of the City Manager for weekly City Council informational updates	
Assist in reviewing and drafting agenda reports from the City Manager to the City Council for public meetings	
Coordinate citywide public records requests on behalf of city departments	

Functional Work Assignments	Relates to Job Spec?
Support the City Manager in coordinating external communications when the emergency operations center is activated	√
Create internal communications for the city intranet	√
Draft internal communications on behalf of the City Manager	
Consult and prepare departmental staff for media interactions	√
Develop and administer a citywide communications work plan	√
Develop and maintain citywide communications policies	

Comparing the job specification and actual functional work assignments results in a few variances. Almost all of these duties relate to specified activities in the PIO job specification, with the exception of communications between the City Manager and the Council, as well as the maintenance of citywide communication policies. The PIO currently supports editing and copywriting related activities for communications between the City Manager and City Council, including weekly informational updates on city operations, as well as supporting the regular development of formal agenda item reports. These are not activities identified in the job specification, and due to the volume of these types of reports and activities they comprise a large portion of the PIO function.

Another assignment that the PIO has been functionally tasked with completing is the drafting of citywide communications policies. This specific responsibility is not included in the job specification, but does relate to the purview of communications responsibilities overseen by the PIO and is one of the duties that is assigned to other similar positions.

The PIO is an executive level position within the City of Milpitas that directly supports the City Manager. The PIO's time and expertise is most appropriately used when focused on advising and administering high level public communications activities, and not necessarily technical reports for operational use. Therefore, the job description for this position should be reviewed and expanded to include items such as drafting communication policies, identifying challenges within the community, and developing communication strategies.

Based upon the roles and responsibilities identified for the public information office, and the comparative survey that shows all comparable communities have an in-house PIO, it can be seen that it is critical for this position to be retained in-house. There are certain key benefits associated with having an in-house position, which would be lost with a contracted position, as explained in the following points:

- Centralized communications – internal and external – the ability to disseminate a centralized and cohesive message both internally and externally that is in alignment with the city's values, mission statement, and goals. The contracted PIO or consultant will not have the intimate knowledge regarding the community or the city to draft such messages consistently.

- Additional support beyond specialized messaging support for specific departments. Contracted communications campaigns can provide specific messaging for departments, but an in-house PIO can provide support beyond the campaign and integrate the messaging of new policies (i.e. ADU policy), or rate increases (i.e. fee or water/sewer rate increases) into the overall messaging of the city.
- Ability to respond to critical incidents and communications in a timely manner. A contracted PIO would require time to learn about an incident, draft a message regarding the incident, and talk to several different city employees before any messaging could be put out. In critical situations, and emergencies, there is the need for disseminating accurate information immediately. An in-house PIO would have the knowledge and understanding of city operations and city goals to be able to provide this support in a timely manner.
- Improved internal communications from city management to city employees. A contracted PIO would typically be responsible for drafting external communications, but an in-house PIO can provide support as it relates to internal employee recognition, messaging regarding events, and providing general information regarding the city's projects.
- Understanding of the community, including conducting messaging in different languages and to different socio-economic groups to ensure the greatest and most effective dissemination of information.

As these points demonstrate, garnering the appropriate understanding and knowledge of issues within the community and the City and conveying a citywide message requires building a relationship with internal and external stakeholders. This relationship cannot be established through a contracted position. The cost impact of utilizing in-house vs. a contracted PIO will be discussed in the cost effectiveness section of the report.

Although the PIO's job description includes working with department staff on internal and external communication opportunities, as well as writing, reviewing, and analyzing press releases, speeches, and articles for the legislative body and City Manager, the initial drafting of these materials is more appropriately assigned to a journey-level position discussed in the support staffing section of the chapter.

Outside of the job specification and evaluation of current functional work, there are opportunities for the PIO to improve its management and oversight of citywide communications, including developing a comprehensive workload and performance measure monitoring framework to be incorporated into the communications work plan and regular oversight of the communications function.

As the PIO's role continues to evolve and be defined through written policies, management should ensure that the PIO is appropriating their time to communications activities, and not technical work that may be better assigned to analytical or administrative staff.

Recommendation #1: The PIO should be an in-house full-time permanent position to enable the necessary understanding of the city's culture, operations, goals, and community to provide citywide communication in an effective and timely manner.

Recommendation #2: The PIO job specification should be expanded to include strategic management of the communications function such as oversight of a citywide communications team, and development of communication strategies.

Recommendation #3: Functional workload assignments such as initial drafting of press releases, copy-editing of staff reports and communication to city council, and drafting of emails to city employees should be transitioned from the PIO.

2 COMMUNICATIONS WORKPLAN

Cities commonly create strategic plans, business plans, or work plans for a wide range of functional program areas. Work plans outline a program's operating parameters and program objectives, identify operational challenges and opportunities for improvement, and outline activities and resources needed to achieve those goals within a desired timeline.

The PIO job specification directs the PIO to develop and implement a strategic communications plan, but the City does not currently have a communications work plan in place. It is recommended that one of the key priorities of the PIO be the development of a communications strategic plan, which leads to the development of an internal work plan.

The following table shows the elements of a communications strategic plan and a brief description of the element:

Element	Description
Mission, Goals, and Objectives	Identifying the missions, goals and objectives of the public information function within the City
Service Level Agreement	Discussing the goals and objectives of other City departments and their tie into the public information function. There should be an informal and formalized service level discussion regarding the types of services that will be provided by the PIO and their support staff to other city departments.
Current State	Describing the current communication media and resources available to city staff, including the level of technical and functional expertise in-house.

Element	Description
SWOT Analysis	Conducting a strengths, weaknesses, opportunities, and threats analysis regarding the communications function. It is recommended that this be combined with the service level agreement with other departments to ensure that any feedback provided by the departments are incorporated.
Fiscal Impact	Outlining the fiscal impact of the information needs, including identifying any blanket contracts for communication needs such as graphic designer, printer, etc.

The elements above should be utilized to develop a communications strategic plan. This plan should be developed by the PIO with oversight and support from City Manager and other City executives. Once the plan has been developed it should be formalized and received and filed by City Council for approval. This strategic plan should be reviewed and updated every five (5) years to incorporate changes to the communications goals, objectives, and processes.

The communications strategic plan can be utilized to develop an annual communications workplan. The annual communications workplan should have short-term and long-term objectives. Examples of short-time objectives may include:

- Hire a Communications Specialist to transition functional copywriting work
- Complete media interview training with departmental staff
- Draft communications administrative policies
- Complete online community survey regarding public communications
- Identify opportunities to improve public communications based on the online community survey and prepare an action plan upon survey results analysis

In addition to these short-term objectives, the strategic plan can be used to develop long-term objectives such as the following:

- Complete a website redesign study
- Compile workload measures for all internet-based communications tools
- Incorporate performance measures into the budget document
- Coordinate with each city department on their connection into the City's brand

These concrete objectives are informed by the communications strategic plan and provide a mechanism for the PIO and the communication function to be accountable to the departments and the city that the function is supporting.

The development of these short and long-term objectives annually should be managed by the PIO; however, the tracking of the information on these measures and conducting some of these activities such as conducting the online survey or compiling measures should be performed by the Communications Specialist support position.

Recommendation #4: The PIO should work with the City Manager and City leadership to draft a citywide communications strategic plan. The strategic plan should be filed and reviewed with the City Council.

Recommendation #5: The Citywide Communications Strategic Plan should be used by the PIO as the basis for developing an annual communications workplan, which identifies short and long-term objectives for the PIO function.

3 SUPPORT STAFF

Currently, there is no additional full-time staff support for the PIO within the City Manager's Office. There is a budgeted position for a communications intern; however, this position is intended to be part-time support focusing on posting to social media accounts, supporting the development of the biweekly newsletters and conducting other miscellaneous duties. Intern positions are generally temporary and rotational positions rather than permanent positions within the city.

As part of this engagement, an internal survey was conducted regarding external communication practices. When departments were surveyed in the external communications employee survey, 62% of respondents expressed a desire for additional staffing support to manage external communications needs. The support being requested was in relation to managing social media posts, developing communication strategies, and writing/drafting press releases.

Additionally, the comparative survey revealed that all of the jurisdictions other than Milpitas has more than one full-time position dedicated to internal and external communications within the city. The following table shows by jurisdiction the total number of staff dedicated to the communications function:

Jurisdiction	Communications FTE
Milpitas	1.00
Cupertino	2.95
Palo Alto	2.00 ¹
Mountain View	1.60 ²
Redwood City	2.90 ³
Santa Clara	2.80 ⁴
Sunnyvale	2.00
Average (excl. Milpitas)	2.38

As the table indicates, all but one jurisdiction (Mountain View) has less than two full-time positions dedicated to the communications function. It is important to note that Mountain View is also the only jurisdiction surveyed that has a full-time civilian position dedicated

¹ Only 0.90 FTE are dedicated to external communications; however, 2.0 FTE budgeted for all communication efforts.

² 0.60 FTE are limited term positions.

³ Includes 0.90 FTE for Deputy City Manager.

⁴ The 2.80 FTE are full-time positions; however, the division supplements staffing through as-needed staff.

in the Police Department. Therefore, if that position is considered, then it would also have more than two full-time employees dedicated to external and internal communications.

Considering the departments' request for additional communication support, as well as the comparative survey revealing all other jurisdictions to have an average of 2.38 positions dedicated to communications support, there seems to be a need for full-time support within the communications office. The level of support needed cannot be easily performed with a part-time non-permanent intern position. The support being requested should be full-time to provide consistency and greater tenure.

As discussed in the duties section of this chapter, some of the duties of the PIO are task-oriented and at the level of work that should be performed by an analyst or specialist classification. Adding a support position, could enable the PIO to delegate the duties associated with drafting of communications between City Manager and City Council, drafting social media posts, responding to department requests, processing public records requests, and addressing timeliness of providing critical PIO duties that departments are requesting, etc. This delegation would enable the PIO to focus on drafting the communications strategic plan, annual workplan, policies and procedures, and communication strategies for the city and individual departments.

Currently, the City of Milpitas does not have a Public Information Specialist or Communications Specialist role. The most relevant job classification to support the PIO is the Marketing Coordinator job classification. The Marketing Coordinator job duties include a range of communications related activities from creating multimedia content for public communications, to managing information dissemination to the media, third party organizations, and the general public. Currently, the Marketing Coordinator job classification has a base salary range from \$75,589 to \$91,879, not including fringe benefits.

When determining to add the Communications Specialist position, the PIO and the City Manager's staff should work with the Human Resources Department to develop the position classification. The Communications Specialist position should report directly to the Public Information Officer. The City of Cupertino has a Community Outreach Specialist position, who reports to the Public Affairs Director and is considered to be an entry level position in the communications function. Some of the job duties identified for this position:

- Perform public outreach and community relations activities
- Creates, researches, edits, and contributes contents and materials regarding social media posts, letters, fact sheets, etc.
- Participates in planning and developing social media campaigns
- Assists with content requests from internal departments, including creating and routing content and scheduling posts
- Performs general administrative and clerical work as required

In addition to performing these duties, the position requires knowledge of public information, outreach, and community relations, monitoring social media outlets, reviewing analytics from social media platforms, as well as a bachelor's degree or equivalent experience in public affairs and community outreach. This type of job classification seems to be appropriate for the City of Milpitas. The Communications Specialist can serve to provide entry level support to the PIO, and its salary range of \$79,162 to \$96,222 is comparable to the salary range for the Marketing Coordinator at \$75,589 to \$91,879. The net cost impact of this additional staff position, is discussed in the cost effectiveness chapter of this report.

The PIO should ensure that as the job classification is developed for the Communications Specialist there are additional job duties accounted for in that job classification including items such as tracking and monitoring of performance measures, conducting annual surveys, compiling results of the annual internal and external surveys, drafting posts, drafting press releases, and potentially even require similar technical skillset in relation to development of marketing materials (similar to the Marketing Coordinator).

Assigning initial copywriting and research duties to the Communications Specialist will create additional capacity for the PIO to apply their expertise in supporting the legislative body, city management, and department heads in coordinating their public communications, as well as directly responding to critical incidents, urgent public events, and other engagements where the PIO's physical presence is required. With a support position, the PIO can then serve in a supervisory capacity to review and approve the copywriting and research work of the Communications Specialist and liaise with the city's executive team and legislative body to approve formal documents, such as the work plan and administrative policies.

The City's current staffing of an in-house PIO with an intern for part-time support, is sufficient to meet the city's immediate needs for basic centralized communications. This staffing structure would enable the City to provide basic level of service of social media posts, drafting press releases, managing and editing content on behalf of the City Manager, etc. This staffing structure would not support the ability of the PIO to develop communication strategies for departments, or draft communications policies in a timely manner.

In order for the City to create a robust public communications function that is able to develop strategic communication workplans for department, as well as provide everyday support to departments in relation to social media posts, marketing campaigns, etc. there needs to be the addition of a full-time communications specialist position. The addition of this position would eliminate the need for a part-time intern, as those duties would be absorbed by the Communications specialist position. This would also eliminate the need for contracted PIO functions as those duties could now be managed and absorbed by the in-house PIO with support from the Communications Specialist position. This revised

staffing structure would be in alignment with other bay area agencies, as well as provide city staff the additional resources that were requested for communications support.

Recommendation #6: The City's current staffing structure of a full-time in-house PIO and part-time intern should be maintained in order to provide basic internal and external communications support.

Recommendation #7: A full-time support position with the classification of Communications Specialist should be considered for implementation in order to provide a robust external and internal communications function in-house. This would be a new classification within the City and would be developed with support from the Human Resources Department. The addition of this position would eliminate the need for a part-time intern position and contracted PIO support.

3 Communications Policies and Procedures

The City of Milpitas does not currently have any citywide policies or procedures regarding external and internal communications. It is important to develop policies and procedures regarding external and internal communications focusing on the following policy areas:

- **Role / Utilization of PIO:** When and how the Public Information Officer manages or oversees communications.
- **Workflow requests / projects:** Communication of city department requests to the PIO and support staff.
- **Social Media:** Management of accounts, the type of content, and the number of accounts.
- **Website:** Type of update to the website, and level of responsibility in relation to content management and distribution.
- **Mobile Application:** Content of the application, updates, and utilization of information.
- **City TV:** Management and content of television.
- **Intranet:** Type of content and frequency of update to the internal communications tool.

It is best practice for an agency to adopt written standards to codify operational standards. Adopting policies and procedures help to ensure the continuity of business practices by serving as an authoritative reference.

While some of these policies may not be managed by the Public Information officer, due to the nature of external communication, it is imperative that these fall under the purview of the communications function. The following subsections provide further information regarding each of these policy areas.

1 ROLE / UTILIZATION OF PIO

The PIO is a relatively new position in the City (less than 2 years old). Upon implementation of this position, informal guidance and direction was provided to city staff. This informal communication resonates with our limited survey results from the External Communications Employee Survey, Appendix D, which indicated that 69% of city staff surveyed had only received oral guidance on when to collaborate with the PIO.

The direction provided to city staff was general in nature stating that any communication that is meant for citywide dissemination, such as press releases, rate increases, census, etc. are supposed to be managed and approved by the PIO. The PIO also regularly participates in executive meetings to collaborate with department managers when communications support is needed.

However, the City's current and proposed organizational structure for communication is a hybrid of a centralized and decentralized model. Therefore, in this type of model, where public information can be disbursed through the PIO or through internal departmental resources, it is critical that clear roles and responsibilities be established regarding when it is appropriate for the PIO to be involved and when it is appropriate for the department to take the lead on the communication matter. These roles and responsibilities need to be documented in a formalized policy and procedure document.

The formalization of the policies and procedures will provide clear guidance to city departments, but also serve as a resource for City management and city Council to provide direction and guidance regarding the types of communication activities they would like to see centralized and not managed at the departmental level.

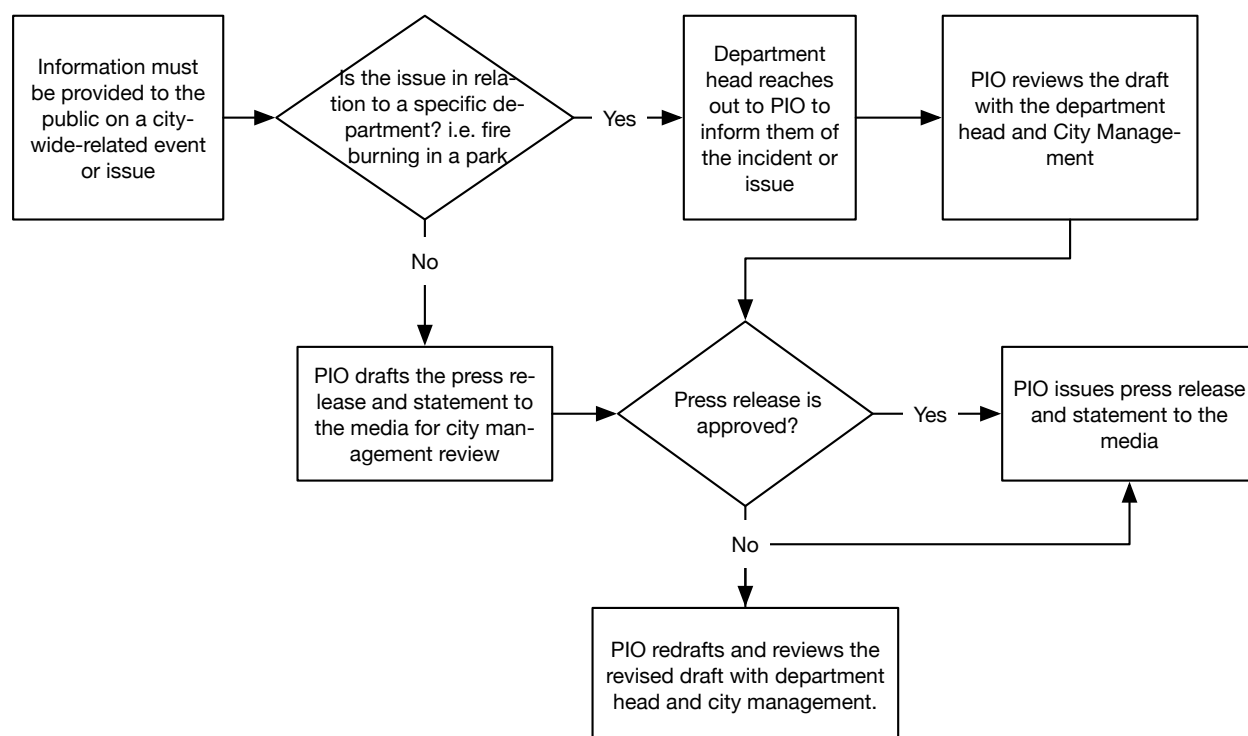
The following graphic provides a sample of determining the situations in which the PIO would take the lead:

Criteria	PIO Lead	Departmental PIO Lead
Is the information intended for the general public?	Yes	No
Is the information in relation to a large citywide initiative (i.e. Housing Assistance Program, Census, etc.)?	Yes	No
Is the information department-specific?	Yes - if it is department specific but affects all city residents.	Yes – if it is department specific and affects a subset or specific group (i.e. developers, homeowners, etc.)
Does the information require specific outreach (i.e. Townhalls, community meetings, etc.)?	Yes – if it is a citywide initiative i.e. census	Yes – if it is a department-led initiative i.e. General Plan Update
Does it require interaction with media (press or TV)?	Yes	No
Is information communicated on behalf of City Manager or Executive Team?	Yes	No

The table above is not meant to be a comprehensive listing, but rather a sampling of the types of scenarios or criteria that can be developed to determine instances in which the PIO would take the lead.

For any communication efforts that have a citywide audience such as press releases, press conferences, print media, live media (local news), and newsletter, the PIO should

always be the lead. The policy and procedure document should outline the workflow related to the PIO taking the lead. If it is a citywide related issue, then the PIO should already be aware and draft the press release or media release statement on behalf of city management. If the mass communication is in response to a specific department, such as a police event, recreation event, etc. then the Department head and liaisons should contact the PIO and inform them of the event, incident, or issue. The PIO should draft the materials, discuss the materials, and review the materials with the department head and City management prior to issuance of any statement. The following workflow shows a sample of this:



As the workflow indicates that even with the PIO as the lead, there is still some interdepartmental communication that must occur between the department head, city management, and PIO to ensure that appropriate and accurate messages are being disseminated to the public. Documenting this type of workflow in a policy and procedure document, ensures consistency of application.

Even if the PIO is not the lead, the PIO must be informed about any and all external communication efforts undertaken in the City. This does not mean that staff working at the public counter, such as development services must have every communication reviewed by the PIO; but rather any communication effort which is coordinated should be reviewed and approved by the PIO. Any documentation the City provides to the public in the form of brochures, pamphlets, forms, etc. should be reviewed and approved by the PIO to ensure consistent branding and messaging of the City. The clear role and

responsibility of the PIO is to be aware of all citywide communication efforts and serve as the liaison between the City and the overall public.

The policy should also document a workflow procedure that requires city departments to submit requests to the PIO regarding the types of projects that require the PIO's management and oversight. The requests can vary from reviewing and drafting press releases and letters to the public, to the management of external community engagement firms. This workflow procedure will not only help the departments engage with the PIO in a consistent manner, but it will also help the PIO track their current requests, assign to support staff as necessary, and prioritize their workload. This workflow also has the added benefit of creating accountability for the role of the PIO.

Lastly, the policy and procedure regarding the role of the PIO, and their workflow of duties should not remain stagnant. Once this policy and procedure is developed, it should be reviewed and updated every two years. Traditionally, these policies and procedures should be reviewed annually; however, the typical timeframe for any major operational changes that would impact a policy and/or procedure change is typically two to three years. Therefore, it is recommended that these policies be reviewed every two years. If there is no change to the policies, the PIO should still date the policies with a new effective date to indicate that the policy has at least been reviewed.

Recommendation #8: The City Manager's Office should formalize and adopt written policies outlining the role of the PIO and in which situations or criteria the PIO takes the lead relative to the department.

Recommendation #9: The policy should clearly state that all citywide mass communications such as press releases, press conference, media appearances, and newsletters should be managed by the PIO with approval from city management.

Recommendation #10: The policy should clearly state that all coordinated communication efforts citywide, if initiated by other city departments, should be reviewed and approved by the PIO.

Recommendation #11: The policy should identify a workflow process, which requires departments to submit all communications requests to the PIO. This can include a range of items from drafting a press release to developing a communications strategy for implementing fee increases.

Recommendation #12: The policies and procedures document regarding the role of the PIO should be reviewed every two years, and updated as necessary.

2 COMMUNICATION REQUEST PROCESSES

As discussed in the previous section there should be workflows and processes in place that establish an approval process for communication statements and posts by the PIO. However, in addition to these workflows, there needs to be a process established to request support from the PIO in the form of communication projects. The communications team can provide this information verbally to the PIO, but creating a formalized process will enable the PIO and their support staff to track the different requests received, divide up the workload and provide information on the status of these requests.

A communications request procedure should be developed, with a formalized request form. A sample form could look like:

COMMUNICATIONS SUPPORT REQUEST FORM

Requester Name:			
Requester Email:			
Requester Phone Number:			
Department Name:			
Type of Request: (Circle)	Social Media Post	Press Release	Media Inquiry Support
	Live TV	Communication	Creation of print content
	Appearance	Strategy Support	
	Creation of video content	Other	
If Social Media Posts, please circle platforms:	Facebook	Twitter	Nextdoor
If Other, please describe:	LinkedIn	Instagram	
Timeframe of Request: (Circle)	Urgent (within 1 business day)	2 weeks	4 weeks
	6 weeks	3 months	Specific Date (please list):
	If Urgent, please explain nature of urgency:		

The form above is intended to be a sample of the type of information that would be submitted by the departments. This form would give an indication of the type of request and the timeframe in which this request will need to be provided.

As the city does not currently have any mechanism internally for processing requests from the departments, the PIO should consider utilizing the City's newly launched intranet as the basis for collecting these requests from the departments. The PIO should work with the City's Information Technology Department to develop an online request portal with similar type of information.

Once this online portal is established all requests should filter to a centralized PIO inbox. This email inbox should be monitored by the support position in the PIO office and the PIO should be informed of any new requests. The PIO should review requests on a daily

basis and assign work depending upon the scope of the request. For example, drafting of a social media post or press release can be performed by PIO support position, whereas preparing a City executive for a live media interview would require support from the PIO.

This type of request system can also be beneficial for the PIO to help with tracking workload measures, and tracking their ability to meet any established performance targets against their communications workplan. Lastly, the data from the request system can be utilized for determining the overhead cost allocation support to the different city departments. This will help ensure that the PIO support is being fairly allocated across all city funds and services and being captured appropriately on fees and rates.

Recommendation #13: A request process for PIO and communications support should be formalized through the creation of a department communications support request form.

Recommendation #14: The communications support request form should be incorporated into the City's intranet system to allow for departments to easily submit the form to the PIO.

Recommendation #15: The PIO should review all communication requests daily and assign depending upon the scope of the request; more regular tasks such as social media posts and press releases should be relegated to the support position (intern); higher level tasks such as strategy and press-related inquiries should be managed by the PIO.

Recommendation #16: The data from the request system should be tracked on an annual basis to report on workload measures, performance measures, and be utilized as part of the City's annual overhead calculation process.

3 SOCIAL MEDIA POLICY

Although there is no citywide policy for social media communications, the Police Department does maintain a few of its own departmental policies. The Police Department adopted Policy No. 343 *Department Use of Social Media* and No. 1058 *Employee Speech and Social Media Networking*. These policies discuss the types of sites and activities that can be considered social media, approval mechanism for social media posts, and the content of the posts themselves.

The City should utilize the department-specific social media policy as a base to develop a citywide policy. The parameters of this policy should cover items such as:

- Requiring any new social media accounts (pages or new social media medium) to be approved by the PIO and City Management
- Assigning administrators for each social media medium (PIO or department staff), along with back-up administrators
- Developing standards related to the types of content that can be posted i.e. city events can be posted, endorsement of specific businesses cannot be posted.
- Reviewing and approving the content that can be posted on social media.
- Requesting the drafting and development of social media posts.
- Responding to questions and requests for information originating from social media posts.
- Retaining records on social media posts.
- Approving social media posts by social media administrator
- Posting social media posts including frequency of posts (i.e. once a day, twice a day) and the responsible position for posting (i.e. marketing coordinator)
- Downloading engagement information from different social media platforms
- Determining workload and performance metrics related to social media
- Utilizing Social Media for public and community engagement through online polls
- Moderating public comment on social media posts to remove offensive or inappropriate comments.
- Deactivating a social media account.
- Using or referring to city social media accounts on personal social media accounts.

This is not intended to be an all-inclusive list, but rather represent the types of items that should be considered when developing and implementing a social media policy. This policy should be drafted by the Public Information office with review and oversight by City Executive staff and the City Attorney's office.

The workflow developed for the PIO and the communications function should incorporate the reference to the social media policy including: classifying and handling requests related to the creation of social media accounts, giving administrator rights, and creative content control.

The following graphic lists by social media site, the number of accounts, the name of the account, and the frequency of posting:

Social Media Type	# of Accounts	Account Information	Actively Posting
Instagram	1	@cityofmilpitas	Last Post January 2017
Nextdoor	1	https://nextdoor.com/agency-detail/ca/milpitas/city-of-milpitas/	Actively Posting
Twitter	4	@MilpitasCityJob	Last Post March 2019
		@MilpitasPD	Actively Posting
		@MilpitasCity	Last Post April 2019
		@MilpitasFire	Last post June 2019

Social Media Type	# of Accounts	Account Information	Actively Posting
Facebook	3	@CityofMilpitas	Actively Posting
		@MilpitasRecreation	Actively Posting
		@MilpitasPD	Actively Posting
Nixle	1	Milpitas Police Department	Actively Posting

Currently, the PIO is responsible for management and posting to all social media accounts, other than Police and Recreation specific accounts, as those are managed by city staff in those respective departments. As this list indicates, many of these social media accounts have not been used for over 6 months. Social media is most effective when there is timely and frequent posting about activities. If accounts are not being actively utilized, the City should consider deactivating those accounts. A typical timeframe for deactivating an account should be after 3 months of non-use. If a social media type has not been actively posted on for 3 months, the PIO should deactivate and discontinue that account to ensure that there is no outdated information and to prevent the public from seeking information from a communication channel that is not being actively utilized.

Additionally, certain departments have their own social media pages. Police has its own separate twitter and Facebook page. Similarly, Recreation has its own Facebook page. As part of the development of the social media policy, the PIO should review the content of each departmental page and determine if there is enough content and value to the content that it should have a separate account. For example, if the Police Facebook page only posts once a week, then that specific post could be pushed through a citywide page rather than requiring a separate Facebook page. Consideration should be given to whether a defined need exists for a separate account at the department level. It is important for the city to limit the number of accounts to help control and contain the consistent external messaging and to ensure residents are able to find and easily access important information being disseminated by the City.

These two examples discussed highlight the need for a comprehensive and layered social media policy. This policy will help promote consistency in practices throughout the City. Similar, to the citywide PIO policy, this policy should be reviewed. However, due to the more rapid and frequent changes in social media utilization, this policy should be reviewed on annual basis to ensure that any and all aspects of the policies and procedures are still relevant.

Recommendation #17: The PIO in conjunction with City Management and City Attorney should develop a detailed and comprehensive social media policy covering all aspects related to account creation, management, posting, deactivation, and development of content.

Recommendation #18: The social media policy should be incorporated into the workflow for the PIO, including requesting items such as approval of posts, assigning account administrators, and backup account administrators.

Recommendation #19: Any social media accounts which have been inactive for more than 3 months should be evaluated for deactivation by the PIO.

Recommendation #20: All multiple pages and accounts associated with a singular social media type should be reviewed by the PIO to determine the need for a separate page and/or account for dissemination of information.

Recommendation #21: The comprehensive social media policy should be reviewed and updated as necessary annually to ensure that all aspects of the policy are relevant and incorporate the different types of social media.

4 CITY WEBSITE

The primary form of communication utilized by the City is its website. The City of Milpitas manages a website to keep the public informed of the city's various operations, programs, services, and community news.

The city website is currently built on a WordPress framework managed by the Information Technology Department. Departments are responsible for reviewing and managing content on their webpages; however, depending on the department, departmental staff have limited ability or training to update or change their website pages and must rely on support from the Webmaster to process and upload most substantive changes.

In reviewing the City's website, there is a lack of uniformity in the webpages, the branding of the content that is uploaded, and the level of information that is available. Some departments have a lot of data and updated information; whereas, other departments may reference or link to outdated pages and content. There is a general lack of consistency regarding the utilization of the website as a tool for external and internal communication.

The City should develop and adopt a policy regarding the use of the website for public communication. The policy should identify a support or analyst position in each department to serve as the website content manager and content uploader, as well as require that all City departments review their webpages on a quarterly basis, and/or if there are operational or service changes to their department. Implementing policies identifying these requirements will document the position(s) responsible as well as ensure that content on the website is not outdated for more than three months.

In addition to the creation of policies regarding roles and frequency of website updates, a process should be developed regarding approval of webpage content. The website is a public realm; therefore, any content that is posted on the website should not only be accurate, but it should also be approved by department and city management. An internal workflow should be created requiring that any major changes to a department's webpage (i.e. new subpage, new programs, new content being uploaded, layout change, etc.) are

reviewed and approved by the department head, as well as the Public Information Officer. Based upon the nature of the change, the PIO may relay the information to the city's executive team; however, if it is in alignment with already established city goals and objectives, then it can be approved.

The position that has been designated as the website content manager for each department should also be required to obtain initial training on the City's current website. This training should go over items such as how to update the content on the webpage, change the layout of the webpage, or add new subpages as necessary.

For any non-department specific or department-related page (i.e. Planning commission page should be managed by City Clerk or Planning Department), the Public Information Officer or their support staff, such as the part-time intern, should be the primary keeper of the webpage. These pages would include the City Manager's office, the city's homepage, the calendar of events, and press releases. This will mitigate the need for a workflow of updates to this content to the PIO, as the PIO would be generating those updates.

Through the City Manager's webpage of the City website, there are three tabs or sections related to communications originating from the City Manager's Office. The following points discuss these three sections:

1. **City Manager Communications:** This is a roster of formal memos and reports issued from the City Manager and city department directors to the City Council regarding a range of city operations. This current page dates back to August 2018 and has not been updated since March 2019.
2. **Weekly Reports:** This is a roster of weekly briefings provided by prior city managers addressing different topical issues relating to city programs or community events. The reports were informal, usually text based, and brief in scope. The webpage has weekly reports in archive dating back to 2016 but has not been updated since March 2019.
3. **Milpitas Newsletters:** This section of the website contains a roster of quarterly community newsletters. The community newsletter on this page was known as *Connected* and contained a wide range of information on updates or changes to city programs and services, briefings on recent events, a calendar of upcoming events, and other news important to the community. The newsletter was usually several pages long and aesthetically designed with graphics to supplement written narrative. Newsletters were printed and mailed throughout the community and distributed at city facilities. The webpage only has five quarterly newsletters from November 2017 through January 2019. The City Council did not renew funding for the printed newsletter during the FY19-20 budget cycle.

The only aspect of the City Manager's webpage that has been updated is the section identifying the updated Interim City Manager, who was appointed in June 2019 in this position. However, in the last six months, there have been no other updates made to this webpage. Creating and implementing the policy discussed, which would not only require departments to review their webpages quarterly, but require that the City Manager's webpage be managed by communications staff, will ensure that the content is regularly updated. Any outdated material should still be available, but if the type of information or newsletter has been discontinued, it should be noted on the webpage, so as to provide the most accurate information.

However, while the City Manager's webpage may not be updated frequently, the City does have on its homepage a link to Milpitas Matters. This is a bi-weekly newsletter on behalf of the City Manager informing the public regarding updates on city services, recent events, and identifying any upcoming community and city events. The City recently released one in January 2020, and prior to that the last Milpitas Matter on the City's website was in October 2019. In reviewing the prior news content section, it does not seem that this newsletter is published consistently. Currently, there is no way to access older Milpitas Matters, other than scrolling through old news articles, rather than having an archive available of newsletters through a separate link.

Based upon all the different types of communications by the City Manager's office, the City Manager, in conjunction with the PIO, should develop a policy outlining the type and frequency of information that should be communicated to the public. This policy does not need to be specific in terms of identifying a specific layout, but should provide generic guidelines to ensure that there is consistency in the level of detail, transparency of information, and frequency of updates.

Recommendation #22: City Management should develop an internal administrative policy identifying a support position in each department responsible for website updates and dictating that all website content must be reviewed quarterly by each department and/or when there is a major operational change.

Recommendation #23: An internal workflow should be developed outlining that any major changes to a departmental webpage (i.e. new page, new content, changing layout, etc.) should be reviewed and approved by the department head as well as the PIO.

Recommendation #24: The PIO and/or support staff (intern) should be responsible for updates to the City Manager's webpage, as well as non-department specific webpages such as the homepage, calendar, news and announcements, etc.

Recommendation #25: The City Manager in conjunction with the PIO should develop an administrative policy outlining the type and frequency of external

communications to the public (i.e. biweekly newsletter containing updates on city events).

5 MOBILE APPLICATION

The City also administers MyMilpitas, a free mobile device application accessible on a range of mobile devices with access to the Apple App Store or Google Play Store. The application may be used to report non-emergency, quality-of-life issues within the City of Milpitas, such as potholes, streetlight problems, or other maintenance issues. The app also offers other information to the public such as:

- A calendar of city events
- Links to other government agencies providing services within the City of Milpitas (i.e. garbage and recycling services, animal control services, odor complaints, etc.)
- A listserv to sign up for notices from the City of Milpitas
- Access to an interactive map that displays where maintenance issues have been reported, and a summary of each issue.

The City and vendor recently released an update to this application to allow the City to notify users when a maintenance request is being responded to by city staff. The prior version of the application did not facilitate communication with the city regarding maintenance requests, now creating a high level of transparency and accountability.

Mobile applications are robust information tools, which if utilized appropriately can be an effective tool for disseminating information. The application is currently managed by Public Works, as the primary focus of the application is regarding maintenance-related issues. The Public Works department and the PIO should work with the third party vendor administrating and developing the application to determine if the current application has the capacity for expansion to incorporate additional content.

The app should allow residents to access city council/boards and commissions information, access to city department webpages, as well as turn on push notifications regarding major events or emergencies occurring within the area. The app may also be used to provide updates on new job openings in the city, town hall meetings, new city hall hours, new recreation programs, etc. The access from the app could be to simplified versions of these documents or information or access to the city website to view on mobile-friendly platforms.

It is recommended that a policy and procedure be developed regarding the utilization of the application as a tool for external communication. The policy should identify the type of content that is appropriate to be included in the app as well as the approval process for the content. This content approval should follow the same workflow as website change or content, requiring department head and PIO approval.

The application can then serve as a robust tool for city residents beyond utilizing it as a mechanism for recording issues or concerns against the City. Additionally, it will provide a free tool for encouraging involvement or participation in city events such as the census or the Milpitas Assistance Program.

Recommendation #26: The Public Works Department in conjunction with the PIO should work with the app developer to determine if there is the ability for in-app expansion or the ability to access the city's website through the application.

Recommendation #27: The MyMilpitas Mobile Application should be expanded to incorporate additional types of public information such as council/board meeting agendas, job announcements, town hall meetings, etc.

Recommendation #28: A policy and procedure should be developed regarding content inclusion and update to the application. This should mimic the website content process workflow requiring approval from the department head and PIO.

6 CITY TV

The City of Milpitas currently manages two local television channels: Comcast KMLP Channel 15, and Comcast MCTV Channel 26. Channel 15 is the government access channel that streams public meetings hosted by the City Council and Planning Commission. Channel 26 is the public access or education channel that airs community-created content. Both channels operate 24 hours a day and seven days a week. Channel 15 is managed by the Video Media Specialist position in the Information Technology (IT) Department; whereas Channel 26 is managed primarily through a nonprofit group of volunteers governed by the Science, Technology, and Innovation Commission.

Comcast KMLP Channel 15 is the Milpitas City Government Channel, as such it can be used primarily to address local municipal programming needs such as livestreaming all council meetings, commission meetings, community events sponsored and hosted by the city, and any city related activity or event. The channel is currently managed by the Video Media Specialist position within the City. Based upon the job description, this position reports to the IT Director and is responsible for management of the channel, content creation, and any operational or technical issues associated with the content.

There are no formalized policies and procedures dictating the content and use of the Government Channel. Additionally, other than the IT department, there is no other department involved in the utilization of the channel. Similar to the application, television is a tool that can be utilized by the communications function to disseminate information regarding city activities, events, and initiatives. The policy should identify the types of content that are appropriate to be streamed and developed for this channel such as flyers for recreation programs, announcements for town hall meetings, prior city council or board

meetings, etc.; as well as a workflow for approving new content to be developed, posted, or streamed on the channel.

Due to the public nature of the TV Channel, the management of the government channel along with the Video Media Specialist position should be considered to be transferred to the City Manager's Office under the direction of the Public Information Officer. This will enable the PIO to monitor and manage all external messaging done by the City, as they are required to do so per the job duties and responsibilities. The Video Media Specialist position, will then also be able to be utilized in a communication capacity focused on content creation, approval, and management rather than in a technical capacity of IT Systems. The Video Media Specialist position classification will need to be modified to indicate reporting to the Public Information Officer, rather than the IT Director.

While the government channel is extremely limited in the type of content that can be broadcasted, the public access channel Comcast Channel 26, has much more independence and leeway. Even though this channel is managed by a group of volunteers and overseen by the Science, Technology, and Innovation Commission, in the last two years there have been no items on agendas discussed regarding the content of the channel.

Per regulations, this channel is open to the public at an extremely low cost or free of charge and allows for content to be developed and communicated by the public. While the City may use this channel to broadcast their meetings and/or information, this channel is meant primarily to serve as a resource to residents for them to create their own content and distribute it to the general public. A group of non-profit volunteers, with oversight from the Science, Innovation, and Technology Commission manages this channel. In review, of prior agendas for the commission, there is no discussion regarding content of this channel. The Science, Innovation, and Technology Commission as part of their annual workplan should review the content and management of this channel and outline any changes that need to be made to the channel to encourage utilization of the channel by residents.

As this channel's content is also managed by the Video Media Specialist, Channel 26, should also be considered to be moved with the Video Media Specialist to be under the purview of the Public Information Office.

The reorganization of the Cable TV channels to be housed under the Public Information Office is not an uncommon practice. As part of the comparative survey, the cities of Cupertino, Mountain View, and Santa Clara also had tv channels under the management of the City Manager's office and communications function.

As the Video Media Specialist currently reports to the IT director, the position performs duties beyond channel content management. Therefore, the position and its related duties should be moved to be under the purview of the PIO through the attrition of the current

Video Media Specialist. At that point, the classification for the Video Media Specialist should be reviewed and refined to ensure reporting to the PIO, and a greater focus on development of content for the City TV Channels.

Recommendation #29: Formalized policies and procedures should be developed regarding the Government Access Channel identifying the type of content, as well as approval process for new content to be developed and published.

Recommendation #30: The non-profit volunteers with oversight from the Science, Innovation, and Technology Commission should continue to manage the Public Access Channel. The Commission should, as part of its annual workplan, include review of channel content and marketing of the channel to promote content development and utilization of channel space.

Recommendation #31: The Video Media Specialist position should continue to report to the IT director and serve in an IT capacity until attrition. At that point, the Video Media Specialist job classification should be reviewed and revised to incorporate reporting to the PIO and focus on content creation.

Recommendation #32: Upon reclassification of the Video Media Specialist position through attrition, the Government Access Channel and the Public Access Channel should be reorganized under the PIO. The Public Access Channel should still have oversight by the Science, Technology, and Innovation Commission.

7 EMPLOYEE INTRANET

During the course of this study, the City of Milpitas launched MINT (Milpitas Intranet) in November 2019, this is an online web portal that is meant for internal employee communication. The Intranet is hosted on SharePoint. The MINT provides similar information as the citywide webpage, but it also includes additional information that may not be posted on the city webpage, such as internal policies, procedures, as well as access to the personnel-related forms. The website also provides a way for city employees to “chat” with each other to obtain information immediately on specific topics.

The intranet was created by liaisons from a variety of departments such as Planning, Human Resources, Building, Economic Development, PIO, Fire, and Police. The development of the intranet was managed by the PIO with assistance from the IT Director, who provided training to city staff on the use of SharePoint to enable frequent updates to the webpages. Currently, these employees are the only employees that can conduct updates to the intranet. The intranet is still evolving and being updated based upon staff availability.

Similar to the city website, a policy and procedure be formally documented and adopted in relation to the citywide intranet (MINT). This policy and procedure should cover similar topics such as identification of the position responsible for updates, the content of the updates, and the frequency of the updates. The responsibility of the updates should be the communication liaison from the city department and the content that should be uploaded on the intranet should be policies, procedures, forms, and information that is generally not available to the public, but is relevant to city staff to provide their services. The frequency of the updates should be every month. It should be more frequent than the external internet updates, as any changes related to city operations or services should be communicated internally immediately.

The policy and procedure document should be developed by the intranet team. This documentation will ensure that the MINT is used as an effective tool, especially as it relates to ensuring updated policies and procedures are available to all city employees.

Recommendation #33: A formal policy and procedure document related to the citywide intranet system should be developed identifying the position(s) responsible for individual departmental updates, frequency of updates (monthly), and the contents of the updates.

4 Communications Performance Measures

The City of Milpitas currently tracks a variety of workload measures in its budget document related to the communications function. However, to effectively measure a function, there should be key performance measures and targets established for that service area. The following chapter discusses the development of the following aspects:

- **Workload Measures:** Additional workload measures that can be recorded and tracked by the PIO and the communications function.
- **Performance Measures:** Targets to be adopted for evaluating the effectiveness of the communications function.

The workload measures being proposed will directly tie into the performance measures, as well as ensuring there is an emphasis on obtaining annual input from the residents.

1 WORKLOAD MEASURES

Currently, the City of Milpitas budget document contains both workload and performance measures for each department; however, all communications related measures are only workload measures not specifically related to program objectives or goals. The following table summarizes the current communications related workload measures pulled from the City Manager's Office, Fire Department, Police Department, and Information Technology Department.

Workload Measures	FY17-18 Actual	FY18-19 Estimate	FY19-20 Forecast
Information Memos Published	21	85	95
City Manager Weekly Reports	49	45	46
Press Releases	9	16	30
Communication to all employees	13	20	30
Number of Social Media Campaigns	n/a	5	10
Number of Recreation Social Media Engagements	4,554	9,785	10,179
Police Community Presentations	56	80	85
Fire Public Education Events	199	200	225
Website Availability	99.99%	99.8%	99.99%

As it can be seen the amount of workload is projected to increase each year. In addition to these workload measures, the following workload measures should also be considered:

- Number of annual visitors to the city website
- Number of social media posts on each of the social media platforms
- Number of social media engagements on the citywide social media platforms
- Number of likes/followers on citywide social media platforms

- Number of downloads of the MyMilpitas mobile application
- Active user statistics for the MyMilpitas mobile application
- Number of unique email accounts registered with the city's emailing lists
- Viewership statistics for City TV Channels 15 and 26
- Hours of original/local programming on City TV Channels

The tracking, compilation, and monitoring of all the workload measures (current and proposed) will help not only provide information regarding the level of workload associated with the communications function and the robust nature of the city's operations, but also provide input on how the community currently engages with city. The proposed request system for the PIO workload should also be reported upon and used to track workload information such as number of communication requests.

These workload measures should be tracked by staff in the PIO functional area. The workload measures should be tracked on an annual basis for incorporation into the city budget document.

Recommendation #34: The communications function should add additional workload measures to track information such as number of downloads of the application, engagement on citywide social media platform, and viewership for city tv channels.

Recommendation #35: The PIO and/or support staff (intern) should be tasked with tracking, monitoring, and compiling these statistics annually to be incorporated into the budget process.

2 PERFORMANCE MEASURES

Performance measures enable departments to measure performance against established goals and objectives, whether from Council, department management, or other mandated reporting requirements. The purpose of performance measures are to not only represent the level of activity or output of a particular function or program, but also the level of effectiveness for that program. Performance measures should be compiled and reviewed on a regular basis to enable management to efficiently evaluate program quality and effectiveness, and hold staff and programs accountable to their objectives. Performance measures should be based on the following criteria:

1. **Effectiveness:** The degree to which the work product conforms to any requirements.
2. **Efficiency:** The degree to which the process produces required output at a minimum resource cost.

3. **Quality:** The degree to which the product/service meets customer requirements & expectations.
4. **Timeliness:** The degree to which the product/service was done on time and correctly. This is typically based on service requirements.

Performance measures are typically structured from a workload or activity measure, which is simply a measure of program activity without being tied to an objective or goal. While workload measures are the building blocks to performance measures, workload measures can be applied in different ways as well, such as managing individual staff workload and evaluating staffing needs.

There are currently no performance measures monitoring the effectiveness of the city communications function – externally or internally. In conducting the comparative survey and industry research, there are no common, template public sector communications related performance measures that can easily be applied here. Performance and activity measures differ from agency to agency depending on their organizational and staffing structure, communications tools used by an agency, and operational needs. Based upon current and proposed workload measures, the following table provides a list of sample performance measures, with a proposed target:

Workload Related Performance Measure	Target
Percentage of MyMilpitas Downloads Relative to City Population	30%
Annual Increase in MyMilpitas Downloads	10%
Percentage of Emails Registered Relative to City Population	30%
Annual Increase in Email List Registrations	10%
Annual Increase in Social Media Account Follows/Likes	5%
Annual Increase in Social Media Post Engagements	20%
Annual Increase in Unique Visits to the City Website	20%
Annual Increase in Unique Visits to the News and Announcements Webpage	20%
Annual Increase in Channel 15 Viewership	5%
Annual Increase in Channel 26 Viewership	5%
Annual Increase in City Council YouTube/Livestreaming Views	5%

The table above is not intended to be a comprehensive listing of performance measures, but a sampling of the type of performance measures that can be initiated. Additionally, the target percentage is intended to be a sample target percentage. The PIO support staff positions should calculate the initial performance measure for these areas and determine the appropriate target percentage. For example, if 50% of the city population has downloaded the mobile application, the target goal to increase downloads could be 10% instead of the proposed 30%; however, if only 10% of the population has downloaded it, the target percentage might be appropriate at 30% increase.

These performance measures discussed are in relation to the current and proposed workload measures. There are other performance measures that can be compiled based upon internal and external surveys. The following table shows a sample of the types of performance measures and proposed targets based upon internal and external surveys:

Internal Survey-Based Performance Measure	Target
Satisfaction with the Frequency of City Manager Internal Communications	90%
Satisfaction with the Content of City Manager Internal Communications	90%
Satisfaction with the Frequency of Department Head Internal Communications	90%
Satisfaction with the Content of Department Head Internal Communications	90%
Satisfaction with the PIO in Supporting Departmental Communications Needs	90%
Satisfaction with the PIO in Supporting Social Media Management	90%
Satisfaction with the PIO in Supporting Community Programs and Events	90%
Satisfaction with the Level of Department Communications Staffing	90%

Similar to the workload-based performance measures, these survey based measures help assess the level of satisfaction within the city regarding the types of communication initiatives and measures. The implementation of these performance measures would require that the PIO and their support staff conduct annual internal surveys distributed to all city employees. These survey results will have to be tracked and monitored annually in order to provide useful information.

Beyond internal city staff support, the PIO is primarily responsible for the public in helping to convey city operational information to the public. Therefore, performance measures should be compiled and monitored periodically to assess the public's attitude toward city communications activities.

The city is currently in the process of utilizing a contracted firm to conduct a community engagement survey. The annual community satisfaction survey being proposed for performance measures purposes is different, as this survey would be tailored and focused on assessing the satisfaction level of the community with current communication platforms and mechanisms. The community engagement survey, which is being contracted, is a comprehensive effort to understand the different manners in which the community engages, how the community identifies with the City, and what is the brand of the City in the eyes of the community.

The annual community satisfaction survey for performance measures should focus on determining information related to level of satisfaction regarding frequency, content, and format of information distribution. The support staff position, such as the part-time intern along with the PIO should draft the questions for the community satisfaction survey. The questions can be drafted on the basis of the National Citizen Survey (a national organization drafting questions regarding community satisfaction), as well as by considering questions that may specifically address Milpitas residents and their needs.

The following table includes examples of community survey based performance measures and their proposed target percentages:

Community Survey-Based Performance Measure	Target
Community Satisfaction with the MyMilpitas Application	90%
Satisfaction with the Frequency of City Manager Newsletters	90%
Satisfaction with the Content of City Manager Newsletters	90%
Satisfaction with the Frequency of Email List Blasts	90%
Satisfaction with the Frequency of Social Media Posts	90%
Satisfaction with the Content of Social Media Posts	90%
Satisfaction with the Content of Channels 15 and 26	90%
Satisfaction with the Frequency of Emergency Alerts	90%
Satisfaction with the Content of Emergency Alerts	90%
Satisfaction with the Content of the Recreation Activity Guide	90%
Satisfaction with the Design and User-Friendliness of the City Website	90%
Satisfaction with the Content of the City Website	90%

Similar to the internal employee survey, it will be the responsibility of the Communications Specialist to implement these surveys annually, collect, and compile the results. Tracking this information on an annual basis can help the PIO track trends in satisfaction based upon any changes in operations.

The implementation of workload and survey-based performance measures or a combination of both types of performance measures will help the communications function measure its ability to engage with the public and internal city employees. The results from these performance measures can help determine the effectiveness of certain types of programs and activities, such as social media posts, cable TV utilization, level of support obtained from the communications function, and satisfaction of the community with the current types of communication practices.

Recommendation #36: The communications function should implement tracking of performance measures based upon workload and survey measures.

Recommendation #37: The PIO should be responsible for drafting and conducting the internal and external communication satisfaction surveys.

Recommendation #38: The PIO and/or support staff (intern) should be responsible for tracking all of the performance measures on an annual basis, including implementing an annual internal survey for employees and external survey for community residents.

5 Communications Organization

Cities may manage their public affairs needs through a variety of organizational and staffing arrangements. There are four major approaches to communications:

1. **Centralized communications:** All communications within the city department and citywide are managed from a singular source – the communications office.
2. **Decentralized communications:** Each department and function within the city is responsible for conducting their own outreach, engagement, and messaging.
3. **Hybrid communications:** There is a centralized source for all citywide initiatives, but specific departmental representatives for conducting department-specific outreach and engagements.
4. **Contracted communications:** All external and internal communications are contracted out to a third-party contractor.

Each of these models has distinct advantages and disadvantages and can be achieved with either full-time staff or a mix of staff and contracted services. Typically, smaller jurisdictions with limited or contracted services will utilize either a centralized or decentralized communications model; whereas, larger jurisdictions with a variety of services will use the hybrid communications model.

The following chapter explores the current and proposed organizational structure for the communications function within the City of Milpitas as well as the creation of a citywide communications team.

1 ORGANIZATIONAL STRUCTURE

Historically, the City of Milpitas used a decentralized approach for managing communications as there was no Public Information Officer and departments were responsible for managing their respective public affairs needs. In FY18-19, the city created the Public Information Officer (PIO) position to better support citywide public affairs. With the creation of this position, the decentralized organizational structure has transitioned into a hybrid approach – centralized and decentralized.

The PIO is utilized to communicate citywide communications (centralized), whereas departments such as Recreation (decentralized) are responsible for conducting their own communications for department-specific initiatives and programs. The following table outlines by city department the position(s) that are dedicated as either their primary or ancillary duty to the communications function:

Department	Position Title	Function
Recreation	Assistant Director/Community Engagement and Inclusion Coordinator	Engagement activities for the Recreation department
	Marketing Coordinator	City's graphic design function, including activity guides and brochures for recreation programs
Police	Media Relation Coordinators: Captain (1), Lieutenant (1), Sergeant (3), Officer (1)	Manages the department's social media accounts, publishes press releases, and performs on-camera interviews.
	Community Relations Unit: Sergeant (1)	Manages community engagement activities for the Police Department.
Fire	Emergency Services Coordinator	Trains and prepares internal city staff for emergency situations, may join and support public awareness programs for emergency preparedness.
Information Technology	IT Director/Webmaster	Responsible for conducting updates to the City's website.
	Video Media Specialist	Responsible for managing the City's Cable TV channels

While it may seem that the City dedicates significant resources in addition to the Public Information Office, other than the Marketing Coordinator and the Video Media Specialist position, all of the other positions noted above perform the public communications function as an ancillary duty. Beyond these departments, there are other city departments that depending upon the nature of their activities utilize staff as needed or rely upon the PIO to communicate their messages.

Additionally, relative to peer jurisdictions in the Bay Area, the City of Milpitas supports departmental communications needs through a common approach. The following points outline some of the key findings from the comparative survey related to departmental support of public information efforts:

- Mountain View, Palo Alto, Santa Clara, and Sunnyvale (consolidated public safety unit) have designated PIO support roles for their police departments. However, communications is typically considered a collateral assignment as opposed to serving as a full-time PIO. Mountain View Police does employ a full-time civilian Social Media and Public Relations Coordinator,
- Fire departments in Mountain View, Santa Clara, and Sunnyvale manage communications needs through different methods. Mountain View's Office of Emergency Services has a Coordinator who manages their media needs, while Santa Clara and Sunnyvale have Captains collaterally serving as their PIOs.

- Both Palo Alto and Santa Clara provide communications support to their municipal utilities, with Palo Alto dedicating a full-time Communications Manager, and Santa Clara dedicating a Communications Coordinator.
- Most of the peers did not indicate that they have additional communications staff dedicated to their recreation departments, but Redwood City indicated that their department's Assistant Director manages communications collaterally.

Results from the comparative survey confirm that even when a public information officer or communications office spearheads citywide communications, just about every peer city has recognized the need to augment frontline departmental communications needs for larger public-facing departments.

Additionally, the utilization of a hybrid model to manage communications has many operational benefits including:

- Designating a trained and specialized leader to bridge interdepartmental communications from departments typically siloed in a decentralized model
- Creating capacity for the city manager's office to handle higher level citywide public affairs needs so that departments can focus on their operational needs
- Creating an economy of scale by allowing multiple departments to use a citywide public information officer or office without having to hire communications staff for every department
- Having a trained communications officer to draft and disseminate information effectively, concisely, and accurately.
- Allowing specific departments with significant public interaction to use additional resources to manage their own public affairs needs when justified

Therefore, based upon this analysis of current practices and other surrounding jurisdictions and the identified needs of the City of Milpitas, the City should continue to operate under a hybrid communications organizational structure.

Due to the City's lack of historical centralized communications practice, there has been a transition period and some challenges in encouraging city staff to utilize the PIO. The external communications employee survey revealed that approximately 12 out of the 13 respondents utilize the PIO for communication needs and 11 out of the 13 respondents utilize the PIO on a weekly and monthly basis. This helps mitigate concerns that even with the number of decentralized staff for communications support there is still sufficient need for city staff to utilize the PIO.

The City does have the option to have a completely contracted Public Information Support function. In the past, City Management has relied on contracted public information support, but that has only been for critical incidents, critical press releases, and other types of specific messaging. Departments have also utilized contracted public information support, but again for very specific needs such as community engagement for master plan updates, or economic development initiatives.

The use of a contracted model for public information assumes typically, that the contracted PIO is an off-site position and is not local to the community or region. This lack of on-site presence and local knowledge limits the ability of the position to understand the needs of the community. The position does not generally speak on behalf of the City, but rather provides support in drafting press releases and communications to be spoken. As discussed earlier in this report, there are many qualitative benefits associated with having an in-house PIO; and as discussed in the next chapter, an in-house PIO is just as cost effective as contracted PIO. There is no comparable community that utilizes a contracted PIO in the primary PIO capacity. As will be discussed only specialized communication needs are typically contracted.

The staffing section of this report presents potential staffing modifications including the addition of a full-time communications specialist position to assist the City in centralizing the utilization of the PIO and their support staff as it relates to development of communication strategies, rather than deployment of message (i.e. social media posts, flyers, etc.). If the City were to consider implementing these changes, there would be increased reliance on centralized communications, with only department-specific messages being managed through the decentralization process.

Recommendation #39: The City of Milpitas should continue to utilize a hybrid communications model.

2 COMMUNICATIONS TEAM

Upon the implementation of the Public Information Officer position, the City of Milpitas created a team of employees to develop the city's intranet website for interdepartmental communication. The employees were from Finance, Human Resources, Information Technology, Building, Recreation and Community Services, Planning, Police, and Fire. The primary focus of this team was to meet once a month to develop the framework of the intranet, develop the content, and launch the intranet. Once the intranet was launched the citywide committee continued to meet.

Due to the nature of the public communication function being performed on behalf of city departments, it is important to have the city departments involved as stakeholders for the PIO and the communication function. A standard way to involve the stakeholders is through a standing committee such as a citywide communications committee/team.

The communications team/committee should be formalized and should have representatives from every city department. These representatives do not have to be managers or executives, but can be support staff positions; however, they must be knowledgeable regarding their department's operations and any issues or incidents that must be disseminated to the public. The roles and responsibilities of the communications team members should also be formalized through the creation of the communications policy.

As part of the comparative survey, cities such as Redwood City, Palo Alto, Sunnyvale, and Santa Clara all require their Public Information Officer or equivalent position to manage a citywide communications team. The Citywide communications team is tasked with handling external and internal communication issues and discussing appropriate avenues and strategies for distributing the message. The communications team can serve as a resource for the PIO and their staff in helping develop annual communications work plans and strategic goals and outcomes.

A monthly meeting of this committee for an hour will ensure that the PIO is informed of any ongoing operational changes that may require support from the PIO and/or their support staff. The PIO, along with the Communications Specialist and Video Media Specialist should participate in these monthly meetings. For example, if the Economic Development Department is planning on doing a tour of a major Milpitas Business for local high school kids two months later, the Economic Development representative may inform the PIO and their support staff this month to allow for preparation of a communication and marketing strategy for the program.

Recommendation #40: A citywide communications team should be formalized and the roles and responsibilities documented through an administrative policy.

6 Communications Cost Effectiveness

One of the key components of this analysis was to determine the cost effectiveness of the Public Information Officer position. Currently, the costs associated with communications functions have been spread between the City Manager's office and the Economic Development Department. The Finance department compiled the following showing the Communications budget by major cost category:

Cost Category	FY 19-20 Budget
Public Information Officer – Salaries & Benefits	\$263,040
Student Intern – Salaries	\$31,035
<i>Subtotal Personnel</i>	<i>\$294,075</i>
Community Promotions	\$2,000
Supplies	\$1,750
Contractual Services (Branding Study + Additional Contracts)	\$100,000
Community Survey	\$50,000
2020 Census	\$50,000
Memberships and Dues	\$783
Training and Registration	\$5,000
Meals for Meetings	\$500
<i>Subtotal Services and Supplies</i>	<i>\$210,033</i>
Total Communications Budget	\$504,108

Approximately 58% of the costs associated with the communications function are personnel related and the other 42% are services and supplies related. The \$504,000 associated with the communications function excludes the approximately \$50,000 associated with newsletter mailing, which was not approved by council in FY19-20.

As part of this evaluation, the project team evaluated the cost effectiveness of the communications function in the context of the following items:

- **Cost Structure:** Categorization of expenses as part of City manager or other department's budgets.
- **Personnel costs:** Salaries associated with the Public Information officer and other support staff.
- **Cost Recovery:** Personnel and non-personnel related expenses, which can be recovered through indirect cost allocation and support.
- **External Contracting/Outsourcing:** Specialized or limited services, which are most cost effective to be contracted.

It is important to evaluate all of these cost components to determine the most effective service delivery method for internal and external communications within the city.

1 COST STRUCTURE

The costs associated with the communications function are spread throughout the different City departments, with major contracts housed in the City Manager's budget, but other initiatives can be housed with Economic Development or Recreation. The centralization of responsibilities of the public information function must be mimicked with the centralization of costs into a singular cost center.

External and internal communications within the City is not a separate division within the City Manager's office. In evaluating comparable agencies, only two out of the six agencies (Mountain View and Sunnyvale) did not have the communications budget broken out as a separate division within the City Manager's office. The remaining agencies all identified communications as a separate cost center, which enabled them to track separate workload and performance measures, report on different cost changes, as well as represent the contracts associated with citywide communication efforts.

Due to the nature of the types of expenses, contracts, and services provided by communications, it is recommended that the Finance department create a separate cost center within the City Manager's office related to the communications function. This separation will create greater financial transparency regarding the portion of the City Manager's budget that is communications related compared to other types of general support services related. Additionally, it will enable city departments to house any citywide communications related costs in a singular cost center rather than separating costs in different departments.

Lastly, with the proposed staffing changes to the communications function, it will be imperative that the costs associated with the different support staff (Communications Specialist and Video Media Specialist) are tracked within the City Manager's Office separate from the other City Manager staff.

Recommendation #41: A separate cost center and division for Communications should be created in the City Manager's office to track personnel and contracted costs.

2 PERSONNEL COSTS

The largest component of the costs associated with the communications function are personnel costs. To determine, the cost effectiveness of this position, a benchmarking analysis was conducted comparing the minimum and maximum costs for a Public Information Officer or similar type of position. The following table shows by jurisdiction, position title, the minimum, midpoint, and maximum salary associated with the position.

Jurisdiction	Position Title	Minimum Salary	Midpoint Salary	Maximum Salary
Cupertino	Public Information Officer	\$127,369	\$141,094	\$154,818
Mountain View	Communications Coordinator	\$104,767	\$123,256	\$141,744
Palo Alto	Chief Communications Officer	\$141,586	\$176,977	\$212,368
Redwood City	Communications Manager	\$124,560	\$146,358	\$168,156
Santa Clara	Public Information Officer	\$168,996	\$193,842	\$218,688
Sunnyvale	Communications Officer	\$118,423	\$130,614	\$142,805
	Average	\$130,950	\$152,024	\$173,097
	Median	\$125,965	\$143,726	\$161,487
Milpitas	Public Information Officer	\$120,750	\$144,900	\$169,050

It is important to note that the information reflected in the prior table is only representative of salary information and does not represent the full compensation package (i.e. salaries, benefits, and other perks). Depending upon the jurisdiction, there might be lower salaries, which may be offset by higher benefits. Milpitas' Public Information Officer's salary is within the range of salaries charged by other jurisdictions. The City's minimum salary is not the lowest (the lowest is Mountain View), and its maximum salary is not the highest (the highest is Santa Clara). The midpoint salary for Milpitas is in line with Cupertino, Redwood City, and slightly above Sunnyvale.

Therefore, from a personnel perspective, the City of Milpitas has set its salary package for the Public Information Officer at a rate, which while on the lower end is still within the competitive market range for the region.

The variation in the minimum and maximum salaries in the bay area is due to the different job duties assigned to staff. The higher paid staff serve as more than a liaison between the City and the public, they also provide guidance on communication strategies, branding, and managing the overall message.

The only additional personnel cost currently incorporated in the communications function is \$30,000 for a public communications intern. This position is budgeted but currently vacant within the City Manager's Office. The focus of this position is intended to be an internship with a maximum of 20 hours per week. The position would report directly to the Public Information Officer and assist with social media posts, intranet updates, biweekly newsletters, and other miscellaneous tasks as needed.

While not considered a personnel cost, the City currently has a contracted Public Information Consultant. The Public information consulting services include the following scope of services:

1. Provide strategic and tactical guidance for institutional communications related to City of Milpitas
2. Provide communications advice and counsel as requested on issue-specific topics and policy matters.

3. Review, edit, and revise communications products related to the City Manager's internal and external communications, such as City Manager's Weekly reports, news releases, website content, and other materials.
4. Assist in preparing City Manager and other City senior staff for news media interviews and other public interactions
5. Assist in the development of job description, recruitment, and candidate selection for the next City of Milpitas Public Information Officer; pending Council approval of this position
6. Provide transitional advice and support of the incoming PIO as requested.
7. Identify and promote the City's achievements, innovations, public policy, and service goals across all appropriate channels.
8. Provide other related public information services as requested.

The City entered into this agreement with David Vossbrink and Associates in March of 2018. In September 2018, this agreement was amended to be extended to June 2019, and in June 2019 the agreement was further amended to extend it to June 2020. Therefore, the City currently still has this contract active. The contract for \$30,000 includes up to 240 billable hours by the consultant. As of January 2020, the consultant has billed the city for approximately for 62.5 hours of service or \$8,281.25 in contracted costs. The majority of these consultant hours were accrued in 2018 prior to the selection and implementation of the in-house PIO. Once the PIO was hired, the City has only utilized 2 hours of contracted services support.

The contracted consultant has an hourly rate of \$125 per hour. If the consultant were to serve as a full-time consultant to the city at 2,080 hours, the total cost would be \$260,000. This \$260,000 is comparable to the approximately \$263,000 budgeted in personnel costs for the Public Information Officer. Therefore, utilizing a contracted PIO full-time would not generate any cost savings for the City. Additionally, a permanent position, would have more insight into the community, build a relationship with city staff, and be able to more effectively communicate a consistent message compared to a contractor or consultant. The in-house PIO would provide more qualitative benefits, and there would be little to no cost differential.

Other than the recruitment and transitional support for the future Public Information Officer, many of the job duties for the consultant overlap with the current job duties of the Public Information Officer job description. Therefore, this consultant can be considered an additional personnel cost associated with the communications function.

Therefore, when accounting for the intern and external consultant, the City manager's office has budgeted \$60,000 in support staff or services for the existing PIO. However, through the course of this analysis it has been determined that a different type of support position is necessary for the Public Communications Officer, as discussed in the staffing section. The primary purpose of this support position will be as follows:

- Serve as primary backup to the Public Information Officer
- Assist with social media posts, drafting of press releases, updates to bi-weekly newsletter
- Participates in the citywide intra-communications team
- Coordinates with other city departments to collect and review all communication postings
- Assists with drafting messages on behalf of the City Manager

While some of these duties are similar to the part-time intern position and the consultant PIO, the level of oversight, understanding of the community, the messaging needs for the city, and approval and responsibility for issuing some of these items cannot be performed at the intern or consultant level. That type of authority and level of understanding is generally reserved for consistency associated with a full-time permanent position.

Additionally, contracted and intern level support is only cost effective if the functions being performed are not on-going and/or time intensive in nature. The types of duties assigned to the intern and the contracted support are functions that will need to be performed on a continuous basis. Assigning these duties to non-permanent employees, breaks continuity as interns may change depending upon opportunities, similarly consultant(s) may change depending upon the ability of the consultant to provide those same services at the same rate and/or availability of the consultant to provide the materials in a timely manner.

The analysis revealed that the most appropriate classification for a support position in the communications function is a Communications Specialist. Milpitas does not currently have a communications specialist position. The closest classification in the city to a Communications Specialist is the Marketing Coordinator position. The annual salary impact for the Marketing Coordinator is approximately \$75,589 to \$91,879. In order to implement this support position in the PIO office, the City would need to create a new classification for Communications Specialist.

The annual cost associated with the Communications Specialist would be set at a lower rate than the Marketing Coordinator, as the Communications Specialist would not have any supervisory duty. To determine an appropriate estimate, the following table shows the comparison of similar classifications within the region:

Jurisdiction	Position Title	Minimum Salary	Midpoint Salary	Maximum Salary
Cupertino	Community Outreach Specialist	\$79,162	\$87,692	\$96,222
Mountain View	Community Outreach Coord.	\$72,304	\$85,063	\$97,823
Palo Alto	Communications Specialist	\$84,261	\$105,321	\$126,381
Redwood City	Comm. Multimedia Analyst	\$104,052	\$114,474	\$124,896
Santa Clara	Communications Coordinator	\$94,104	\$107,232	\$120,360
Sunnyvale	Web & Comm. Specialist	\$82,674	\$94,095	\$105,516
Average		\$86,093	\$98,980	\$111,866
Median		\$83,467	\$99,708	\$112,938
Milpitas	Marketing Coordinator	\$75,589	\$83,734	\$91,879

Based upon the comparative analysis, hiring the Communications Specialist at the Marketing Coordinator salary range may be the most cost effective solution and would be comparable to rates utilized by other agencies.

It is important to note that the \$75,589 to \$91,879 estimation is only salary costs. In comparing benefits as a proportion of salary costs, the average ratio for the City of Milpitas is approximately 62%. Therefore, considering salary and benefits, the addition of a full-time Communications Specialist position would have an annual fiscal impact of \$122,454 to \$148,844.

Even though the addition of a full-time Communications Specialist position would more than double the \$60,000 in personnel costs currently associated with the part-time intern and the 240 hours of consultant support, it will be more cost effective in the long run as it will eliminate the administrative costs associated with managing interns and contracted support. Additionally, the part-time intern and the contracted support only provide a maximum of 1,280 hours of support compared to the full-time maximum support of 2,080 hours provided by the Communications specialist which is needed based upon our analysis and the services needed by the organization.

If the \$60,000 annual cost was converted to an hourly rate based upon 1,280 hours, the hourly rate for the current communications support would be \$46.875. If this hourly rate was used to calculate the annual salary for a full-time equivalent support position, the annual salary would be approximately \$97,500. The \$97,500 salary calculated is higher by approximately \$5,621 when comparing to the full-time communications specialist. Therefore, on a comparable cost basis, the transition to utilizing a full-time communications specialist in lieu of a part-time intern or as-needed PIO consultant is more cost effective.

Beyond a cost perspective, the full-time position will also serve to provide a consistent, cohesive, and more comprehensive support function to the existing Public Information Officer, rather than supplementing the function through part-time and contracted support. As discussed in the staffing section, in order for the city to provide a communications function with a clear focus on strategic communication priorities as well as day-to-day activities, there would be the need for a full-time support position.

Recommendation #42: The City should have a full-time in-house PIO, as there are no cost savings associated with utilizing a full-time contracted PIO.

Recommendation #43: A full-time permanent Communications Specialist position with an annual fiscal impact of approximately \$122,454 to \$148,844 is more cost effective compared to an equivalent amount of full-time support received between intern and contracted PIO support.

3 COST RECOVERY

The City of Milpitas has an internal overhead allocation, which captures support provided by City functions or departments to other city departments. While not all of the support provided by the Communications function is solely in relation to other departments, as some of it is promoting citywide engagements (i.e. Census, Milpitas Assistance Program, etc.), whose beneficiaries are city residents rather than City departments; the majority of the work is internal support related. The City's current overhead plan for FY19-20 allocates all of the City Manager expenses including the personnel and non-personnel related expenses for the public information function.

It is important to note that in the City's current cost allocation plan, the public information function is incorporated in the Information Technology Division. To ensure accuracy, this should be moved to the City Manager's office. Additionally, the costs associated with the public information function have been captured under the general services support function and have been allocated to all city departments based upon number of full-time equivalents (FTE). Utilization of FTE allocates higher proportion of support to larger departments such as Police, Fire, and Public Works, while minimizing support to other departments such as Economic Development, Planning, Building, etc.

Implementing a separate cost center for Communications within the City Manager's office will help ensure that all communications related costs (personnel and non-personnel) are documented, accounted for, and captured appropriately, including the addition of any new personnel or reorganization of staff into the function.

This separate cost center, will help the City identify any contracted costs that are one-time costs, as those should be amortized or annualized in order to be allocated as overhead. Lastly, by creating it as a separate cost center, the city can explore the utilization of alternative allocation metrics such as equal support to all city departments, or allocating resources based upon the number of communications projects and requests that are processed per department. The utilization of requests by department will minimize the impact to departments such as Recreation and Police who have internal support staff, and more accurately represent support to other city departments.

Therefore, the current results of the cost allocation plan, incorporate a portion of communications support in every direct city service (i.e. recreation, police, fire, sewer, water, development services, etc.). Every time the city charges sewer rates, water rates, development fees, and/or charges fully burdened hourly rates for its services, a portion of the Public Information Officer and communications support is being recovered.

The inclusion of the communications function in the cost allocation plan enables the city to recover the costs associated with this function through direct support services. This ensures that the city is being cost effective and where appropriate recovering for this

general fund function through fees from the public (recreation, development services, etc.) and/or rates.

Recommendation #44: The City's Cost Allocation Plan should be updated to reflect Public Information as a function of the City Manager's office.

Recommendation #45: The costs for the communications functions in the Cost Allocation Plan should be reviewed to ensure that any one-time costs are annualized and all ongoing contracted and services costs are allocated to city departments.

Recommendation #46: The allocation methodology for the communication function should be reviewed and refined to be based upon more equitable metrics such as equal allocation to all departments and/or number of projects or requests per city department per the new request system being proposed.

4 EXTERNAL CONTRACTING / OUTSOURCING

Approximately 42% of the communications function budget is in relation to services and supplies and of this amount 95% is contracted services. The Public Information Officer is responsible for managing these contracted programs. The following table shows the list of current active contracts for the City service type and contract amount. For some contracts, the contract amount lasts multiple years, and as such the total contracted amounts do not reflect the total for a singular fiscal year.

Service	Contract Amount
Public Information Consulting Services	\$30,000
Communications / Media Training for City Council / Executive Staff	\$52,500 ⁵
2020 Census	\$50,000
Community and Employee Surveys	\$50,000
Branding/Marketing Services	\$90,000
Newsletter	\$50,000 ⁶

As the table indicates, the primary nature of contracted services for communications are for specialized functions and services such as census outreach, surveys, branding, and training. The only generic contract services is in relation to PIO consulting, which has already been discussed in the personnel cost component.

In regards to communications / media training contract, this contract includes group training for identified city staff, individual training for city staff, and elected official training. The topics covered in the trainings range from discussing communication trends to the

⁵ \$52,500 represents 2 years of services, so annually the cost would be \$26,250

⁶ This contract was not approved for FY19-20; however, for purposes of cost effectiveness discussion, it has been included in this table.

role of social media. Trainings will also prepare staff through individualized and elected official training for media interviews. The group training is three hours and can accommodate up to 50 individuals, individual training is 1.25 hours, and elected official training is two hours. These trainings are available on an annual basis for two years, and at the end of the training there will be materials left behind in the form of PowerPoints and videos, which staff can review later.

While the Public Information Officer may have much of the same knowledge and expertise as the consultants regarding city issues and how to serve as the spokesperson; they do not necessarily have the expertise as it relates to training staff and elected officials on media and communications. Additionally, if the Public Information Officer was to conduct this training in house, it would require a reallocation of their existing duties. Depending upon the events occurring in the City, it may be difficult to find specific time to conduct this training, without it interfering with their daily job duties and functions. Lastly, the use of external vendors, allows the training to be conducted on a larger scale than would be possible, if the training was conducted in-house.

The utilization of an external vendor for communications training is a cost effective use of external vendors. This type of service should not be provided in-house, other than on an as-needed basis, depending upon the communications crisis or emergency. Third party training ensures that information is disbursed in a consistent, comprehensive, and documented manner.

The 2020 census contract cost for \$50,000 is for outreach specific to the census program. As this is not an on-going activity, it is expected that this should be contracted out, and based upon the comparative survey, this is a typical practice of other jurisdictions within the region.

Community and Employee Surveys have been contracted out for \$50,000. Due to the specific and specialized nature of this service, it is expected that this would be contracted. Additionally, the use of contracted staff to conduct surveys is more cost effective than utilizing internal city staff. The consultants are able to utilize a variety of methods (on-line surveys, mail-in surveys, phone surveys, etc.) to gather information, rather than relying upon a singular methodology and typically have a greater level of expertise in survey methodologies. Ultimately, the results of the survey(s) can also be compiled and analyzed by the consultant and presented to the City in a concise manner and format which the City can utilize to inform strategic decisions.

Contracting for branding services for a city is a specialized service that while it can be performed in-house requires a level of expertise that is not always within the skill-set of a specific PIO. Articulate Solutions has proposed this service for a not-to-exceed fee of \$90,000. This service includes conducting an analysis of the city's current brand, its needs for adapting and improving that brand, stakeholder interviews, surveys, community outreach and engagement, and development of interim and final reports. Ultimately, the

results of this study, will help the City obtain an updated brand, which is in alignment with its core values and vision. The City entered into contract in February 2019, the study commenced in March of 2019 and it is still currently ongoing. Therefore, based upon the scope of the project, the length of the project, and the expertise required, it is more cost effective for this type of service to be contracted.

The last contracted item the City has is \$50,000 budgeted for annual newsletter printing. This \$50,000 contract assumes printing and mailing of 27,650 citywide resident newsletters, which is 6 pages long and has a glossy cover. This newsletter would be mailed once a quarter or four times a year. Based upon the number of estimated mailings, the annual cost of the newsletter is approximately is \$1.81 per city resident that receives the newsletter in the mail.

As part of the comparative survey of other agencies, the project team evaluated the cost associated with printing and mailing newsletters. The City of Santa Clara produces a newsletter three times a year, with an annual cost of \$150,000. The City of Mountain View creates a bi-annual newsletter, which costs approximately \$100,000. The City of Sunnyvale spends approximately \$75,000 annually on the production and mailing of the newsletter.

It is important to note that the \$50,000 contracted cost for the newsletter was primarily in relation to the production and mailing of the newsletter, not the design or the development of the content of the newsletter. Therefore, there would be additional city staff cost incurred in the development of the newsletter. The newsletter used to be managed and created by the Economic Development Director; however, as it is a public information document, it should be managed by the Public Information Officer. The fully burdened hourly rate for the Public Information Officer is \$212 per hour⁷. If it is assumed that every quarter, the PIO spends approximately 10-20 hours developing this newsletter, the staff cost associated with the development of the newsletter would be approximately \$2,120-\$4,240 per quarter or \$8,480-\$16,960 annually. If we round to approximately \$10,000-\$20,000 annually, considering that the approval of the newsletter would require input from other City staff and the Assistant City Manager/City Manager, the annual cost for the newsletter could be as high as \$70,000. Based upon the \$70,000 annual cost, the per resident cost (27,650 mailings) would be \$2.53. Additionally, this \$70,000 cost would be less than the costs incurred by Santa Clara, Mountain View, and Sunnyvale for development of less frequent newsletters.

In discussions, with staff and council, the Milpitas Newsletter (Connected) was discontinued due to a variety of reasons including its effectiveness as a tool compared to its cost. City Staff and City Council agreed that in concept this was a valuable tool for the community; however, there was no measure of the success of the outcome of the tool. The city is planning on conducting a community survey and there is the intent to discover the effectiveness of the newsletter as part of this survey.

⁷ City of Milpitas ClearSource Full Cost Allocation Plan pg. 26

Therefore, as part of this, a cost evaluation was conducted of the newsletter. It can be seen that even with the estimated cost, it is still cost effective for the city to be providing this service to its residents as a public information effort. Additionally, this newsletter should be posted on the City's website and social media channels similar to the other agencies that provide published and mailed letters.

The management of the newsletter, including development of content, posting of the letter, and negotiation of the printing contract should be performed by the PIO and their support staff. While the development of this newsletter's cost is in alignment with other jurisdictions, the City should also wait to review the results of the City's community survey regarding the effectiveness of the Connected Newsletter as a form of communication to its residents. This will ensure that the City is reinstating the newsletter based upon cost and communication effectiveness.

Overall, the types of contracted services that the City currently engages in for communications are specialized and/or limited term. This is typically the most cost effective utilization of contracted services. These contracted services should be managed by the PIO, to ensure that there is a consistent approach in delivery of external communication strategies. Where appropriate, certain types of contracted costs can be absorbed in-house such as contracted PIO support, which may be eliminated with the implementation of a support position in the communications function.

Recommendation #47: Contracted services should be utilized for one-time, limited term, or specialized communications services and activities such as training, branding, and printing.

Recommendation #48: Contracted services related to communications should be centrally managed and coordinated through the PIO.

Recommendation #49: The Connected Newsletter should be considered for reinstatement depending upon the results of the City's external community survey, to ensure that along with being cost effective it also serves as an effective tool for disseminating important City information to Milpitas residents.

Recommendation #50: If reinstated, the development of the content of the Connected Newsletter should be done in-house by the PIO and their support staff, while design, printing, and mailing should be contracted.

5 SUMMARY OF COST EFFECTIVENESS ANALYSIS

Prior to the institution of the Public Information Officer position, the City was conducting internal and external communications in individual departmental silos, rather than coordinating citywide messages. Any major city initiatives or press releases were drafted by contracted public information support on an hourly basis, and had to be integrated into the City's overall strategic efforts from the City Manager or the Assistant City Manager. These costs are difficult to quantify, as they do not include the time associated with coordinating between departments, drafting the different types of messages, ensuring the right medium of delivery, and conforming with the overall vision of the City. Therefore, it is difficult to conduct a true cost comparison between pre-PIO era and the post-PIO era.

Based upon a simple cost comparison between utilizing contracted PIO support and in-house PIO support, there is a net neutral fiscal impact. Therefore, from a qualitative perspective, the utilization of an in-house PIO promotes understanding of the community, identifying city trends and needs, and building relationships within the media and the community. Additionally, implementing a full-time permanent support position reporting to the PIO is more cost effective than utilizing interns and consultants for similar services for similar level and time of support.

Appendix A: Profile of Communications Function

The following descriptive profile outlines the organization, structure, and staffing of the City's internal and external communications function. The information contained in the profile has been developed through a number of interviews with City staff involved in the process.

The primary objective of this profile is to review and confirm our current understanding of the external and internal communications practices. Observations and recommendations, including peer benchmarking comparisons, will be incorporated in a later report after completing our analytics. Instead, this document focuses on outlining the following items:

- Description of the current external and internal communications practices of the City.
- Organizational and staffing structures of external and internal communications within the City.
- The roles, objectives, and responsibilities of staff assigned to external and internal communications throughout the City.
- Policies and procedures related to external communications.
- Performance measures related to external communications.

The profile is the first deliverable of this project.

1 EXTERNAL COMMUNICATIONS BACKGROUND

External communications refer to an agency's outward facing communications whether it be to the general public or third-party organizations, such as media outlets. External communications are managed differently from agency to agency including different staffing models, different communication mediums and tools. Managing external communications may also be centralized through a specific office or position, such as a City Manager's Office or a Public Information Officer or may be decentralized so that departments or programs are managing their own communications. In the City of Milpitas, there is a hybrid model where a Public Information Officer centralizes much of the citywide communications coordination, but some duties are decentralized with specific departments allocated with their own resources and responsibilities.

Prior to September 2018, the City of Milpitas did not have a Public Information Officer. This was a new position created in the FY2018-2019 budget process. Prior to the creation

of this position, a variety of City departments and city staff fulfilled the communications role. For example, in the City's budget document from FY2017-18, Information Technology was described as the defacto Public Information Office due to its management of the City's website, and the Recreation Department was responsible for most of the City's social media efforts. However, neither of these departments were responsible for the substantive duties that the current Public Information Officer performs. There was no business practice or position responsible for centralizing citywide communications or external messages.

The creation of the Public Information Officer in the FY2018-2019 budget was identified as being critical to ensuring the collaborative development and management of comprehensive citywide communications. After the position was approved, the City's Public Information Officer position was filled by mid-October 2018.

The City of Milpitas now has a hybrid approach where certain external communications are centralized through the Public Information Officer in the City Manager's Office, and other communications may be decentralized and managed by departments with their own staffing and resources. Recreation and Police are two of the larger decentralized departments with specific resources to manage their public affairs and communications. Additionally, Information Technology is responsible for website updates and Planning and Economic Development conduct their own specialized contracted outreach and community engagement efforts. However, all of these efforts are assisted by the Public Information Officer to ensure consistent citywide messaging of services.

There is no formal policy or procedure regarding when and how the Public Information Officer should be utilized by city departments. Although there is no written policy, guidance is provided to department heads through executive management meetings to coordinate where the Public Information Officer can support communications activities.

Staffing for the primary citywide communications function is shown in the following table.

Department	Position Title	Function
City Manager's Office	Public Information Officer	Centralized communication messages for the City

In addition to the Public Information Officer, several departments provide specialized communication activities within their department as ancillary duties. The decentralization of communications services is in relation to the lack of the Public Information Officer prior to the previous fiscal year. The following table shows by department, the position title, and the communications related function performed as ancillary duties with the exception of the marketing coordinator in recreation.

Department	Position Title	Function
Recreation	Assistant Director/Community Engagement and Inclusion Coordinator	Engagement activities for the Recreation department

Department	Position Title	Function
Recreation	Marketing Coordinator	City's graphic design function, including activity guides and brochures for recreation programs
Recreation	Intern	Support the marketing coordinator in development of city graphics and brochures
Police	Media Relation Coordinators: Captain (1), Lieutenant (1), Sergeant (3), Officer (1)	Manages the department's social media accounts, publishes press releases, and performs on-camera interviews.
Police	Community Relations Unit	Manages community engagement activities for the Police Department.
Fire	Emergency Services Coordinator	Conducts educational outreach regarding emergencies
Information Technology	IT Director/Webmaster	Responsible for conducting updates to the City's website.
Information Technology	Video Media Specialist	Responsible for managing the City's Cable TV channels

For those departments not included in the table above, it is important to note that they also may engage in community activities, but they might be project specific rather than a focus of their job duties. For example, Economic Development may host community workshops relating to development activity, but their regular staff are administering the community meetings.

The following subsections provide a detailed description of the different departments that have external communication responsibilities, communication strategies, performance measures, and any policies and procedures.

2 CITY MANAGER'S OFFICE: PUBLIC INFORMATION OFFICER

Currently, the City of Milpitas has a Public Information Officer (PIO) that leads the citywide coordination in disseminating information to the public. The PIO has no direct reports or support staff, but supports the City Manager. Since this position is new, the roles and responsibilities are evolving, but generally, the PIO is responsible for:

- Authoring press releases,
- Fielding inquiries from the press, third party organizations, and the general public,
- Authors citywide social media posts and reviews department city social media pages,
- Compiling information for the City Manager's biweekly newsletter,
- Compiling information for weekly City Council informational email updates,
- Supporting the City Manager in coordinating external communications when the emergency operations center is activated,
- Consulting and preparing departmental staff for media interactions,
- Editing information memoranda,
- Creating internal communications portal for city employees

- Drafting citywide emails for the City Manager – update on citywide issues, and
- Writing Milpitas Matters through coordination with city departments.

This is not an all-inclusive list of responsibilities. Although there is a written job description for the PIO, there is currently no policy, procedure, or resolution from the City Council or City Manager outlining the major responsibilities of the PIO. In practice, the PIO regularly collaborates with city management through executive meetings to identify where communications support is most needed.

To supplement the City's current PIO function, there are a variety of contracted services in use by the city. The following table lists by contract name, the type of service provided, as well as the annual cost associated with that contract.

Contract Name	Service	Contract Amount
David Vossbrink	Public Information Consulting Services	\$30,000
SAE Communications	Media Training for City Council/Executive Staff	\$26,250
Articulate Solutions	Branding/Marketing Services	\$90,000

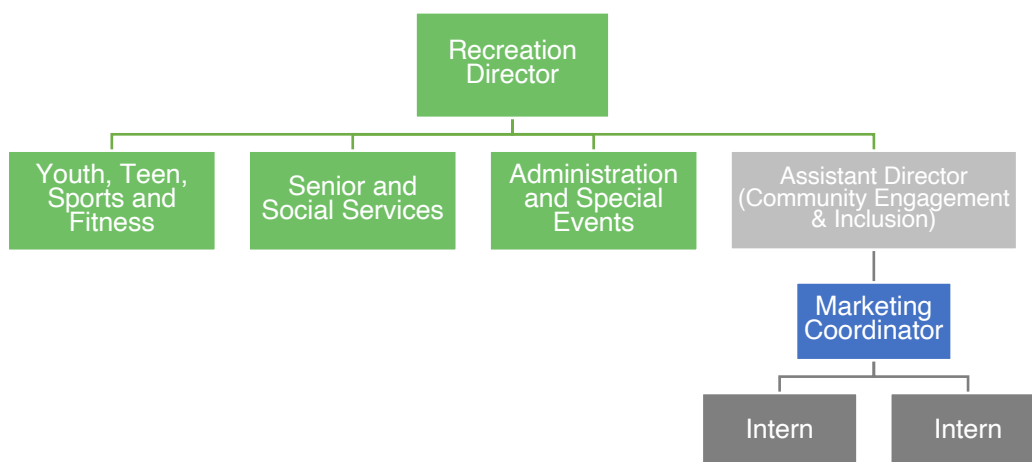
The total contracted costs currently under the communications function are approximately \$146,250. The project team also collected information for the communications function separate from the City Manager's budget. The following table shows the Communications budget by major cost category:

Cost Category	FY 19-20 Budget
Public Information Officer – Salaries & Benefits	\$263,040
Student Intern – Salaries	\$31,035
Subtotal Personnel	\$294,075
Community Promotions	\$2,000
Supplies	\$1,750
Contractual Services (Branding Study + Additional Contracts)	\$100,000
Community Survey	\$50,000
Communications Printing	\$100,000
2020 Census	\$50,000
Memberships and Dues	\$783
Training and Registration	\$5,000
Meals for Meetings	\$500
Subtotal Services and Supplies	\$310,033
Total Communications Budget	\$604,108

The Communications function has a total budget of approximately \$600,000 for FY19-20. It is important to note that the City used to publish a newsletter called "Connected". As part of the FY19-20 budget adoption on June 11, 2019, this item was discontinued, and it represented the \$100,00 associated with communications printing. Therefore, the total budget for communications functions is \$504,108.

3 RECREATION AND COMMUNITY SERVICES

Recreation and Community Services (Recreation) is comprised of four units, three of which focus on administering core programs and services to the public. The fourth unit is Community Engagement and Inclusion, which provides administrative support and coordination for the department's external communications. This unit is comprised of two full-time staff and two part-time interns. Reporting to the Recreation Director is an Assistant Director overseeing Community Engagement and Inclusion. This unit is staffed with a full-time Marketing Coordinator who oversees two interns, as outlined in the following chart.



The Community Engagement and Inclusion unit is responsible for a range of activities including compiling and publishing the department's Activity Guide three times a year, maintaining the department's website and social media pages with up-to-date events and information (at least 4,554 social media engagements in Fiscal Year 2017-18), creating multimedia content to advertise events and programs, and administer advertising campaigns for Recreation's programs and activities. Staff also attend and promote the Recreation department at over 40 community events each year. According to the Fiscal Year 2019-20 Budget, the department has \$269,686 earmarked for marketing activities.

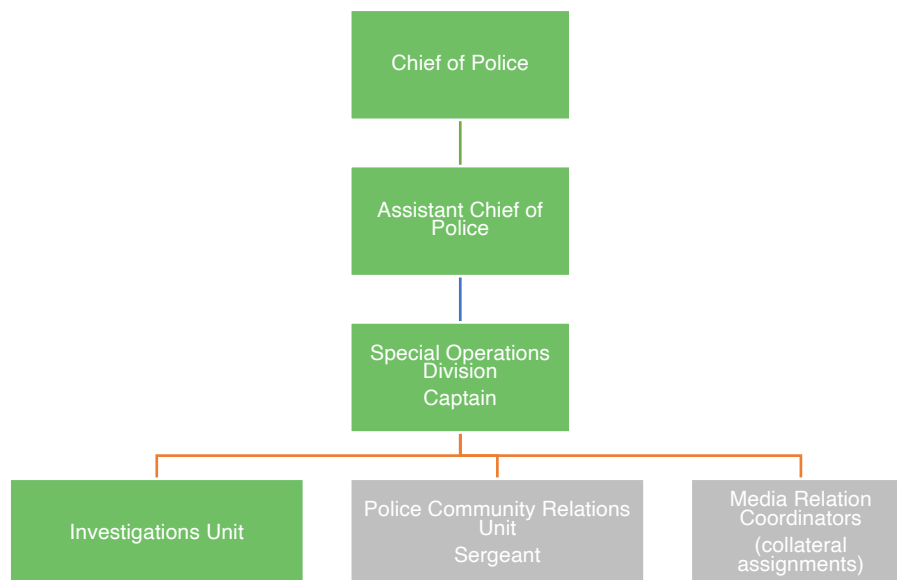
The Assistant Director position is relatively new, created during the Fiscal Year 2018-19 budget cycle, with the intent of creating direct oversight for the department's marketing and communications efforts, while also creating greater capacity to evaluate how to better serve and engage the city's diverse population with its range of social and recreational programs. The position is also responsible for overseeing Public Art, Cultural Arts, Social Services, Special Projects, and Heritage and Special Events. The community engagement and outreach duties are a focus of the position but only in relation to specific recreation-related events and activities.

The Marketing Coordinator is a technical position that focuses on the day-to-day creation of multimedia content that is used in external communications for the department. With support from the two interns, these staff create brochures, flyers, posters, and other electronic multimedia content. Although these staff are dedicated to promoting Recreation's activities, they have created a venue for other departments to submit requests for technical assistance in creating similar materials for their external communication needs.

Although Recreation maintains its own marketing team in this unit, for any new programs, they will coordinate with the PIO for external communications. This may include re-sharing information on Recreation's social media pages or referring public inquiries unrelated to Recreation to the PIO. There is currently no policy or administrative guidance dictating Recreation's interdepartmental collaboration for communications as these interactions have grown organically based on operational need.

4 POLICE DEPARTMENT

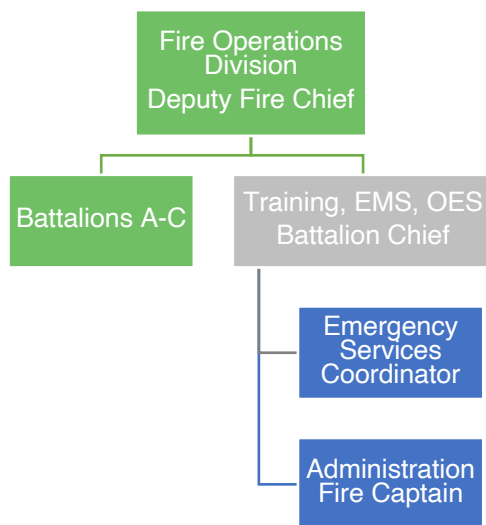
The Police Department is comprised of three main divisions including Special Operations, Technical Services, and Field Services. Under the Special Operations Division, there is a Police Community Relations & Youth Services (CRU) unit dedicated to building stronger relationships between the Police Department and residents through community-based programs such as Police and Community Educational Seminars (P.A.C.E.S.), neighborhood watch, youth crime prevention, citizen volunteer, Police Explorer, and they attend other community events and programs. For Fiscal Year 2019-20, Community Relations had a total budget of \$666,501, amounting to two percent of the department's budget. Staffing for this unit is outlined in the following chart.



Outside the CRU, there is a collateral unit referred to as the Media Relation Coordinators. This team is comprised of six staff including a Captain, Lieutenant, three Sergeants, and an Officer. The Media Relation Coordinators respond to media inquiries and requests for interviews, as well as manage the department's social media pages and publish department press releases. Although the Police Department has its own resources to manage public affairs, staff may coordinate with the citywide PIO for critical incidents or emergency situations. During emergency situations, the PIO will serve as the backup spokesperson for the Police Department.

5 FIRE DEPARTMENT

Although the Fire Department relies primarily on the PIO for external communications support, the City's Office of Emergency Services falls under the Fire Department and plays an integral role in ongoing public education and disaster readiness. This function falls under the Training, Emergency Medical Services (EMS), and Office of Emergency Services (OES) Division. The OES is filled by one full-time position, an Emergency Services Coordinator.

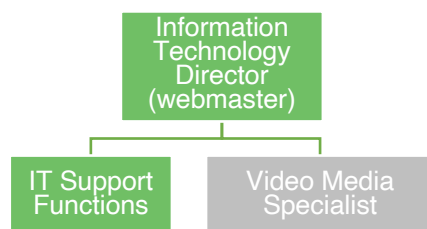


The Emergency Services Coordinator primarily serves in a disaster preparedness and public education capacity, with limited public information duties. During emergency incidents and crises, the Emergency Services Coordinator works with the Public Information Officer to disseminate appropriate information to city staff and residents.

6 INFORMATION TECHNOLOGY

The Information Technology (IT) Department oversees all of the city's hardware, software, systems, and networking needs. The Department is also responsible for the management of the City's website and Cable TV channel. The website was developed in-house by IT

staff and any updates or changes to the content of the City’s website typically go through the IT Department. The website and Cable TV channel are key components of the external communications strategy.



The City’s IT Director serves as the defacto Webmaster for the City, with other IT staff providing backup support. The Webmaster is responsible for updating content on the City’s website, as well as adding any new webpages or new content on the City’s website. Specific individuals throughout the city are trained to update basic components of the website; however, any major changes to a department’s webpage must be administered through the webmaster.

The Video Media Specialist position is responsible for the management of the City’s two Cable TV Channels. The position must plan, produce and direct the broadcast of the live public meetings, provide technical support for any troubleshooting, and administer franchise agreements.

7 OTHER DEPARTMENTS

Outside of the City Manager’s Office, Recreation, Police, Fire, and Information Technology, all other departments manage their communications activities as collateral assignments, often with the support of the PIO. These departments include: Building Safety and Housing, Planning, Economic Development, Public Works, Finance, Human Resources, City Attorney, and City Clerk.

Due to the nature of city services, many departments interact and serve the public and other third-parties on a daily basis, but external communications tend to focus on high-level, customer-oriented interactions. For example, the Planning Department performs typical services of performing reviews to ensure that developers and permit applicants are conforming to the city’s zoning laws and General or Specific Plans. These communications are managed by regular planning staff.

Alternatively, many departments may be involved in facilitating mass external communications, but through their core departmental staff and services. For example, the Office of Economic Development helps maintain and promote economic growth within the City of Milpitas by aiding businesses, developers, and residents. However, in promoting the City of Milpitas as a place for economic investment, staff also coordinate and host community workshops to engage the various community stakeholders interested and

impacted by the city's economic development activities. Not only are staff responsible for facilitating the workshop, but advertising the event, including creating flyers, posting such flyers to their city website and city "News and Announcements" webpage, and printing them for distribution. In this example, the PIO would also typically assist in reviewing flyers and facilitate the distribution of these communications, including publishing these notices through social media, the city website, and other venues as needed.

These departments may also reach out to the PIO for assistance in reviewing written communications, assistance in disseminating public announcements, administering community surveys via Open Town Hall, as well as advice and consultation in preparing for media interviews or responding to media inquiries.

8 EXTERNAL COMMUNICATION STRATEGIES AND TOOLS

Public engagement through external communications can be administered through various mediums including the city website, city mailing list, mobile device application, social media, and traditional media sources (print and cable TV channel). The following subsections outline these various mediums used by the City of Milpitas.

Internet – City Website

The City of Milpitas manages a website at www.ci.milpitas.ca.gov to keep the public informed of the city's various operations, programs, services, and community news. The website contains webpages for each city department and commission, as well as information about the City Council, city management and access to public records. There are also a range of resources and links to external agencies for services relating to residents and businesses based in the City of Milpitas. On the home page of the city website, viewers are first presented with links to city news and announcements and a calendar of upcoming city events and public hearings and meetings.

The City Information Technology Department manages the city website. Departments are responsible for managing content on their webpages but rely on support from the IT Webmaster to process and upload changes.

Internet – City Manager Communications

Through the City Manager's webpage of the City website, there are three tabs or sections related to communications originating from the City Manager's Office. The following points discuss these three sections:

1. **City Manager Communications:** This is a roster of formal memos and reports issued from the City Manager and city department directors to the City Council

regarding a range of city operations. This current page dates back to August 2018 and has not been updated since March 2019.

2. **Weekly Reports:** This is a roster of weekly briefings provided by prior city managers addressing different topical issues relating to city programs or community events. The reports were informal, usually text based, and brief in scope. The webpage has weekly reports in archive dating back to 2016 but has not been updated since March 2019.
3. **Milpitas Newsletters:** This section of the website contains a roster of quarterly community newsletters. The community newsletter on this page was known as *Connected* and contained a wide range of information on updates or changes to city programs and services, briefings on recent events, a calendar of upcoming events, and other news important to the community. The newsletter was usually several pages long and aesthetically designed with graphics to supplement written narrative. Newsletters were printed and mailed throughout the community and distributed at city facilities. The webpage only has five quarterly newsletters from November 2017 through January 2019. The City Council did not renew funding for the printed newsletter during mid-year FY 2018-19, and no funding was allocated in the FY19-20 budget cycle.

Although all of these prior communications have not been updated since the last city manager transition, the current City Manager has begun publishing a biweekly report known as *Milpitas Matters*. This report is similar to the weekly reports of prior city managers, presented informally in a text-based format, available only online. Content is focused on updates to city services and recent events and highlights upcoming community and city events. *Milpitas Matters* is not currently accessible via the City Manager's website but can be found through the City home page under "News and Announcements" section, along with other press releases and other city announcements.

Internet – City Mailing List

Through the City's website home page, visitors can access and view different city announcements, city flyers, and press releases by clicking on "News and Announcements." Postings are not sorted by topic but are presented in the chronological order in which they're posted in a grid format. Visitors also do not have the ability to sort or filter postings to search for specific announcements or news.

However, on the top banner of the city website, visible on any subpage of the city website, there is a "Stay Informed" tab that takes visitors to sign up for automated e-mail blasts from the city. As visitors register their email account for the mailing list, they are presented with 18 different categories of communication from the city, so users can filter which topics they would like to receive regular communications about. Visitors can select from the summarized list:

- Agendas and minutes for the City Council and other city commissions
- Current bids for vendors looking to do business with the city.
- Employment Opportunities.
- Milpitas Latest News.
- Newsletter
- Activity Guide and Recreation Activity Guide.

Based upon these topic selections users are emailed periodically with information regarding city events and information.

MyMilpitas – Mobile Device Application

MyMilpitas is a free mobile device application accessible on a range of mobile devices from the Apple App Store or Google Play Store. Individuals may also access a limited version of the application online at www.ci.milpitas.ca.gov/milpitasapp/. The application is hosted by a private, third-party vendor, SeeClickFix.

The application may be used to report non-emergency, quality-of-life issues within the City of Milpitas, such as potholes, streetlight problems, or other maintenance issues. Although maintenance requests can be submitted through both the website and mobile application, the mobile application also offers other information to the public. Information accessible through the application include:

- A calendar of city events
- Links to other government agencies providing services within the City of Milpitas
- A listserv to sign up for notices from the City of Milpitas
- Access to an interactive map that displays where maintenance issues have been reported, and a summary of each issue.

The City and vendor recently released an update to this application to allow the City to notify users when a maintenance request is being responded to by city staff. The prior version of the application did not facilitate communication with the city regarding maintenance requests, now creating a higher level of transparency and accountability.

Social Media

The City of Milpitas is engaged in multiple social media platforms with several accounts registered through Facebook, Instagram, Twitter, and Nextdoor. The following graphic lists by social media site, the number of accounts, the name of the account, and the frequency of posting:

Social Media Type	# of Accounts	Account Information	Actively Posting
Instagram	1	@cityofmilpitas	Last Post January 2017
Nextdoor	1	https://nextdoor.com/agency-detail/ca/milpitas/city-of-milpitas/	Actively Posting
Twitter	4	@MilpitasCityJob	Last Post March 2019
		@MilpitasPD	Actively Posting
		@MilpitasCity	Last Post April 2019
		@MilpitasFire	Last post June 2019
Facebook	3	@CityofMilpitas	Actively Posting
		@MilpitasRecreation	Actively Posting
		@MilpitasPD	Actively Posting
Nixle	1	Milpitas Police Department	Actively Posting

Currently, the PIO has taken on the role of managing and moderating general City of Milpitas accounts, while Police and Recreation manage their respective departmental accounts. Any other department without social media specific accounts may request assistance from the PIO to post content to general city accounts.

Traditional Media

Traditional media refers to media predominantly used for decades prior to the advent of the internet and mobile devices, including television, radio, and printed publications such as newspapers and magazines.

The City manages two different TV channels – Channel 15 and Channel 26. Channel 15 is primarily for the purpose of streaming public meetings such as City Council or Planning Commission. This channel and its content is managed by the Video Media Specialist position in the IT department. Channel 26 is managed through PEG funds and generally runs old materials or new materials that the City receives from the public. Channel 26 is not actively managed by City staff.

In the City of Milpitas, print publications are the most used traditional media tool. The largest user of print publications is Recreation since their core services and programs are regularly advertised to the public. The Recreation department publishes approximately 9,000 activity guides a year (5,000 Summer and 2,000 each for Fall and Spring) costing approximately \$52,400. These activity guides are available for pickup at the City's recreation and community facilities, as well as online in electronic format.

Other departments may also print flyers to advertise updates about services or promote upcoming community events and activities. In addition to printing and distributing directly, the City may purchase advertising space or coordinate with local newspapers to market certain city events and activities. These types of traditional media uses are limited to major events and city initiatives.

9 WORKLOAD / PERFORMANCE MEASURES

The City currently tracks a variety of workload and performance metrics in its budget book related to the external communications function. The following table shows by performance measure type the amount processed over the last two years and the forecast for the current year:

Workload / Performance Measure	FY17-18 Actual	FY18-19 Estimate	FY19-20 Forecast
Information Memos Published	21	85	95
City Manager Weekly Reports	49	45	46
Press Releases	9	16	30
Communication to all employees	13	20	30
Number of Social Media Campaigns	n/a	5	10
Number of Recreation Social Media Engagements	4,554	9,785	10,179
Police Community Presentations	56	80	85
Fire Public Education Events	199	200	225
Website Availability	99.99%	99.8%	99.99%

In addition, the Police Department tracks additional workload measures relating to communications activities. In 2019, the department published 83 press releases and hosted 100 community engagement events.

Generally, there seems to be an upward trend in the workload and performance measures related to communications for the city.

10 POLICIES AND PROCEDURES

There are no citywide policies and procedures related to external communications. The only department with a policy related to any form of communications is the Police Department. The Milpitas Police Department adopted Policy No. 343 Department Use of Social Media in May 2019. This policy discusses the types of sites and activities that can be considered social media, approval mechanism for social media posts, and the content of the posts. Based upon this policy, the PIO is currently developing a Citywide Social Media Use policy. The Police Department also has Policy No. 346 News Media Relations, and Policy No. 1058 Employee Speech and Social Networking.

Even beyond use of social media, there are no written guidelines regarding the effective utilization of the Public Information Officer, including for what types of media and communication activities the PIO should be utilized compared to other types of more specialized resources.

11 BACKGROUND AND STAFFING ON INTERNAL COMMUNICATIONS

Internal communications refer to an agency's ability to communicate information from management and leadership to other employees within the organization. There are a variety of methods of providing internal communications. The following subsections discuss the city's background on internal communications and strategies.

There is no dedicated position within the City to manage the flow of internal communications, whether it is about internal city policies, or external city events. The flow of information internally has been managed at the departmental level by department heads, and department heads receive that information from the City Manager. Any information related to employee compensation or benefits changes has been disseminated through the Human Resources department.

12 INTERNAL COMMUNICATIONS STRATEGIES

Similar to the external communications strategies, the City currently employs a variety of strategies to engage in internal communications. These range from traditional forms such as employee newsletters to more technologically advanced such as an employee intranet. The following sections discuss these items.

Employee Newsletter

The Human Resources Department is responsible for drafting and emailing a monthly newsletter to all employees. This newsletter includes information regarding employee benefits, reminders regarding enrollment, discussion of employee birthdays, and fun facts regarding the month. This newsletter is drafted by Human Resources employees and mailed directly to employee inboxes.

Community Service Area – Roundtable Meetings

The City of Milpitas has divided its departments into different community service areas (CSAs). These CSAs have a weekly meeting with the City Manager's office to discuss key issues and areas of concern for those specific services. The City is currently split into four CSAs as follows:

1. **Development-Related:** This CSA includes Building Safety and Housing, Planning, Economic Development, Land Development, Economic Development, and Fire Prevention.
2. **Public Safety:** This CSA includes Police and Fire.

3. **Internal Services:** This CSA includes services such as Finance, Human Resources, City Manager's Office, and Information Technology.
4. **Community Services:** This CSA includes Recreation, Public Works, and Engineering.

These four community service areas enable the City Manager and Assistant City Managers to meet with department heads on a regular basis in a focused environment on issues impacting similar types of service areas and departments.

Informational Memos

A prior City Manager used to develop bi-weekly (two times a month) informational memos for distribution to Council as well as to department heads. These memos included detailed information on major projects and initiatives from each department. The department heads were responsible for providing that information to the City Manager's office who would send the memo to council and department heads. The department heads then had the ability to either forward the information or share the information with line level staff.

Employee Intranet

In November 2019, the City launched its revamped employee intranet. The purpose of the intranet is to provide a centralized database for city employees to access policies and procedures, as well as learn information regarding important city events and news. This intranet is now the homepage of all city employees. Representatives from each city department will be responsible for maintaining current information regarding their department. This intranet will also serve as a way for employees to directly communicate with each other.

Communications Team

With the advent of the Public Information Officer position, an internal city communications team was created. The primary purpose of this internal communications team was to have representatives from all City departments to draft the development of the intranet.

With the launch of the intranet, the communications team's primary purpose has been fulfilled. However, a new area of focus or project has not been announced for the communications team.

Appendix B: Comparative Survey

The Matrix Consulting Group was retained by the City of Milpitas to assist with the evaluation of the City's communications process. As part of this study, we conducted a survey to understand the communications practices of comparable jurisdictions in the region. The survey gathered information on demographics, organizational structure, staffing, and business practices for managing their communications function. This document presents the results of this comparative analysis.

1 PROJECT BACKGROUND AND INFORMATION

The analysis focuses on comparing communications practices for each surveyed jurisdiction. Cupertino, Palo Alto, Mountain View, Redwood City, Santa Clara, and Sunnyvale were chosen as the comparable jurisdictions based upon the following factors:

- **Region:** The Bay Area is a dynamic and fast paced environment with a variety of events and activities. Cities in the south bay area and the peninsula are similar to Milpitas in the types of challenges that they face - high growth, housing, and transit-related issues. Additionally, all of the proposed jurisdictions are in Santa Clara County.
- **Services:** All of the cities except for Cupertino are full-service cities, meaning they provide all or majority of municipal services (i.e. police, fire, utilities, parks and recreation, etc.) in-house.
- **Population:** The jurisdictions have a similar service or target population to which they provide their communication efforts.

For each of these jurisdictions, the survey utilized two primary data collection techniques:

1. **Online Research:** Reviewed city websites to gather publicly available information on public information offices and external communications practices. Additionally, publicly available documents, such as budget documents, organization charts, and job specifications were gathered and reviewed.
2. **Jurisdiction Outreach:** Reached out to individual jurisdictions via email and phone calls to gather additional information regarding their communications policies, procedures, and business practices.

The results of the analysis of the comparative survey are presented in this document.

2 SUMMARY OF FINDINGS

In conducting the comparative analysis, the project team collected information related to municipal communications practices. The following points discuss the key takeaways from the analysis:

- All six cities surveyed have a public information officer to provide centralized communications.
- The responsibilities for the Public Information Officer are generally similar across jurisdictions with some jurisdictions requiring contract oversight and the development of performance measures as part of the responsibilities.
- The Public information Officer generally has support staff to help in the execution of day to day communication tasks, drafting press releases, social media posts, and other matters. The City of Milpitas is the only city with one position in the communications office.
- Communications functions are generally centralized in other jurisdictions, with some decentralization for departments such as Police, Fire, and Recreation. This is similar to Milpitas' current organizational approach.
- For specific communications training needs and branding studies several jurisdictions rely on contracted communications support.
- Facebook, Twitter, and Instagram are the most commonly social media tools used to communicate general updates, events, press releases, and emergencies.
- The frequency of newsletters varies across jurisdictions; however, the content is generally similar and typically focuses on providing updates on the city's events.

The following sections provide further information and detail regarding these comparative factors.

3 DEMOGRAPHICS AND SERVICES

The project team collected basic demographic information for each of the surveyed jurisdictions. Communications budget and staffing data refers to public information offices, public information officers, or equivalent citywide communications roles for each peer. This data set does not include communications resources that may exist in individual departments, but these additional resources are discussed later in this report.

The following table summarizes relevant demographic data regarding the comparable jurisdictions.

Jurisdiction	Population	Demographics Information			
		Citywide FTE	Communications FTE	Communications Budget ⁸	Communications Budget per Capita
Milpitas	78,106	431.25	1.00	\$504,108	\$6.45
Cupertino	60,777	202.75	2.95	\$696,310	\$11.46
Palo Alto	67,178	1,034.85	2.00 ⁹	\$257,136 ¹⁰	\$3.83
Mountain View	81,438	649.75	1.60 ¹¹	Not available	N / A
Redwood City	86,685	564.36	2.90 ¹²	\$1,225,058	\$14.13
Santa Clara	127,134	1,131.75	2.80 ¹³	\$1,311,352	\$10.31
Sunnyvale	153,656	921.96	2.00	Not available	N / A
Average (excl. Milpitas)	96,145	751.00	2.38	\$872,464	\$9.93

The communications divisions, or public information offices, from the survey group range between 1.60 FTE (Mountain View) to 2.95 FTE (Cupertino). The City of Milpitas communications staff is 1 FTE, less than the 2.38 group average. The cities of Mountain View and Sunnyvale do not have a public information office or communications function budgeted as a separate division so budgeted resources specifically for that function were not available. The City of Milpitas also does not budget its public information office separately; however, information was provided by the City's Finance Department. Of those jurisdictions that have a division specific budget available, the City of Palo Alto has the smallest communications budget with \$257,136 and the City of Santa Clara has the largest with \$1,311,352. The average communications budget was \$872,464. The variation in the communications budget is in relation to contracted expenses being included in communications compared to individual city departments.

To provide a comparison of the public information function, the project team compared the impact of the budget of the communications function to the target audience. The average communications cost per capita is \$9.93. The City of Milpitas at \$6.45 has the lowest communications budget per capita with the exception of Palo Alto. However, it is important to note that the budget for Palo Alto is only representative of the external communications component and does not include any internal communications staffing or contracted costs.

⁸ The communications budget included is only reflective of centralized communications and duties, and does not include staffing or contracted costs budgeted in other city departments / functions.

⁹ Only 0.90 FTE are dedicated to external communications; however, 2.0 FTE budgeted for all communication efforts.

¹⁰ The communications budget is only reflective of staff in City Manager's office and not communications staff budgeted in other funds or departments.

¹¹ 0.60 FTE are limited term positions related to demand for translation services for Census 2020 and for support for outreach for the Center for Performing arts.

¹² Includes 0.90 FTE for Deputy City Manager.

¹³ The 2.80 FTE are full-time positions; however, the division supplements staffing through as-needed staff.

The municipal services provided by each comparative agency were identified to show the range of departments for which each city must support external communications. The following table summarizes the findings.

Municipal Services Provided

	Planning	Building	Public Works	Fire	Police	Parks	Utilities
Milpitas	✓	✓	✓	✓	✓	✓	✓
Cupertino ¹⁴	✓	✓	✓			✓	
Palo Alto	✓	✓	✓	✓	✓	✓	✓
Mountain View	✓	✓	✓	✓	✓	✓	✓
Redwood City	✓	✓	✓	✓ ¹⁵	✓	✓	✓
Santa Clara	✓	✓	✓	✓	✓	✓	✓
Sunnyvale	✓	✓	✓	✓	✓	✓	✓

The City of Milpitas provides nearly all the same services as the other jurisdictions, with the exception of Cupertino which does not have Fire, Police, or Utilities.

4 COMMUNICATIONS POSITION RESPONSIBILITIES

As part of the comparative analysis, job descriptions were collected of city communication officers and public information officers. The following table summarizes the major duties of the communications officer based upon published job descriptions and provides a visual comparison of those responsibilities among the jurisdictions surveyed.

Major Duties of the Public Information Officer Role

Major Duties	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Communications Strategic Plan	✓	✓	✓	✓	✓	✓	✓
Implement and Update Communication-Related City Policies				✓			✓
Principal Media Representative	✓	✓	✓		✓	✓	✓
Develop External Outreach Products (i.e. newsletter; press releases, community relations, social media posts)	✓	✓	✓	✓	✓	✓	✓
Coordinate Community Events and Activities		✓	✓	✓	✓	✓	✓

¹⁴ The City of Cupertino contracts with the Sheriff's office for Police services and with the County Fire for Fire services.

¹⁵ Redwood City shares fire services with the City of San Carlos.

Major Duties	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Oversee Media Related Contractors			✓	✓		✓	✓
Track Performance Measures			✓		✓	✓	✓
Coordinate Internal Communication			✓		✓	✓	✓
Identify strategic challenges and issues related to communications			✓		✓	✓	
Prepares Annual Budget for Communications	✓		✓		✓	✓	✓
Cultivate strategic communication partnerships		✓	✓			✓	
Manage Public Information during Emergency Operations Center Activation	✓			✓		✓	
Promotes Citywide Community Engagement Events	✓	✓	✓	✓	✓	✓	✓

As the table indicates, there are a variety of functions outlined in the published position description. The roles and responsibilities of the public information officer vary between jurisdictions. All of the jurisdictions specify that the communications manager develop a citywide communications strategic plan, serve as principal media representative, and promote citywide community engagement events.

It is important to note that this comparison of job duties was from published job descriptions and not all jurisdictions update their job descriptions to reflect the actual job duties. Therefore, there are additional job duties that are performed by PIO's that are not included in the previous table. For example, in the City of Milpitas, while it is not part of the PIO job description, the PIO is responsible for coordinating internal communications. Many job descriptions include the catch all phrase of "other job duties as necessary" to help capture any additional duties that are being performed that are not explicitly outlined in the published job description.

Several jurisdictions have certain job specifications for the Public Information Officer that are unique and have been noted below by jurisdiction:

Jurisdiction	Job Duty
Cupertino	Build consensus for enterprise solutions by promoting ideas persuasively, working through organizational conflict and shaping stakeholder opinions
Palo Alto	Identify challenges and emerging issues faced by the organization. Work with leadership team and staff to recognize internal and external communications opportunities and solutions, and define and execute appropriate strategies to support them
Redwood City	Create and manage a decentralized communications team to support the departments' communication needs and the development and execution of the communication's strategy
Sunnyvale	Develops, implements, and updates policies and procedures for community relations media relations, and public information

These specific job duties provide insight into the types of unique and specialized ways that a jurisdiction can utilize the public information officer, whether it is to manage internal communications, write policies and procedures, or help address major strategic challenges within the community.

In most cases, the public information officer is supported by additional staff within the division. The following table provides by jurisdiction, the title and description of staff members that support the communications officer in their respective jurisdictions.

Public Information Officer Support Positions

Jurisdiction	Title	Function
Milpitas	N/A	N/A
Cupertino	Community Outreach Specialist	Responsible for generating media, coordinating projects.
	Office Assistant	Provides administrative support to communications staff.
Palo Alto	Communications Manager	Manages communications process by performing external communication tasks.
Mountain View	Community Outreach Coordinator	Provides support to the communications coordinator in conducting public engagement activities.
Redwood City	Management Analyst I	Provide data analysis and performance indicators.
Santa Clara	Communications Outreach Manager	Website design and assists in public communication duties.
Sunnyvale	Web and Communication Specialist	Maintains the communications webpage, social media and other external communications.

In every jurisdiction other than Milpitas, there is at least one additional staff member that provides support. The City of Sunnyvale has a web specialist that is tasked with maintaining web based external facing products. A similar role can be found in Santa Clara where a Communications Coordinator provides support through digital functions. The extent of the support provided by staff in the remaining jurisdictions are general functions that include maintaining communications posts, websites, and providing general administrative support to the communications team.

5 PUBLIC INFORMATION SUPPORT IN OTHER DEPARTMENTS

In addition to the public information officer, some jurisdictions provide additional communications staff to larger departments. These positions may work in conjunction with the city public information officer, but focus primarily on their department and generally serve in an ancillary capacity, as they have other roles and responsibilities in

their full-time job duties. The following table shows the department, title and function of the communications staff in other departments.

Public Information Positions In Other Departments

Jurisdiction	Department	Title	Function
Milpitas	Recreation	Assistant Director / Community Engagement and Inclusion Coordinator	Engagement activities for the Recreation department
	Recreation	Marketing Coordinator	City's graphic design function, including activity guides and brochures for recreation programs
	Recreation	Interns	Support the marketing coordinator in development of city graphics and brochures
	Police	Patrol Sergeant	Supports the department's outreach efforts
	Police	Community Relations Unit	Manage Police's social media outreach and engagement with the community
	Fire	Emergency Services Coordinator	Conducts educational outreach regarding emergencies
	Information Technology	IT Director / Webmaster	Responsible for conducting updates to the City's website.
Cupertino ¹⁶	Information Technology	Video Media Specialist	Responsible for managing the City's Cable TV channels
	N/A	N/A	N/A
	Parks and Recreation	Marketing Coordinator	Responsible for providing marketing support for development of activity guides
Palo Alto ¹⁷	Library	Library Specialist	Responsible for supporting the development of library promotional materials
	Utilities	Marketing / Communications Staff	Support in relation to marketing and communication materials for rates and program updates.
	Police	Lieutenant	Serves in a collateral duty
Mountain View	Police	Police Media and Community Relations Coordinator	Serves as the public information officer for the police department, interacts with media and engages with the community through social media.
	Fire	Office of Emergency Services Coordinator	Manages media, community and publications programs for the Fire Department.

¹⁶ The City of Cupertino contracts for Police and Fire Services, as such there are no dedicated support beyond the centralized communications support.

¹⁷ Based upon survey information reported by the agency, there is no dedicated support for Fire in Palo Alto in relation to communications.

Jurisdiction	Department	Title	Function
Redwood City	Parks	Assistant Parks, Recreation and Community Services Director	Represents the department in communications with agencies, the public and information requests.
	Police	Police Captain	In addition to daily Police duties, the Captain serves as the Police department's communications officer.
Santa Clara	Fire	Battalion Chief	Serves as the department's public information officer when necessary in addition to daily duties.
	Silicon Valley Power	Communications Technical Services Manager	In addition to technical task, the position maintains communication and supervises the work of technical personnel in maintaining records and files.
Sunnyvale	Public Safety (Police and Fire)	Captain	Serves as PIO for Police and Fire Incidents
		Part-time Non-Sworn Position	Social media posts for Police and Fire
	Env. Services	Marketing / Outreach Coordinator	Conducts outreach for environmental grants
	Library and Community Services	Marketing / Communications staff (3.5 staff)	Support the library and community services department for recreation programs

Relative to the surveyed cities, the City of Milpitas provides greater communications support to individual departments outside of the City Manager's office. The City of Milpitas only has one public information officer in the City Manager's office, compared to the average of 2.38 positions of surrounding jurisdictions.

Based upon the comparative survey information gathered through the cities' websites and conversations with communications staff, Cupertino is the only city surveyed that did not have dedicated staff support outside of the City Manager's office for communications. This is due to the limited amount of services provided in-house by Cupertino (no public safety and no utilities).

Mountain View and Santa Clara provide dedicated communications staff for their public safety functions: police and fire. Santa Clara also has a communications support position for its power utility.

6 BACKUP TO THE PUBLIC INFORMATION OFFICER

In cases where the chief public information officer is unavailable, it is a common practice to assign a backup that acts as the public information officer. The following table shows the position that is responsible for being a backup in each surveyed city.

Public Information Officer Backup

Jurisdiction	Backup
Milpitas	N/A
Cupertino	Community Outreach Specialist
Palo Alto	Communications Manager
Mountain View	Assistant to the City Manager
Redwood City	Deputy City Manager
Santa Clara	Communications & Outreach Manager
Sunnyvale	Deputy City Manager

All of the surveyed jurisdictions have an assigned backup in the absence of the public information officer, with the exception of Milpitas. The most common role that serves as the backup is the second most senior ranking position in their respective communications teams. Mountain View, Redwood City, and Sunnyvale utilize other staff in the City Manager's office such as the Assistant to the City Manager and Deputy City Manager respectively as the backup in times of emergency.

7 COMMUNICATIONS POLICIES

The cities of Santa Clara and Redwood City have a media relations policy, which provides a clear delineation of the types of communications that can be done at the department head level compared to the types of communications that require approval from the city public information officer or city management.

The City of Mountain View allows division and department heads to communicate externally, but there is always the option to use the Communications Coordinator as a resource, if needed. This is an informal practice within the City as there are no written policies or procedures in relation to external or internal communications. The City of Cupertino employs a similar structure where department heads may respond to the public if they feel comfortable doing so, while the PIO is available to help if needed.

The majority of the jurisdictions surveyed utilize informal approaches and policies and procedures to guide their communications efforts.

8 EXTERNAL CONTRACTS

The project team contacted all of the surveyed jurisdictions to obtain information regarding the types of communications services that are contracted externally, as well as the costs associated with those contracts. In many cases, the information regarding the detail of these costs was not available or the community was not willing to share the specific cost line items.

The following table provides a list of external contract services and the contract amount, if provided by the respective city.

External Contractor Services		
Jurisdiction	Contract Service	Contract Amount
Milpitas	Public Information Consulting Services	\$30,000
	Communications / Media Training for City Council / Executive Staff	\$26,250
	Branding / Marketing Services	\$90,000
Cupertino	Communications Specialist and PR Consultant	\$15,000
Palo Alto	N/A	N/A
Mountain View	ADA Consultant	\$200,000
Redwood City	N/A	N/A
Santa Clara	Communication Consultant	N/A
	Writing Consultant to support City newspaper, annual calendar and annual report	N/A
	Creative Services to Redesign City Newspaper	N/A
	Census 2020	\$100,000
Sunnyvale	Videographers	\$75,000
	Photographers	\$50,000
	Graphic Design	\$25,000
	KMVT	\$50,000
	Newsletter	\$75,000

The Cities of Milpitas, Cupertino, and Santa Clara have contracted with a communications consultant. Both Milpitas and Santa Clara have also contracted for some form of creative solutions to branding and marketing of products.

9 PERFORMANCE / WORKLOAD MEASURES

Many jurisdictions have a set of workload measures used to determine the effectiveness of different methods of communications. The following table summarizes the types of performance measures (insert footnote) used by each jurisdiction.

Workload Measures							
	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Social Media Engagement	✓	✓		✓	✓	✓	✓
# of Outreach Products				✓		✓	✓

	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Newsletter Engagement			✓	✓	✓	✓	
Website Engagement			✓	✓			
Survey Engagement			✓			✓	
# of Media Inquiries				✓			✓
# of Videos Produced						✓	

The most common measure used among the jurisdictions surveyed is the number of social media engagements. The second most common measure is newsletter engagement, followed by the number of outreach products (newsletter, press releases, etc.). Only Palo Alto and Santa Clara measure survey engagement, while Mountain View and Sunnyvale both track the number of media inquiries. The City of Santa Clara is the only jurisdiction that tracks the number of videos produced in the fiscal year.

10 SOCIAL MEDIA USAGE, CONTENT, AND POLICIES

A large component of current external communications is the use of social media by cities to convey information to the public in a quick and efficient manner. The following table summarizes the social media website used by the communities in the comparison.

Social Media Channels Used

Social Media Tool	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Facebook	✓	✓	✓	✓	✓	✓	✓
Twitter	✓	✓	✓	✓	✓	✓	✓
Instagram	✓	✓	✓	✓	✓	✓	✓
YouTube	✓	✓	✓	✓	✓	✓	✓
Nextdoor	✓	✓	✓	✓	✓	✓	✓
LinkedIn	✓	✓	✓	✓	✓	✓	✓
Nixle	✓	N / A ¹⁸	✓	✓	✓	✓	✓
Snapchat					✓		

All of the jurisdictions are active on multiple social media platforms including Facebook, Twitter, Instagram, YouTube, Nextdoor, LinkedIn, and Nixle. Redwood City is the only jurisdiction active on Snapchat. It is important to note that these agencies have accounts on all of these social media platforms; however, not all platforms are treated equally and kept up to date in the same manner. The following table provides a summary of the types of information presented on the city social media platforms.

¹⁸ Cupertino contracts for public safety services and Nixle is for public safety departments only.

Information Provided On Social Media

Media Content	Milpitas	Cupertino	Palo Alto	Mountain View	Redwood City	Santa Clara	Sunnyvale
Events	✓	✓	✓	✓	✓	✓	✓
Press Releases	✓	✓	✓	✓	✓	✓	✓
Emergency	✓	✓	✓	✓	✓	✓	✓
Programs	✓	✓	✓	✓	✓	✓	✓
Updates	✓	✓	✓	✓	✓	✓	✓
Surveys	✓					✓	
Social Media Policy			✓	✓		✓	✓

All of the jurisdictions use social media to post information on events, press releases, emergencies, programs, and general city updates.

The jurisdictions were also asked if they have an official social media policy. Of the surveyed jurisdictions, only Mountain View, Santa Clara, Palo Alto, and Sunnyvale have written social media policies. The City of Milpitas has a draft policy that is in the review process and the Milpitas Police Department has its own social media policy.

11 SMARTPHONE APPLICATIONS

In conjunction with social media, many jurisdictions have developed or purchased third-party applications for mobile devices and web browsers to relay information directly to residents in the quickest way possible. The following table lists the applications used by each jurisdiction.

Smartphone Applications

Jurisdiction	Application Name
Milpitas	myMilpitas, Pulsepoint
Cupertino	Ready 95014, Mobile 95014, Cupertino 311
Palo Alto	Palo Alto 311
Mountain View	Ask Mountain View, Pulsepoint Respond, Library Anywhere
Redwood City	myRWC
Santa Clara	mySantaClara
Sunnyvale	None

Every jurisdiction other than Sunnyvale has made an application available to the public that provides basic information, frequently asked questions, and general news and updates to its citizens. Applications such as myMilpitas, myRWC, and mySantaClara

allow residents to make service requests. For example, residents can use the applications to alert the city of graffiti in a public space and prompt the start of the removal process. The City of Milpitas and Mountain View utilize the Pulsepoint application, where residents can request emergency services staff.

12 PRESS RELEASES

One of the most common forms of public communication are press releases. Press releases are written communications on a specific topic or event with the purpose of informing the public and the press on the matter at hand. Every surveyed city provides periodic press releases when necessary and posts them on their respective websites. In all of the jurisdictions surveyed, it is the responsibility of the public information officer, or equivalent position, to publish citywide press releases. In some communities, department specific press releases may be issued directly by the department PIO (such as in some police operations).

13 COMMUNITY NEWSLETTER

A common form of communication with the public is a community newsletter. The purpose of these newsletters is to notify the community regarding major changes within the city and events happening within the City. The following table provides information regarding how the comparable communities handle community newsletters.

Community Newsletters			
Jurisdiction	Newsletter	Content	Frequency
Milpitas	Yes ¹⁹	Updates on City Events	Twice a Month
Cupertino	Yes	Articles on interest topics related to the city, provides awareness to happenings, and community calendar.	Once a Month
Palo Alto	Yes	Includes a message from the City Manager, links to articles, event updates, and social media highlights.	Once a Month
Mountain View	Yes	Includes a message from the City Manager, updates on capital improvement projects, and community events.	Twice a Year
Redwood City	Yes	Provides updates on city events, happenings, news, and activities.	Weekly / Quarterly ²⁰

¹⁹ In addition to digital newsletter posted on the City's website, the City used to have a printed newsletter "Connected", which used to be mailed to residents once a quarter. This was discontinued due during the budget adoption for FY19-20.

²⁰ The printed newsletters are mailed quarterly. The weekly newsletters for Redwood City are an email blast to subscribers of the weekly newsletter.

Jurisdiction	Newsletter	Content	Frequency
Santa Clara	Yes	Highlights local events, community programming, an occasional reading list and general updates.	Three Times a Year
Sunnyvale	Yes	Provides updates on city events, news, provides statistics on the growth of the city, and answers questions.	Three Times a Year

All of the jurisdictions surveyed, provide a newsletter to the public that is made available via a digital copy online and are mailed to the residents of the city. The frequency in the newsletters vary, with Cupertino and Palo Alto providing them on a monthly basis, Santa Clara three times a year, Sunnyvale four times a year, and Redwood City on a weekly basis.

The contents of the newsletters are generally similar, with all providing updates on the events within the city, activities around the city, and updates on public improvement projects. The City of Sunnyvale provides statistical data and analysis to show growth projections and trends in areas like economic development, and Palo Alto provides unique social media highlights.

14 UTILITY BILL COMMUNICATIONS

Most jurisdictions including Milpitas, provide additional pieces of information in utility bills. This information can come in the form of an attachment to electronic transmissions of utility bills or accompany the physical billings. These inserts provide updates on any changes to services, provide utility savings tips and other general information.

Appendix C: Employee Internal Communications Survey Results

As part of the Matrix Consulting Group's study for the City of Milpitas, the project team distributed an anonymous survey to City employees in order to learn about the way they receive internal communication from the City and gauge their opinions on internal communication and thoughts about how it may be improved.

This survey generally asked three types of questions:

- **Respondent Demographic Questions:** Respondents were asked to indicate their department, how long they have worked for the City, and their level of responsibility.
- **Factual Questions:** Respondents were asked to provide factual responses regarding the modes and frequencies of internal communication in their Department and throughout the City.
- **Opinion Questions:** Respondents were asked to provide their opinion on the effectiveness of different types of communication and opportunities for improvement.

The link to the online survey was distributed to a group of 476 City employees, of which 115 completed the survey, for a response rate of 24%.

1 SUMMARY OF SURVEY RESULTS AND FINDINGS

While a more detailed analysis can be found in the sections below, the following points summarize the key findings from the responses received to this survey:

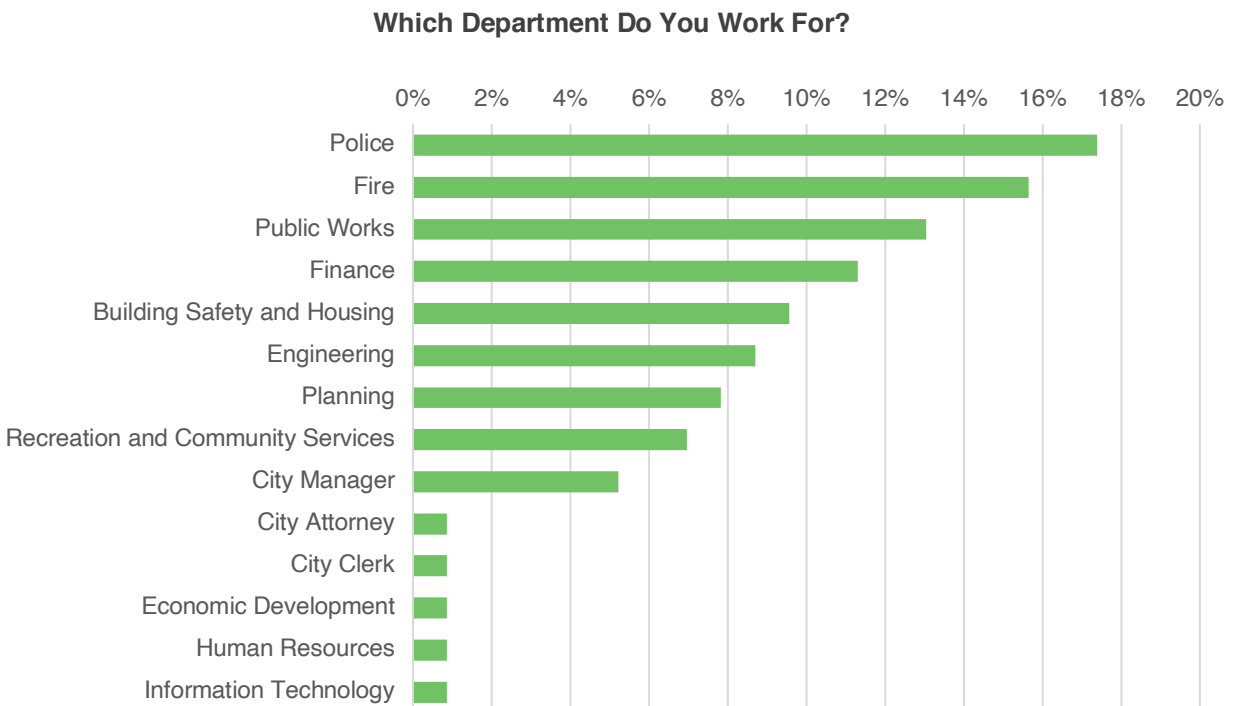
- Most staff rely on email from their department head for news relevant to them in their role with the City, and most staff indicate email as their preferred mode of future communication.
- Most respondents receive some form of internal communication either once per week (especially true among police and fire staff) or twice per month (especially true among planning, building, and engineering staff).
- Executive level respondents were much more likely to report frequent internal communication than staff at lower levels of their department.

- Respondents generally believe they receive effective internal communication from leadership, particularly their own department director and direct supervisor. Where there is room for improvement, they generally point to the City Manager and Council and their department head, rather than their direct supervisor or manager.
- Most staff prefer frequent communication from their direct supervisor, somewhat less frequent from their department head, and occasional updates from the City Manager and Council.
- While email is the preferred method of internal communication, about a third of staff want in-person interaction with their department head and direct manager or supervisor.

The following sections provide the analysis supporting these findings and explore them in more depth.

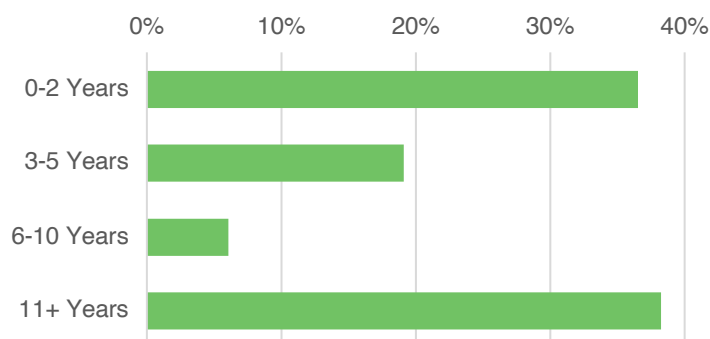
2 RESPONDENT DEMOGRAPHICS

The first section of the survey asked respondents to provide information about their department, years of service, and level of responsibility/authority in their Department. Of 115 respondents, the greatest volume of responses came from the Police Department (20), the Fire Department (18), and the Public Works Department (15). Finance (13) provided the most responses of any administrative department.



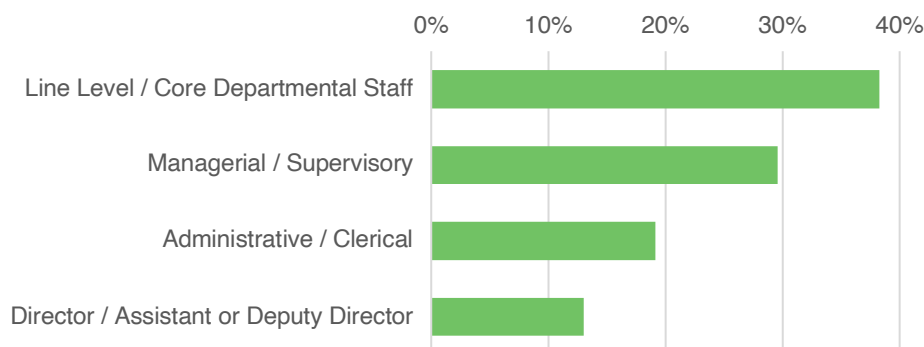
Most respondents have worked for either 5 years or fewer (64 responses), or for more than 10 years (44 responses). Very few participants have been with the City for 6-10 years.

How Long Have You Worked for the City?



Most respondents (44) were line level/core departmental staff, with a sizeable number of managerial/supervisory staff (34) also participating. Administrative/clerical staff and executive level staff rounded out the respondent pool.

What Is Your Level of Responsibility?



The responses to questions in this section provide a high-level picture of the respondents, and can be used to compare responses to questions in the following sections between different respondent groups.

3 CURRENT STATE OF INTERNAL COMMUNICATION

The second section of the questionnaire asked respondents to provide factual answers to questions about the modes and types of communication they receive from within the City.

(3.1) A Majority of Staff Rely on Emails from Their Department Head for Information.

The first question asked how staff receive information about City news and events. The chart below shows the percentages of the 108 staff who indicated that they rely on various sources.



As the chart shows, more than half of respondents said that they get news from their department heads via email, and email was also the most common “other” response cited. Sources such as the employee newsletter, city website, and departmental meetings also received sizeable minorities of responses. Other modes of internal communication were listed by fewer than a third of respondents. The following points highlight some key findings from this question:

- 75% of police respondents said they get information from their department head’s emails (well above the average of 54%), while only 33% of fire department respondents rely on this mode of internal communication.

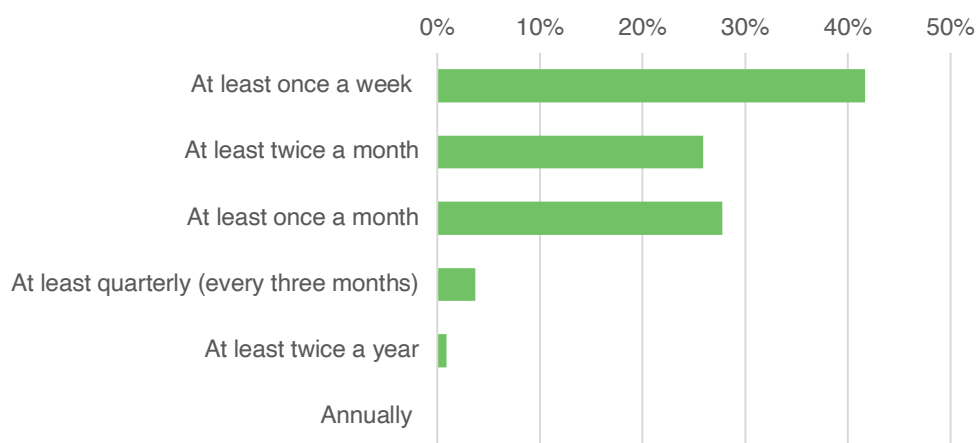
- At least 2/3 of respondents from the Planning Department said they rely on the City Manager's newsletter, Council Meetings, and the City Website for information, despite the fact that less than half of respondents overall look to these sources.
- Only one respondent (of six) from the City Manager's Office said they rely on their department head's emails, as opposed to 57% of other staff citywide. Five of the six, however, said they look to the employee newsletter for information.

The breakout of responses by different city departments indicates the need for the variation in different types of communication avenues to be able to reach all city employees.

(3.2) Two-Thirds of Respondents Receive Communication At Least Twice per Month.

The second question in this section asked respondents how often they receive communication about City news and events. The following chart breaks down the frequencies indicated (by percentage) of the 108 responses received.

How Often Do You Receive Communication About City News and Events?



As the chart shows, 42% of respondents said they receive communication at least once per week. This was the most common response, with another 26% indicating that they receive communication at least twice per month. Fewer than a third of participants said the communication they receive comes less frequently than twice per month. The following points provide key highlights by department or position level:

- 58% of Police and Fire staff said they receive weekly communication, compared to 42% on average among respondents. All six respondents from the City Manager's Office also said they received weekly internal communication.

- For Planning, Engineering, Recreation, and Building Safety staff, twice a month was more common (50% selected this) than for other departments' staff, of whom just 15% selected this answer.
- 73% of staff at the executive level (director/assistant or deputy director) said they receive weekly communications, compared to 37% of all other respondents.
- Administrative and clerical staff were more likely (43%) to choose "once per month" as their typical communication frequency than the rest of respondents (24%).

As the points highlight, public safety staff and executive staff receive much more frequent communications compared to non-public safety and non-executive level staff.

4 OPINIONS AND SUGGESTIONS FOR FUTURE COMMUNICATION

The third section of the survey asked respondents to provide their opinions about the effectiveness of different internal communication types and provide suggestions for improvement.

(4.1) A Strong Majority of Staff Believe Their Department Heads and Managers/Supervisors Provide Effective Communication.

The first question in this section asked respondents to indicate their level of agreement with the statement that they receive effective communication from each of three levels of management: the City Manager and Council, their department head, and their direct manager/supervisor. The following table summarizes the responses received.

I Receive Effective Communication About Important City News for Employees and Volunteers

	City Manager and Council	Department Head	Manager/ Supervisor
Strongly Agree	11%	28%	32%
Agree	56%	55%	49%
Disagree	22%	10%	14%
Strongly Disagree	11%	7%	5%
Count	73	71	73

Each of the three levels of management received more than two-thirds agreement or strong agreement from respondents with the statement that they provide effective communication. 67% agreed that the City Manager and Council provide good communication, 83% agreed that their department head provides good communication,

and 81% agreed that their manager or supervisor provides good communication.

(4.2) Staff See the Greatest Opportunities for Improvement in Communication in All Areas from the City Manager and Council Level and Department Heads

The second question in this section asked respondents what topics could be improved upon in terms of internal communication, and by which parties – the City Manager and Council, their department head, and their direct manager/supervisor. The following table summarizes the responses received.

On What Topics Could the City Improve Its Internal Communications?

	City Manager and Council	Department Head	Manager/ Supervisor
Changes to City Executive Level Staff	68%	56%	35%
Changes to City Ordinances, Policies, Procedures	66%	58%	39%
Organizational and Operational Restructuring	54%	69%	34%
Planning and Rollout of New Technological Tools	47%	69%	39%
Achievements from City Departments and Programs	55%	57%	33%
Promotion of City-Hosted Events	60%	36%	32%
Updates to the City Budget and Financial Condition	73%	34%	23%

As the table shows, more than half of respondents felt that the City Manager and Council should improve on their communication of all but one topic. Updates to the City budget and financial condition, in particular, were listed as belonging to this level of management. Department heads were said to need improvement in communication of organizational and operational restructuring by more than two-thirds of staff, as well as in the planning and rollout of new technology tools. Managers and supervisors, meanwhile, were not perceived as needing to improve their communication in any area by more than 39% of respondents.

(4.3) Email Is the Preferred Mode of Internal Communication.

The final question in this section asked respondents how they would prefer to receive communication from the City Manager and Council, their department head, and their direct manager/supervisor. The table below summarizes the responses received.

What Is Your Preferred Method of Communication for Each Communicator?

	City Manager and Council	Department Head	Manager/ Supervisor
Email	77%	62%	53%
Internet Posts	15%	9%	9%
In Person	8%	30%	38%
Count	91	94	91

As the table shows, email is the preferred method of communication. This is especially true for the City Manager and Council level, where 77% of respondents said email would be the best method of communication. For department heads and direct managers/supervisors, email was still the most common response, but in-person interaction received about a third of responses.

5 OPEN-ENDED QUESTIONS

The final section of the questionnaire asked respondents to provide any other comments with the project team regarding internal communications. There were only a handful of responses that were entered into this section. The following points summarize some of the key themes of the responses:

- Need for increased interdepartmental communication
- Elimination of communication and work silos in the city
- Distribution of information needs to be standardized rather than when requested

Overall, the respondents felt that there is a need for improved internal communications and not in relation to dissemination of information down the chain of command, but rather among different departments and employee groups.

Appendix D: Employee External Communications Survey Results

As part of the Matrix Consulting Group's study for the City of Milpitas, the project team distributed a survey to a select group of City employees identified by City Management, who are involved in external communication efforts to determine how their department handles external communication and gauge their opinions on the effectiveness of various external communication methods and resources, as well as the ways in which it might be improved. This survey generally asked three types of questions:

- **Respondent Demographic Questions:** Respondents were asked to indicate their department, how long they have worked for the City, and their level of responsibility.
- **Multiple Choice Questions:** Respondents were asked to provide answers to multiple choice questions about factual topics as well as opinion-based questions regarding the effectiveness of external communications.
- **Open Response Questions:** Respondents were asked to provide responses in their own words to describe staffing and suggest improvements to the approach to external communication.

The link to the online survey was distributed to a group of 30 selected City employees, of which 13 responses were received, resulting in a response rate of 43%.

1 SUMMARY OF SURVEY RESULTS AND FINDINGS

While a more detailed analysis can be found in the sections below, the following points summarize the key findings from the responses received to this survey:

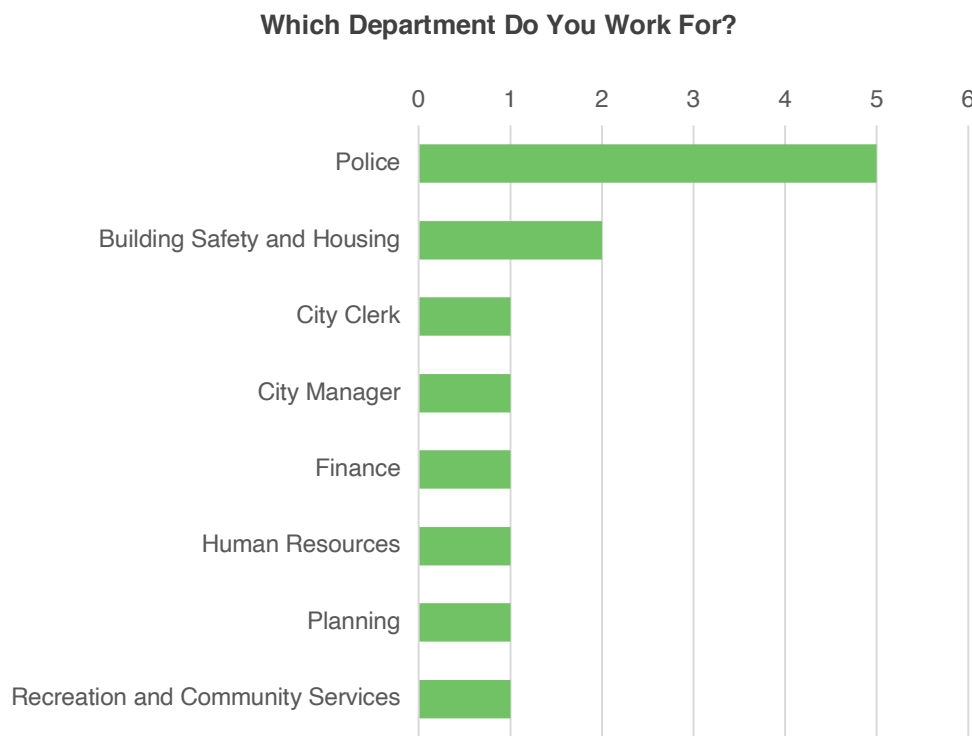
- Most departments do not have dedicated external communications staff; those tasks are simply absorbed by existing personnel.
- Almost all departments use the Public Information Officer (PIO), and a majority have received directions or guidance on their role.
- Most departments interact with the PIO on a weekly or monthly basis.
- Community outreach and engagement, as well as the development of promotional materials, were the two tasks listed as being most commonly contracted to external vendors.

- A majority of staff said their department would like additional help in external communications, with 75% of these saying one additional full-time employee would be preferred.
- Social media posting was the most commonly cited task where they would like extra help.
- A strong majority of respondents said their department monitors Facebook, Twitter, and Nextdoor.
- Respondents believe a wide variety of communication types are effective, including website updates, town halls, in-person interactions, social media posts, press releases, and email blasts.

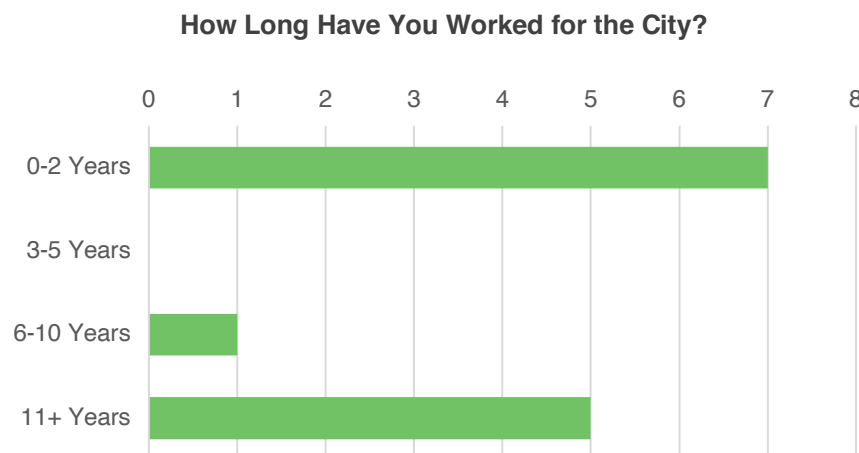
The following sections provide the analysis supporting these findings and explore them in more depth.

2 RESPONDENT DEMOGRAPHICS

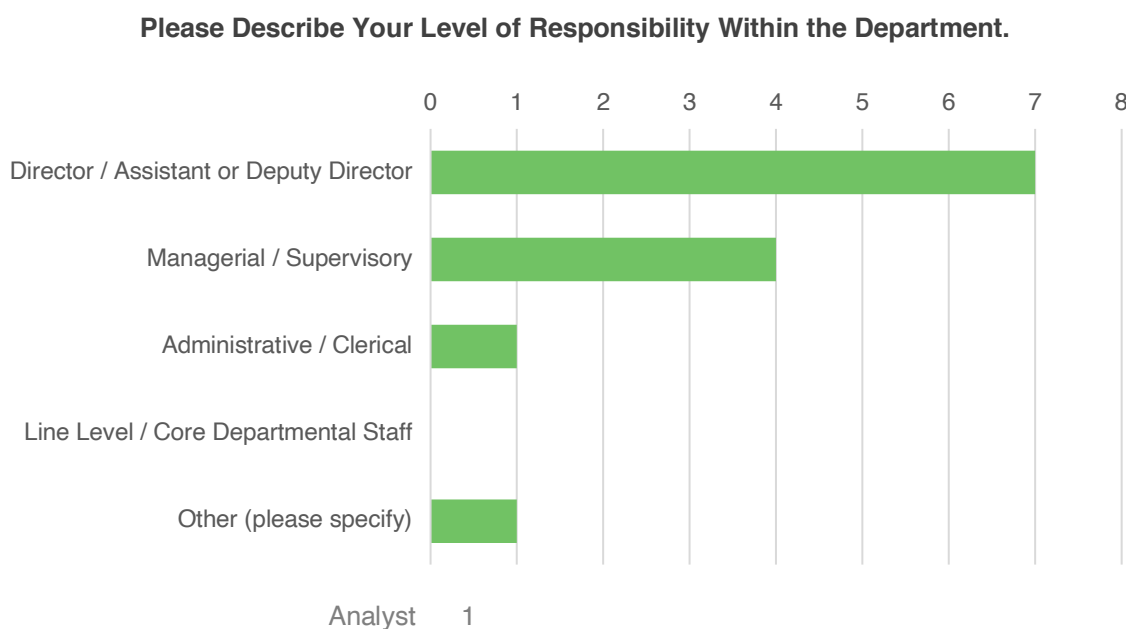
The first section asked respondents to provide information about their department, years of service, and level of responsibility/authority in their Department. The chart below shows this breakdown of respondents.



Most of the responding staff had either worked for the City for a very short period of time (0-2 years) or a very long time (11+ years), as shown by the following chart.



Most respondents were executive level staff (Director/Assistant or Deputy Director), although a sizeable number of managers and supervisors were also represented. One respondent identified themselves as administrative/clerical personnel, and another said they were an analyst.



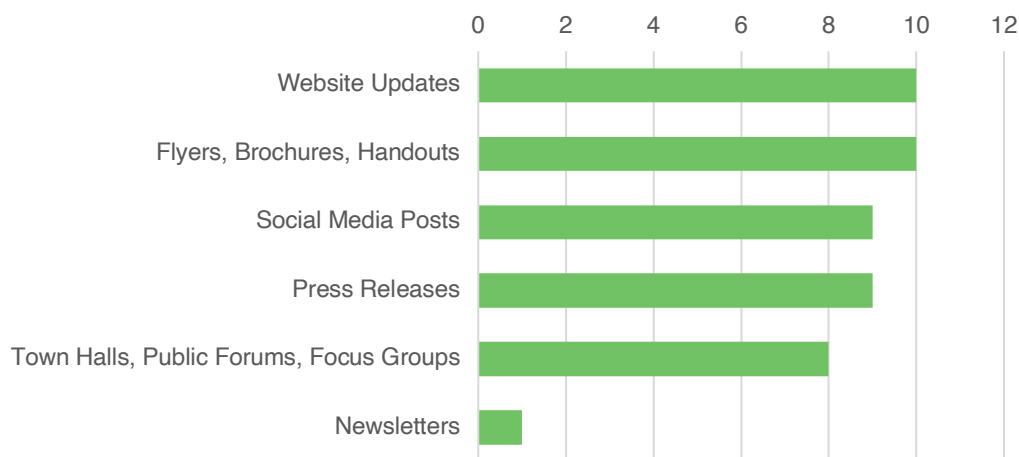
The responses to questions in this section provide a picture of the respondent pool, and can be used to compare responses to questions in the following sections between different respondent groups.

3 CURRENT EXTERNAL COMMUNICATIONS PRACTICES

The second section of this survey asked respondents to provide information about the way they currently handle external communications, their use of existing resources, and the extent of any help they have received.

The first question asked respondents what type of external communication their department most commonly utilizes. The following chart shows the responses received to this question.

What Forms of External Communications Does Your Department Most Commonly Utilize?



As the chart shows, each of these communications modes (website updates, flyers, social media, press releases, etc.) are used by a majority of respondents, with the exception of newsletters – only Recreation and Community Services stated that their department uses a newsletter.

The survey then asked respondents whether they have received any guidance on the role of the City's Public Information Officer, and the type of guidance they received. The following table details the responses.

Did your department receive any guidance, whether written or orally, on the role of the Public Information Officer and how they can be utilized?

Response	Count
Yes, oral	9
Yes, written	2
None	2

11 out of 13 respondents (85%) said they have received some kind of guidance about the public information office. The only two who did not were a police respondent and the representative from the City Clerk's Office.

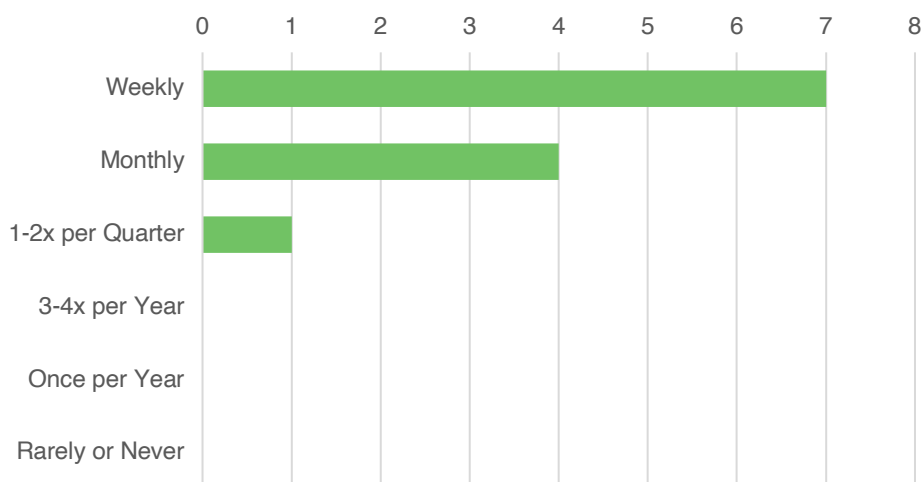
When asked whether their department uses the Public Information Officer, 12 of 13 respondents said that they do. The only respondent who answered "no" was from the City Clerk's Office.

Does Your Department Use the Public Information Officer?

Response	Count
Yes	12
No	1

Respondents were next asked how frequently they interact with the Public Information Officer. The responses received are shown in the chart below.

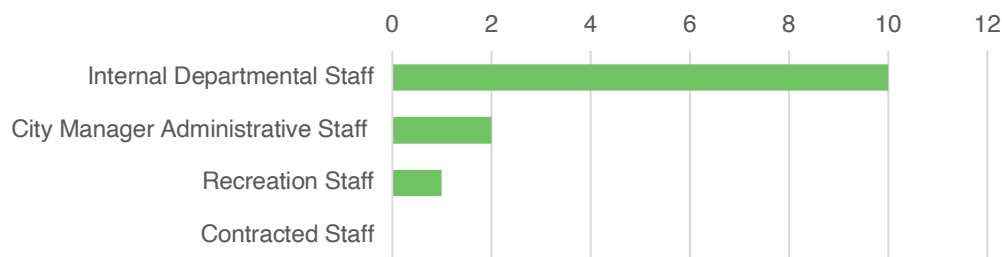
What is the frequency of your department's interaction with the Public Information Officer?



The majority of respondents said that their department interacts with the Public Information Officer on a weekly basis, and four of the five others said that they have monthly interaction with the office.

Respondents were also asked how their department handled external communication before the creation of the Public Information Office. The chart below shows the responses received to this question.

As the Public Information Officer is a fairly new position to the City, prior to the position, who did you utilize for external communication needs?



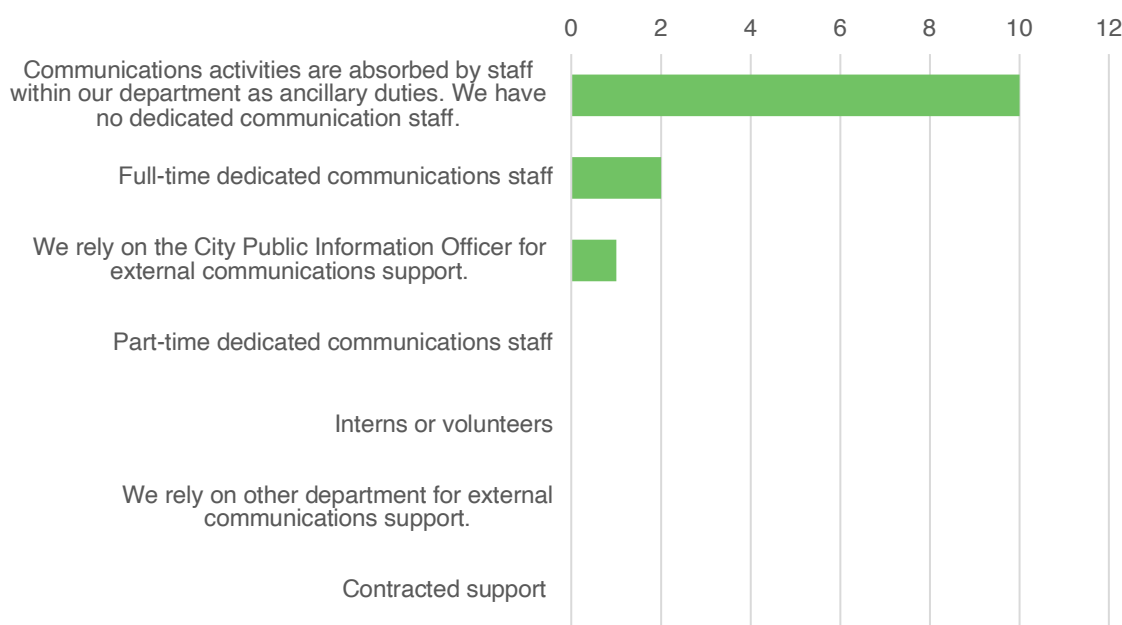
The majority of respondents said that they used their department's own internal staff prior to the institution of the Public Information Officer position.

4 STAFFING

The third section asked respondents questions about their departments' staffing for external communications functions.

The first question gave respondents multiple choices from which to respond regarding various potential external communications staffing arrangements. The following table illustrates the responses received.

How is your department staffed to handle public information and external communications?



As the table shows, only three respondents said their department has dedicated full-time communications personnel or that they rely on the Public Information Officer for support. The departments that identified full-time dedicated support are City Manager's Office (in reference to the Public Information Officer) and the Recreation and Community Services Department. The Finance Department is the only department that stated that they solely rely upon the City's PIO for external communications support. The other 10 respondents said that their existing staff absorb communications responsibilities as ancillary duties.

Respondents were asked to describe the nature of any dedicated staff supporting public affairs and external communications. The responses below were received from survey participants.

If your department has dedicated staff supporting public affairs and external communications, please detail each position and its employment status.

Human Resources	Human Resources Analyst, FTE 40hrs/week
City Manager	PIO and Communications Intern
Recreation & Comm. Services	Marketing Coordinator, 1 FTE; Intern, 2 15 hrs per week
Police	Use PIO as an ancillary assignment, mainly for social media posts and occasional press releases. 4 PIO's at 2 hours weekly (1 Captain, 1 Lieutenant, 3 Sergeants, 1 Police Officer)

Respondents were also asked to describe any contracted support which their department uses, specifically the types of activities contracted out. The table below shows those responses.

What types of external communication activities are contracted out?

Response	Count
Community Outreach / Engagement	1
Flyers, Videos, Brochures	1
Written letters / press releases	0
Other	0

Two responses were received, with those staff members listing community outreach and engagement, as well as the development of promotional materials, as the contracted activities.

Respondents were asked to indicate whether they feel their department could use additional support for managing public information and external communications, and if yes, how many additional staff members are needed to satisfy the department's needs in this area. The tables below show their responses.

Do you feel that your department could use additional support for managing public information and external communications?

Response	Count
Yes	8
No	5

If yes, how many additional staff members are needed to satisfy your department's needs related to external communications?

Response	Count
2 full-time positions	0
1 full-time position	6
1 part-time position	1
1 as needed / intern position	0
Contracted position	0
None / Not Applicable	1

As the tables indicate, approximately 62% responded that they feel their department needs additional support. The 5 respondents that identified no need for additional support were from City Clerk, Finance, Human Resources, Police, and Recreation and Community Services.

For the eight respondents that requested additional support, six of these eight (75%) preferred that the additional support be in the form of a full-time position. Of those six respondents, four of the respondents were from Police, one was from City Manager, and one was from Building and Safety.

Respondents were also asked to indicate in which areas their departments need additional support from the City's Public Information Officer. They could check all the responses that applied. The chart below illustrates their responses.

In what area(s) does your department require additional support from the City's Public Information Officer? Please check all that apply.

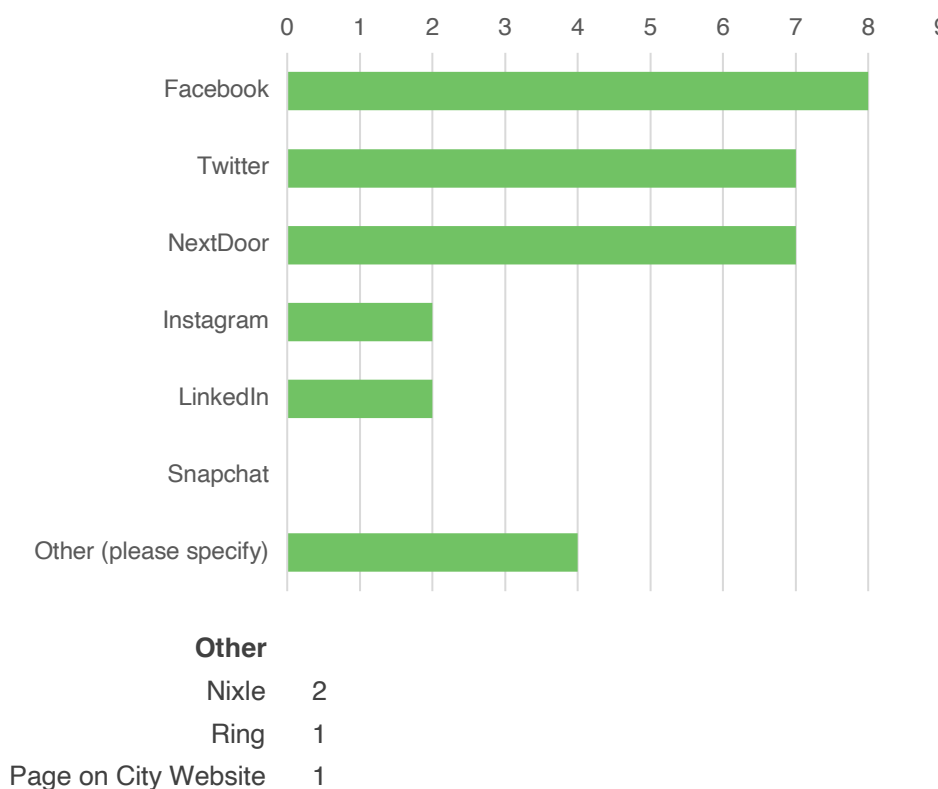


The responses to this question were evenly split between no additional support and support in relation to posting to social media pages. The respondents that identified no additional support needed are City Manager's office, Finance, Police, and Recreation and Community Services, similar to the departments that stated the lack of need for additional resources.

5 DIGITAL / ONLINE COMMUNICATIONS

Every respondent said that their department manages one or more social media pages for the purposes of public information and external communication. The following table details how many respondents said their department manages social media pages of each type.

Which of the following social media pages does your department monitor?



As the table shows, Facebook, Twitter, and Nextdoor were the most common types of social accounts monitored by City departments. Instagram, LinkedIn, and Nixle were the next most popular, with two mentions each.

The survey asked respondents whether their department maintains any written policies or procedures regarding public communications and their digital presence, as well as

whether their department has an external communications or public affairs strategy in place. The following tables show the responses received.

Does your department maintain any written policies or procedures regarding public communications, social media, and web presence?

Response	Count
Yes	7
No	6

Does your department have an external communications or public affairs strategy in place?

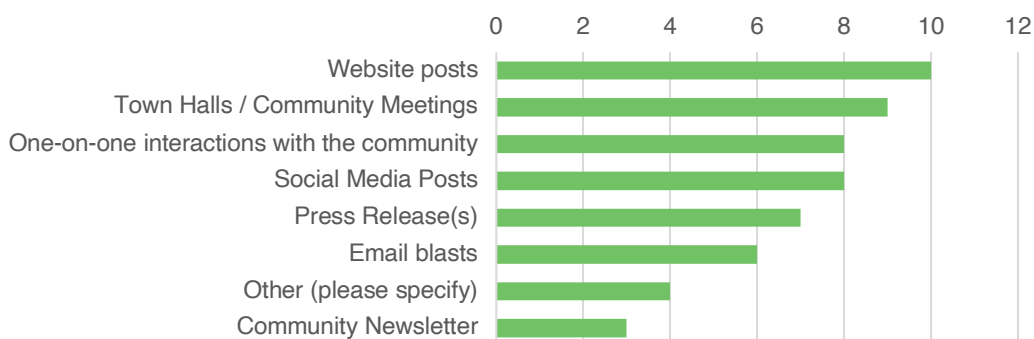
Response	Count
Yes	4
No	9

As the tables show, about half of respondents said their department has written policies and procedures for public/external communication, while just 4 of 9 (44%) said that their department has an external communications or public affairs strategy in place. The respondents that stated yes to the external communications or public affairs strategy are City Manager's Office, Human Resources, Police, and Recreation and Community Services.

6 EFFECTIVENESS OF COMMUNICATIONS

The respondents were asked to indicate which types of external communications strategies they believe are most effective for their department. They were asked to check all that apply, allowing them to select more than one response. The following chart shows their responses.

What type(s) of external communication strategies do you feel are most effective for your department?



As the chart shows, 10 of 13 respondents believe website posts are effective means of communication, with town halls, individual community interactions, and social media posts also rating highly. There were four responses coded under other:

- Utility Bill inserts
- Text-Based Messaging
- Signage / Activity Guide, Media Coverage
- Newspaper

The respondents were also asked to rank each of those strategies from most effective to least effective (1 to 7). The following table shows by communication strategy, the number of respondents that ranked it from most effective to least effective.

Please rank each communication strategy from 1-7 based upon its effectiveness.

Communication Strategy / Rank	1 (Most Effective)	2	3	4	5	6	7 (Least Effective)
One-on-One Interactions	1	3	1	2	0	1	5
Email Blasts	2	0	0	4	3	2	2
Website Posts	2	1	3	1	2	4	0
Press Release(s)	1	3	2	1	3	1	1
Social Media Posts	6	3	1	2	0	0	0
Town Halls / Community Meetings	1	1	1	1	4	3	2
Community Newsletter	0	2	4	2	1	1	3

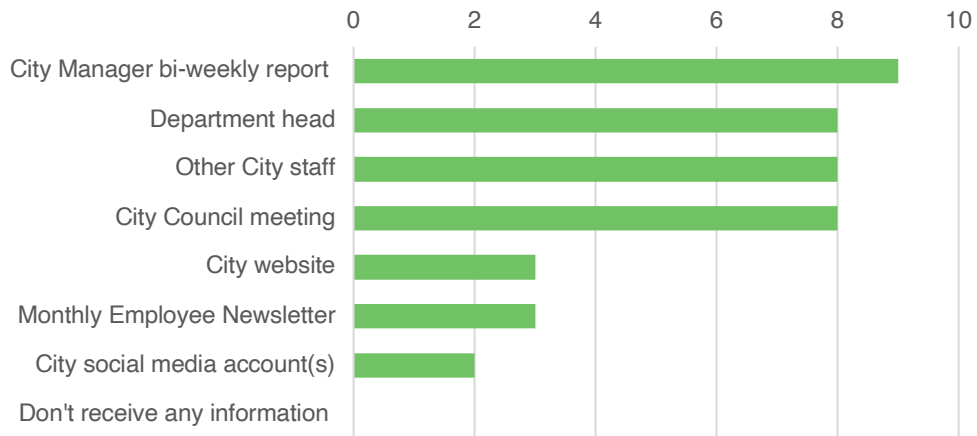
Based upon the responses received across the departments, the communication strategies rank based upon effectiveness as follows:

1. Social Media
2. Press Releases
3. Website Posts
4. Community Newsletter (currently discontinued)
- 5 & 6. One-on-one interactions with community and email blasts
7. Town Halls / Community Meetings

It is interesting to note that even though respondents felt that website posts are the most effective communication strategy for their department, more than social media posts, that when it came to ranking the effectiveness it was ranked below social media and press releases.

In order to disseminate information, the departments must also receive information to pass along to their customers. Respondents were also asked how their department *receives* information about current projects, events, and general happenings within the City. Again, they were asked to check all that apply. The following table details the responses.

How does your department receive information regarding current projects, events and general happenings within the City?



Most respondents listed the City Manager's bi-weekly report, updates from their department head, receiving word from other City staff, or information learned from the City Council meeting as their primary means of receiving information. Avenues such as the monthly newsletter, city website, and social media accounts received fewer responses.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Review Fiscal Year 2019-20 Second Quarter Financial Status Report, Mid-Year Budget Amendments, and Adopt a Resolution Amending Resolution No. 1626, the Classification Plan, to Approve and Adopt the Pay Schedule Titled “All Job Classifications/Salary Table” and Approve the Three Position Changes
Category:	Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendations:	1. Review the FY 2019-20 Quarterly Financial Status Report for the Quarter Ending December 31, 2019 2. Approve FY 2019-2020 Mid-Year Budget Amendments 3. Adopt a Resolution Amending Resolution No. 1626, the Classification Plan, to Approve and Adopt the Pay Schedule Titled “All Job Classifications/Salary Table” and Approve Three Position Changes.

Background:

On June 11, 2019, the City Council approved the Fiscal Year (FY) 2019-20 Adopted Operating Budget in the amount of \$247.9 million and the General Fund Budget in the amount of \$121.6 million. After adoption of the budget, staff monitors and tracks revenues and expenditures for all funds within an emphasis on the General Fund and Enterprise Funds. Additionally, operational needs and or inadvertent oversights may necessitate mid-year budget or position adjustments.

Per the California Code of Regulations § 570.5, any CalPERS agency such as the City is required to bring all pay schedules for its CalPERS benefited employees before the governing board for review and approval.

In response to Council inquiry at the January 28, 2020 FY 2020-21 Preliminary Budget Study Session, this report transmits and discusses a vacant position status report.

Analysis:

This staff report provides a quarterly update on budget versus actual expenditures and revenues of the General, Water and Sewer Funds, the City's major operating funds, based on unaudited financial reports for FY 2019-20 as of December 31, 2019. Additionally, staff is bringing forward mid-year budget adjustment and position change recommendations for Council consideration. The final section of this report discusses the recommendation to adopt salary tables for various employee groups and the vacant position status report as of January 31, 2020.

Quarterly Financial Status Report for the Quarter Ending December 31, 2019

The information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for the Quarter ending December 31, 2019, a variance analysis of budget versus actual expenditures and revenues for the second quarter of FY 2019-20 as well as prior year actual expenditures and revenues for the second quarter of FY 2018-19 for comparison purposes. Major revenue sources and expenditures are discussed below.

General Fund

On June 11, 2019, the City Council approved the Fiscal Year (FY) 2019-20 Adopted Operating General Budget in the amount of \$121.6 million. The budget comprised of \$118.8 million of ongoing revenues off

ongoing expenditures of \$115.6 million and the use of unassigned reserves in the amount of \$6 million for onetime transfers-out in the amount of \$6.0 million to the General Government Capital Improvement Fund (\$4 million) and Affordable Housing and Community Benefit Fund (\$2 million). The higher ongoing estimated revenues resulted in an ongoing net operating surplus of approximately \$3.2 million.

Revenues (Attachment 1)

For the six months ending December 31, 2019, the General Fund has received \$37.7 million, or 31.59%, of the FY 19-20 amended operating budget of \$119.4 million. The amended budget is comprised of \$118.8 millions of the adopted budget and various budget amendments totaling \$562,693 (e.g.: Fire Safer Grant of \$483,383, Tobacco Grants of \$26,563, Bulletproof Vest Partnership Grants of \$26,183).

- Property Taxes and Redevelopment Property Tax Trust Fund (RPTTF): For the six months ending December 31, 2019, \$6,500,270, or 22.89%, of the \$34.8 million budget has been received. Revenues are 5% higher than last year at the same time. Property Tax estimates from the County of Santa Clara are projecting an increase; hence, staff is recommending a budget amendment to increase Property Tax of \$1,073,000 and RPTTF \$699,000. Current revenue projections from the County of Santa Clara estimate \$36.6 million in total revenue for the City, which would be \$1.8 million, or 5%, above budgeted revenues.
- Sales & Use Tax: For the six months ending December 31, 2019, \$9.1 million, or 33.59%, of the \$27.2 million budget has been received. Revenues are 19% less than last year at the same time which is due to a change in the timing of payments received by the California Department of Tax and Fee Administration (CDTFA). The CDTFA shortened its clean-up payment from 3 months after a quarter end to 2 months after a quarter end resulting in a shift of sales tax receipts by one month of sales tax revenue this year compared to last year. After adjusting for the CDTFA's timing of payment, sales tax proceeds received year-to-date are in excess of budgeted estimates. Therefore, staff is recommending a budget amendment to increase budgeted estimates for Sales Tax by \$525,000. The revised Sales Tax estimate of \$27.7 million is 1.9% above budget revenues.
- Franchise Fees: For the six months ending December 31, 2019, \$1.5 million, or 29.5%, of the \$4.9 million budget has been received. Revenues are 5.7% higher than last year at the same time which is due to the timing of payments received.
- Hotel/Motel (TOT) Tax: For the six months ending December 31, 2019, \$6.8 million, or 34.9%, of the \$19.6 million budget has been received. Revenues are 34% higher than last year at the same time which is due to the increase in the TOT rate to 14% approved by the Council on 11/20/18. However, revenues for TOT are trending below budgeted estimates due to a reduction of activity at hotels related to renovations at two hotels and a slight softening of business travel due to economic uncertainty. Staff is recommending a budget adjustment to decrease TOT revenues by \$983,000. The revised TOT estimate of \$18.6 million is 5.2% below budgeted revenues.
- License and Permits: For the six months ending December 31, 2019, \$6.4 million, or 43.1%, of the \$14.7 million budget has been received. Revenues are 28% less than last year at the same time while building permit activity remained constant in comparison to the same period last year. Staff is analyzing the revenue decrease and will return to Council as part of the FY 2020-21 Master Fee Schedule Study Session with a preliminary analysis. Staff is recommending that this revenue source be decreased by \$1,314,000. The revised License and Permits estimate of \$13,434,486 is 9.8% below budgeted revenues.
- Charges for Services: For the six months ending December 31, 2019, \$3.3 million, or 47.7%, of the \$7.0 million budget has been received. Revenues are 8.7% lower than last year due to overstated police service charges from prior year that was corrected in the third quarter. Revenue received for the second quarter, as projected, is on track to meet the budgeted estimate.

Expenditures (Attachment 2)

For the six months ending December 31, 2019, the General Fund has utilized \$64.8 million, or 51.85%, of the FY 19-20 amended operating budget of \$124.9 million. The amended budget is comprised of \$121.6 million of the adopted budget, \$2.7 million of carryover encumbrances from the previous fiscal year for goods and services as well as approximately \$656,211 of increased department appropriations as approved by Council during the first half of the fiscal year (e.g. Fire Safer Grant of \$483,383, Velocity Pumper for Fire Department \$120,082, Tobacco Grant of \$26,563, and Bulletproof Vest Partnership Grants of \$26,183). At the end of the second quarter, total expenditures plus encumbrances are above the par of 50% by 1.85% or \$2.3 million primarily due to purchases of goods and contractual services related to carryover encumbrances, along with \$6.8 million completed transfers-out to the General Government Capital Improvement Fund (\$4 million), Affordable Housing and Community Benefit Fund (\$2 million), the Storm Drain Capital Improvement Fund (\$500,000), and the Equipment Fund for information technology equipment replacement (\$300,000). Regardless, staff will monitor expenditures to ensure that departments will not exceed their appropriations.

Water Maintenance & Operation (M&O) Fund (Attachment 3)

Revenues: For the six months ending December 31, 2019, \$18.3 million of charges for services, or 54.4%, of the \$33.6 million budgeted has been received. Total revenue received amounts to \$18.5 million, or 53.9%, of the \$34.3 million budgeted.

Expenditures: For the six months ending December 31, 2019, \$13.9 million, or 47.6%, of the \$29.2 million amended budgeted has been spent.

Sewer Maintenance & Operation (M&O) Fund (Attachment 3)

Revenues: For the six months ending December 31, 2019, \$9.8 million of charges for services, or 51.2%, of the \$19.1 million budgeted has been received. Total revenue received amounts to \$10.0 million, or 50.6%, of the \$19.7 million budgeted.

Expenditures: For the six months ending December 31, 2019, \$10.7 million, or 72.0%, of the \$14.8 million amended budgeted has been spent primarily due to the encumbrance and quarterly payments that amount to \$7 million to the City of San Jose for operation of the Wastewater Treatment Plant.

Budget Amendment Recommendations (Attachment 4)

The summary information below describes by categories the recommended budget adjustments with the dollar amount and item number related to the budget amendment. The item number references detailed explanations which can be found in the attachment titled "FY 2019-20 Mid-Year Budget Adjustment Recommendations" (Attachment 4). In this attachment, the recommended budget amendments are grouped by Operating and Capital budget amendments and by departments. In summary, if Council approves the recommendations in this section, the General Fund Unassigned Reserve balance will be reduced by \$1.7 million from \$10.9 million to \$9.2 million and the Affordable Housing Fund Ending Fund balance will be increased by \$2.0 million from \$1.6 million to \$3.6 million.

1. Alignment of revenue estimates with 6 months of proceeds received
 - a. Decrease in Building revenues (-\$1,314,000) (Item #1)
 - b. Increase Affordable Housing Fund revenues (\$2,000,000) (Item #3)
 - c. Net increase in major General Fund tax revenues (\$1,314,000) (Item #8-11)
 - d. Decrease in Recreation Tournament Fees Revenue Adjustment (-\$12,000) (Item #21)
2. Net-zero re-alignment of revenue sources for certain capital projects
 - a. Street Resurfacing 2018 Project (Item #C2)
 - b. Street Resurfacing 2018-19 Project (Item #C3)
 - c. Street Resurfacing Project 2019-20 (Item #C4)
 - d. Montague Expwy Widening at Great Mall Pkwy (Item #C5)
3. Non-personnel Expenditure Adjustments

- a. City Attorney Reimbursable charges (\$125,000 offset with revenues from developers) (Item #5)
 - b. Milpitas Assistance Program for recreation programs (\$30,000) (Item #22)
 - c. Early retirement of debt: IT Phone and Networking Equipment Lease Purchase and LAN/WAN Project (\$576,813) (Item #14)
 - d. Net Zero Vacancy Savings Allocation to Departments: The FY 2019-20 General Fund Budget includes assumed Vacancy Savings in the amount of \$2,732,255 budgeted in the Non-Departmental budget. This net-zero action allocates the assumed Vacancy Savings to departments based on current year-to-date personnel expenditure trends. (Item #18)
4. Correction of inadvertent errors
- a. Landscape Maintenance District 95-1: reimbursement to Irvine Corporation for landscape service performed (\$80,000) (Item #6)
 - b. Annual debt payment for IT Phone and Networking Equipment Lease Purchase (\$202,222) (Item #13)
 - c. Fire Command Vehicles Upfitting (\$34,399) (Item #16)
 - d. LAN/WAN Project Accounting Correction (Item #C1)
 - e. Street Resurfacing 2018-19 Project (\$1,600,000 transfer from the General Fund and \$1,600,000 transfer from the Gas Tax Fund) (Item #C3)

Position-related Amendment Recommendations

Staff is recommending three front-line position changes to improve service delivery and align the position complement to current service demands for Building, Safety and Housing Department and the Engineering Department and to align the salary range of the Budget Manager position. Staff has provided a description and justification of the recommended position changes below and identified the annual cost impact. Any salary and related benefits cost increases of Council approved recommendations will be absorbed within existing appropriations for FY 2019-20 and incorporated into the development of the FY 2020-21 Proposed Budget. None of the recommended position amendments will increase the Council approved number of authorized positions.

1. Amend three budgeted vacant positions to align positions to Departments' operational needs:
 - a. 1.0 vacant Office Specialist to 1.0 Building Permit Technician Position (Building, Safety and Housing Department).
The Permit Center Counter primarily receives technical questions at the counter and over the phone related to building permits and development requirements. To enhance customer service and to deliver high quality services to the Milpitas community now and for the long term, as well as to assist with the backlog of building permits it is recommended to delete 1.0 Office Specialist position and add 1.0 Building Permit Technician position as the duties of a Building Permit Technician are better aligned with the requirements of the position. The additional Building Permit Technician will assist with the routing of Building Permits and Plans as well as provide assistance with reducing the backlog of permit activity in the Permit Center. Having an additional Permit Technician will assist with cross training and coordination with other departments (increased annual costs: \$15,951).
 - b. 1.0 Building Inspector to 1.0 Plan Checker Position (Building, Safety and Housing Department).
The recommendation of deleting 1.0 vacant Building Inspector position and add 1.0 Plan Checker continues to align the position needs with the current workload. It provides improved high-quality service delivery at the Permit Center. During the last year it has been observed that service demand versus capacity for Plan Review has been greater than service demand versus capacity for Building Inspections. A Plan Checker will provide Plan Check services to assist with the backlog of plan checks in the Permit Center. An additional Plan Checker will assist with cross training and coordination with other departments (increased annual costs: \$11,617).
 - c. 1.0 Assistant Civil Engineer to 1.0 Associate Civil Engineer Position (Engineering Department):
The recommendation to delete 1.0 vacant Assistant Civil Engineer and add 1.0 Associate Civil Engineer in the Traffic Engineering function will increase the candidate pool allowing the City to fill the position with an entry or journey level candidate. Further, it will promote staff retention.

an entry-level candidate as they can advance to the journey level if qualified (increased annual costs: \$31,102).

2. Adjustment of the salary range for the Budget Manager position: Per the job description, the City's Budget Manager is responsible for planning, organizing, directing, and personally performing professional budgeting activities in conformance with the principles and procedure of public finance, budgeting, and budgetary control; for the development, maintenance, and operation of the City's Annual Budget; and for providing financial information and analysis to aid in executive management decision making. Additionally, the Budget Manager position is responsible for the oversight of the City's investment, debt management and risk management functions. Based on duties of overseeing several citywide functions, staff initiated a compensation study completed by a consultant. The consultant compared the duties and compensation for the position with six local cities. Based on the study, staff recommends increasing the salary range by approximately 12% from between \$104,794.82 and \$137,940.40 to between \$117,755.16 to \$155,000.04, which is one (1) percentage point below the median of comparable cities. Staff also discussed the salary adjustment with the Mid-Management and Confidential Unit, the applicable bargaining unit, which supports the salary range adjustment (increased annual costs: \$25,537).

Salary Table Approval (Attachments 5 and 6)

As required by State law, staff prepared a resolution (Attachment 5) which includes the most current Salary Table (Attachment 6) for your review and approval. The salary table is consistent with Council approved Memoranda of Understandings and salary ranges granted for unrepresented employees including the City Manager classification. Additionally, the salary table corrects an inadvertent salary range error for the Customer Services Supervisor classification.

In June 2018, the Customer Services Supervisor classification was created. Due to the timing of the creation of the classification of Customer Services Supervisor and the timing of both the Mid-Con Memorandum of Understanding (MOU) Wage increase and Ralph Anderson Classification Study a MOU increase of 3% in July 2018 was inadvertently overlooked as well as the Ralph Anderson Classification study, which included the Senior Accountant salary amendment of 2.9% for which the Customer Services Supervisor classification was aligned to was also overlooked. As a result, the Salary Table will include the corrected salary range for the Customer Services Supervisor. The monthly salary range is currently \$7,372.67 to \$9,704.52 and it is recommended to adjust the salary range to \$7,814.21-\$10,285.23.

Vacant Position Status Report (Attachment 7 and 8)

At the January 28, 2020 FY 2020-21 Preliminary Budget Study Session, the City Council requested information regarding vacant positions. In response to Council request, this report transmits the Vacant Position Status Report as of January 31, 2020 sorted by department and by recruitment phase. Additionally, the report provides comments explaining delays in the filling of positions. Recruitments take on average 3 months for non-sworn positions not hired by the Police Department and 4-6 months for sworn positions and non-sworn positions in the Police Department due to additional backgrounding requirements.

Currently, the City has 57.50 positions, or about 13% of authorized positions, in various phases of the recruitment process. As detailed in the report, recruitments for 28 positions, or more than 49%, are either in the backgrounding phase or actively ongoing. For the remaining recruitments of 29.5 positions, the recruitment is in the preparation phase or delayed for various reasons. Recruitments experience delays for various reasons such as development of exam materials, review and update of position requirements due to changing organizational needs, coordination with our bargaining units, availability of contracts to perform backgrounds, insufficient candidate pool, candidates declining a formal job offer as they are given counter offers, and organizational restructuring proposals brought forward through the annual budget process for Council consideration.

Policy Alternatives:

Alternative 1: Do not approve FY 2019-20 Mid-Year Budget Amendment Recommendations

Pros: Not approving certain budget amendment recommendations will result in less utilization of the General Fund Unassigned Reserve.

Cons: The recommended budget amendment recommendations include urgent funding recommendations, adjustments to revenue estimates, and corrections of inadvertent errors.

Reason not recommended: Not approving the FY 2019-20 Mid-Year budget amendment recommendations will result in not funding certain programs, adjust revenue estimates to year-to-date revenue proceeds received, and not correct inadvertent errors.

Alternative 2: Do not approve Position-related Amendment Recommendations

Pros: It will not impact future budgets.

Cons: The position-related amendments align positions to operational needs.

Reason not recommended: The position-related amendments will ensure staff can deliver front-line services more effectively and compensate staff consistent with the job description duties.

Fiscal Impact:

In summary, if Council approves the recommendations in this section, the General Fund Unassigned Reserve balance will be reduced by \$1.7 million from \$10.9 million to \$9.2 million; the Affordable Housing Fund Ending Fund balance will be increased by \$2.0 million from \$1.6 million to \$3.6 million.

Any salary and related benefits cost increases of Council approved position amendment recommendations will be absorbed within existing appropriations for FY 2019-20 and incorporated into the development of the FY 2020-21 Proposed Budget,

There's no fiscal impact related to the adoption of a resolution approving the salary tables for various employee groups.

California Environmental Quality Act:

Not applicable.

Recommendations:

1. Review the FY 2019-20 Quarterly Financial Status Report for the quarter ending December 31, 2019.
2. Approve FY 2019-2020 Mid-Year Budget Amendments.
3. Adopt a Resolution amending Resolution No. 1626, the Classification Plan, to approve and adopt the Pay Schedule titled "All Job Classifications/Salary Table" and approve three position changes.

Attachments:

1. FY 2019-2020 Revenue Report for Fiscal Year-To-Date December 31, 2019
2. FY 2019-2020 General Fund Expenditures by Department December 31, 2019
3. FY 2019-2020 Water and Sewer Funds Financial Status for Fiscal Year-To-Date December 31, 2019
4. FY 2019-20 Mid-Year Budget Adjustment Recommendations
5. Resolution
6. Salary Table
7. Vacant Position Status Report – Sorted by Department
8. Vacant Position Status Report – Sorted by Recruitment Phase

CITY OF MILPITAS

General Fund Revenues

For Fiscal Year-To-Date December 31, 2019

General Fund Revenues	FY20 Adopted Budget	FY20 Budget Amendments As of 12/31/2019	FY20 Amended Budget	FY20 Revenue As of 12/31/19	FY20 Percentage of Budget	FY19 Revenue As of 12/31/18	Percentage Inc (Dec) FY20 / FY19
Property Taxes	\$ 28,391,781	\$ -	\$ 28,391,781	\$ 6,500,270	22.89%	\$ 6,183,093	5.13%
RFTTF Distributions	6,414,919	-	6,414,919	-	0.00%	-	0.00%
Sales and Use Taxes	27,200,042	-	27,200,042	9,137,212 *	33.59%	11,223,801	-18.59%
Other Taxes	1,128,000	-	1,128,000	563,438	49.95%	575,437	-2.09%
Franchise Fees	4,937,000	-	4,937,000	1,458,307	29.54%	1,379,413	5.72%
Hotel/Motel Tax	19,557,639	-	19,557,639	6,829,522	34.92%	5,101,686	33.87%
License & Permits	14,748,486	-	14,748,486	6,362,066	43.14%	8,875,858	-28.32%
Fines and Forfeitures	501,810	-	501,810	128,710	25.65%	200,322	-35.75%
Interest Income	1,267,000	-	1,267,000	756,328	59.69%	620,169	21.96%
Intergovernmental	1,445,927	536,129	1,982,056	218,654	11.03%	200,694	8.95%
Charges for Services	6,960,914	-	6,960,914	3,322,103	47.73%	3,637,796	-8.68%
Other Revenue Sources	241,000	-	241,000	204,077	84.68%	164,325	24.19%
Operating Transfers In	5,993,002	26,564	6,019,566	2,223,065 **	36.93%	6,355,432	-65.02%
Total General Fund Revenue	\$118,787,520	\$562,693	\$119,350,213	\$37,703,751	31.59%	\$44,518,026	-15.31%

* Change in Accounting of payments from the California Department of Tax and Fee Administration. In Fiscal Year 2019-2020, the City received four months of Sales Tax revenue, while in Fiscal Year 2018-2019, the City received five months of Sales Tax revenue for the quarter ended December 31st.

** Change in timing of recognition of revenues. In Fiscal Year 2019-2020, the City is entering transfers on a quarterly basis, as the transfers are available, which is more accurate to actual experience. In Fiscal Year 2018-2019 and prior, the City entered all of these transfers in December

General Fund Expenditures by Department

For Fiscal Year-To-Date December 31, 2019

Percent of Year 50%

Department/Division	FY 2019-20 Adopted Budget	FY 2019-20 Budget Amendments As of 12/31/2019	FY 2018-19 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 Exp. incl. Encumbr. As of 12/31/2019	FY 2019-20 Percent of Amended Budget	FY 2018-19 Exp. incl. Encumbr. As of 12/31/2018	Percent Exp & Enc Inc (dec) FY20/FY19
City Council	587,319	-	-	587,319	166,607	28.37%	667,564	-75.04%
City Manager	2,332,184		21,719	2,353,903	967,027	41.08%	1,444,871	-33.07%
City Clerk	626,844		-	626,844	303,309	48.39%	281,808	7.63%
Economic Development	939,806	-	185,157	1,124,963	480,246	42.69%	344,490	39.41%
Policy Planning	4,486,153	-	206,876	4,693,029	1,917,189	40.85%	2,738,733	-30.00%
Building Safety & Housing	6,693,391	-	85,560	6,778,951	3,019,749	44.55%	2,693,690	12.10%
City Attorney	1,190,364	-	-	1,190,364	1,196,538	100.52%	835,793	43.16%
Finance	4,367,077		193,342	4,560,419	2,220,123	48.68%	1,799,827	23.35%
Public Works	9,258,950		339,768	9,598,718	5,858,709	61.04%	4,429,407	32.27%
Engineering	3,998,574		110,002	4,108,576	1,814,076	44.15%	2,025,270	-10.43%
Planning	1,920,315		78,130	1,998,445	992,688	49.67%	971,970	2.13%
Police	36,375,936	52,746	383,975	36,812,657	16,871,269	45.83%	14,788,982	14.08%
Fire	26,640,966	764,592	212,383	27,617,941	13,160,150	47.65%	11,389,658	15.54%
Information Technology	3,549,603	-	253,780	3,803,383	1,735,565	45.63%	1,457,289	19.10%
Human Resources	2,045,669		85,704	2,131,373	1,089,246	51.11%	617,886	76.29%
Recreation	6,463,227	-	209,600	6,672,827	3,381,710	50.68%	2,906,785	16.34%
Non-Departmental	7,780,761	(161,127)	509,333	8,128,967	4,696,884	57.78%	4,213,567	11.47%
Transfers Out	6,800,000			6,800,000	6,800,000	100.00%	8,874,245	76.63%
Total	121,570,986	656,211	2,668,453	124,895,650	64,753,896	51.85%	59,743,102	8.39%

(a)

(a) Funding for the County Library was moved from the City Council to the Non-Departmental budget in F19-20.

(b) Annual contract for Best, Best, and Krieger fully encumbered. Amounts include reimbursable expenditures from developers.

(c) Transfers Out - General Government CIP Fund (\$4 million), Affordable Housing and Community Benefit Fund (\$2 million), Equipment Fund (\$300,000) and Storm Drain CIP Fund (\$500,000).

City of Milpitas

Water and Sewer Financial Status

For Fiscal Year-To-Date December 31, 2019

Percent of Year		50%							
Revenue	FY 2019-20 Adopted Budget	FY 2019-20 Budget Amendments As of 12/31/2019	FY 2019-20 Amended Budget	FY 2019-20 Revenue As of 12/31/2019	FY 2019-20 Percent of Amended Budget	FY 2018-19 Revenue As of 12/31/2018	Percent Revenue (dec.) FY20/FY19		
Water Fund									
Revenue:									
Revenue from Investments	516,000		516,000	180,994	35.08%	141,263	28.13%		
Charges for Services	33,629,267		33,629,267	18,309,098	54.44%	16,413,697	11.55%		
Miscellaneous Revenue	130,000		130,000	12,952	9.96%	18,225	-28.93%		
Operating Transfer In	3,089		3,089	3,089	100.00%	13,444	-77.02%		
Total Water Fund Revenue	34,278,356	0	34,278,356	18,506,133	53.99%	16,586,629	11.57%		

Expense	FY 2019-20 Adopted Budget	FY 2019-20 Budget Amendments As of 12/31/2019	FY 2018-19 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 Exp. incl. Encumbr. As of 12/31/2019	FY 2019-20 Percent of Amended Budget	FY 2018-19 Exp. incl. Encumbr. As of 12/31/2018	Percent Exp & Enc Inc (dec.) FY20/FY19		
Water Fund										
Expenses:										
Personnel Services	4,027,954			4,027,954	2,021,716	50.19%	1,628,200	24.17%		
Services and Supplies	2,654,897		276,745	2,931,642	1,317,971	44.96%	950,938	38.60%		
Wholesale Water Purchase	18,860,000			18,860,000	8,680,733	46.03%	8,415,622	3.15%		
Debt Service	225,225			225,225	0	0.00%	-	0.00%		
Capital Outlay	110,000		0	428,274	509,581	118.98%	8,984	5572.09%		
Operating Transfer Out	2,741,851			2,741,851	1,370,926	50.00%	1,352,942	1.33%		
Total Water Fund Expenses	28,619,927	0	276,745	29,214,946	13,900,927	47.58%	12,356,686	12.50%		

Percent of Year		50%							
Revenue	FY 2019-20 Adopted Budget	FY 2019-20 Budget Amendments As of 12/31/2019	FY 2019-20 Amended Budget	FY 2019-20 Revenue As of 12/31/2019	FY 2019-20 Percent of Amended Budget	FY 2018-19 Revenue As of 12/31/2018	Percent Revenue (dec.) FY20/FY19		
Sewer Fund									
Revenue:									
Revenue from Investments	375,000		375,000	50,194	13.39%	91,425	-45.10%		
Charges for Services	19,132,127		19,132,127	9,795,902	51.20%	8,608,126	13.80%		
Miscellaneous Revenue	60,000		60,000	0	0.00%	-	0.00%		
Operating Transfer In	119,878		119,878	119,878	100.00%	13,444	791.68%		
Total Sewer Fund Revenue	19,687,005	0	19,687,005	9,965,974	50.62%	8,712,995	14.38%		

Expense	FY 2019-20 Adopted Budget	FY 2019-20 Budget Amendments As of 12/31/2019	FY 2018-19 Carryover Encumbrances	FY 2019-20 Amended Budget	FY 2019-20 Exp. incl. Encumbr. As of 12/31/2019	FY 2019-20 Percent of Amended Budget	FY 2018-19 Exp. incl. Encumbr. As of 12/31/2018	Percent Exp & Enc Inc (dec.) FY20/FY19		
Sewer Fund										
Expenses:										
Personnel Services	3,069,935			3,069,935	1,099,199	35.81%	1,273,738	-13.70%		
Services and Supplies	1,550,907		476,408	2,027,315	1,270,601	62.67%	634,759	100.17%		
Treatment Plant	7,045,200			7,045,200	7,023,272	99.69%	2,903,684	141.87%		
Debt Service	1,033,038			1,033,038	428,750	41.50%	493,414	86.89%		
Capital Outlay	47,292			47,292	47,292	100.00%	-	0.00%		
Operating Transfer Out	1,568,485			1,568,485	784,243	50.00%	829,637	94.53%		
Total Sewer Fund Expenses	14,314,857	0	476,408	14,791,265	10,653,357	72.02%	6,135,232	73.64%		

CITY OF MILPITAS

FY 2019-2020 Mid-Year Budget Funding Requests

Operating Budget

Item #	Department	Title	Description	Expenditure General Fund	Expenditure Other Funds	Revenue General Fund	Revenue Other Funds
1	Building Safety and Housing	Building Revenue Adjustment	Alignment of building fee revenues based on 6 months of actuals data			\$ (1,314,000)	
2	Building Safety and Housing	Adjustments to the General Fund Unassigned Reserve	This corresponding action decreases the General Fund Unassigned Reserve balance to offset the decrease in Building revenues.	\$ (1,314,000)			
3	Building Safety and Housing	Affordable Housing Fund Revenue Adjustment	Recognizing Developer contributions in accordance with the Affordable Housing Ordinance				\$ 2,000,000
4	Building Safety and Housing	Adjustment to the Affordable Housing Fund Ending Fund Balance	This corresponding action increases the Affordable Housing Fund Ending Fund Balance.		\$ 2,000,000		
5	City Attorney	Reimbursable City Attorney fees from Developers	This action recognizes the revenue from developers and related reimbursable City Attorney expenditures.	\$ 125,000		\$ 125,000	
6	Engineering	Landscape Maintenance Reimbursement	The City has an agreement with Irvine Community Development to provide annual landscape maintenance at 660 North McCarthy Boulevard funded by the Landscape Maintenance District 95-1. Irvine invoices the City on an annual basis, and the City provides reimbursement to Irvine from the Landscape Maintenance District fund. Due to staff change at Irvine, Irvine has not been invoiced the City of Milpitas for the FY 2018-19 costs. To pay Irvine's invoices for the services provided in FY 2018-19, staff recommends appropriating \$80,000 from the Landscape District's Fund fund balance.		\$ 80,000		
7	Engineering	Landscape Maintenance District 95-1 Fund Ending Fund Balance Adjustment	This corresponding action recommends to reduce the Landscape Maintenance District 95-1 Fund Ending Fund Balance to reimburse Irvine Community Development expenses incurred in FY 2018-19.		\$ (80,000)		
8	Finance	Property Tax Revenue Adjustments	Based on year to date tax proceeds revenue estimates are adjusted upward.			\$ 1,073,000	
9	Finance	Redevelopment Property Tax Trust Fund) (RPTTF) Distribution Revenue Adjustment	Based on year to date tax proceeds revenue estimates are adjusted upward.			\$ 699,000	
10	Finance	Sales Tax Revenue Adjustment	Based on year to date tax proceeds revenue estimates are adjusted upward.			\$ 525,000	
11	Finance	Transient Occupancy Tax Revenue Adjustment	Based on year to date tax proceeds revenue estimates are adjusted downward due to reduced tax proceeds from hotels undergoing renovations and short-term rentals (STRs). The TOT tax revenue estimate related to STRs was assumed at \$260,000. However, the Voluntary Collection Agreement with AirBnB will not go into effect until March 1, 2020.			\$ (983,000)	
12	Finance	Adjustments to the General Fund Unassigned Reserve	This corresponding action increases the General Fund Unassigned Reserve due to higher than anticipated tax proceeds revenue.	\$ 1,314,000			

Item #	Department	Title	Description	Expenditure General Fund	Expenditure Other Funds	Revenue General Fund	Revenue Other Funds
13	Finance	IT Phone and Networking Equipment Lease Purchase Annual Debt Payment	The City entered into a loan purchase agreement with Key Government Finance on 12/18/18 for a 5 year term to purchase IT phone and networking equipment. However, inadvertently, the funding for the debt service payment for the second year of the lease was not included in the FY 2019-20 Adopted Budget. This recommended action corrects the oversight and ensures that the City complies with the agreed debt service schedule.		\$ 202,222		
14	Finance	IT Phone and Networking Equipment Lease Purchase Remaining Debt Early Payoff	The City entered into a loan purchase agreement with Key Government Finance on 12/18/18 for a 5 year term to purchase IT phone and networking equipment. The loan is scheduled to be paid off in 2023 after 3 more annual payments of \$202,222. Total payments would equal \$606,666 over the next three years. The City has a pre-payment option that would cost a total of \$576,813 if paid by March 31st, 2020 (\$557,608 principal balance; \$2,436 interest; \$16,729 pre-payment penalty). Based on the current interest earnings of approximately 2%, it is estimated that approximately \$24,000 in interest earnings would be generated by not paying of the debt early. Therefore, total cost of the pre-payment comes to \$600,813. Exercising the pre-payment option would save the City nearly \$6,000 in total cost over the three year period and would allow staff to focus on more value added activities.		\$ 576,813		
15	Finance	General Government Fund Ending Fund Balance Adjustment	This corresponding action recommends to reduce the General Government Fund Ending Fund Balance to pay for the debt service for the lease revenue financing used for the LAN/WAN Network Upgrade.		\$ (779,035)		
16	Fire	Fire Command Vehicles Upfitting	On March 19, 2019, the City Council authorized the purchase of three Chevy Tahoes SUVs. In the staff report that recommended the purchase of the vehicles, it stated that once the vehicles are		\$ 34,399		
17	Fire	Adjustment to the Equipment Replacement Fund Ending Fund Balance	This corresponding action funds the installation of radios, sirens and emergency lights from the Equipment Replacement Fund ending fund balance.		\$ (34,399)		
18	Non-Departmental	Net Zero Vacancy Savings Allocation	The FY 2019-20 General Fund Budget includes assumed Vacancy Savings in the amount of \$2,732,255 budgeted in the Non-Departmental budget. This net-zero action allocates the assumed Vacancy Savings to departments based on current year-to-date personnel expenditure trends as follows: Building \$ 498,256 Engineering \$ 225,574 Finance \$ 137,700 Human Resources \$ 51,637 Information Technology \$ 263,623 Planning \$ 8,153 Police \$ 1,187,661 Public Works \$ 246,411 Recreation \$ 113,240	\$ -			

Item #	Department	Title	Description	Expenditure General Fund	Expenditure Other Funds	Revenue General Fund	Revenue Other Funds
19	Police	Police Motorcycle Replacement Funding	The current fleet of 7 Honda ST1300Ps and 1 Kawasaki KZ1000 have reached the end of its useful life. The motorcycles are 9 to 16 years old. The outdated equipment has reduced reliability of service and does not meet the Police Department's requirement for extreme performance and safety measures for our officers. The estimated total funding need is \$161,000 of which \$82,000 is available in the Equipment Replacement Fund. Therefore, staff recommends to appropriate the remaining balance of \$79,000. Once the funding is approved, staff will issue a bid to replace 5 out of 7 motorcycles in the fleet with BMW 2360RT-P or equivalent.	\$ 79,000			
20	Police	Adjustments to the General Fund Unassigned Reserve	This corresponding action reduces the General Fund Unassigned Reserve Balance to fund the replacement of Police motorcycles which reached the end of their useful life.	\$ (79,000)			
21	Recreation	Tournament Fees Revenue Adjustment	Revenues from tournament events are adjusted downward as less sport tournaments have been booked than anticipated. With an increased marketing effort, staff expects to increase revenues related to tournaments for FY 2020-21.	\$ -		\$ (12,000)	
22	Recreation	Milpitas Assistance Program	On August 20, 2019, the City Council approved the Milpitas Assistance Program (MAP) with \$27,000 in initial funding for recreation programs. After approval of the program, staff established the administrative processes including the communication to potential eligible residents. Based on MAP's initial application period, which closed December 4, submitted applications are expected to require \$47,750 of funding for the program. Therefore, staff recommends allocating an additional \$30,000 of funding bringing the total amount available for MAP dedicated to recreation programs to \$57,000. The additional funding of approximately \$9,000 will be allocated to additional funding requests.	\$ 30,000		-	
23	Recreation	Adjustments to the General Fund Unassigned Reserve	This corresponding action reduces the General Fund Unassigned Reserve Balance to offset the reduction in Tournament Fees Revenue and to provide additional funding for MAP related to recreation programs.	\$ (42,000)			
				\$ 113,000	\$ 2,000,000	\$ 113,000	\$ 2,000,000

Capital Budget Adjustments

Item #	Department	Title	Description	Expenditure General Fund	Expenditure Other Funds	Revenue General Fund	Revenue Other Funds
C1	Finance	LAN/WAN Project Accounting Correction	The City entered into a loan purchase agreement with Key Government Finance on 12/18/18 for a 5 year term to purchase IT phone and networking equipment. The funding from the General Government fund and equipment fund was supposed to pay for the Debt Service and should have been budgeted in the General Government Fund. To replace the funding source from General Government Fund (\$854,245) and Equipment Replacement Fund of (\$98,000) for a total of \$952,245 with Lease Revenue Financing of \$780,000.				\$ (952,245)
							\$ 952,245
C2	Engineering	Street Resurfacing 2018	To replace the funding source from General Government Fund (\$991,917) and Gas Tax Fund of (\$390,068) for a total of \$1,381,985 with Measure B Funds. Measure B funds are more restrictive and this funding source should be used first.				\$ (991,917)
							\$ (390,068)
							\$ 1,381,985
C3	Engineering	Street Resurfacing Project 2018-19	Replace Gas Tax Funding of \$1,985 with Measure B funds of \$1,985. Measure B funds are more restrictive and this funding source should be used first.				\$ 1,985
							\$ (1,985)
			In FY19, inadvertently, \$1.6 M was transferred in error from this project to the General fund. This action returns the General Fund money to the project in order to be in compliance with the State Maintenance of Effort requirements related to SB1 - RMRA. Senate Bill (SB) 1 created the Road Maintenance and Rehabilitation Program to address deferred maintenance on the local street and road system.			\$ 1,600,000	
			This corresponding action reduces the General Fund Unassigned Reserve Balance to offset the transfer to the Street Resurfacing Project 2018-19.	\$ (1,600,000)			
			In FY19, inadvertently, \$1.6 M was transferred in error from this project to the Gas Tax Fund. The Gas Tax Fund money needs to be returned to the project which was originally budgeted for this project.				\$ 1,600,000
			This corresponding action reduces the Gas Tax Ending Fund Balance to offset the transfer to the Street Resurfacing Project 2018-19.		\$ (1,600,000)		
C4	Engineering	Street Resurfacing Project 2019-20	Replace Gas Tax funds with Measure B funds to reflect eligible amount for reimbursement. Measure B funds are more restrictive and this funding source should be used first.				\$ 23,431
							\$ (23,431)
C5	Engineering	Montague Expwy Widening at Great Mall Pkwy	Replace TASP fee with Milpitas Business Park Traffic Impact Fee. Traffic Impact fees are more restrictive and this funding source should be used first.				\$ (380,000)
							\$ 380,000
				\$ (1,600,000)	\$ (1,600,000)	\$ 1,600,000	\$ 1,600,000

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION NO. 1626, THE CLASSIFICATION PLAN, TO ADJUST SALARY RANGES,
APPROVE AND ADOPT THE PAY SCHEDULE TITLED “ALL JOB
CLASSIFICATIONS/SALARY TABLE,” AND AMEND BUDGETED, ALLOCATED
POSITIONS**

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, which has been amended from time to time, and 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 annual mid-year budget process necessitates changes in classification titles, salary ranges, and budgeted classification authorizations; and

WHEREAS, the City is required to publish publicly available approved and adopted pay schedule(s) for all positions within the Classification Plan pursuant to the California Code of Regulations, 2 CCR §570.5.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Resolution No. 1626, as amended, is hereby further amended effective February 18, 2020, as set forth below.

**A. ADJUST THE SALARY RANGES FOR THE FOLLOWING
CLASSIFICATIONS:**

<u>Title</u>	<u>Existing Range</u>	<u>Proposed Range</u>
Customer Service Supervisor	\$7,372.67 - \$ 9,704.52	\$7,814.21 - \$10,285.23
Budget Manager	\$8,732.90 - \$11,495.03	\$9,812.93 - \$12,916.67

**B. APPROVE AND ADOPT THE PAY SCHEDULE “ALL JOB
CLASSIFICATIONS/SALARY TABLE EFFECTIVE FEBRUARY 18, 2020”:**

A pay schedule, that includes but is not limited to Classification (Position), Title, Payrate; Hourly, Bi-Weekly, Monthly and Annual Wage, is attached hereto as Exhibit A (“The City of Milpitas All Job Classifications/Salary Table effective 02-18-2020”).

C. AMEND THE FOLLOWING BUDGETED ALLOCATED POSITIONS:

Delete one (1) FTE Office Specialist and authorize one (1) FTE Building Permit Technician in the Building Safety and Housing Department.

Delete one (1) FTE Building Inspector and authorize one (1) FTE Building Plan Checker in the Building Safety and Housing Department.

Delete one (1) FTE Assistant Civil Engineer and authorize one (1) Associate Civil Engineer in the Engineering Department.

PASSED AND ADOPTED this _____ day of _____, 2020, 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

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
5	Accountant	500	2101	A	43.41	3473.02	7524.88	90298.52
				B	45.58	3646.64	7901.05	94812.64
				C	47.85	3828.25	8294.54	99534.50
				D	50.26	4020.56	8711.21	104534.56
				E	52.76	4220.86	9145.20	109742.36
5	Accounting Technician I	513	6104	A	28.27	2261.81	4900.59	58807.06
				B	29.69	2374.92	5145.66	61747.92
				C	31.17	2493.67	5402.95	64835.42
				D	32.73	2618.36	5673.11	68077.36
				E	34.37	2749.27	5956.75	71481.02
5	Accounting Technician II	514	6105	A	31.10	2487.98	5390.62	64687.48
				B	32.66	2612.41	5660.22	67922.66
				C	34.29	2743.04	5943.25	71319.04
				D	36.00	2880.22	6240.48	74885.72
				E	37.80	3024.16	6552.35	78628.16
8	Administrative Analyst I	801	2102	A	38.84	3106.99	6731.81	80781.74
				B				
				C				
				D				
				E	51.13	4090.15	8861.99	106343.90
8	Administrative Analyst II	802	2103	A	42.89	3431.31	7434.51	89214.06
				B				
				C				
				D				
				E	56.45	4516.39	9785.51	117426.14
8	Administrative Assistant	828	6111	A	37.05	2964.15	6422.33	77067.90
				B	38.90	3112.36	6743.45	80921.36
				C	40.85	3268.00	7080.67	84968.00
				D	42.89	3431.37	7434.63	89215.62
				E	45.04	3602.93	7806.35	93676.18
7	Adult Crossing Guard	725	8401	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	17.98	1438.40	3116.53	37398.40

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
7	Adult Crossing Guard Superviso	720	8402	A	17.25	1380.00	2990.00	35880.00
				B				
				C				
				D				
				E	20.66	1652.80	3581.07	42972.80
6	Assistant Chief of Police	649	1405	A	89.82	7185.28	15568.11	186817.28
				B				
				C				
				D				
				E	125.74	10059.40	21795.37	261544.40
6	Assistant City Engineer	639	1205	A	68.30	5464.20	11839.10	142069.20
				B				
				C				
				D				
				E	95.62	7649.88	16574.74	198896.88
6	Assistant City Manager	666	1104	A	90.99	7279.32	15771.86	189262.32
				B				
				C				
				D				
				E	127.39	10191.06	22080.63	264967.56
5	Assistant Civil Engineer	502	2201	A	47.04	3762.96	8153.08	97836.96
				B	49.39	3951.11	8560.74	102728.86
				C	51.86	4148.64	8988.72	107864.64
				D	54.45	4356.11	9438.24	113258.86
				E	57.17	4573.93	9910.18	118922.18
6	Assistant Director of Finance	669	1109	A	65.48	5238.57	11350.24	136202.82
				B				
				C				
				D				
				E	91.68	7334.17	15890.70	190688.42
6	Assistant Fire Marshal	632	2501	A	67.88	5430.45	11765.97	141191.70
				B				
				C				
				D				
				E	95.03	7602.63	16472.37	197668.38

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
5	Assistant Planner	503	2801	A	45.10	3608.18	7817.72	93812.68
				B	47.36	3788.68	8208.81	98505.68
				C	49.72	3977.43	8617.77	103413.18
				D	52.20	4176.26	9048.56	108582.76
				E	54.81	4385.16	9501.18	114014.16
7	Assistant Pool Manager	709	5609	A	17.00	1360.00	2946.67	35360.00
				B				
				C				
				D				
				E	23.80	1904.00	4125.33	49504.00
2	Assistant Water Operator	221	7212	A	37.95	2846.52	6167.46	74009.52
				B	39.85	2988.85	6475.84	77710.10
				C	41.84	3138.29	6799.63	81595.54
				D	43.94	3295.19	7139.58	85674.94
				E	46.13	3459.97	7496.60	89959.22
2	Assistant Water Operator - 40	226	8611	A	37.95	3036.03	6578.06	78936.78
				B	39.85	3188.14	6907.64	82891.64
				C	41.84	3347.24	7252.35	87028.24
				D	43.94	3515.08	7616.01	91392.08
				E	46.13	3690.80	7996.73	95960.80
5	Associate Civil Engineer	504	2202	A	54.09	4327.38	9375.99	112511.88
				B	56.80	4543.78	9844.86	118138.28
				C	59.64	4770.98	10337.12	124045.48
				D	62.62	5009.52	10853.96	130247.52
				E	65.75	5260.02	11396.71	136760.52
5	Associate Planner	505	2802	A	51.86	4148.76	8988.98	107867.76
				B	54.46	4356.75	9439.63	113275.50
				C	57.19	4574.82	9912.11	118945.32
				D	60.04	4802.96	10406.41	124876.96
				E	63.04	5043.02	10926.54	131118.52
8 **	Budget Manager	839	1115	A	56.61	4529.04	9812.93	117755.16
				B				
				C				
				D				
				E	74.52	5961.54	12916.67	155000.04

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Building & Housing Director	658	1802	A	79.14	6330.89	13716.93	164603.14
				B				
				C				
				D				
				E	110.79	8863.25	19203.71	230444.50
8	Building Inspection Manager	848	3809	A	58.98	4718.20	10222.77	122673.20
				B				
				C				
				D				
				E	71.69	5735.05	12425.94	149111.30
7	Building Inspector Apprentice	770	8610	A	28.00	2240.00	4853.33	58240.00
				B	0.00	0.00	0.00	0.00
				C	0.00	0.00	0.00	0.00
				D	0.00	0.00	0.00	0.00
				E	35.00	2800.00	6066.67	72800.00
6	Building Official	676	1804	A	69.61	5568.75	12065.63	144787.50
				B				
				C				
				D				
				E	97.45	7796.25	16891.88	202702.50
5	Building Permit Technician	508	5801	A	34.44	2755.32	5969.86	71638.32
				B	36.17	2893.39	6269.01	75228.14
				C	37.98	3038.55	6583.53	79002.30
				D	39.87	3189.90	6911.45	82937.40
				E	41.87	3349.23	7256.67	87079.98
5	Building/NP Inspector	507	3801	A	45.65	3652.03	7912.73	94952.78
				B	47.93	3834.66	8308.43	99701.16
				C	50.33	4026.36	8723.78	104685.36
				D	52.85	4227.70	9160.02	109920.20
				E	55.49	4439.06	9617.96	115415.56
8	Buyer	803	2106	A	38.49	3078.83	6670.80	80049.58
				B				
				C				
				D				
				E	50.66	4052.69	8780.83	105369.94

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

CITY OF MILPITAS - HUMAN RESOURCES

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
5	Case Manager	544	5612	A	30.86	2468.78	5349.02	64188.28
				B				
				C				
				D				
				E	38.51	3080.99	6675.48	80105.74
6	Chief Fire Enforcement Officer	656	1505	A	65.62	5249.81	11374.59	136495.06
				B				
				C				
				D				
				E	91.87	7349.73	15924.42	191092.98
6	Chief of Police	650	1402	A	94.30	7544.33	16346.05	196152.58
				B				
				C				
				D				
				E	132.03	10562.08	22884.51	274614.08
6	CIP Manager	642	2211	A	60.13	4810.62	10423.01	125076.12
				B				
				C				
				D				
				E	84.19	6735.40	14593.37	175120.40
6	City Clerk	605	1101	A	60.17	4813.80	10429.90	125158.80
				B				
				C				
				D				
				E	84.25	6740.09	14603.53	175242.34
6	City Council	699	1107	A	104.35	417.40	904.37	10852.40
				B				
				C				
				D				
				E	130.47	521.88	1130.74	13568.88
6	City Manager	697	1102	A	143.27	11461.54	24833.34	298000.04
				B				
				C				
				D				
				E	143.27	11461.54	24833.34	298000.04

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
5	Code Enforcement Officer	515	5804	A	39.92	3193.22	6918.64	83023.72
				B	41.91	3352.93	7264.68	87176.18
				C	44.02	3521.30	7629.48	91553.80
				D	46.22	3697.35	8010.92	96131.10
				E	48.53	3882.09	8411.19	100934.34
6	Comm Svc Engmt & Incl Admin	659	1121	A	62.09	4967.31	10762.51	129150.06
				B				
				C				
				D				
				E	86.93	6954.23	15067.50	180809.98
4	Communications Dispatch Superv	456	6409	A	53.74	4299.33	9315.22	111782.58
				B	56.43	4514.29	9780.96	117371.54
				C	59.25	4740.02	10270.04	123240.52
				D	62.21	4977.02	10783.54	129402.52
				E	65.32	5225.88	11322.74	135872.88
4	Communications Dispatcher	455	6408	A	46.53	3722.52	8065.46	96785.52
				B	48.86	3908.62	8468.68	101624.12
				C	51.30	4104.04	8892.09	106705.04
				D	53.87	4309.21	9336.62	112039.46
				E	56.56	4524.68	9803.47	117641.68
5	Community Services Officer	551	5807	A	38.19	3055.21	6619.62	79435.46
				B	40.10	3207.97	6950.60	83407.22
				C	42.10	3368.37	7298.13	87577.62
				D	44.21	3536.78	7663.02	91956.28
				E	46.42	3713.64	8046.22	96554.64
8	Confidential Fiscal Asst II	805	6121	A	31.66	2532.82	5487.78	65853.32
				B	33.24	2659.43	5762.10	69145.18
				C	34.91	2792.40	6050.20	72602.40
				D	36.65	2932.02	6352.71	76232.52
				E	38.48	3078.63	6670.37	80044.38
8	Crime Analyst	809	2105	A	46.49	3719.36	8058.61	96703.36
				B				
				C				
				D				
				E	61.20	4895.82	10607.61	127291.32

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
8 **	Customer Services Supervisor	847	2127	A	45.08	3606.56	7814.21	93770.56
				B				
				C				
				D				
				E	59.34	4747.03	10285.23	123422.78
8	Deputy City Clerk	835	6102	A	44.27	3541.63	7673.53	92082.38
				B				
				C				
				D				
				E	53.81	4304.87	9327.22	111926.62
6	Deputy City Manager	672	1119	A	89.17	7133.73	15456.42	185476.98
				B				
				C				
				D				
				E	124.79	9983.08	21630.01	259560.08
6	Deputy Fire Chief	633	1504	A	85.54	6842.86	14826.20	177914.36
				B				
				C				
				D				
				E	119.75	9580.00	20756.67	249080.00
6	Deputy Public Works Director	654	1207	A	70.19	5615.48	12166.87	146002.48
				B				
				C				
				D				
				E	98.27	7861.68	17033.64	204403.68
6	Dir of Recr & Community Svcs	655	1208	A	77.50	6199.79	13432.88	161194.54
				B				
				C				
				D				
				E	108.71	8696.62	18842.68	226112.12
8	Economic Development Coord	852	8623	A	48.85	3908.23	8467.83	101613.98
				B				
				C				
				D				
				E	60.58	4846.15	10499.99	125999.90

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Economic Development Director	653	1206	A	72.79	5823.47	12617.52	151410.22
				B				
				C				
				D				
				E	101.91	8152.84	17664.49	211973.84
6	Economic Development Manager	611	1203	A	58.57	4685.48	10151.87	121822.48
				B				
				C				
				D				
				E	76.17	6093.93	13203.51	158442.18
8	Economic Development Spec	850	8606	A	46.52	3721.81	8063.92	96767.06
				B				
				C				
				D				
				E	56.16	4492.59	9733.94	116807.34
5	Electrical/Building Inspector	511	3802	A	47.93	3834.65	8308.41	99700.90
				B	50.33	4026.36	8723.78	104685.36
				C	52.85	4227.69	9160.00	109919.94
				D	55.49	4439.06	9617.96	115415.56
				E	58.26	4661.02	10098.88	121186.52
8	Emergency Services Coordinator	836	2502	A	51.40	4111.99	8909.31	106911.74
				B				
				C				
				D				
				E	67.65	5411.93	11725.85	140710.18
6	Employee Relations Officer	677	1209	A	60.31	4825.16	10454.51	125454.16
				B				
				C				
				D				
				E	84.44	6755.21	14636.29	175635.46
5	Engineering Aide	512	3201	A	37.41	2992.51	6483.77	77805.26
				B	39.28	3142.14	6807.97	81695.64
				C	41.24	3299.24	7148.35	85780.24
				D	43.30	3464.18	7505.72	90068.68
				E	45.47	3637.39	7881.01	94572.14

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Engineering Director/City Eng	606	1201	A	79.14	6330.89	13716.93	164603.14
				B				
				C				
				D				
				E	110.79	8863.25	19203.71	230444.50
5	Engineering Permit Technician	540	2210	A	33.67	2693.78	5836.52	70038.28
				B	35.36	2828.48	6128.37	73540.48
				C	37.12	2969.89	6434.76	77217.14
				D	38.98	3118.36	6756.45	81077.36
				E	40.93	3274.29	7094.29	85131.54
1	Entry Firefighter	112	4510	A	33.34	3734.03	8090.40	97084.78
				B	34.67	3883.39	8414.01	100968.14
				C				
				D				
				E				
1	Entry Firefighter/Paramedic	113	4511	A	37.34	4182.11	9061.24	108734.86
				B	38.83	4349.41	9423.72	113084.66
				C				
				D				
				E				
1	Entry Level Fire Inspector	114	3508	A	40.69	3255.52	7053.63	84643.52
				B	42.73	3418.30	7406.32	88875.80
				C	44.87	3589.22	7776.64	93319.72
				D	47.11	3768.68	8165.47	97985.68
				E	49.01	3921.11	8495.74	101948.86
8	Envir & Regulatory Comply Spec	851	8624	A	49.65	3972.16	8606.35	103276.16
				B				
				C				
				D				
				E	65.36	5228.51	11328.44	135941.26
5	Environmental Inspector	553	2213	A	47.93	3834.65	8308.41	99700.90
				B	50.33	4026.38	8723.82	104685.88
				C	52.85	4227.71	9160.04	109920.46
				D	55.49	4439.09	9618.03	115416.34
				E	58.26	4661.02	10098.88	121186.52

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
2	Equip Maint Worker I - 40	227	8612	A	34.72	2777.45	6017.81	72213.70
				B	36.44	2914.92	6315.66	75787.92
				C	38.26	3060.92	6631.99	79583.92
				D	40.18	3214.60	6964.97	83579.60
				E	42.19	3375.11	7312.74	87752.86
2	Equip Maint Worker II - 40	228	8613	A	38.18	3054.08	6617.17	79406.08
				B	40.09	3206.93	6948.35	83380.18
				C	42.09	3367.43	7296.10	87553.18
				D	44.21	3536.48	7662.37	91948.48
				E	46.42	3713.23	8045.33	96543.98
2	Equip Maint Worker III - 40	229	8614	A	43.01	3440.86	7455.20	89462.36
				B	45.17	3613.33	7828.88	93946.58
				C	47.43	3794.35	8221.09	98653.10
				D	49.80	3983.90	8631.78	103581.40
				E	52.30	4183.69	9064.66	108775.94
2	Equipment Maint. Worker I	200	7202	A	34.50	2587.74	5606.77	67281.24
				B	36.23	2717.13	5887.12	70645.38
				C	38.04	2853.01	6181.52	74178.26
				D	39.94	2995.66	6490.60	77887.16
				E	41.94	3145.43	6815.10	81781.18
2	Equipment Maint. Worker II	201	7203	A	37.95	2846.52	6167.46	74009.52
				B	39.85	2988.85	6475.84	77710.10
				C	41.84	3138.29	6799.63	81595.54
				D	43.94	3295.19	7139.58	85674.94
				E	46.13	3459.97	7496.60	89959.22
2	Equipment Maint. Worker III	202	7204	A	42.76	3207.26	6949.06	83388.76
				B	44.90	3367.57	7296.40	87556.82
				C	47.15	3535.97	7661.27	91935.22
				D	49.50	3712.76	8044.31	96531.76
				E	51.98	3898.42	8446.58	101358.92
8	Executive Assistant	812	6117	A	40.75	3260.10	7063.55	84762.60
				B	42.79	3423.12	7416.76	89001.12
				C	44.93	3594.28	7787.61	93451.28
				D	47.17	3773.98	8176.96	98123.48
				E	49.53	3962.69	8585.83	103029.94

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Finance Director	627	1103	A	79.48	6358.38	13776.49	165317.88
				B				
				C				
				D				
				E	111.26	8901.03	19285.57	231426.78
6	Finance Manager	647	1116	A	56.09	4487.46	9722.83	116673.96
				B				
				C				
				D				
				E	78.53	6282.48	13612.04	163344.48
5	Finance Technician	501	5101	A	34.21	2736.92	5929.99	71159.92
				B	35.92	2873.73	6226.42	74716.98
				C	37.72	3017.43	6537.76	78453.18
				D	39.60	3168.28	6864.61	82375.28
				E	41.58	3326.69	7207.83	86493.94
8	Financial Analyst I	844	2125	A	36.26	2901.07	6285.65	75427.82
				B				
				C				
				D				
				E	47.73	3818.65	8273.74	99284.90
8	Financial Analyst II	845	2126	A	40.05	3203.98	6941.96	83303.48
				B				
				C				
				D				
				E	52.72	4217.41	9137.72	109652.66
1	Fire Battalion Chief	153	2508	A	50.43	5647.67	12236.62	146839.42
				B				
				C				
				D				
				E	70.60	7906.74	17131.27	205575.24
1	Fire Battalion Chief - 40	154	2509	A	70.60	5647.67	12236.62	146839.42
				B				
				C				
				D				
				E	98.83	7906.74	17131.27	205575.24

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
1	Fire Captain	100	2504	A	44.13	4942.68	10709.14	128509.68
				B	46.28	5183.64	11231.22	134774.64
				C	48.54	5436.65	11779.41	141352.90
				D	50.91	5702.28	12354.94	148259.28
				E	53.40	5981.22	12959.31	155511.72
1	Fire Captain - 40	108	2507	A	61.78	4942.68	10709.14	128509.68
				B	64.80	5183.64	11231.22	134774.64
				C	67.96	5436.65	11779.41	141352.90
				D	71.28	5702.28	12354.94	148259.28
				E	74.77	5981.22	12959.31	155511.72
6	Fire Chief	630	1502	A	94.30	7544.33	16346.05	196152.58
				B				
				C				
				D				
				E	132.03	10562.08	22884.51	274614.08
1	Fire Engineer	102	4501	A	38.91	4358.46	9443.33	113319.96
				B	40.81	4570.21	9902.12	118825.46
				C	42.79	4792.52	10383.79	124605.52
				D	44.87	5025.94	10889.54	130674.44
				E	47.06	5271.04	11420.59	137047.04
1	Fire Engineer/Paramedic	151	4505	A	43.45	4866.58	10544.26	126531.08
				B	45.57	5103.77	11058.17	132698.02
				C	47.79	5352.75	11597.63	139171.50
				D	50.13	5614.15	12163.99	145967.90
				E	52.58	5888.68	12758.81	153105.68
1	Fire Prevention Inspector	106	3501	A	62.39	4990.89	10813.60	129763.14
				B	65.43	5234.26	11340.90	136090.76
				C	68.62	5489.78	11894.52	142734.28
				D	71.98	5758.07	12475.82	149709.82
				E	75.50	6039.78	13086.19	157034.28
1	Fire Protection Engineer	110	3507	A	62.39	4990.89	10813.60	129763.14
				B	65.43	5234.26	11340.90	136090.76
				C	68.62	5489.78	11894.52	142734.28
				D	71.98	5758.07	12475.82	149709.82
				E	75.50	6039.78	13086.19	157034.28

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
1	Firefighter	103	4502	A	36.37	4073.45	8825.81	105909.70
				B	38.13	4270.87	9253.55	111042.62
				C	39.98	4478.23	9702.83	116433.98
				D	41.93	4695.97	10174.60	122095.22
				E	43.97	4924.50	10669.75	128037.00
1	Firefighter Trainee	109	4509	A	44.88	3590.42	7779.24	93350.92
				B	44.88	3590.42	7779.24	93350.92
				C	44.88	3590.42	7779.24	93350.92
				D	44.88	3590.42	7779.24	93350.92
				E	44.88	3590.42	7779.24	93350.92
1	Firefighter/Paramedic	104	4503	A	40.60	4547.38	9852.66	118231.88
				B	42.58	4768.46	10331.66	123979.96
				C	44.65	5000.72	10834.89	130018.72
				D	46.83	5244.52	11363.13	136357.52
				E	49.11	5500.58	11917.92	143015.08
1	Firefighter/Paramedic Trainee	107	4504	A	50.27	4021.26	8712.73	104552.76
				B	50.27	4021.26	8712.73	104552.76
				C	50.27	4021.26	8712.73	104552.76
				D	50.27	4021.26	8712.73	104552.76
				E	50.27	4021.26	8712.73	104552.76
7	Fitness Instructor	713	5620	A	35.00	2800.00	6066.67	72800.00
				B				
				C				
				D				
				E	75.00	6000.00	13000.00	156000.00
2	Fleet Maint Worker I -40	230	8615	A	33.14	2651.40	5744.70	68936.40
				B	34.80	2784.27	6032.59	72391.02
				C	36.54	2923.26	6333.73	76004.76
				D	38.37	3069.25	6650.04	79800.50
				E	40.29	3223.11	6983.40	83800.86
2	Fleet Maint Worker II - 40	231	8616	A	36.45	2916.27	6318.59	75823.02
				B	38.28	3062.25	6634.88	79618.50
				C	40.19	3215.24	6966.35	83596.24
				D	42.20	3376.09	7314.86	87778.34
				E	44.31	3544.81	7680.42	92165.06

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

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2	Fleet Maint Worker III -40	232	8617	A	41.93	3354.24	7267.52	87210.24
				B	44.03	3522.09	7631.19	91574.34
				C	46.22	3697.79	8011.88	96142.54
				D	48.53	3882.23	8411.50	100937.98
				E	50.96	4077.18	8833.89	106006.68
2	Fleet Maintenance Worker I	213	7207	A	33.14	2485.69	5385.66	64627.94
				B	34.80	2609.94	5654.87	67858.44
				C	36.54	2740.47	5937.69	71252.22
				D	38.37	2877.44	6234.45	74813.44
				E	40.28	3021.33	6546.22	78554.58
2	Fleet Maintenance Worker II	214	7208	A	36.46	2734.27	5924.25	71091.02
				B	38.28	2870.94	6220.37	74644.44
				C	40.19	3014.53	6531.48	78377.78
				D	42.20	3165.25	6858.04	82296.50
				E	44.31	3323.45	7200.81	86409.70
2	Fleet Maintenance Worker III	215	7209	A	41.93	3144.38	6812.82	81753.88
				B	44.02	3301.58	7153.42	85841.08
				C	46.22	3466.63	7511.03	90132.38
				D	48.53	3639.96	7886.58	94638.96
				E	50.96	3822.02	8281.04	99372.52
5	GIS Technician	552	2212	A	47.04	3762.96	8153.08	97836.96
				B	49.39	3951.11	8560.74	102728.86
				C	51.86	4148.67	8988.78	107865.42
				D	54.45	4356.09	9438.19	113258.34
				E	57.17	4573.95	9910.23	118922.70
1	Hazardous Materials Inspector	105	3502	A	62.39	4990.89	10813.60	129763.14
				B	65.43	5234.26	11340.90	136090.76
				C	68.62	5489.78	11894.52	142734.28
				D	71.98	5758.07	12475.82	149709.82
				E	75.50	6039.78	13086.19	157034.28
8	Housing & Neigh Svcs Manager	849	2812	A	49.79	3983.57	8631.07	103572.82
				B				
				C				
				D				
				E	65.55	5243.79	11361.55	136338.54

**Note Customer Services Supervisor change effective 02-18-2020

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6	Housing Authority Adminr	673	1120	A	58.56	4684.62	10150.01	121800.12
				B				
				C				
				D				
				E	81.98	6558.43	14209.93	170519.18
8	Human Resources Analyst I	843	2124	A	38.84	3106.99	6731.81	80781.74
				B				
				C				
				D				
				E	51.13	4090.15	8861.99	106343.90
8	Human Resources Analyst II	842	2123	A	42.89	3431.31	7434.51	89214.06
				B				
				C				
				D				
				E	56.45	4516.39	9785.51	117426.14
8	Human Resources Assistant	846	2108	A	27.67	2213.25	4795.38	57544.50
				B	29.05	2323.84	5034.99	60419.84
				C	30.50	2440.03	5286.73	63440.78
				D	32.03	2562.04	5551.09	66613.04
				E	33.63	2690.13	5828.62	69943.38
6	Human Resources Director	613	1105	A	79.03	6322.61	13698.99	164387.86
				B				
				C				
				D				
				E	110.65	8851.67	19178.62	230143.42
8	Human Resources Technician	816	2107	A	33.55	2684.39	5816.18	69794.14
				B	35.24	2819.20	6108.27	73299.20
				C	36.99	2959.53	6412.31	76947.78
				D	38.85	3108.09	6734.19	80810.34
				E	40.79	3263.09	7070.03	84840.34
6	I T Director	624	2113	A	77.99	6239.43	13518.76	162225.18
				B				
				C				
				D				
				E	109.19	8735.19	18926.24	227114.94

**Note Customer Services Supervisor change effective 02-18-2020

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8	I T Manager	819	2116	A	58.47	4677.42	10134.41	121612.92
				B				
				C				
				D				
				E	76.96	6157.20	13340.60	160087.20
5	I T Technician	542	3101	A	37.42	2993.96	6486.91	77842.96
				B	39.30	3143.64	6811.22	81734.64
				C	41.26	3300.79	7151.71	85820.54
				D	43.32	3465.83	7509.30	90111.58
				E	45.49	3639.13	7884.78	94617.38
8	Information Services Analyst	831	2118	A	49.18	3934.73	8525.25	102302.98
				B				
				C				
				D				
				E	64.74	5179.26	11221.73	134660.76
5	Junior Civil Engineer	519	2203	A	42.76	3420.86	7411.86	88942.36
				B	44.90	3591.90	7782.45	93389.40
				C	47.14	3771.50	8171.58	98059.00
				D	49.50	3960.08	8580.17	102962.08
				E	51.98	4158.09	9009.19	108110.34
5	Junior Planner	520	2804	A	38.72	3097.22	6710.64	80527.72
				B	40.65	3252.09	7046.19	84554.34
				C	42.68	3414.68	7398.47	88781.68
				D	44.82	3585.46	7768.50	93221.96
				E	47.06	3764.69	8156.83	97881.94
7	Lifeguard	710	5610	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	21.00	1680.00	3640.00	43680.00
2	Maint Worker III - 40	234	8619	A	35.70	2855.95	6187.89	74254.70
				B	37.49	2998.96	6497.75	77972.96
				C	39.36	3148.82	6822.44	81869.32
				D	41.33	3306.40	7163.87	85966.40
				E	43.40	3471.68	7521.97	90263.68

**Note Customer Services Supervisor change effective 02-18-2020

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2	Maintenance Custodian I	203	8101	A	25.43	1907.19	4132.24	49586.94
				B	26.70	2002.56	4338.88	52066.56
				C	28.04	2102.70	4555.85	54670.20
				D	29.44	2207.83	4783.63	57403.58
				E	30.91	2318.23	5022.83	60273.98
2	Maintenance Custodian I - 40	222	8107	A	25.43	2034.36	4407.78	52893.36
				B	26.70	2136.05	4628.11	55537.30
				C	28.04	2242.87	4859.55	58314.62
				D	29.44	2355.02	5102.54	61230.52
				E	30.91	2472.75	5357.63	64291.50
2	Maintenance Custodian II	204	8102	A	27.97	2097.95	4545.56	54546.70
				B	29.37	2202.83	4772.80	57273.58
				C	30.84	2312.99	5011.48	60137.74
				D	32.38	2428.57	5261.90	63142.82
				E	34.00	2550.04	5525.09	66301.04
2	Maintenance Custodian II - 40	223	8108	A	27.97	2237.82	4848.61	58183.32
				B	29.37	2349.66	5090.93	61091.16
				C	30.84	2467.17	5345.53	64146.42
				D	32.38	2590.48	5612.71	67352.48
				E	34.00	2720.07	5893.49	70721.82
2	Maintenance Custodian III	205	8103	A	32.17	2412.60	5227.30	62727.60
				B	33.78	2533.22	5488.64	65863.72
				C	35.47	2659.89	5763.10	69157.14
				D	37.24	2792.89	6051.26	72615.14
				E	39.10	2932.57	6353.90	76246.82
2	Maintenance Custodian III - 40	233	8618	A	32.17	2573.60	5576.13	66913.60
				B	33.78	2702.09	5854.53	70254.34
				C	35.47	2837.59	6148.11	73777.34
				D	37.24	2979.21	6454.96	77459.46
				E	39.10	3127.82	6776.94	81323.32
2	Maintenance Worker I	206	8202	A	27.97	2097.95	4545.56	54546.70
				B	29.37	2202.83	4772.80	57273.58
				C	30.84	2312.99	5011.48	60137.74
				D	32.38	2428.62	5262.01	63144.12
				E	34.00	2550.04	5525.09	66301.04

**Note Customer Services Supervisor change effective 02-18-2020

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2	Maintenance Worker I-40	207	8203	A	28.23	2258.22	4892.81	58713.72
				B	29.63	2370.40	5135.87	61630.40
				C	31.12	2489.44	5393.79	64725.44
				D	32.67	2613.60	5662.80	67953.60
				E	34.31	2744.63	5946.70	71360.38
2	Maintenance Worker II	208	8204	A	30.77	2307.72	5000.06	60000.72
				B	32.31	2423.09	5250.03	63000.34
				C	33.92	2544.23	5512.50	66149.98
				D	35.62	2671.46	5788.16	69457.96
				E	37.40	2805.04	6077.59	72931.04
2	Maintenance Worker II-40	209	8205	A	31.04	2483.44	5380.79	64569.44
				B	32.60	2607.61	5649.82	67797.86
				C	34.23	2738.64	5933.72	71204.64
				D	35.93	2874.79	6228.71	74744.54
				E	37.73	3018.66	6540.43	78485.16
2	Maintenance Worker III	210	8206	A	35.38	2653.85	5750.01	69000.10
				B	37.15	2786.55	6037.53	72450.30
				C	39.01	2925.89	6339.43	76073.14
				D	40.96	3072.17	6656.37	79876.42
				E	43.01	3225.80	6989.23	83870.80
7	Maintenance Worker/Seasonal	760	8207	A	19.88	1590.40	3445.87	41350.40
				B				
				C				
				D				
				E	24.85	1988.00	4307.33	51688.00
8	Management Analyst	854	2128	A	51.49	4119.23	8925.00	107099.98
				B				
				C				
				D				
				E	72.10	5768.18	12497.72	149972.68
5	Marketing Coordinator	548	5614	A	36.34	2907.27	6299.09	75589.02
				B	38.16	3052.63	6614.03	79368.38
				C	40.07	3205.26	6944.73	83336.76
				D	42.07	3365.53	7291.98	87503.78
				E	44.17	3533.81	7656.59	91879.06

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Mayor	696	1118	A	130.47	521.88	1130.74	13568.88
				B				
				C				
				D				
				E	130.47	521.88	1130.74	13568.88
5	Neighbhd Preservation Asst	510	5802	A	30.51	2441.10	5289.05	63468.60
				B	32.04	2563.17	5553.53	66642.42
				C	33.64	2691.32	5831.19	69974.32
				D	35.32	2825.92	6122.83	73473.92
				E	37.09	2967.17	6428.87	77146.42
5	Office Assistant I	516	6108	A	24.59	1966.86	4261.53	51138.36
				B	25.81	2065.19	4474.58	53694.94
				C	27.11	2168.46	4698.33	56379.96
				D	28.46	2276.85	4933.18	59198.10
				E	29.88	2390.70	5179.85	62158.20
5	Office Assistant II	517	6109	A	27.04	2163.45	4687.47	56249.70
				B	28.39	2271.59	4921.78	59061.34
				C	29.82	2385.23	5168.00	62015.98
				D	31.31	2504.49	5426.40	65116.74
				E	32.87	2629.64	5697.55	68370.64
5	Office Specialist	518	6110	A	31.10	2487.96	5390.58	64686.96
				B	32.65	2612.38	5660.16	67921.88
				C	34.29	2743.04	5943.25	71319.04
				D	36.00	2880.22	6240.48	74885.72
				E	37.80	3024.16	6552.35	78628.16
4	Patrol Officer	404	4401	A	49.75	3980.00	8623.33	103480.00
				B	52.24	4178.99	9054.48	108653.74
				C	54.85	4387.92	9507.16	114085.92
				D	57.59	4607.33	9982.55	119790.58
				E	60.47	4837.66	10481.60	125779.16
4	Patrol Officer Trainee	458	4402	A	48.68	3894.53	8438.15	101257.78
				B	51.11	4089.18	8859.89	106318.68
				C	53.67	4293.69	9303.00	111635.94
				D	56.35	4508.34	9768.07	117216.84
				E	59.17	4733.72	10256.39	123076.72

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
5	Payroll Specialist	546	5102	A	33.22	2657.20	5757.27	69087.20
				B	34.88	2790.06	6045.13	72541.56
				C	36.62	2929.56	6347.38	76168.56
				D	38.45	3076.05	6664.78	79977.30
				E	40.37	3229.80	6997.90	83974.80
5	Plan Check Engineer	521	3807	A	55.36	4428.42	9594.91	115138.92
				B	58.12	4649.38	10073.66	120883.88
				C	61.03	4882.17	10578.04	126936.42
				D	64.07	5125.87	11106.05	133272.62
				E	67.32	5385.54	11668.67	140024.04
5	Plan Checker	522	3803	A	47.20	3776.18	8181.72	98180.68
				B	49.56	3964.94	8590.70	103088.44
				C	52.04	4163.54	9021.00	108252.04
				D	54.64	4371.10	9470.72	113648.60
				E	57.38	4590.27	9945.59	119347.02
6	Plan Review Manager	678	1210	A	61.45	4915.76	10650.81	127809.76
				B				
				C				
				D				
				E	79.92	6393.40	13852.37	166228.40
6	Planning & Neigh Svcs Director	607	1803	A	79.14	6330.89	13716.93	164603.14
				B				
				C				
				D				
				E	110.79	8863.25	19203.71	230444.50
7	Planning Commissioners	698	1108	A	1.00	80.00	173.33	2080.00
				B				
				C				
				D				
				E	1.00	80.00	173.33	2080.00
6	Planning Manager	602	2803	A	60.31	4825.16	10454.51	125454.16
				B				
				C				
				D				
				E	84.44	6755.21	14636.29	175635.46

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

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4	Police Assistant	450	6401	A	0.02	1.64	3.55	42.64
				B	47.27	3781.86	8194.03	98328.36
				C	49.64	3970.92	8603.66	103243.92
				D	52.12	4169.45	9033.81	108405.70
				E	54.72	4377.95	9485.56	113826.70
6	Police Captain	651	1401	A	85.54	6842.88	14826.24	177914.88
				B				
				C				
				D				
				E	119.75	9580.00	20756.67	249080.00
4	Police Clerk I	451	6402	A	33.88	2710.80	5873.40	70480.80
				B	35.58	2846.35	6167.09	74005.10
				C	37.36	2988.65	6475.41	77704.90
				D	39.23	3138.10	6799.22	81590.60
				E	41.19	3294.94	7139.04	85668.44
4	Police Clerk II	452	6403	A	37.27	2981.81	6460.59	77527.06
				B	39.14	3130.99	6783.81	81405.74
				C	41.09	3287.52	7122.96	85475.52
				D	43.15	3451.92	7479.16	89749.92
				E	45.31	3624.44	7852.95	94235.44
4	Police Clerk Supervisor	454	6404	A	43.05	3444.07	7462.15	89545.82
				B	45.20	3616.30	7835.32	94023.80
				C	47.46	3797.07	8226.99	98723.82
				D	49.84	3986.95	8638.39	103660.70
				E	52.33	4186.28	9070.27	108843.28
4	Police Evidence Technician	459	8607	A	39.53	3162.29	6851.63	82219.54
				B	41.50	3320.38	7194.16	86329.88
				C	43.58	3486.42	7553.91	90646.92
				D	45.76	3660.76	7931.65	95179.76
				E	48.05	3843.79	8328.21	99938.54
4	Police Lieutenant	400	2402	A	76.31	6104.74	13226.94	158723.24
				B	80.12	6409.98	13888.29	166659.48
				C	84.13	6730.51	14582.77	174993.26
				D	88.34	7067.05	15311.94	183743.30
				E	92.75	7420.38	16077.49	192929.88

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
4	Police Officer	403	4403	A	54.40	4352.17	9429.70	113156.42
				B	57.12	4569.84	9901.32	118815.84
				C	59.98	4798.31	10396.34	124756.06
				D	62.98	5038.19	10916.08	130992.94
				E	66.13	5290.16	11462.01	137544.16
4	Police Officer Trainee	457	4404	A	53.23	4258.69	9227.16	110725.94
				B	55.90	4471.68	9688.64	116263.68
				C	58.69	4695.30	10173.15	122077.80
				D	61.63	4930.03	10681.73	128180.78
				E	64.71	5176.53	11215.82	134589.78
4	Police Sergeant	401	4405	A	65.72	5257.54	11391.34	136696.04
				B	69.01	5520.43	11960.93	143531.18
				C	72.46	5796.44	12558.95	150707.44
				D	76.08	6086.34	13187.07	158244.84
				E	79.88	6390.65	13846.41	166156.90
6	Police Support Services Mgr	657	1404	A	58.49	4679.57	10139.07	121668.82
				B				
				C				
				D				
				E	81.90	6551.69	14195.33	170343.94
7	Pool Manager	708	5608	A	18.25	1460.00	3163.33	37960.00
				B				
				C				
				D				
				E	25.55	2044.00	4428.67	53144.00
8	Principal Civil Engineer	822	2204	A	61.45	4915.76	10650.81	127809.76
				B				
				C				
				D				
				E	79.92	6393.40	13852.37	166228.40
8	Principal Planner	823	2811	A	63.35	5068.27	10981.25	131775.02
				B				
				C				
				D				
				E	76.73	6138.46	13300.00	159599.96

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

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5	Program Coordinator	523	5606	A	33.89	2711.28	5874.44	70493.28
				B				
				C				
				D				
				E	44.61	3568.85	7732.51	92790.10
6	Public Information Officer	674	1122	A	58.05	4644.23	10062.50	120749.98
				B				
				C				
				D				
				E	81.27	6501.93	14087.51	169050.18
5	Public Services Assistant I	524	6601	A	28.27	2261.81	4900.59	58807.06
				B	29.69	2374.92	5145.66	61747.92
				C	31.17	2493.69	5402.99	64835.94
				D	32.73	2618.37	5673.13	68077.62
				E	34.37	2749.27	5956.75	71481.02
5	Public Services Assistant II	525	6602	A	31.10	2487.98	5390.62	64687.48
				B	32.66	2612.41	5660.22	67922.66
				C	34.29	2743.03	5943.23	71318.78
				D	36.00	2880.23	6240.50	74885.98
				E	37.80	3024.16	6552.35	78628.16
6	Public Works Director	635	1204	A	81.37	6509.80	14104.57	169254.80
				B				
				C				
				D				
				E	113.92	9113.73	19746.41	236956.98
5	Public Works Inspector	526	3202	A	45.65	3652.03	7912.73	94952.78
				B	47.93	3834.66	8308.43	99701.16
				C	50.33	4026.36	8723.78	104685.36
				D	52.85	4227.70	9160.02	109920.20
				E	55.49	4439.06	9617.96	115415.56
6	Public Works Manager	648	1117	A	54.16	4332.74	9387.60	112651.24
				B				
				C				
				D				
				E	75.82	6065.83	13142.63	157711.58

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

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8	Purchasing Agent	826	1106	A	50.73	4058.22	8792.81	105513.72
				B				
				C				
				D				
				E	65.42	5233.97	11340.27	136083.22
7	Recreation Administrative Asst	712	5619	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	21.00	1680.00	3640.00	43680.00
7	Recreation Attendant	711	5618	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	21.00	1680.00	3640.00	43680.00
7	Recreation Instructors	707	5607	A	18.33	1466.40	3177.20	38126.40
				B				
				C				
				D				
				E	36.66	2932.80	6354.40	76252.80
7	Recreation Leader	706	5617	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	21.00	1680.00	3640.00	43680.00
6	Recreation Services Manager	616	2602	A	50.05	4003.69	8674.66	104095.94
				B				
				C				
				D				
				E	65.10	5207.62	11283.18	135398.12
8	Recreation Services Supervisor	827	2601	A	48.46	3876.64	8399.39	100792.64
				B				
				C				
				D				
				E	63.78	5102.17	11054.70	132656.42

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

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5	Recreation Svcs Assistant I	527	8601	A	15.98	1278.47	2770.02	33240.22
				B	16.78	1342.38	2908.49	34901.88
				C	17.62	1409.54	3054.00	36648.04
				D	18.50	1479.98	3206.62	38479.48
				E	19.43	1554.02	3367.04	40404.52
5	Recreation Svcs Assistant II	528	8602	A	18.97	1517.96	3288.91	39466.96
				B	19.93	1594.02	3453.71	41444.52
				C	20.92	1673.67	3626.28	43515.42
				D	21.97	1757.40	3807.70	45692.40
				E	23.07	1845.23	3998.00	47975.98
5	Recreation Svcs Assistant III	529	8603	A	21.81	1744.87	3780.55	45366.62
				B	22.90	1832.06	3969.46	47633.56
				C	24.05	1923.67	4167.95	50015.42
				D	25.25	2019.85	4376.34	52516.10
				E	26.51	2120.87	4595.22	55142.62
5	Recreation Svcs Assistant IV	530	8604	A	25.59	2047.19	4435.58	53226.94
				B	26.87	2149.53	4657.32	55887.78
				C	28.21	2257.01	4890.19	58682.26
				D	29.62	2369.87	5134.72	61616.62
				E	31.10	2488.35	5391.43	64697.10
8	Senior Accountant	829	2110	A	45.08	3606.56	7814.21	93770.56
				B				
				C				
				D				
				E	59.34	4747.03	10285.23	123422.78
5	Senior Accounting Technician	539	6106	A	34.21	2736.78	5929.69	71156.28
				B	35.92	2873.64	6226.22	74714.64
				C	37.72	3017.33	6537.55	78450.58
				D	39.60	3168.22	6864.48	82373.72
				E	41.58	3326.60	7207.63	86491.60
8	Senior Administrative Analyst	834	2112	A	49.79	3983.57	8631.07	103572.82
				B				
				C				
				D				
				E	65.55	5243.79	11361.55	136338.54

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

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5	Senior Building Inspector	531	3804	A	52.73	4218.07	9139.15	109669.82
				B	55.36	4429.02	9596.21	115154.52
				C	58.13	4650.44	10075.95	120911.44
				D	61.04	4882.93	10579.68	126956.18
				E	64.09	5127.10	11108.72	133304.60
8	Senior Executive Assistant	855	6123	A	42.89	3431.31	7434.51	89214.06
				B				
				C				
				D				
				E	56.45	4516.39	9785.51	117426.14
8	Senior HR Analyst	841	2122	A	46.49	3719.38	8058.66	96703.88
				B				
				C				
				D				
				E	61.20	4895.82	10607.61	127291.32
5	Senior Plan Check Engineer	534	3806	A	60.89	4871.26	10554.40	126652.76
				B	63.94	5114.96	11082.41	132988.96
				C	67.13	5370.47	11636.02	139632.22
				D	70.48	5638.72	12217.23	146606.72
				E	74.01	5920.61	12827.99	153935.86
8	Senior Planner	830	2805	A	58.08	4646.28	10066.94	120803.28
				B				
				C				
				D				
				E	70.60	5647.74	12236.77	146841.24
5	Senior Public Works Inspector	535	3203	A	52.73	4218.10	9139.22	109670.60
				B	55.36	4429.02	9596.21	115154.52
				C	58.13	4650.45	10075.98	120911.70
				D	61.04	4882.93	10579.68	126956.18
				E	64.09	5127.10	11108.72	133304.60
2	Senior Public Works Lead	225	8609	A	44.37	3549.30	7690.15	92281.80
				B	46.59	3726.89	8074.93	96899.14
				C	48.91	3913.02	8478.21	101738.52
				D	51.36	4108.55	8901.86	106822.30
				E	53.93	4314.31	9347.67	112172.06

**Note Customer Services Supervisor change effective 02-18-2020

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7	Special Project Associate	750	5105	A	20.00	1600.00	3466.67	41600.00
				B				
				C				
				D				
				E	50.00	4000.00	8666.67	104000.00
5	Sr Code Enforcement Officer	545	5806	A	46.84	3747.39	8119.35	97432.14
				B	49.18	3934.04	8523.75	102285.04
				C	51.64	4131.27	8951.09	107413.02
				D	54.23	4338.13	9399.28	112791.38
				E	56.93	4554.60	9868.30	118419.60
8	Sr. Information Analyst/Dev	853	2119	A	51.77	4141.85	8974.01	107688.10
				B				
				C				
				D				
				E	68.15	5451.93	11812.51	141750.18
5	Sr. Public Services Assistant	549	5615	A	34.69	2775.18	6012.89	72154.68
				B	36.42	2913.94	6313.54	75762.44
				C	38.25	3059.64	6629.22	79550.64
				D	40.16	3212.62	6960.68	83528.12
				E	42.17	3373.25	7308.71	87704.50
7	Sr. Special Projects Associate	749	5106	A	50.00	4000.00	8666.67	104000.00
				B				
				C				
				D				
				E	125.00	10000.00	21666.67	260000.00
7	Staff Assistant	745	5104	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	24.00	1920.00	4160.00	49920.00
7	Student Intern	740	5103	A	15.00	1200.00	2600.00	31200.00
				B				
				C				
				D				
				E	24.00	1920.00	4160.00	49920.00

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
6	Transporation & Traffic Mgr	675	1202	A	58.05	4644.23	10062.50	120749.98
				B				
				C				
				D				
				E	81.27	6501.93	14087.51	169050.18
8	Video Media Specialist	840	2121	A	40.05	3203.98	6941.96	83303.48
				B				
				C				
				D				
				E	52.72	4217.41	9137.72	109652.66
2	Water Meter Reader I	216	8104	A	27.97	2097.88	4545.41	54544.88
				B	29.37	2202.83	4772.80	57273.58
				C	30.84	2312.98	5011.46	60137.48
				D	32.38	2428.57	5261.90	63142.82
				E	34.00	2550.03	5525.06	66300.78
2	Water Meter Reader I -40	235	8620	A	27.97	2237.90	4848.78	58185.40
				B	29.37	2349.80	5091.23	61094.80
				C	30.84	2466.94	5345.04	64140.44
				D	32.38	2590.20	5612.10	67345.20
				E	34.01	2720.46	5894.33	70731.96
2	Water Meter Reader II	217	8105	A	30.77	2307.72	5000.06	60000.72
				B	32.31	2423.08	5250.01	63000.08
				C	33.92	2544.22	5512.48	66149.72
				D	35.62	2671.44	5788.12	69457.44
				E	37.40	2805.04	6077.59	72931.04
2	Water Meter Reader II -40	236	8621	A	30.77	2461.69	5333.66	64003.94
				B	32.31	2584.96	5600.75	67208.96
				C	33.92	2713.46	5879.16	70549.96
				D	35.62	2849.84	6174.65	74095.84
				E	37.40	2992.33	6483.38	77800.58
2	Water Systems Operator	219	7211	A	40.09	3207.25	6949.04	83388.50
				B	42.09	3367.27	7295.75	87549.02
				C	44.20	3535.96	7661.25	91934.96
				D	46.41	3712.76	8044.31	96531.76
				E	48.73	3898.42	8446.58	101358.92

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

All Job Classifications/Salary Table Effective 01/06/2020

<u>Code</u>	<u>Classification</u>	<u>Pay Grade</u>	<u>Occ Code</u>	<u>Step</u>	<u>Hourly</u>	<u>BiWeekly</u>	<u>Monthly</u>	<u>Annual</u>
2	Water Systems Operator - 40	237	8622	A	42.76	3420.67	7411.45	88937.42
				B	44.90	3592.01	7782.69	93392.26
				C	47.15	3772.10	8172.88	98074.60
				D	49.50	3960.04	8580.09	102961.04
				E	51.98	4158.48	9010.04	108120.48

**Note Customer Services Supervisor change effective 02-18-2020

**Note Budget Manager change effective 02-18-2020

Vacant Position Status Report as of 01/31/2020				By Department			
Department Name	Position Title	Positions	Vacancy Date/Position Approval Date	# of days Vacant	Recruitment Phase		Comments
					1- Employee waiting to start 2- Employee in background 3- Recruitment Ongoing 4- Recruitment waiting to begin 5- Other		
Building & Housing	Building/NP Inspector	1.00	11/22/2019	70	4		in Human Resource's recruitment queue
Building & Housing	Senior Building Inspector	1.00	9/15/2019	138	4		Department working on exam materials
Building & Housing	Senior Plan Check Engineer	1.00	09/15/2019	138	4		in Human Resource's recruitment queue
Building & Housing	Senior Administrative Analyst	1.00	7/1/2019	214	4		Department working on exam materials
Building & Housing	Building/NP Inspector	1.00	9/15/2019	138	5		Pending Council Consideration for Classification Adjustment 2/18/20
Building & Housing	Office Specialist	1.00	12/22/2019	40	5		Pending Council Consideration for Classification Adjustment 2/18/20
City Manager	City Manager	1.00	6/4/2019	241	5		Pending Council Decision to fill the position
City Manager	Public Information Officer	1.00	1/3/2020	28	5		Pending Council review of the Communication Study scheduled for 2/18/20
Economic Development	Econ Development Specialist	1.00	6/28/2019	217	3		Recruitment started 1/15/20
Engineering	GIS Technician	1.00	7/1/2019	214	4		Department working on exam materials
Engineering	Asst Civil Engineer	1.00	1/2/2020	29	5		Pending Council Consideration for Classification Adjustment 2/18/20
Finance	Senior Accountant	1.00	2/4/2019	361	3		Extended recruitment due to lack of qualified applicants; Interviews 2/20/2020
Finance	Senior Accountant	1.00	10/13/2019	110	3		Interviews 2/20/2020
Finance	Budget Manager	1.00	9/27/2019	126	5		Based on the results of a comparative compensation study for the position, staff submitted for Council Consideration a salary range adjustment for 2/18/20

Vacant Position Status Report as of 01/31/2020			By Department				
Department Name	Position Title	Positions	Vacancy Date/Position Approval Date	# of days Vacant	Recruitment Phase		Comments
					1- Employee waiting to start	2- Employee in background	
					3- Recruitment Ongoing	4- Recruitment waiting to begin	
					5- Other		
Finance	Finance Technician	1.00	8/30/2019	154		5	This position has been held vacant for a reclassification recommendation forthcoming for Council consideration as part of the FY 2020-21 Proposed Operating Budget in support of developing a robust risk management program.
Finance	Customer Services Supervisor	1.00	7/1/2018	579		5	Pending Council Consideration for a Salary Range adjustment on 2/18/20 to correct an error
Finance	Water Meter Reader II - 40	0.50	7/1/2017	944		5	Funding is used for temporary meter readers who are on call as needed; will recommend converting the 0.50 permanent position to temp. salaries as part of the FY 2020-21 Proposed Budget
Fire	Fire Captain - 40	1.00	11/9/2019	83		3	Recruitment to open 2/7/20
Fire	Executive Assistant	1.00	7/1/2019	214		3	Candidate Interviews 2/6/20
Fire	Haz Mat Inspector	1.00	9/19/2019	134		3	Candidate Testing
Fire	Fire Engineer	1.00	5/25/2019	251		4	in Human Resource's recruitment queue
Fire	Fire Prev Inspector	1.00	7/1/2019	214		4	in Human Resource's recruitment queue
Fire	Entry Level Fire Inspector	1.00	7/1/2019	214		5	Staff is developing Job Specifications
Human Resources	Human Resources Technician	1.00	11/1/2019	91		3	Interviewing Candidates 2/10-2/14
Information Technology	Information Technology Technician	1.00	6/6/2019	239		2	Candidate in Backgrounds
Information Technology	Information Technology Analyst	1.00	6/17/2019	228		3	Interviews 2/18/2020
Information Technology	Information Technology Analyst	1.00	7/1/2019	214		3	Interviews 2/18/2020
Information Technology	Sr. Information Analyst/Dev	1.00	7/1/2018	579		4	Extensive discussions with Bargaining Unit reg. salary range; Department working on exam materials
Police	Police Management Analyst	1.00	7/1/2019	214		2	Candidate in Backgrounds

Vacant Position Status Report as of 01/31/2020			By Department				
Department Name	Position Title	Positions	Vacancy Date/Position Approval Date	# of days Vacant	Recruitment Phase		Comments
					1- Employee waiting to start 2- Employee in background 3- Recruitment Ongoing 4- Recruitment waiting to begin 5- Other		
Police	Comm Dispatcher	1.00	7/1/2019	214		2	Conditional job offer given; start date TBD
Police	Police Officer	1.00	10/5/2019	118		2	Conditional job offer given; start date TBD
Police	Community Service Officer	1.00	7/1/2019	214		2	Applicant given conditional job offer; start date TBD
Police	Police Clerk Super	1.00	12/28/2018	399		3	Recruitment ongoing; applicant interviews March 2020
Police	Comm Dispatcher	1.00	10/29/2019	94		3	Candidate in Backgrounds
Police	Community Service Officer	1.00	7/1/2019	214		3	Recruitment continuously open; Applicant interviews scheduled March 2020
Police	Police Officer	1.00	9/6/2019	147		3	Candidate in Backgrounds
Police	Patrol Officer	1.00	12/15/2019	47		5	Candidate in Backgrounds
Police	Patrol Officer	1.00	1/1/2019	395		5	Recruitment continuously open
Police	Patrol Officer	1.00	7/1/2017	944		5	Recruitment continuously open
Public Works	Senior Administrative Analyst	1.00	7/1/2019	214		2	Candidate in Backgrounds
Public Works	Maint Worker II-40	1.00	1/5/2020	26		3	Interviews 2/12-2/13
Public Works	Maint Worker I-40	1.00	5/30/2019	246		3	Interviews 2/12-2/13
Public Works	Maint Worker II-40	1.00	1/5/2020	26		3	Interviews 2/12-2/13
Public Works	Maint Worker II-40	1.00	1/5/2020	26		3	Interviews 2/12-2/13
Public Works	Maint Worker II-40	1.00	5/30/2019	246		3	Interviews 2/12-2/13
Public Works	Maintenance Worker III - 40	1.00	7/1/2019	214		3	Extended recruitment due to eligibility list exhausted; Interviews 2/12-2/13
Public Works	Senior Public Works Lead	1.00	9/16/2018	502		4	in Human Resource's recruitment queue, in salary discussions with MEA
Public Works	Maintenance Worker III - 40	1.00	6/19/2019	226		4	Extended recruitment due to eligibility list exhausted; Interviews 2/12-2/13
Public Works	Fleet Maint Worker III - 40	1.00	3/3/2019	334		4	in Human Resource's recruitment queue
Public Works	Equipment Maint Worker II -40	1.00	7/1/2019	214		4	in Human Resource's recruitment queue

Vacant Position Status Report as of 01/31/2020				By Department			
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					1- Employee waiting to start	2- Employee in background	
					3- Recruitment Ongoing		
					4- Recruitment waiting to begin		
					5- Other		
Public Works	Administrative Analyst II	1.00	12/4/2018	423	4	Interviews 2/7/20	
Public Works	Environmental Inspector	1.00	7/1/2019	214	4	in Human Resource's recruitment queue	
Recreation	Public Services Assistant I	1.00	7/1/2019	214	3	Interviewing Candidates	
Recreation	Program Coordinator	1.00	7/1/2019	214	3	Recruitment to start 2/7/20	
Recreation	Program Coordinator	1.00	12/27/2019	35	3	Recruitment to start 2/7/20	
Recreation	Rec Serv Asst IV	1.00	1/6/2020	25	4	in Human Resource's recruitment queue	
Recreation	Rec Serv Asst II	1.00	7/1/2019	214	4	Recruitment to start 3/6/20	
Recreation	Office Asst II	1.00	7/1/2019	214	4	Recruitment to start 3/6/20	
	Total Vacancies	57.50					
	Vacancy Rate	13.15%					

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Police	Police Management Analyst	1.00	7/1/2019	214		2	Candidate in Backgrounds
Police	Comm Dispatcher	1.00	7/1/2019	214		2	Conditional job offer given; start date TBD
Police	Police Officer	1.00	10/5/2019	118		2	Conditional job offer given; start date TBD
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Finance	Budget Manager	1.00	9/27/2019	126		5	Based on the results of a comparative compensation study for the position, staff submitted for Council Consideration a salary range adjustment for 2/18/20
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Finance	Customer Services Supervisor	1.00	7/1/2018	579		5	Pending Council Consideration for a Salary
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Police	Patrol Officer	1.00	1/1/2019	395	5	Recruitment continuously open	
Police	Patrol Officer	1.00	7/1/2017	944	5	Recruitment continuously open	
	Total Vacancies	57.50					
	Vacancy Rate	13.15%					



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Agreement with Chandler Asset Management for a Five Year Contract Amount Not to Exceed \$790,000 for Investment Services
Category:	Leadership and Support Services
Meeting Date:	2/18/2020
Staff Contact:	Walter C. Rossmann, Finance Director, 408-586-3111
Recommendation:	Approve and authorize the City Manager to execute the agreement with Chandler Asset Management for a five year contract amount not to exceed \$790,000, with the first year of the contract in the amount of \$150,000, for investment services to manage the City's pooled portfolio, subject to the annual appropriation of funds.

BACKGROUND:

The City of Milpitas currently internally manages the investment of its pooled portfolio, which as of June 30, 2019 totaled approximately \$332 million. Of this amount, approximately \$89 million was invested with the State's Local Agency Investment Fund (LAIF) to meet the City's liquidity needs. The City currently has three approved brokers from which investments are made. Portfolio evaluation and reporting are currently performed using Sympro software. For the last decade, the investment of the pooled portfolio has been assigned as a collateral duty to the Finance Technician position. The duties of this position do not provide for effectively researching and analyzing investments which resulted in a dependence on brokers, treasury bonds, LAIF and cash and generated low yields in comparison to the appropriate benchmark. As of the last quarterly investment report, the City's investment pool earned 2.16%, while the performance benchmark of the 3-year Treasury Note earned 2.17% and LAIF earned 2.28%. The average yield for the last four quarters was 2.13% earning the City \$5.2 million in investment income.

As part of the adoption of the FY 2020-21 Budget, Council approved funding to outsource the management of the City's pooled cash portfolio.

ANALYSIS:

On September 13, 2019 the Purchasing Division released a Request for Proposals (RFP) #2373 seeking proposals from qualified vendors with demonstrated experience in managing municipal investment portfolios and implementing a municipal investment policy.

The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website and emailed to companies registered with the City via ProcureNow.com (the City's eProcurement system). Upon release, 76 firms received the solicitation notification and 15 firms downloaded the RFP documents. The Purchasing Division received two (2) proposals by 2:00 pm on the October 11, 2019 deadline in response to the RFP from PFM Asset Management, LLC and Chandler Asset Management, Inc.

The evaluation committee reviewed proposals based on the following criteria:

1. Cover Letter
2. Company Profile
3. Execution Plan
4. Personnel Assigned
5. Experience
6. References, and
7. Proposed Compensation

After an initial evaluation by three City staff members and one outside evaluator, who comprised the evaluation committee, both firms were invited to and attended an interview to establish their experience, approach, as well as risk and performance analysis in managing municipal investment portfolios. Onsite interviews were held at City Hall on November 7, 2019 and scoring was finalized on November 14, 2019 based on the interviews.

For Chandler, the top-rated firm, reference checks were performed from November 19-20, 2019 to further understand the firm's performance and user experience with references that Chandler included in its response to the RFP. References rated Chandler as an excellent, responsive and knowledgeable firm that assisted each City that served as a reference in increasing its investments. For one city, Chandler was able to increase the investment return by 150%. This was due to Chandler having a greater ability to focus on asset management and its greater knowledge of investing compared to an employee who was charged with these investments as additional duties to her/his job.

The table below shows the final evaluation scores with the recommended firm highlighted in green:

RFP NO: 2373	PFM Asset Management, LLC	Chandler Asset Management, Inc.
Final RFP Evaluation Scores	83.75	90.5

Chandler Asset Management, Inc. has a long-standing commitment and proven record of performance as an investment manager to the public sector. It was founded in 1988 and has kept paramount the common investment objectives of public agencies of safety of principal, liquidity, and above-market returns over an investment cycle. Their risk management practices and relationship-based approach to investment management have led to the firm's growth, working with 143 public agencies nationwide currently managing over \$17.5 billion in assets.

Chandler will work as a fiduciary on every aspect of the investment program including:

- investment policy development and review,
- cash flow analysis and forecasting, and
- portfolio optimization through the careful control of risk.

Chandler will implement investment strategies that meet the City's risk and return requirements as outlined in the Council approved investment policy, ensure sufficient cash liquidity, conduct education and training to staff, and provide comprehensive investment reporting. The City will maintain its relationship with the Bank of New York (BNY) as the City's cash custodian, ensuring that Chandler will never have direct access to any money in the City's investment account. All deposits and withdrawals from the investment account with BNY will still be initiated by City staff. Chandler will only have access to initiate trades to purchase and sell securities that will remain in the investment account with BNY.

Staff recommends the City Council approve Chandler Asset Management as the most qualified vendor. Once Council approves staff's recommendation, staff will transition the investment services to Chandler by March 31, 2020.

POLICY ALTERNATIVE:

Alternative: Do not outsource the management of the City's investment pool.

Pros: The City would avoid paying annual fees estimated at \$150,000 based on the estimated amount of invested funds outside of LAIF.

Cons: The City would not take advantage of the expertise and know-how of an investment firm.

Reason for Not Recommending: To increase yields on the City's cash pool, the City would have to invest significantly in staff such as reclassify the Finance Technician position to a Financial Analyst position, de

more staff time for the investment function, allocate existing staff capacity from other duties for back-up duties, and train the primary and secondary position in a complex field. In turn, to offset Chandler Asset Management, Inc. annual estimated fee of \$150,000, the firm needs to raise the average annual yield by 5.0 basis points or 0.05 percentage point, which Chandler has achieved with other cities.

FISCAL IMPACT:

The City is heavily invested in LAIF. Therefore, staff anticipates that approximately \$50 million from the City's LAIF accounts may be transferred to the portfolio of securities to be managed by Chandler, leaving about \$40 million for liquidity needs. With this shift, Chandler may manage approximately \$300 million in the first year of the contract for an estimated annual fee of \$150,000 per the tiered fee structure based on millions of dollars invested as shown below. The annual fee would average approximately 5.0 basis points (0.05 of 1%), but may average slightly higher or lower, depending on the amount ultimately managed. Chandler's return goals will be to enhance the portfolio's interest income as well as underlying market value. Given Chandler's experience and record for generating risk-adjusted above market returns while maintaining safety and liquidity (the California Government Code-mandated objectives of the City's investment program), staff recommends the award of contract.

Fee Schedule

Assets Under Management	Annual Asset Management Fee
First \$50 million	0.08 of 1% (8 basis points)
Next \$75 million	0.06 of 1% (6 basis points)
Next \$125 million	0.04 of 1% (4 basis points)
Assets over \$250 million	0.03 of 1% (3 basis points)

Chandler calculates fees based on the average monthly balance of assets under their direct management. Fees are charged monthly in arrears. The fee schedule is firm for the entire five-year term of the agreement and the City will not be subject to any fee schedule increases during this period. Further, there are no separate or one-time fees associated with the investment management and advisory services provided. The proposed fee schedule is all-inclusive for the services that Chandler provides, including full time investment management, technological resources, onboarding and implementation, online access to the Chandler Client Portal, comprehensive reporting, meetings, personal visits, and educational offerings for staff as well as the treasury management support services.

To arrive at the not-to-exceed contract amount for the five-year contract, staff had to model possible future balances. The modeling assumes a 5% growth in the City's cash pool in addition to up to \$50 million transferred to the portfolio of securities. Based on the tiered fee structure for assets under management, the estimated contract amount for the five-year contract is \$790,000.

Contract Year	Assets Under Management	Estimated Annual Contract Amount
Year 1	\$ 300 million	\$150,000
Year 2	\$ 313 million	\$154,000
Year 3	\$ 326 million	\$158,000
Year 4	\$ 340 million	\$162,000
Year 5	\$ 354 million	\$166,000
Total Five-Year Contract Estimated Amount		\$790,000

California Environmental Quality Act:

Not applicable

Recommendation:

Approve and authorize the City Manager to execute the agreement with Chandler Asset Management for a five year contract amount not to exceed \$790,000, with the first year of the contract in the amount of \$150,000, for investment services to manage the City's pooled portfolio, subject to the annual appropriation of funds.

Attachment:

Professional Services Agreement with Chandler Asset Management

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND CHANDLER ASSET MANAGEMENT**

This Agreement is made and entered into as of _____, 2020 ("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 **Chandler Asset Management**, a California Corporation with its principal place of business at **6225 Lusk Boulevard, San Diego, CA 92121** (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:

INVESTMENT SERVICES

(hereinafter referred to as "the Project").

- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. 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 **Seven-Hundred Ninety Thousand Dollars and Zero Cents (\$790,000)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

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.

The term of this Agreement shall be from **January ____, 2020** to **January ____, 2025** unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the 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. 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 field notes, drawings and specifications, written reports and other documents 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 in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

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. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign **Carlos Oblites** 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

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Walter C. Rossmann, Director
of Finance/Risk Manager

CONSULTANT:

Chandler Asset Management

7250 Redwood Boulevard, Suite 300

Novato, California 94945

Attn: Carlos Oblites, SVP, Portfolio Strategist

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.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND CHANDLER ASSET MANAGEMENT**

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, Director of Finance/
Risk Manager

CHANDLER ASSET MANAGEMENT

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

PROJECT OVERVIEW

The City of Milpitas currently internally manages the investment of its pooled portfolio, which as of June 30, 2019 totaled approximately \$332 million. Of this amount, approximately \$89 million was invested with the State's Local Agency Investment Fund (LAIF) to meet the City's liquidity needs. The City currently has three approved brokers from which investments are made. Portfolio evaluation and reporting are currently performed using Sympro software.

The City's current Investment Policy is reviewed and adopted annually typically at the first Council meeting of a fiscal year to ensure consistency with the overall objectives of safety, liquidity, and yield and its relevance to current law and financial and economic trends. An investment report is filed and submitted to the City Council quarterly.

Consultant will provide investment management services for the City's pooled portfolio in accordance with the City's Investment Policy, as may be amended from time to time, as further set forth below.

SCOPE OF SERVICES

Consultant understands and is uniquely qualified to meet and/or exceed all the expectations that the City has for its investment management, advisory, and service needs, and is committed to management of the City's portfolio as a separate managed account.

• **Investment Management Services.** Consultant will provide full-time investment management services for the City pursuant to the prudent expert standard of care required as a fiduciary. Consultant will develop City-specific objectives and constraints for each portfolio through a collaborative process with City staff. Consultant will work with the City's Director of Finance to evaluate and monitor investments in the portfolio within the scope of a comprehensive strategy to ensure safety, meet liquidity needs, and enhance return.

Consultant manages portfolios that are comprised of asset classes in the U.S. fixed income universe that align with the City's objectives of **safety**, **liquidity** and **return**. In California, these are assets that are permitted by California Government Code 53601 and 53635. The composition of Consultant's portfolios includes high quality, short-term investment-grade, U.S. dollar denominated securities including but not limited to:

- a. U.S. Treasuries,
- b. Federal agency enterprise obligations,
- c. municipal bonds,
- d. negotiable CDs,
- e. corporate notes,
- f. supranational securities,
- g. asset-backed securities,
- h. mortgage-backed securities, and
- i. commercial paper.

• **Investment Policy Review.** Consultant will conduct an extensive review of the City's Investment Policy, as well as consult with the City to understand and quantify investment objectives, risk profile, and expected outcomes. Once the investment policy is approved, it becomes the operating guideline for the portfolio. In addition, the Consultant will perform a formal review of the City's investment policy annually to ensure that it is updated to reflect the latest changes to California Government Code, as well as incorporate the City's objectives and cash flow needs that may change over time. Recommendations are meant to incorporate best practices that provide clarification, increase return potential, and improve risk management.

- **Cash Flow and Maturity Analysis.** The Consultant utilizes proprietary methods to conduct cash flow analysis and forecast cash requirements as an initial step and on an ongoing basis to effectively structure a portfolio that both ensures liquidity and provides the City with opportunities for enhanced returns. Consultant will communicate with the City about current and expected needs in order to maintain cash flow forecasts to manage liquidity, and structure securities in the portfolio to mature on known cash flow dates. Consultant will also identify funds available for longer-term investment in the City’s total return investment strategy to take advantage of the yield-curve and the potential for higher returns.

- **Socially Responsible Investments.** Consultant incorporates ESG factors into their fundamental credit research process, as these factors influence the underlying credit quality and longer-term outlook of a corporation. Integrating ESG factors in the credit analysis process is consistent with the underlying tenets of California Government Code – safety, liquidity, and return. While ESG issues evolve over time, Consultant’s Credit Committee is charged with ensuring the current and evolving factors are consistent with the current relative value of a given security compared to its peer group. For the City, the Consultant will not purchase securities of companies that receive more than 50% of their revenue from the sale or manufacture of tobacco, alcohol, or firearms.

From a Socially Responsible Investment (“SRI”) perspective, Consultant works closely with clients to identify the SRI issues they are looking to address on a case-by-case basis. Global Industry Classification Standards (GICS) and the Calvert Social Index are often utilized to create an SRI program that can be accurately tracked within the Consultant’s automated compliance system. Consultant also has the ability to exclude specific securities and issuers as part of an SRI program.

- **Best Execution, Settlement, and Documentation.** Consultant executes securities transactions on a transparent and highly competitive basis, in accordance with their commitment to best execution. As part of this process, the Consultant will seek a broad range of security broker-dealers that provide a high level of market liquidity and product inventory. Consultant will strive to find the best execution for each transaction, seeking multiple price quotations on all purchases and sales, a process which adds to the incremental net economic benefit and value added over time. Trade tickets documenting the Consultants process will be made available to City the same day that trades occur. The Consultants competitive bid process results in an incremental net financial advantage for the City over time.

- **Reconciliation and Settlement.** Consultant invests in best-in-class tools and technology to support the portfolio management process and simplify investment reporting and compliance. Consultant’s operations team performs daily reconciliations of cash balances and positions in all accounts. This is completed by comparing each account’s cash and security positions in Consultants PAM for Securities accounting system to the relative holdings maintained and provided by the City’s custodian bank. Consultant will work with a number of third-party custodians, including the City’s current provider, Bank of New York Mellon.

Consultant will assist the City in reviewing custodial and safekeeping arrangements. The Consultants Relationship Manager will review the City’s current custodial arrangement, including contractual arrangement, services provided, the City’s satisfaction with the services and their cost. Consultant will make recommendations for revisions in the City’s existing relationship and assist in selecting a new custodian that best facilitates the City’s needs.

- **Establish an appropriate performance benchmark.** Along with an overarching investment strategy designed to meet the City’s risk tolerance and return expectations, Consultant will identify an appropriate benchmark to measure portfolio outcomes. The benchmark should reflect the actual securities being purchased and the risks undertaken and should have a similar weighted average maturity and credit profile as the portfolio. The benchmark should also be the basis for discussion about factors contributing to incremental outperformance of the portfolio relative to the benchmark. Consultant will undergo a collaborative process with the City’s finance staff to select appropriate benchmarks for each of its portfolios.

- **Portfolio Accounting and Reporting.** Consultant will provide monthly reports that include a management summary of portfolio characteristics, performance and full accounting details. Reports may be structured to include the City’s investment accounts as well as its liquid funds in LAIF and cash vehicles. Consultant’s consolidation of the City’s accounts offers both a “broken-out” as well as an aggregated view of the City’s entire investment program for increased transparency and operational efficiency. This provides a rolled up or complete view of the City’s investment program. Reports as well as holdings, trade tickets, and historical data is available to the City via Consultant’s online reporting tool, the *Chandler Client Portal*. Monthly reports will be available no later than the third business day following month-end. The City will also receive

a quarterly report in a format designed to facilitate discussion between the Consultants designated engagement team and City staff.

Reports will be prepared in accordance with state law and the Governmental Accounting Standards Board (GASB) and will be compiled to meet the City's specific needs. Performance for your portfolio will be calculated and reported in compliance with the CFA Institute's Global Investment Performance Standards (GIPS®).

• **Attend meetings with City Staff and Council.** As an investment manager headquartered in California, Consultant will provide timely communication and practice excellent service delivery to the City in all of its contact with City staff. Carlos Oblites (located in the Bay Area), Christopher McCarry and other contacts from the designated team for the City will meet with the City at least quarterly to present the investment portfolio to the City's finance staff. Consultant understands that during any transition and initial period that follows, communication will be frequent in nature and will assist both teams to establish objectives, communication requirements and milestones for the engagement. After this initial period, the team assigned to the City maintains the flexibility to continue to meet as often as the City prefers and will also attend any ad hoc or special meetings and present on fixed income topics throughout the year. Consultant invites the City's staff to their headquarters for periodic meetings, trainings or for the purpose of conducting due diligence.

The Consultant is committed to keeping the City fully informed of local issues, investment strategies, market conditions and developments that are relevant to its investment program and that could potentially impact the City from a risk, opportunity, operational and statutory perspective. Consultant will meet with the City as frequently as they prefer, and the Consultants investment professionals will also be available by phone during business hours.

In addition, the Consultant will communicate regularly via email to the City with updates which include:

1. Weekly economic updates that provide a concise summary of economic and market news of the current week, key economic indicators, as well as topics for the next weeks' economic data releases. The update will be sent via email to City staff and interested parties each Friday;
2. Monthly newsletter that includes a market summary, treasury yield curve graph and monthly percent changes, as well as economic data and statistics; and
3. Ad hoc emails and communication such as Fed rate news, education pieces, white papers, technology and product updates.

• **Serve as a General Resource to the City's staff.** Consultant professionals serve as faculty and committee members for the Government Finance Officers Association (GFOA) and are active participants and sponsors of other national and regional associations that develop recommended best practices and training curricula for public agencies including:

1. the California Society of Municipal Finance Officers (CSMFO),
2. the California Municipal Treasurers Association (CMTA),
3. the California Debt and Investment Advisory Commission (CDIAC),
4. and the CFA Institute.

Consultant is a registered sponsor on the National Registry of CPE Sponsors, affirming its commitment to the delivery of high quality continuing professional education. The Consultant has developed educational materials on a wide range of investment topics, including:

1. risk,
2. duration,
3. benchmarking
4. and total return,
5. corporate credit analysis,
6. accounting and others.

Consultant will provide educational presentations based on best practices of public financial management. Learning opportunities can be scheduled in conjunction with regular portfolio reviews, or at other times more convenient for City staff.

• **Evaluate market risk and develop strategies that minimize the impact on the portfolio.** Consultants focus on managing downside risk is equally as important as the focus on an investment's upside potential and proves especially valuable for protecting the City's principal in a rising interest rate environment. The Consultants strategies add value in a framework of risk management throughout the investment process including the establishment of:

1. specific client objectives,
2. purchasing individual securities,
3. and the reinvestment of maturing bonds.

The Consultant will reduce exposure to market risk by diversifying the portfolio by issuer and security type and by establishing and maintaining a target portfolio duration that is consistent with the City's risk profile and investment objectives.

• **Provide assurance of portfolio compliance with applicable policies and laws.** Consultant utilizes Bloomberg AIM, a robust order management and portfolio compliance system to monitor and automate compliance review and report on compliance of the City's investments. Under Consultant's management engagement, the City will derive additional benefits through operational efficiencies and time-saving practices, the Consultant will use Bloomberg AIM as the single platform from trade origination through compliance review. Compliance will be monitored in the City's portfolio daily and reported formally in the monthly report.

• **Broker-Dealer Due Diligence.** The Consultants Investment Management Team will maintain an active, productive relationship with the broker-dealer community in order to promote an ongoing flow of market information and to execute trades for the City at competitive prices. Currently, there are approximately 45 broker-dealers on the Consultant's Approved List. The Consultant will consistently place several dealers in competition and continuously monitor and compare inventories and prices. The Consultant reviews the credentials and regulatory background of each broker-dealer firm and their employees with whom they trade using FINRA's online BrokerCheck System.

• **Additional Terms Agreement.** The **Additional Terms Specific to Investment Management Relationship**, Exhibit E, is incorporated into this agreement.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

PROPOSED COMPENSATION

1. There are no separate or one-time fees associated with the investment management and advisory services provided. Consultants proposed fee schedule is all-inclusive for the services to be provided, including:
 - a. full time investment management,
 - b. technological resources,
 - c. onboarding and implementation,
 - d. online access to the Chandler Client Portal,
 - e. comprehensive reporting, meetings, personal visits,
 - f. and educational offerings for City staff,
 - g. as well as the treasury management support services described in the scope of services.

Consultants fee schedule does not include charges that the City would incur for third party custodial services. Consultant does not charge fees on funds held in vehicles not directly under their management, including Local Government Investment Pools and internally managed liquid funds; however, Consultant is able to consolidate these funds in City reports.

2. The fee proposal based on Average Assets Under Management by tiers with a breakdown of fees will be:

Proposed Fee Schedule for City of Milpitas

Assets Under Management	Annual Asset Management Fee
First \$50 million	0.08 of 1% (8 basis points)
Next \$75 million	0.06 of 1% (6 basis points)
Next \$125 million	0.04 of 1% (4 basis points)
Assets over \$250 million	0.03 of 1% (3 basis points)

The Consultant calculates fees based on the average balance of assets under their direct management (market value including accrued interest), they will fluctuate based on portfolio value. Fees are charged monthly in arrears and can be debited directly from the City's third-party custody account. Pricing is firm for the entire five-year term of the agreement, and the City will not be subject to any increases during this period.

3. There are no expense ratios of funds/portfolios.
4. There are no fees related to the transfer of assets and restrictions or costs related to termination of this contract.

Contract Year	Assets Under Management	Estimated Annual Contract Amount
Year 1	\$ 300 million	\$150,000
Year 2	\$ 313 million	\$154,000
Year 3	\$ 326 million	\$158,000
Year 4	\$ 340 million	\$162,000
Year 5	\$ 354 million	\$166,000
Total Five-Year Contract Amount		\$790,000

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 combined single limit 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 combined single limit 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):

X 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 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.

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.

Cyber Liability Insurance

___ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

☐ Bid Bond
☐ Performance Bond
☐ 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.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

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.

Loss Payee Status – 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.

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

Additional Terms Specific to Investment Management Relationship

1. Client Representative. In its capacity as investment manager, Chandler shall receive all instructions, directions and other communications on Client's behalf respecting Client's account from _____ (Representative). Chandler is hereby authorized to rely and act upon all such instructions, directions and communications from such Representative or any agent of such Representative.
2. Investment Policy. In investing and reinvesting Client's assets, Chandler shall comply with Client's Investment Policy, which is attached hereto as Exhibit F.
3. Authority of Chandler. Chandler is hereby granted full discretion to invest and reinvest all assets under its management in any type of security it deems appropriate, subject to the instructions given or guidelines set by Representative.
4. Electronic Delivery. From time to time, Chandler may be required to deliver certain documents to Client such as account information, notices and required disclosures. Client hereby consents to Chandler's use of electronic means, such as email, to make such delivery. This delivery may include notification of the availability of such document(s) on a website, and Client agrees that such notification will constitute "delivery". Client further agrees to provide Chandler with Client's email address(s) and to keep this information current at all times by promptly notifying Chandler of any change in email address(s).

Client email address(s): _____

5. Proxy Voting. Chandler will vote proxies on behalf of Client unless otherwise instructed. Chandler has adopted and implemented written policies and procedures and will provide Client with a description of the proxy voting procedures upon request. Chandler will provide information regarding how Clients' proxies were voted upon request. To request proxy policies or other information, please contact us by mail at the address provided, by calling 800-317-4747 or by emailing your request to info@chandlerasset.com.
6. Custody of Securities and Funds. Chandler shall not have custody or possession of the funds or securities that Client has placed under its management. Client shall appoint a custodian to take and have possession of its assets. Client recognizes the importance of comparing statements received from the appointed custodian to statements received from Chandler. Client recognizes that the fees expressed above do not include fees Client will incur for custodial services.
7. Valuation. Chandler will value securities held in portfolios managed by Chandler no less than monthly. Securities or investments in the portfolio will be valued in a manner determined in good faith by Chandler to reflect fair market value.
8. Investment Advice. Client recognizes that the opinions, recommendations and actions of Chandler will be based on information deemed by it to be reliable, but not guaranteed to or by it. Provided that Chandler acts in good faith, Client agrees that Chandler will not in any way be liable for any error in judgment or for any act or omission, except as may otherwise be provided for under the Federal Securities laws or other applicable laws.
9. Payment of Commissions. Chandler may place buy and sell orders with or through such brokers or dealers as it may select. It is the policy and practice of Chandler to strive for the best price and execution and for

commission and discounts which are competitive in relation to the value of the transaction and which comply with Section 28(e) of the Securities and Exchange Act. Nevertheless, it is understood that Chandler may pay a commission on transactions in excess of the amount another broker or dealer may charge, and that Chandler makes no warranty or representation regarding commissions paid on transactions hereunder.

10. Other Clients. It is further understood that Chandler may be acting in a similar capacity for other institutional and individual clients, and that investments and reinvestments for Client's portfolio may differ from those made or recommended with respect to other accounts and clients even though the investment objectives may be the same or similar. Accordingly, it is agreed that Chandler will have no obligation to purchase or sell for Client's account any securities which it may purchase or sell for other clients.
11. Confidential Relationship. All information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except (i) as required by law, rule, or regulation, (ii) as requested by a regulatory authority, (iii) for disclosures by either party of information that has become public by means other than wrongful conduct by such party or its officers, employees, or other personnel, (iv) for disclosures by either party to its legal counsel, accountants, or other professional advisers, (v) as necessary for Chandler to carry out its responsibilities hereunder, or (vi) as otherwise expressly agreed by the parties.
12. Receipt of Brochure and Privacy Policy. Client hereby acknowledges receipt of the disclosure statement or "brochure" and "brochure supplement" also known as Part 2A and Part 2B of Form ADV, required to be delivered pursuant to Rule 204-3 of the Investment Advisers Act of 1940 (Brochure). Client further acknowledges receipt of Chandler's Privacy Policy, as required by Regulation S-P.

EXHIBIT F

City of Milpitas Investment Policy Effective July 1, 2019

PURPOSE

The purpose of this policy is to establish overall guidelines for the management and investment of the City of Milpitas (the City) unexpended funds under authority granted by the City Council. This policy is in compliance with the provisions of the California Government Code, Sections 16340, 16429.1-16429.4, and 53600-53686, the authority governing investments for municipal governments.

INVESTMENT OBJECTIVES

The primary objectives of this investment policy, in order of priority, are safety, liquidity, and yield:

- 1) **Safety** - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. This objective shall be accomplished by mitigating credit risk and market risk.
- 2) **Liquidity** - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This objective shall be accomplished by structuring the portfolio so that securities mature concurrently with anticipated needs. The portfolio shall consist largely of securities with active secondary or resale market. Furthermore, a portion of the portfolio may be placed in money market funds or Local Agency Investment Fund (LAIF) which offer same day liquidity for short term investment.
- 3) **Yield** - The investment portfolio is designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Nevertheless, investment performance shall be continually monitored and evaluated by the City Treasurer by comparison with other investment portfolio benchmark yields.

Additionally, investments are to be made that will bear in mind the responsibility of City government to its citizens. The following investment considerations, which enhance the quality of life, will be adhered to:

- **Divestment from Publicly-Traded Fossil Fuel Companies** - The City of Milpitas has a responsibility to protect the lives and livelihoods of its inhabitants from the threat of climate change. The City believes that its investments should support a future where all citizens can live healthy lives without the negative impacts of a warming environment. For the purposes of the Investment Policy, a "fossil fuel company" shall be defined as any of the two hundred publicly-traded companies with the largest coal, oil and gas reserves as measured by the gigatons of carbon dioxide that would be emitted if those reserves were extracted and burned, as listed in the Carbon Tracker Initiative's "Unburnable Carbon" report. Staff responsible for managing the City's investment portfolio are directed to divest all City investment funds held in fossil fuel companies once they reach their maturities and are prohibited from making any new investments in such companies.

SCOPE

The investment policy applies to all financial assets of the City of Milpitas as accounted for in the Comprehensive Annual Financial Report (CAFR), including but not limited to the funds listed below:

- General Fund
- Special Revenue Funds

- Capital Projects Funds
- Debt Service Fund
- Enterprise Funds
- Internal Service Fund
- Trust and Agency Funds
- Any new fund created by the City Council unless specifically exempted with the exception of the following:
 - 1) The City's Deferred Compensation Plan is excluded because it is managed by a third-party administrator and invested by individual plan participants.
 - 2) Proceeds of debt issuance shall be invested in accordance with the investment objectives of this policy. However, such proceeds are generally invested in accordance with permitted investment provisions of their specific bond indentures. If the City Treasurer determines that the matching of bond reserve fund with the maturity schedule of an individual bond issue is prudent, the investment policy authorizes extending beyond the five year maturity limitation as outlined in this document.

STANDARDS OF CARE

- 1) **Prudence** - The City investment officials shall act as a fiduciary subject to the Prudent Investor Standard. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The City Treasurer and other individuals assigned to manage the investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, shall be relieved of personal responsibility and liability for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.
- 2) **Ethics and Conflict of Interest** - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or could impair their ability to make impartial investment decisions. City employees involved in the investment process shall disclose to the City Manager any material financial interest in financial institutions that conduct business within the jurisdiction. They shall further disclose any large personal financial/investment positions that could affect the performance of the investment portfolio.
- 3) **Delegation of Authority** - Authority to manage the investment program is granted to the City Treasurer and derived from Section VI-1-3.04 of the City of Milpitas Municipal Code. Under the oversight of the City Treasurer, responsibility for the operation of the investment program may be delegated to the Finance Administration staff, who shall act in accordance with established written procedures and internal controls consistent with the investment policy. The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of the subordinate staff members. The system of internal controls includes separation of duties, custodial safekeeping, avoidance of physical delivery securities, development of wire transfer agreement, and clear delegation of authority to subordinate staff members.

INVESTMENT GUIDELINES

SAFETY OF PRINCIPAL

Safety of principal is the primary objective of The City. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker/dealer default or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk, credit risk and market risk:

Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in investment grade securities and by diversifying the investment portfolio so that the failure of any one issuer does not unduly harm the City's capital base and cash flow.

Market risk, defined as market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by limiting the average maturity of the City's investment portfolio to three years, the maximum maturity of any one security to five years, structuring the portfolio based on historic and current cash flow analysis eliminating the need to sell securities prior to maturity and avoiding the purchase of long term securities for the sole purpose of short term speculation.

LIQUIDITY

The City's financial portfolio shall be structured in a manner to ensure that the securities mature concurrent with anticipated cash demands. The portfolio should consist largely of securities with an active secondary or resale market to meet any unanticipated cash demands. A portion of the portfolio may be placed in money market funds or LAIF which offer same day liquidity for short term investment.

It is the full intent of the City to hold all investments until maturity to ensure the return of all invested principal. However, securities may be sold prior to maturity under the following circumstances:

- A security with declining credit may be sold early to minimize loss of principal,
- A security swap would improve the quality, yield, or target duration in the portfolio, or
- Liquidity needs of the portfolio require that the security be sold.

INVESTMENT PARAMETERS

1) Diversification - The investment shall be diversified by:

- limiting investments to avoid over concentration in securities from a specific issuer or business sector (excluding U.S. Treasury and Federal Agency securities),
- limiting investment in securities that have higher credit risks,
- investing in securities with varying maturities, and
- continuously investing a portion of the portfolio in readily available funds such as LAIF or money market funds to ensure that appropriate liquidity is maintained in order to meet unanticipated cash demands.

2) Maximum Maturities - To the extent possible, the City shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than five (5) years from the date of purchase. The intent to invest in securities beyond the five year maturity limitation shall be disclosed in writing to the City Council no less than 3 months prior to the investment. As a general rule, the weighted average maturity of the investment portfolio will not exceed three years. Reserve funds established by the issuance of bonds and other funds with longer-term investment horizons may be invested in securities exceeding five years if the maturity of such investments are made to coincide with the expected use of funds.

3) Competitive Bidding - It is the policy of the City to require competitive bidding for investment transactions that are not classified as "new issue" securities. For the purchase of non "new issue" securities and the sale of all securities, with the exception of U.S. Treasury securities, at least three bidders must be contacted.

Competitive bidding for security swaps is also recommended, however, it is understood that certain time constraints and broker portfolio limitations exist which would not accommodate the competitive bidding process. If time or portfolio constraining condition exists, the pricing of the swap should be verified to current market conditions and documented for auditing purposes.

PERFORMANCE EVALUATION/BENCHMARK

- Investment performance is continually monitored and evaluated by The City Treasurer. Investment performance statistics and activity reports are prepared on a quarterly basis for presentation to the City Manager and City Council within 30 days of the end of the quarter.
- The investment portfolio benchmark yield shall be the 12 month average yield of the three-year U.S. Treasury note. This benchmark yield coincides with the City's intended weighted average maturity of three years.

SAFEKEEPING OF SECURITIES

- To protect against fraud or embezzlement or losses caused by collapse of an individual securities dealer, all securities owned by the City shall be held in safekeeping by a third party bank trust department, acting as agent for the City under the terms of a custody agreement or master repurchase agreement. All trades executed by a dealer will settle delivery vs. payment (DVP) through the City's safekeeping agent.
- Securities held in custody for the City shall be reviewed and verified quarterly by Finance staff who has not been assigned to the investment function.

INTERNAL CONTROL

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits to be derived and that the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- Control of collusion
- Separation of transaction authority from accounting and record keeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third party custodian

REPORTING

- The City Treasurer shall review and render quarterly reports to the City Manager and City Council which shall include the par and dollar amount of the investment, the classification of the investment, the percentage of the total portfolio which each type of investment represents, the name of the institution or entity, the rate of interest, the maturity date, the current market value, and the source of the market value.
- Statement that the projected cash flow is adequate to meet expected obligations over the next six months.
- The weighted average maturity of the investment portfolio.
- The average weighted yield to maturity of the portfolio as compared to the applicable benchmark.
- Statement of compliance with the investment policy.
- The report is due within 30 days of the end of the quarter.
- The City Manager may, at his discretion, require this reporting on a monthly basis based upon market conditions.

QUALIFIED BROKER/DEALERS

- The City shall transact business with financial institutions and security broker/dealers after careful review of their qualifications and creditworthiness. All dealers who desire to do business with the City shall provide the necessary information (e.g. audited financial statements, proof of state registration, proof of National Association of Securities Dealers certification, etc.) from which the City can determine their creditworthiness, the existence of any pending legal action against the firm or the individual broker as well as an understanding of the security markets that they service. The City Treasurer shall annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the City. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the City's investment policies and intends to sell the City only appropriate investments authorized by this investment policy.

COLLATERAL REQUIREMENTS

Collateral is required for investments in non-negotiable certificates of deposit and repurchase agreements. In order to reduce market risk, the collateral level shall be at least 102% of market value of principal and accrued interest and marked-to-market weekly. Securities acceptable as collateral shall be the direct obligations of, or are fully guaranteed as to principal and interest by the United States or any agency of the United States.

AUTHORIZED INVESTMENTS

Investment of City funds is governed by the California Government Code, Sections 16340, 16429.1-16429.4, and 53600-53686. Within the context of the limitations, the following investments are authorized, as further limited herein:

- 1) **United States Treasury Bills, Bonds, and Notes** or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no percentage limitation of the portfolio which can be invested in this category, though a five year maturity limitation is applicable.
- 2) **Federal Agency Obligations** - Obligations issued by the Federal Government agencies such as Government National Mortgage Association (GNMA), the Federal Farm Credit Bank (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Federal Home Loan Mortgage Corporation (FHLMC). There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable.
- 3) **Bills of Exchange/Time Drafts**- Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Purchase of banker's acceptances may not exceed 180 days maturity or 40% of the cost value of the portfolio. Furthermore, no more than 30% of the cost value of the portfolio may be invested in the banker's acceptances of any one commercial bank.
- 4) **Commercial Paper** of the highest letter and number rating as provided by at least two nationally recognized statistical rating organizations, issued by general corporations organized and operating within the United States, having assets in excess of \$500,000,000 and having an "A" or better rating on their long term debentures as provided by at least two nationally recognized statistical rating organizations. Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper of the issuing corporation. Purchases of commercial paper may not exceed 40% of the cost value of the portfolio for Pooled Funds and 25% of the cost value of the portfolio for Non-Pooled Funds.
- 5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, state or federal savings institutions, or state-licensed branch of foreign banks. Purchases of negotiable certificates of deposit may not exceed 30% of the cost value of the portfolio. A maturity limitation of five years is applicable.

- 6) **Repurchase Agreements** - Repurchase agreements may be made on any investment authorized by this investment policy. The maturity of the repurchase agreements shall not exceed one year. The market value of the securities used as collateral for the repurchase agreements shall be monitored by the investment staff weekly and shall not be allowed to fall below 102% of the value of the repurchase agreement. A Master Repurchase agreement is required between the City and the dealer for all repurchase agreements transacted.
- 7) **Time Deposits** - Time deposits, non-negotiable and collateralized in accordance with the California Government Code, may be purchased through banks or savings and loan associations. A maturity limitation of five years is applicable.
- 8) **Medium-Term Corporate Notes** issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States with a maximum maturity of five years may be purchased. Securities eligible for investment shall be rated "A" or better by at least two nationally recognized statistical rating organizations. Purchase of medium-term notes may not exceed 30% of the cost value of the portfolio and no more than 10% of the cost value of the portfolio may be invested in notes issued by one corporation. Commercial paper holdings should also be included when calculating the 10% limitation.
- 9) **Local Agency Investment Fund (LAIF)** - a State of California managed investment pool may be used up to the maximum permitted by California State Law.
- 10) **Money Market Funds** - Money Market funds invested in U.S. Government securities are permitted under this policy and under the California Government Code Section 53601. In order to be eligible for investment under this section, an investment objective of such a fund must be the maintenance of a price per share of \$1.00. Investment in such funds shall not exceed 20% of the City's total portfolio and no more than 10% of the City's total portfolio may be invested in any one money market fund. In addition, either one of the following criteria must be met:
- The fund shall have achieved a rating of "AAA" by at least two nationally recognized statistical rating organizations, or
 - The fund shall have retained an advisor who is registered or exempt from registration with the Security Exchange Commission with not less than five years' experience managing money market funds with assets under management in excess of five hundred million dollars (\$500,000,000).

For both the LAIF and Money Market Funds investment, a thorough investigation of the investment pool is required on a continual basis. The types of investment and average maturity as reported by LAIF on their monthly investment reports and by the Money Market Mutual Funds on their semiannual reports will be examined closely to ensure that the criteria for qualifying these investment pools remain unchanged.

- 11) **Security Swaps** - The City may take advantage of security swap opportunities to improve the overall quality, yield or target duration of the portfolio. A swap that improves the portfolio yield may be selected even if the transactions result in an accounting loss. Documentation for swaps will be included in the City's permanent investment file documents.
- 12) **Ineligible Investments** - Ineligible investments are those that are not described herein, including but not limited to, common stocks, reverse repurchase agreements, inverse floaters, range notes, mortgage derived interest only strips, derivatives securities, or any security that could result in zero interest accrual.

MAXIMUM INVESTMENT MATURITY AND PERCENTAGE

The following matrix of maximum maturity and percentage limits, by instrument, are established for the City's total pooled funds portfolio:

Investment Type	Maturity	Percentage
Repurchase Agreements	1 Year	0 to 100%
Local Agency Investment Fund	Upon Demand	Up to State Limits
U.S. Treasury Bonds/Notes/Bills	5 Years	0 to 100%
U.S. Government Agency Obligations	5 Years	0 to 100%
Bankers' Acceptances	180 Days	0 to 40%
Commercial Paper — Pooled Funds	270 Days	0 to 40%
Commercial Paper — Non-Pooled Funds	270 Days	0 to 25%
Negotiable Certificates of Deposit	5 Years	0 to 30%
Time Certificates of Deposit	5 Years	0 to 100%
Medium-Term Corporate Notes	5 Years	0 to 30%
Money Market Funds	Upon Demand	0 to 20%

LEGISLATIVE CHANGES

Any State of California legislative action, that further restricts allowable maturities, investment type or percentage allocations, will be incorporated into the City's Investment Policy and supersede any and all previous applicable language.

INTEREST EARNINGS

All moneys earned and collected from investments authorized in this policy shall be allocated monthly to various fund accounts based on the cash balance in each fund as a percentage of the entire pooled portfolio.

ANNUAL POLICY APPROVAL

The City's investment policy shall be adopted by resolution of the City Council on an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.

GLOSSARY OF TERMS

Accrued Interest- Interest earned but not yet received.

Active Deposits- Funds which are immediately required for disbursement.

Amortization- An accounting practice of gradually decreasing (increasing) an asset's book value by spreading its depreciation (accretion) over a period of time.

Arbitrage- Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets.

Asked Price- The price a broker dealer offers to sell securities.

Banker's Acceptance- A high quality, short term money market instrument used to finance international trade. There has never been an instance of a failure to pay a banker's acceptance in full at its maturity date.

Basis Point- One basis point is one hundredth of one percent (.01). **Bid Price-**

The price a broker dealer offers to purchase securities.

Bond- A financial obligation for which the issuer promises to pay the bondholder a specified stream of future cash flows, including periodic interest payments and a principal repayment.

Book Value- The value at which a debt security is shown on the holder's balance sheet. Book value is acquisition cost less amortization of premium or accretion of discount.

Broker- Someone who brings buyers and sellers together and is compensated for his/her service.

Certificate of Deposit- A deposit insured up to \$250,000 by the FDIC at a set rate for a specified period of time.

Collateral- Securities, evidence of deposit or pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposit of public moneys.

Commercial Paper- Short-term, negotiable unsecured promissory notes of corporations.

Comprehensive Annual Financial Report (CAFR)- The official annual financial report for the City, prepared in conformity with Generally Accepted Accounting Principles (GAAP).

Coupon- The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.

Credit Risk - Defined as the risk of loss due to failure of the issuer of a security.

Current Yield- The interest paid on an investment expressed as a percentage of the current price of the security.

Custodian- A bank or other financial institution that keeps custody of stock certificates and other assets.

Defeased Bond Issues- Issues that have sufficient money to retire outstanding debt when due so that the agency is released from the contracts and covenants in the bond document.

Delivery vs. Payment (DVP)- Delivery of securities with a simultaneous exchange of money for the securities.

Derivative- Securities that are based on, or derived from, some underlying asset, reference date, or index.

Discount- The difference between the cost of a security and its value at maturity when quoted at lower than face value.

Diversification- Dividing investment funds among a variety of securities offering independent returns and risk profiles.

Duration- A measure of the timing of the cash flows, such as the interest payments and the principal repayment, to be received from a given fixed-income security. This calculation is based on three variables: term to maturity, coupon rate, and yield to maturity. The duration of a security is a useful indicator of its price volatility for given changes in interest rates.

Fannie Mae- Trade name for the Federal National Mortgage Association (FNMA), a U.S. sponsored corporation.

Federal Reserve System- The central bank of the U.S. which consists of a seven member Board of Governors, 12 regional banks and 5,700 commercial banks that are members.

Federal Deposit Insurance Corporation (FDIC)- Insurance provided to customers of a subscribing bank which guarantees deposits to a set limit (currently \$250,000) per account.

Fed Wire- A wire transmission service established by the Federal Reserve Bank to facilitate the transfer of funds through debits and credits of funds between participants within the Fed system.

Freddie Mac- Trade name for the Federal Home Loan Mortgage Corporation (FHLMC), a U.S. sponsored corporation.

Ginnie Mae- Trade name for the Government National Mortgage Association (GNMA), a direct obligation bearing the full faith and credit of the U.S. Government.

Government Accounting Standards Board (GASB)- A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

Guaranteed Investment Contracts (GICS)- An agreement acknowledging receipt of funds, for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

Inactive Deposits- Funds not immediately needed for disbursement.

Interest Rate- The annual yield earned on an investment, expressed as a percentage.

Investment Agreements- An agreement with a financial institution to borrow public funds subject to certain negotiated terms and conditions concerning collateral, liquidity and interest rates.

Liquidity- An asset that can easily and rapidly be converted into cash without significant loss of value.

Local Agency Investment Fund (LAIF)- A pooled investment vehicle for local agencies in California sponsored by the State of California and administered by the State Treasurer.

Local Agency Investment Pool- A pooled investment vehicle sponsored by a local agency or a group of local agencies for use by other local agencies.

Market Risk- Defined as market value fluctuations due to overall changes in the general level of interest rates.

Market Value- The price at which a security is trading and could presumably be purchased or sold.

Maturity- The date upon which the principal or stated value of an investment becomes due and payable.

Modified Duration- A measure of exposure to market risk of a security or a portfolio. It is the percent change in the price of a security (portfolio) or a 100 basis point change in the security's (portfolio's) yield.

Mutual Funds- An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

Negotiable Certificate of Deposit- A large denomination certificate of deposit which can be sold in the open market prior to maturity.

New Issue- Term used when a security is originally "brought" to market.

Note- A written promise to pay a specified amount to a certain entity on demand or on a specified date.

Par Value- The amount of principal which must be paid at maturity. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.

Perfected Delivery- Refers to an investment where the actual security or collateral is held by an independent third party representing the purchasing entity.

Portfolio- Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

Primary Dealer- A group of government securities dealers that submit daily reports of market activity and security positions held to the Federal Reserve Bank of New York and are subject to its informal oversight.

Principal- The face value or par value of a debt instrument, or the amount of capital invested in a given security.

Prospectus- A legal document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement")

Prudent Investor Standard- A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling and managing funds. The test of whether the standard is being met is if a prudent person acting in a similar situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

Purchase Date- The date in which a security is purchased for settlement on that or a later date.

Rate of Return- The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

Repurchase Agreement (REPO)- A transaction where the seller agrees to buy back from the buyer (City) the securities at an agreed upon price on demand or at a specified date.

Reverse Repurchase Agreement (REVERSE REPO)- A transaction where the seller (City) agrees to buy back from the buyer the securities at an agreed upon price on demand or at a specified date.

Risk- Degree of uncertainty of return on an asset.

Rule G-37 of the Securities Rulemaking Board- Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

Safekeeping Service- An arrangement under which a third party institution holds securities or valuables under safe, controlled conditions. A safekeeping arrangement is evidenced by a safekeeping receipt.

Sallie Mae- Trade name for the Student Loan Marketing Association (SLMA), a U.S. sponsored corporation.

Secondary Market- A market made for the purchase and sale of outstanding issues following the initial distribution.

Securities and Exchange Commission (SEC)- The federal agency responsible for supervising and regulating the securities industry.

Settlement Date- The date on which a trade is cleared by delivery of securities against funds.

Tax and Revenue Anticipation Notes (TRANS)- Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

Time Certificate of Deposit- A non-negotiable certificate of deposit which cannot be sold prior to maturity.

Treasury Bills- U.S. Treasury Bills which are short-term, direct obligations of the U.S. Government issued with original maturities of 13 weeks, 26 weeks and 52 weeks; sold in minimum amounts of \$10,000 in multiples of \$5,000 above the minimum. Issued in book entry form only. T-bills are sold on a discount basis.

Trustee or trust company or trust department of a bank- A financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

Underwriter- A dealer which purchases a new issue of municipal securities for resale.

U.S. Government Agencies- Instruments issued by various US Government Agencies most of which are secured only by the credit worthiness of the particular agency.

U.S. Treasury Obligations- Debt obligations of the United States Government sold by the Treasury Department in the forms of Bills, Notes, and Bonds. Bills are short-term obligations that mature in 1 year or less and are sold on the basis of a rate of discount. Notes are obligations which mature between 1 year and 10 years. Bonds are long-term obligations which generally mature in **10** years or more.

Weighted Average Maturity (WAM)- The average maturity of all the securities that comprise a portfolio that is typically expressed in days or years.

Yield- The rate of annual income return on an investment, expressed as a percentage. It is obtained by dividing the current dollar income by the current market price of the security.

Yield to Maturity- The rate of income return on an investment, minus any premium or plus any discount, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond, expressed as a percentage.

Yield Curve- A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

Draft MEETING MINUTES

MILPITAS CITY COUNCIL RULES SUBCOMMITTEE

Minutes of:	Joint Meeting of the Council Rules Subcommittee and the Milpitas City Council
Date:	Friday, January 31, 2020
Time:	3:30 PM
Location:	Milpitas City Hall, Committee Room 455 E. Calaveras Blvd., Milpitas, CA

1. **Call to order and Roll Call** – Meeting was called to order by Mayor Tran at 3:35 PM. Mayor Tran, Councilmember Dominguez, Vice Mayor Nuñez and Councilmember Phan were present. Councilmember Montano was absent.

2. **Approve Meeting Minutes** – Minutes of September 20, 2019 meeting were approved.

Motion /Second: Nuñez/Dominguez

AYES: All

3. **Public Forum**

- Jackie Romero (Milpitas resident) spoke in support of the Children's Theater Program. She expressed her appreciation for the Rules Subcommittee but suggested that urgency should be considered in placing and prioritizing items to be discussed on the agenda, especially on matters that affect the community.
- Rob Means (Milpitas resident) spoke in support of the Personal Rapid Transit (PRT).
- Frank De Smidt (Milpitas resident and representative for Milpitas Chamber of Commerce and Milpitas Rotary Club) invited all attendees to the Annual Auction and Crab Feed.

4. **Discuss Clarifications Related to the Scope of the Rules Subcommittee Document and provide direction and clarity to staff on existing language and / or propose clarifying language related to the Subcommittee's role in adding items to the agenda**

Interim City Manager McHarris opened the discussion regarding the scope of the Rules Subcommittee as well as staff's need for feedback, direction, and clarification from the full City Council.

Assistant City Manager Kantak provided a brief background regarding the Rules Subcommittee since its formation in April 2019 and official start in August 2019.

Assistant City Manager Kantak and City Attorney Diaz presented seven questions to facilitate Council discussion.

Councilmembers reviewed and discussed all seven questions listed in the staff report and presentation. A summary of the direction is provided below:

1. Council Agenda Item Requests would be placed on the next regular Council meeting agenda and listed under the Reports of Mayor and Councilmembers section of the agenda. In addition, Council requested to have the Rules Subcommittee minutes be presented under this section. Councilmembers could also request items be placed on the Council Agenda under the Announcements section. The City Attorney was asked to provide verbiage so that legal parameters and guidance would be incorporated into the Announcements and Reports of the Mayor and Councilmembers sections of the City Council meeting agenda to ensure compliance with the Brown Act.
2. Councilmembers agreed that there should be no “cap” placed on Agenda Item Requests for any one Council agenda. Council would be relying on the City Manager in terms of assessing, establishing “caps” contingent upon departments’ individual workload, and advising Council regarding staff workload.
3. A majority of the Councilmembers agreed that the current Agenda Item Request Form was satisfactory. If more detailed explanation was needed for items that were placed on the agenda, there would be avenues available to present proposals including but not limited to memoranda, presentation slides, fiscal impact reports, and other data that would show as to how the agenda item directly tied to one of the established Council Priority Areas.
4. Councilmembers agreed that the Rules Subcommittee would not meet to review the agenda for Special City Council meetings.

Vice Mayor Nuñez stated that the original intent of the Rules Subcommittee was to review the agenda for items added by Council and staff. Council discussed having alternates for the current Subcommittee members in case one was not be able to attend the Rules Subcommittee meeting. Mayor Tran nominated Vice Mayor Nuñez as his alternate. Councilmember Dominguez nominated Councilmember Montano as her alternate.

City Attorney Diaz advised that he would conduct research as to whether there would be any Brown Act rules regarding Subcommittee alternates, and that he would report back to Council regarding the results of his research. Council agreed to further discuss this matter once more at a later date.

Mayor Tran excused Vice Mayor Nuñez from the remainder of the meeting due to prior commitments.

Assistant City Manager Kantak reviewed the two-step process for adding agenda items through Agenda Item Request Forms and received Council agreement on the process.

Interim City Manager McHarris and Assistant City Manager Kantak stated that staff needed clarification and guidance from Council regarding this question so that it would assist staff in balancing and re-prioritizing workload.

Assistant City Manager Kantak proposed modifying the Rules Subcommittee scope and guidelines to formally reflect the direction from Council.

5. Review of Regular City Council Meeting Agendas

Assistant City Manager Kantak led the review and discussion of the following:

- February 4, 2020 Preliminary Agenda
- February 18, 2020 List of Agenda Items

Mayor Tran requested that the Public Forum section should be modified to reflect that speaking time would be “three minutes or less.”

Interim City Manager McHarris advised that the Council could forward question concerning Consent Calendar items ahead of time to the City Manager’s Office, so that staff could provide answers or clarification prior to the meeting.

In an effort to avoid unnecessary pulling items off the Consent Calendar, Councilmember Dominguez inquired as to whether Council could submit questions to the City Manager and have the questions and the answers provided be a part of public record. City Attorney Diaz replied that some cities formulate a list of Council questions. City Attorney Diaz and City Manager proposed to further research into this matter.

6. Adjourn

- Vice Mayor Nuñez was excused to leave prior to adjournment at 5:10 PM.
- Mayor Tran adjourned the meeting at 5:23 PM.
- The next Rules Subcommittee meeting would be scheduled on Friday, February 21, 2020 at 3:30 PM.

*Minutes prepared by
Pam Caronongan, Deputy City Clerk*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law”
Category:	Reports of Mayor and Councilmembers
Meeting Date:	2/18/2020
Staff Contact:	Councilmember Anthony Phan, 408-586-3032 and Mayor Tran, 408-586-3029
Recommendation:	Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law” and consider directing staff to send letter of support.

Background:

On February 4, 2020, Councilmember Phan requested his colleagues to consider directing staff to research and consider Council support locally of "Laura's Law" related to mandatory conservatorship by the County for those with severe mental health illness.

Recommendation:

Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law” and consider directing staff to send letter of support.

Attachments:

Memorandum by Councilmember Phan and Mayor Tran
City of San Jose Letter of Support
Report to San Jose City Council with Attachments



MEMORANDUM

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3000, FAX: 408-586-3056, www.ci.milpitas.ca.gov

TO: City Manager Steve McHarris
City Attorney Chris Diaz
CC: City Clerk Mary Lavelle

DATE: 02/03/2020

FROM: Mayor Rich Tran

Councilmember Anthony Phan

SUBJECT: County Implementation of Laura's Law and Enhanced Conservatorships

RECOMMENDATION

Place the following item on the February 18, 2020 Agenda for Council discussion and action; Direct the City Manager to submit a letter from the City Council to the Santa Clara County Board of Supervisors and the County Executive's Office to request County implementation of Laura's Law (Assisted Outpatient Treatment) and strengthened conservatorship policies, and add these objectives to the City's legislative priorities.

BACKGROUND

In Santa Clara County, homelessness has become a crisis. Nearly 10,000 individuals are currently homeless in Santa Clara County, and these numbers are projected to continue to increase at an alarming rate. Last year, homelessness increased at a drastic increase of 31.3% in Santa Clara County.¹

According to the U.S. Department on Housing and Urban Development, it is estimated that on average, amongst homeless individuals nationally, 45% are mentally ill and 25% are seriously mentally ill. Locally, Santa Clara County statistics show data based on self-reported responses that parallel national numbers, with 42% of homeless respondents indicating that they suffer from mental illness of some form and 35% of respondents reporting having experienced alcohol or substance abuse.

BACKGROUND ON LAURA'S LAW AND CONSERVATORSHIP

Laura Wilcox was a teenage college student shot to death in 2001, by a severely mentally deranged individual. Despite pleas from his own family and recommendation from his social worker, the individual actively refused psychiatric treatment and continued to be defiant, as he increasingly became delusional and paranoid, in the events leading up to the shooting.

In 2002, Assisted Outpatient Treatment Demonstration Project Act, also known as Laura's Law, was signed into law by Governor Gray Davis. The legislation aims to help individuals suffering with severe mental health needs by mandating their access to assisted outpatient treatment. The policy applies to those who meet a specific set of exhaustive requirements to demonstrate

¹ "County of Santa Clara, City of San Jose Release Results of 2019 Homeless Census." County News, County of Santa Clara, 16 May 2019, www.sccgov.org/sites/opa/newsroom/Pages/2019homelesscensus.aspx.

their history of non-compliance, such as if they were hospitalized or jailed at least twice within 36 months.

The policy heavily relies on County implementation and enforcement. In California, twenty Counties have opted to implement Laura's Law, with Bay Area Counties including Contra Costa, Marin, San Mateo, San Francisco and San Mateo.

In 2018, Senate Bill 1045 was signed into law, allowing the City and County of San Francisco, Los Angeles, and San Diego Counties to pilot a 5-year program of housing-based conservatorship. The bill establishes conservatorships to individuals suffering from both a severe mental illness and a substance use disorder. Ultimately, the bill increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare. Senate Bill 40, passed in 2019, similarly addresses procedures regarding 5150 psychiatric holds and expands conservatorship provisions for these often-neglected individuals, many of whom at high risk of harming themselves.

ANALYSIS

Expanding a framework for conservatorship and County implementation of Laura's Law will expand access to critical services and treatment for our community's most vulnerable struggling with severe mental health needs.

Although we acknowledge these policies will help a relatively smaller population of people who are homeless, and that there is much more work to be done to address the crisis in homelessness, however it will go a long way and positively change many lives. Furthermore, it will make our community safer for our residents and our first responders in public safety, who risk their lives every day. In tragic scenarios where officers have no choice but to use deadly force to stop dangerous individuals with severe mental health needs from harming others, it is unacceptable to write off the case as a situation that could not have been avoided.

Our County has the ability to save lives, make our community safer, and prevent these tragedies from occurring. The implementation of Laura's Law and expanded conservatorship will serve as much-needed reform to our negligent and flawed system which has failed our community's most vulnerable people.

The City of Milpitas should support County implementation of Laura's Law and work with the Board of Supervisors and County Administration to expand conservatorship programs through efforts in adding Santa Clara County to Senate Bill 1045 and related legislation.

Dear Santa Clara County Board of Supervisors,

As community leaders, we recognize that Santa Clara County has a mental health crisis. Of the homeless in our County, 42% reported mental illness, yet current efforts in the County to address this issue are tragically lacking.

Homeless individuals who lack capacity because of a severe mental illness to provide for their basic human needs cannot continue to fall victim to uninhabitable living conditions, drug and alcohol abuse, and risks of harm to themselves or [others on the streets](#). It is imperative that we consider the benefits of Laura's Law and strengthened conservatorship in Santa Clara County.

Laura's Law passed the California State Legislature in 2002, aiming to remedy the issues posed by mentally ill individuals occupying the streets: introducing court-mandated assisted outpatient treatment for those who are likely to benefit from it. To date, 20 counties in California have done just this, including the Bay Area Counties of San Mateo, Alameda, Contra Costa, Marin, and San Francisco-- achieving a high degree of success. Specifically, In San Francisco County, 91% of patients saw reduced hospitalization, with 88% reducing their time spent incarcerated and 74% reducing their use of Psychiatric Emergency Services. Not only that, but in Nevada County, where Laura's Law was first implemented, the law has saved between \$1.82 to \$2.52 per \$1.00 invested in the program. Laura's Law is saving lives, saving money, and giving people the help that they need.

Furthermore, in pursuit of the most comprehensive care for suffering residents, conservatorship for substance abusers and the mentally ill also must be re-examined. While Santa Clara County's LPS Conservatorship was an important first step starting in 1972, now is the time to revisit and strengthen this piece of legislation.

In September of 2018, the State of California passed Senate Bill 1045, which provides for the formation of a 5-year pilot program consisting of housing based conservatorship policies in San Francisco and Los Angeles Counties. SB 1045 increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare in by making available a conservatorship when those individuals are suffering from both a severe mental illness as well as a substance use disorder, something we are unable to achieve under the current standard. Individuals that fail to qualify as "gravely disabled" often get stuck in a chronic cycle of coming in and out of 72-hour psychiatric holds, and are victims of a dysfunctional system that is in desperate need of reform. We would like to see Santa Clara County advocate for inclusion in this or comparable legislation that effectively treats the most vulnerable in our County.

For all these reasons and more, we urge the County to act to strengthen conservatorship laws and to adopt Laura's Law.

Signed:



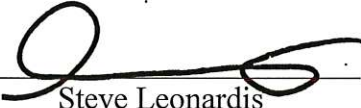
Johnny Khamis
Councilmember, City of San José



Raul Perez
Councilmember, City of San José



Lisa Dailey
Treatment Advocacy Center



Steve Leonardis
Mayor, Town of Los Gatos



Paul Resnikoff
Councilmember, City of Campbell



Katherine Decker
Registered Nurse



Stephani Rideau
Parent of Homeless Mentally Ill Adult

Memorandum

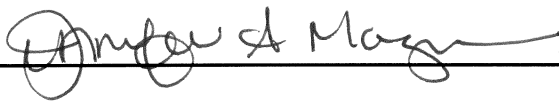
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Wilcox

**SUBJECT: COUNTY OF SANTA CLARA
BEHAVIORAL HEALTH
PROGRAMS**

DATE: January 22, 2020

Approved



Date

1-22-20

INFORMATION

At the November 20, 2019 Rules and Open Government Committee, the Administration was directed to submit a letter from the City of San José Mayor and City Council to the Santa Clara County Board of Supervisors and the County Administration requesting implementation of Laura's Law (Assisted Outpatient Treatment) as well as a strengthening of conservatorship policies for residents that struggle with serious mental illness. This item was again discussed at the December 10, 2019 City Council meeting under item 3.6¹ where a request was made for additional information regarding the Santa Clara County's expansion of Behavioral Health Services for adults and older adults, which was scheduled for implementation in fall 2019.

In response to Council direction, on December 12, 2019 a letter was submitted to the Santa Clara County Board of Supervisors on behalf of the City of San José Mayor and City Council (*Attachment A*).

Attached to this memorandum are two reports authored by Toni Tullys, Director of the County's Behavioral Health Services. The first report was submitted to the Health and Hospital Committee on August 22, 2019 providing an update on Assisted Outpatient Treatment (*Attachment B*). It summarizes the 2002 California Assembly Bill 1421 (Laura's Law) and its implementation in California through April 2017 as summarized by the State of California's Department of Health Care Services, Mental Health and Substance Use Disorder Services in its July 2018 Report. This memo also outlines the County's Behavior Health Services expansion of programs for its adult system of care.

¹ <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4263938&GUID=32623866-8137-46E7-8D24-DFCECA1C562B&Options=&Search=>

The second memorandum was submitted to the Board of Supervisors on December 17, 2019 as part of a report requested by Supervisors Chavez and Cortese (Board Referral Item Number 16 ID#98761 approved on November 5, 2019)², which directed the Behavioral Health Services Department to provide options for consideration relating to the provision of safe places and support services for members of the community with high needs, who are severely mentally ill, dually diagnosed, and unhoused (*Attachment C*).

The Administration understands the Mayor and City Council's shared interest in ensuring that adequate and high quality resources are available and accessible to residents struggling with mental illnesses, substance use, or both. As part of its work in helping draft the Community Plan to End Homelessness, the City Manager's Office and Housing Department are working with their County partners to better assess the existing capacity of behavioral health resources against the need in the community. As the City moves from the planning and community engagement phases of this process to implementation of a San José-specific operational plan, the Administration will continue to advocate for the resources necessary to close any existing resource gaps.

/s/
LEE WILCOX
Chief of Staff, City Manager's Office

For questions, please contact Sarah Zárate, Assistant to the City Manager, at (408) 535-5601.

Attachments:

- Attachment A: December 12, 2019 Letter to Board of Supervisors regarding Conservatorship in Santa Clara County
- Attachment B: County of Santa Clara Behavioral Health Services Update on Assisted Outpatient Treatment (Laura's Law)
- Attachment C: County of Santa Clara Behavioral Health Services Report on Safe Places and Support Services for Mentally Ill/Dually Diagnosed Individuals

² http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=11147&MediaPosition=&ID=99307&CssClass=



December 12, 2019

Board of Supervisors
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

Re: Conservatorship in Santa Clara County

Dear Santa Clara County Board of Supervisors,

We write on behalf of the City of San José to encourage the County to pursue additional options in addressing mental health treatment for homeless individuals, including conservatorship. Currently the County of Santa Clara staff, Destination: Home, and City of San José staff are working to finalize a new Community Plan to End Homelessness—better aligning our goals and strategies. As we embark on implementing this plan we must collectively align our operations, resources, and policies to meet these goals.

To that end, we share the position outlined in the November 5, 2019 memo from Supervisors Chavez and Cortese that “the County of Santa Clara needs to act with urgency as it relates to providing safe places and supportive services to very vulnerable members of our community who are severely mentally ill, dually-diagnosed, unhoused and unable to proactively access community-based mental health services.”

According to the 2019 City of San José Homeless Census and Survey, 42% of homeless survey respondents reported a psychiatric or emotional condition in the City of San José. Homeless individuals who lack capacity because of a severe mental illness to provide for their basic human needs cannot continue to fall victim to uninhabitable living conditions, drug and alcohol abuse, and risks of harm to themselves or others on the streets. It is imperative that we examine conservatorship options, including implementing Laura’s Law in Santa Clara County for outpatient services and inpatient options to address a portion of this population’s needs.

As you know, the State of California passed Laura’s Law in 2002 to introduce court-mandated assisted outpatient treatment for those who are likely to benefit from it. To date, 20 counties in California have implemented Laura’s Law, including the Bay Area Counties of San Mateo, Alameda, Contra Costa, Marin, and San Francisco. In San Francisco County, 91% of patients saw reduced hospitalization, with 88% reducing their time spent incarcerated, and 74% reducing their use of Psychiatric Emergency Services. Not only that, but in Nevada County, where Laura’s Law was first implemented, the law has saved between \$1.82 to \$2.52 per \$1.00 invested in the

District 1-Chappie Jones, Vice Mayor

District 3-Raul Peralez

District 5-Magdalena Carrasco

District 7-Maya Esparza

District 9-Pam Foley

Sam Liccardo, Mayor

District 2-Sergio Jimenez

District 4-Lan Diep

District 6-Dev Davis

District 8-Sylvia Arenas

District 10-Johnny Khamis

Letter from City of San José City Council
Conservatorship in Santa Clara County
December 12, 2019

program. Laura's Law is saving lives, saving money, and giving people the help that they need.

Additionally, in September of 2018, the State of California passed Senate Bill 1045, which allows the City and County of San Francisco, Los Angeles, and San Diego Counties to pilot a 5-year program of housing-based conservatorship. SB 1045 increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare by making available a conservatorship when those individuals are suffering from both a severe mental illness as well as a substance use disorder. Individuals that fail to qualify as "gravely disabled" often get stuck in a chronic cycle of coming in and out of 72-hour psychiatric holds, and are victims of a dysfunctional system that is in desperate need of reform. We encourage Santa Clara County to advocate for inclusion in this or comparable legislation that effectively treats the most vulnerable in our County.

We are heartened that the County is examining additional service needs for homeless individuals, including those suffering mental health disease and drug addiction. We share your goals of ending homelessness in our community, and look forward to continuing to collaborate on solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Liccardo", written over a horizontal line.

Mayor Sam Liccardo
on behalf of the City of San José City Council

C. County Administration
City Manager



COUNTY OF SANTA CLARA
Behavioral Health Services

DATE: August 22, 2019
TO: Health and Hospital Committee
FROM: Toni Tullys, Director, Behavioral Health Services
SUBJECT: Update on Assisted Outpatient Treatment (Laura's Law)

On June 19, 2019, at the request of Supervisor Ellenberg, the Behavioral Health Services Department (the Department) was asked to provide an update on Assisted Outpatient Treatment (AOT), also known as Laura's Law, at the August 2019 Health and Hospital Committee.

On September 13, 2017, the Department provided a detailed report to the Board of Supervisors (Board) through the Health and Hospital Committee related to the possible implementation of Assisted Outpatient Treatment (also known as Laura's Law), which allows using the judicial system when constituents are in high need of mental health services (LF # 88121). The report describes the history of the AOT legislation, the 2004 development of the Mental Health Services Act (MHSA), which emphasized voluntary programs, and the AOT goals, eligibility criteria and court process.

In 2002, California Assembly Bill 1421 (Laura's Law) authorized the provision of AOT which is defined as categories of outpatient services that have been ordered by a court per California Welfare and Institution Code (WIC) 5346. The bill was a result of a Nevada County shooting death of three people, including Laura Wilcox, by an individual with mental illness who was not participating in treatment. While the law was passed, it was not funded, leaving County Boards of Supervisors to decide whether or not they would implement AOT and how they would fund the program. Each County Board of Supervisors must approve AOT implementation in their county. Per state statute, no voluntary mental health programs may be reduced as a result of the implementation of AOT.

Update on California's AOT Implementation

While Nevada County implemented AOT in 2008 and Yolo County in 2013, the majority of counties who chose to implement AOT did not begin implementation until 2015-2016. As reported in the Department's September 2017 AOT report, 14

counties had implemented the program, three had adopted AOT, but had not implemented, and one county was considering AOT. Currently, 20 counties have implemented AOT as an available tool for people with serious mental illness who are unable and/or unwilling to participate in treatment and meet the criteria for AOT in the WIC 5346. The 20 counties are:

- | | | |
|-----------------|---------------------|-------------------|
| 1. Alameda | 8. Nevada | 15. Santa Barbara |
| 2. Contra Costa | 9. Orange | 16. Shasta |
| 3. El Dorado | 10. Placer | 17. Solano County |
| 4. Kern | 11. San Diego | 18. Stanislaus |
| 5. Los Angeles | 12. San Francisco | 19. Ventura |
| 6. Marin | 13. San Luis Obispo | 20. Yolo |
| 7. Mendocino | 14. San Mateo | |

AOT Evaluations and Results

In July 2018, the California Department of Health Care Services (DHCS) Mental Health and Substance Use Disorder Services released a report on Laura's Law: Assisted Outpatient Treatment Demonstration Project Act of 2002 (Attached). DHCS is required to establish criteria and collect outcomes data from counties that choose to implement the AOT program and to produce an annual report on the program's effectiveness, which is due to the Governor and Legislature annually by May 1. The attached report is based on May 2016 - April 2017 data, which was provided by six counties: Contra Costa, Los Angeles, Nevada, Orange, Placer and San Francisco. The Report Summary stated that there are three important developments for this reporting period:

- 1) Two additional counties provided data on AOT clients as compared to the previous reporting period,
- 2) The six counties that provided data to DHCS reported a positive impact on the three data items emphasized by the statute governing AOT (WIC Sections 5345-5349.5) – homelessness, hospitalizations, and incarcerations, and
- 3) Counties continue to report that few individuals require court involvement to participate in AOT services.

There were 63 court-ordered involved individuals in the six counties that provided data. A total of 380 individuals were served voluntarily by the six counties reporting data and the majority were in Los Angeles and Orange counties.

The programs reported that the majority of their AOT referrals responded to the initial invitation to participate in voluntary services and did not require a court petition or process. Counties reported that this is due to a successful engagement process, as most individuals referred for assessment accept the first offer for voluntary services. Many individuals due to their symptoms, do not immediately access mental health services, but may accept a voluntary service in response to county engagement efforts and to avoid a court process.

DHCS also identified several limitations of this analysis. While the data has increased since additional counties have implemented AOT programs, the number of court-ordered participants remains small and counties were not using standardized measures. There was no comparison and/or control group, so it was unknown as to whether the improvements were a result of AOT program services, or other factors. The report was based on aggregated outcomes of the 63 individuals from the six counties that reported court-ordered services.

In conclusion, the DHCS report indicated that the program was successful in reducing the need for hospitalizations and/or incarcerations, largely due to an increased amount of support and increasing employment during the reporting period.

Contra Costa and San Francisco Counties recently completed extensive evaluations of their AOT pilot programs. Contra Costa completed their evaluation in October 2018, following two and a half (2 ½) years of implementation, and served 80 individuals in the Assertive Community Treatment (ACT) program; 63 volunteered and 17 were court-ordered. San Francisco completed their three-year evaluation in March 2019 and 89 out of 129 individuals in the AOT program voluntarily engaged in services; 85 individuals remained connected to a treatment provider at the time of the evaluation. The AOT team provided clinical case management to 43 of these individuals (26 voluntary and 17 court ordered). Both counties reported positive client outcomes (decrease in crisis services, inpatient psychiatric hospitalization and incarceration), cost savings, and small numbers of court-ordered individuals.

Summary of Findings

A significant majority of individuals that have been referred and meet the criteria for AOT programs voluntarily accept services and achieve positive outcomes, including reductions in crisis/emergency psychiatric services, inpatient psychiatric hospitalization, homelessness and incarceration. There are small numbers of court-ordered clients in AOT programs, which cannot show statistical significance.

However, court-ordered clients have demonstrated individual progress and some have achieved the same types of positive outcomes as the voluntary clients.

Counties have developed and learned from AOT pilots, implemented AOT outreach, engagement and clinical teams to serve the population, and utilized Full Service Partnerships (FSPs) or ACT teams for clinical services. Consistent outreach and peer support have been important components to engage and support individuals in AOT services.

AOT program costs may vary based on each county, but the primary costs are for direct service staff, which often includes a program manager, clinical staff, peer workers and administrative support. Orange County and Nevada County estimated the AOT mental health treatment costs at \$35,000 to \$40,000 per person per year. This aligns with the estimated cost for the Department's new ACT program for adults with serious mental illness that need intensive outpatient services.

In reviewing the evaluations and discussing AOT services with county and consultant colleagues, AOT can be a useful tool to identify, engage and treat a small group of people with serious mental illness who would otherwise be unable to participate in services that they need. However, the data on court-ordered individuals enrolled is limited, and while AOT has produced positive outcomes, it will not engage every person with serious mental illness into services or every loved one that a family member cares about.

Expansion of Behavioral Health Services for Adults and Older Adults

Over the past year, the Department has implemented several new programs to address gaps, expand the continuum of care, outreach and engage individuals for services, and track and evaluate client/consumer outcomes. The intent of the new programs is to connect Adults/Older Adults into the appropriate services for their needs.

New programs include the County-operated In-home Outreach Team (IHOT), which will outreach to Emergency Psychiatric Services (EPS) clients/consumers and connect them to services, and the IHOT community-based teams that will serve clients/consumers and families across the county. For individuals in crisis, there is a Crisis Text Line (text RENEW to 74141) and Adult Mobile Crisis Response Teams that assess individual needs over the phone, identify and connect callers to services, and make home visits when needed. These new services are available 24/7.

Vendors have been selected to provide ACT and Forensic ACT (FACT) services, which are evidence-based and the highest level of outpatient services for individuals with serious mental illness. While these are new services in Santa Clara County, ACT and FACT have demonstrated positive and consistent consumer outcomes for many years and are designed for individuals coming out of hospitals or custody and/or those who need intensive and frequent services. In addition, new Intensive

Full Service Partnerships (FSPs) will provide “whatever it takes” mental health services for Transitional Age Youth, Adults and Older Adults. The ACT, FACT and Intensive FSPs will provide 800 new service slots for adult consumers. Substance Use Treatment Services has increased outpatient services by 220 slots and anticipates serving an additional 800 clients in the next year. Detoxification beds also have been increased from 28 to 36 with an expectation to serve over 500 clients.

The Department’s expansion of Adult/Older Adult services was designed to outreach, engage, connect, and support individuals with serious mental illness and substance use disorders in voluntary, evidence-based services. The new ACT/FACT programs and Intensive FSPs are the same services utilized in the AOT programs.

Implementation is planned for October 2019 and the Department expects an increase in the number of people receiving these intensive services and a decrease in EPS visits, psychiatric hospitalization, incarceration and homelessness over time.

Attachment:

- DHCS Laura’s Law: Assisted Outpatient Treatment Demonstration Project Act of 2002, July 2018



Laura's Law: Assisted Outpatient Treatment Demonstration Project Act of 2002

**For the Reporting Period
May 2016 – April 2017**

**Department of Health Care Services
Mental Health and Substance Use Disorder Services**

JULY 2018

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EXECUTIVE SUMMARY

Assembly Bill (AB) 1421 (Thomson, Chapter 1017, Statutes of 2002) established the Assisted Outpatient Treatment Demonstration Project Act of 2002 in Welfare and Institutions Code (WIC) Sections 5345 – 5349.5, known as Laura’s Law (named after one of the individuals killed during a 2001 incident in Nevada County, California). Laura’s Law requires the Department of Health Care Services (DHCS) to establish criteria and collect outcomes data from counties that choose to implement the AOT program and produce an annual report on the program’s effectiveness, which is due to the Governor and Legislature annually by May 1. Using data provided by participating counties, DHCS is required to provide an evaluation of the effectiveness of the county programs in developing strategies to reduce the clients’ risk for homelessness, hospitalizations, and involvement with local law enforcement. This report serves as the May 1, 2017 annual report and provides outcomes for the May 2016 – April 2017 reporting period.

The table below shows a list of counties that have received Board of Supervisors approval to operate an AOT program, counties that submitted an AOT report to DHCS and, of those, which county AOT reports provided data to DHCS during this reporting period. Seventeen counties have Board of Supervisors approval to operate an AOT program: Alameda, Contra Costa, El Dorado, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Stanislaus, Ventura, and Yolo¹. During this reporting period, 12 counties submitted reports to DHCS: Alameda, Contra Costa, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Francisco, San Mateo, Ventura, and Yolo. Six of these counties had data to report on AOT court ordered or settled² individuals: Contra Costa, Los Angeles, Nevada, Orange, Placer and San Francisco. The remaining six programs did not have court-ordered individuals or had too little data for the reporting year to report to DHCS, but provided information on their programs’ progress. Accordingly, this report reflects aggregate outcomes for 63 individuals from the six counties that reported court-ordered or settled AOT client data to DHCS. This is more than double the number of participants compared to the previous 2015-16 reporting period, which included 28 court-involved individuals in AOT programs.

Participating County Implementation and Reporting Status (as of April 2017)*

County	Board of Supervisors Approval	Submitted a Report to DHCS	Report Included AOT Data
Alameda	X	X	
Contra Costa	X	X	X
El Dorado	X		
Kern	X	X	

¹ Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

² Court “settled” means that the individual receives services through a court settlement, rather than a hearing.

County	Board of Supervisors Approval	Submitted a Report to DHCS	Report Included AOT Data
Los Angeles	X	X	X
Mendocino	X	X	
Nevada	X	X	X
Orange	X	X	X
Placer	X	X	X
San Diego	X		
San Francisco	X	X	X
San Luis Obispo	X		
San Mateo	X	X	
Santa Barbara	X		
Stanislaus	X		
Ventura	X	X	
Yolo	X	X	

*Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

2016-17 Report Summary

There are three important developments for this reporting period: 1) two additional counties provided data on AOT clients as compared to the previous reporting period, 2) the six counties that provided data to DHCS reported a positive impact on the three data items emphasized by the statute governing AOT (WIC Sections 5345-5349.5) – homelessness, hospitalizations, and incarcerations, and 3) counties continue to report that few individuals require court involvement to participate in AOT services. In this reporting period, there were 63 court-involved individuals in the six counties that provided data³.

Laws governing AOT programs require individuals whose cases are court-ordered or settled to receive services in a program that also provides the same services to individuals who are participating in the program voluntarily. Individuals referred for an AOT assessment must be offered voluntary services first before a court petition is considered. The programs reported that the majority of their AOT referrals responded to the initial invitation to participate in voluntary services, and did not require a court petition or process. Counties report that this is due to a successful initial engagement process, as most individuals referred for assessment accept the first offer for voluntary services. Many individuals, due to the symptoms of their mental illness, do not initially access local mental health services, but may accept a voluntary services offer

³ 380 individuals were served voluntarily by the six counties reporting data, the majority were in Los Angeles and Orange counties.

in response to county engagement efforts and to avoid a court process.

Due to the small number of court-ordered or settled individuals in each county AOT program, health privacy laws prevent DHCS from reporting specific numbers on each of the required outcomes. This report reflects the following aggregate findings for the AOT program clients, using data for the six counties that reported data from their AOT services, which were provided during this reporting period:

- Homelessness decreased amongst individuals participating in the program.
- Hospitalization decreased amongst individuals participating in the program.
- Contact with law enforcement decreased amongst individuals participating in the program.
- Most individuals remained fully engaged with services.
- Some individuals were able to secure employment.
- Little victimization⁴ was reported for individuals in the program.
- Violent behavior decreased during the reporting period for some individuals.
- Some clients had co-occurring diagnoses. Many of those individuals were able to reduce substance use.
- Some clients were subject to enforcement mechanisms⁵ ordered by the court during AOT. Some of these individuals were involuntarily evaluated, many had additional status hearings, and many received medication outreach.
- Many individuals achieved moderate to moderately high levels of social functioning.
- Some clients agreed to participate in satisfaction surveys and indicated high levels of satisfaction with services.

There are several noteworthy limitations of DHCS' analysis. Although the reportable data has increased since additional counties have implemented AOT programs, court-ordered participant numbers remain small and counties are not using standardized measures. This makes it difficult to make a comparable evaluation across counties, and further, there is no comparison and/or control group, so it is unknown as to whether or not all of the improvements in participant outcomes were a result of AOT program services or if other factors were involved. Some of the measures are based on self-reports and/or recollections of past events, which may or may not be accurate or reliable. Furthermore, individuals were followed for different periods of time (e.g., individual A may have been followed for one week, while individual B may have been followed for the entire reporting year). As with other programs that have transitory populations in different phases of program completion, there may be carry over data from the prior reporting year. Despite these limitations, the data submitted by counties indicate improvements to many of the reported outcomes for individuals who were served during this reporting period.

⁴ Victimization is based on county definitions and reports of victimization include descriptions of the incidents.

⁵ Examples of enforcement mechanisms used by courts include, but are not limited to, involuntary evaluation, increased number of status hearings, and medication outreach.

INTRODUCTION

AB 1421 (Thomson, Chapter 1017, Statutes of 2002) established the Assisted Outpatient Treatment (AOT) Demonstration Project Act of 2002, known as Laura's Law. AB 1569 (Allen, Chapter 441, Statutes of 2012) extended the sunset date for the AOT statute from January 1, 2013, to January 1, 2017; and AB 59 (Waldron, Chapter 251, Statutes of 2016) extended the sunset date for the AOT statute until January 1, 2022, and added the Governor as a direct recipient of this report. The program was transferred from the former Department of Mental Health (DMH) to the Department of Health Care Services (DHCS) and incorporated into DHCS' county mental health performance contracts with the enactment of SB 1009 (Committee on Budget and Fiscal Review, Chapter 34, Statutes of 2012).

DHCS is required to annually report to the Governor and Legislature on the effectiveness of AOT programs by May 1 of every year. Pursuant to WIC Section 5348, effectiveness of AOT programs is evaluated by determining whether persons served by these programs:

- Maintain housing and participation/contact with treatment;
- Have reduced or avoided hospitalizations; and
- Have reduced involvement with local law enforcement, and the extent to which incarceration was reduced or avoided.

To the extent data are provided by participating counties, DHCS must also report on:

- Contact and engagement with treatment;
- Participation in employment and/or education services;
- Victimization;
- Incidents of violent behavior;
- Substance use;
- Required enforcement mechanisms;
- Improved level of social functioning;
- Improved independent living skills; and
- Satisfaction with program services.

The AOT statute provides a process for designated individuals who may refer someone to the county mental health department for an AOT petition investigation. In order for an individual to be referred to the court process, the statute requires certain criteria to be met, voluntary services to be offered, and options for a court settlement rather than a hearing to be provided.

BACKGROUND

The statutory requirements for Laura's Law do not require counties to provide AOT programs and do not appropriate any additional funding to counties for this purpose. For many years, only Nevada County operated an AOT program. The passage of SB 585 (Steinberg, Chapter 288, Statutes of 2013) authorized counties to utilize specified funds for Laura's Law services, as described in WIC Sections 5347 and 5348. Since the enactment of this legislation, an increasing number of counties have implemented AOT. See Appendix A for a history of AOT in California.

Implementation of Laura's Law

The table below shows a list of counties who have received Board of Supervisors approval to operate an AOT program, counties that submitted an AOT report to DHCS and, of those, which county AOT reports provided data to DHCS during this reporting period. Seventeen counties have Board of Supervisors approval to operate an AOT program: Alameda, Contra Costa, El Dorado, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Stanislaus, Ventura, and Yolo.⁶ Most AOT programs are still in early implementation stages and have few or no clients who are court-ordered or settled.

The following 12 counties submitted reports to DHCS on their AOT programs for the reporting period: Alameda, Contra Costa, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Francisco, San Mateo, Ventura, and Yolo. Of these, Contra Costa, Los Angeles, Nevada, Orange, Placer, and San Francisco counties had data to report based on the individuals participating in their AOT programs that were court-ordered and/or settled. Kern and Yolo Counties reported on their programs, but did not yet have any individuals in AOT programs or did not have enough data to include. Alameda, Mendocino, San Mateo, and Ventura Counties reported on their new programs, but did not have clients during most of the reporting period, and therefore did not have enough data to include.

Participating County Implementation and Reporting Status (as of April 2017)*

County	Board of Supervisor Approval	Submitted a Report to DHCS	Report Included AOT Data
Alameda	X	X	
Contra Costa	X	X	X
El Dorado	X		
Kern	X	X	
Los Angeles	X	X	X
Mendocino	X	X	
Nevada	X	X	X
Orange	X	X	X

⁶ Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

County	Board of Supervisor Approval	Submitted a Report to DHCS	Report Included AOT Data
Placer	X	X	X
San Diego	X		
San Francisco	X	X	X
San Luis Obispo	X		
San Mateo	X	X	
Santa Barbara	X		
Stanislaus	X		
Ventura	X	X	
Yolo	X	X	

* Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

DATA COLLECTION AND REPORTING METHODOLOGY

Most counties have implemented their AOT programs as part of their Mental Health Services Act (MHSA) Full Services Partnership (FSP) programs. Welfare and Institutions Code §5348(d) sets forth the reporting requirements for both the counties and the State and lists the required data elements that, if available, must be included. As a result, counties obtain data for AOT clients from some or all of the following sources:

- Client intake information
- MHSA FSP Outcome Evaluation forms
 - Partnership Assessment Form – The FSP baseline intake assessment.
 - Key Event Tracking (KET) – Tracks changes in key life domains such as employment, education, and living situation.
 - Quarterly Assessment – Tracks the overall status of a partner every three months. The Quarterly Assessment captures data in different domains than the KETs, such as financial support, health status, and substance use.
- “Milestones of Recovery Scale” (MORS) ⁷
- Global Assessment of Functioning – Indicates the level of presence of psychiatric symptoms.

⁷This scale was developed from funding by a Substance Abuse and Mental Health Services Administration grant and designed by the California Association of Social Rehabilitation Agencies and Mental Health America Los Angeles researchers Dave Pilon, Ph.D., and Mark Ragins, M.D., to more closely align evaluations of client progress with the recovery model. Data collected from the MORS is used with other instruments in the assessment of individuals functioning level in the Social Functioning and Independent Living Skills sections. Engagement was determined using a combination of MORS score improvement, contact with treatment team tolerance and social activity.

- Mental Health Statistics Improvement Program Consumer Surveys – Measure matters that are important to consumers of publicly funded mental health services in the areas of access, quality, appropriateness, outcomes, overall satisfaction, and participation in treatment planning

Counties collected and compiled the required information into written reports, which were submitted to DHCS. Due to the small population sizes reported, AOT clients may be identifiable. DHCS is committed to complying with federal and state laws pertaining to health information privacy and security.⁸ In order to protect clients' health information and privacy rights, summary numbers for each of the specified outcomes cannot be publicly reported. In order for DHCS to satisfy its AOT program evaluation reporting requirement, as well as protect individuals' health information, DHCS adopted standards and procedures to appropriately and accurately aggregate data, as necessary.

⁸ Federal laws: Privacy Rule and the Security Rule contained in the Health Insurance Portability and Accountability Act and clarified in Title 45 Code of Federal Regulations Part 160 and Subparts A and E of 164. State Laws: Information Practices Act and California Civil Code Section 1798.3, et. seq.

FINDINGS FOR REPORTING PERIOD May 1, 2016 – April 30, 2017

Based on county-reported data, there are very few individuals entering the AOT programs as a result of court orders or settlements. Individuals referred for an AOT assessment must be offered voluntary services before a court petition is considered. The programs reported that the majority of their AOT referrals responded to the initial invitation to voluntary services and did not require a court petition or process. Counties report that this is due to a successful initial engagement process, as most individuals referred for assessment accept the first offer for voluntary services.

Although 16 counties have implemented AOT programs, the data summarized in this report reflect the six counties that had data for court-ordered or settled individuals. Data for these counties are aggregated, with highlights of each program listed first. The six counties' AOT programs collectively served a total of 63 court involved individuals. This is more than double the number of participants as compared to the last reporting period, in which 28 individuals were in AOT programs.

Part I: County Programs Serving AOT Court-Involved Individuals – Contra Costa, Los Angeles, Nevada, Orange, Placer, and San Francisco

County Program Unique Highlights

Contra Costa County reported that, during its first year of operation, 91 percent of individuals referred for assessment for AOT services accepted voluntary services.

Los Angeles County reported serving voluntary clients since 2010 in a pilot AOT program. The county then fully implemented and expanded its AOT program in 2015. This is the first reporting year that Los Angeles has had court-ordered or settled AOT participants. As with the other counties, the Los Angeles court-ordered or settled participants are a fraction of its overall number of AOT participants.

Nevada County has had the longest running AOT program, dating back to 2008. Consistently over that time, the majority of the referred individuals accepted the program's invitation to participate in voluntary services rather than requiring a court-order or settlement.

Orange County noted that, while there was overall improvement in housing over the reporting period, participants still experienced challenges finding and maintaining housing.

Placer County continues to be in the early stages of providing AOT services to individuals and has a small number of participants.

San Francisco County has developed an [AOT Care Team](#), which is responsible for AOT court petitions and advocating for AOT individuals with preexisting charges to be referred to collaborative courts such as Behavioral Health Court. Behavioral Health Court is focused on family support including offering resources such as a Family Liaison, information, and assistance navigating the mental health and criminal justice systems. San Francisco County continues to host a quarterly conference call with other counties that have implemented AOT to share information and experiences of AOT programs.

Demographic Information

Counties reported that the majority of participating individuals were Caucasian males between ages 26 and 59. This is similar to the information from the last reporting period, which indicated the majority of individuals in the programs were males identifying as Caucasian between 26 and 59 years of age. Some counties reported seeing more racial diversity in their AOT populations, and more female participants.

Homelessness/Housing

In the previous reporting period, homelessness among those served decreased. For this reporting period, counties reported modest reductions in homelessness, with the majority of clients obtaining and maintaining housing while in the AOT program.

Hospitalization

In the last reporting period, many of the individuals who were hospitalized prior to receiving AOT services experienced decreases in their hospitalization days. This reporting period, most programs reported that the majority of clients with psychiatric hospitalizations prior to AOT either reduced their days of hospitalization during AOT or entirely eliminated hospitalizations.

Law Enforcement Contacts

In the last reporting period, programs reported law enforcement contacts (measured as “days of incarceration”) were reduced for all individuals that had experienced incarceration days prior to AOT. For this reporting period, this trend continues as all programs reported reductions in law enforcement contact for participants in AOT programs.

Treatment Participation / Engagement

For the previous reporting period, participants’ ability to engage and participate in treatment varied significantly. Counties indicated that programs focused on assisting individuals with critical symptoms who were reluctant to approach treatment, and most participants were able to achieve at least moderate levels of engagement. For this reporting period, the majority of the participants again were able to engage in treatment and remain in contact with their programs. This continues to result in positive outcomes for reducing hospitalizations, incarcerations, and homelessness.

Employment

In the prior reporting period, few clients were employed while in the program. Generally, clients were either not far enough along in treatment to gain employment or the AOT program had not yet implemented employment services as a component. For this reporting period, there was an increased level of employment for individuals across programs, including some participation in education.

Victimization

For the previous reporting period, there were few reported instances of victimization for participants prior to AOT program participation, and none reported for individuals during their AOT program participation. For this reporting period, there were again few reports of victimization, with some programs reporting that individuals were reluctant to share such information via the questionnaires that were used. These programs indicate that they will modify their questionnaires and/or programs to provide more comfortable means for individuals to share such sensitive information.

Violent Behavior

In the prior reporting period, counties reported an overall decrease in violent behavior. In the current reporting period, some programs reported violent episodes for individuals who were struggling with initial phases of stability, and other programs reported that the AOT program participants displayed decreased violent behavior or that they did not collect data on this outcome measure.

Substance Abuse

During the last 2015-16 reporting period, one AOT program reported a decrease in substance use for the majority of its clients; however, most AOT programs could not report on the AOT program's impact on substance use due to lack of information provided by the participants.

For the 2016-17 reporting period, all programs reported varying levels of challenges with participant substance use. The majority of individuals in AOT have co-occurring diagnoses, meaning that they have both mental health and substance use disorder diagnoses. This presents a complication for programs to support individuals in recovery from both issues. In some cases, the majority of individuals in the programs relapsed during AOT, while other programs reported the majority were able to avoid substance use.

Enforcement Mechanisms

For the last reporting period, medication outreach (e.g., visiting clients to discuss medication, helping prepare medication boxes) was the enforcement mechanism used most often to support individuals who experienced challenges in managing and regularly administering their own medications. Some programs used status hearings as a vehicle to help individuals re-focus on their treatment goals and self-care when they were

missing appointments and their mental health was beginning to decompensate.

For this reporting period, the most common enforcement mechanisms used were additional status hearings, with a small group of individuals receiving orders for hospitalization for the purpose of psychiatric evaluation. Some programs provided medication outreach as a regular support for their participants.

Social Functioning

For the prior reporting period, all AOT programs provided DHCS with anecdotal information on clients' increased social functioning, generally credited to the staff's ability to develop good rapport with the clients.

For this reporting period, overall, AOT programs reported increased social functioning and considered the participants' ability to interact with staff and tolerate therapeutic interactions a significant outcome in this area.

Independent Living Skills

For the last reporting period, most programs communicated to DHCS that the participants needed guidance with a wide array of independent living skills, such as medication management, money management, housing maintenance, and activities of daily living (e.g., dental hygiene), especially those who were generally homeless or frequently hospitalized prior to the court order.

During this period, programs reported that the majority of individuals improved in their independent living skills, as indicated by improved scores on the Milestone of Recovery Scale, and demonstrated strengthened skills in stress management, improved hygiene, food preparation, and transportation.

Satisfaction with Services

For the last reporting period, most AOT programs leveraged the annual Mental Health Statistics Improvement Program to report satisfaction with services. Because satisfaction surveys are voluntary, some clients refused to complete them. AOT Programs that surveyed clients and families found that the majority responded positively about the program and services.

For this reporting period, the majority of surveyed individuals were also satisfied with their services. Some programs have or are developing their own survey tool to capture individual responses that are unique to AOT programs rather than utilizing a pre-established survey, which include services beyond AOT.

Part II: Programs with No AOT Court Ordered Individuals –

El Dorado, Kern, Mendocino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Ventura, and Yolo Counties

County Program Unique Highlights

El Dorado County is implementing AOT by conducting a pilot program and currently has voluntary clients.

Kern County began services in Fall 2015 and continues to have only voluntary clients during both the current and previous reporting periods.

Mendocino County has implemented a four-slot pilot program for AOT and had no court-ordered or settled participants.

San Diego County just completed the first year of their new program with no court-ordered or settled participants.

San Luis Obispo County is still in the early stages of implementing their new program.

San Mateo County assembled a team consisting of a Clinical Services Manager, one half-time Psychologist, one Psychiatric Social Worker, one half-time Deputy Public Guardian and two half-time Peer Support Workers that travel throughout the county to evaluate individuals and provide referrals to services if needed. San Mateo County includes a Peer Support Worker to enhance engagement and support for individuals encountering the AOT program.

Santa Barbara County did not have a full year of the new program for this reporting period and did not have any court-ordered or settled participants.

Ventura County recently began receiving individuals, but did not have any during the reporting period.

Yolo County has a five slot AOT program, which was implemented three years ago. To date, it has only voluntary individuals have utilized the program.

Summary of Programs

The numbers of individuals participating in AOT services statewide has increased since more counties have implemented AOT programs. Programs report that ongoing efforts to develop robust engagement and support strategies have led to more engaged participation in AOT programs and voluntary participation in AOT services. With continued success in this area, programs are likely to maintain low numbers of individuals that require court involvement.

LIMITATIONS

There are several noteworthy limitations of DHCS' analysis. Although participating counties have provided additional data, court ordered client numbers remain small. The small population size makes it difficult to determine if the data allows for statistically significant conclusions. Additionally, counties are not using standardized measures, which makes it difficult to make comparisons across counties. Further, there is no comparison and/or control group, so it is unknown as to whether or not the improvements were a result of AOT program services, or other factors. Some of the measures are based on self-reports and/or recollections of past events, which may or may not be accurate or reliable. Furthermore, individuals were followed for different periods of time (e.g., individual A may have been followed for one week, while individual B was followed for the entire reporting period). As with other programs that have transitory populations in different phases of program completion, there may be carry over data from the prior reporting period.

Despite these limitations, DHCS' analysis suggests improved outcomes for AOT program participants served during the reporting period. Notably, the majority of individuals referred for an assessment opt to engage in voluntary AOT program services after being offered those services as part of the assessment process.

DISCUSSION

The data provided by counties suggest that individuals have benefited from participation in AOT programs, as evidenced by reductions in hospitalizations, homelessness, contact with law enforcement, and substance use. With respect to individuals that have both substance use and mental health issues, it is important to understand that concurrently recovering from both represents enormous challenges and requires a great deal of support and counseling. Some counties found that there were challenges with participants relapsing and at times relapses lead to further psychiatric hospitalizations.

Prior to participating in an AOT program, many individuals' experience with mental health treatment mainly involved locked facilities or hospitalization. Therefore, many clients had to adjust to forming relationships with supportive community mental health workers and to receiving intensive services outside of a locked setting. The success of this adjustment was indicated by the engagement by most individuals in AOT programs overall, whether voluntary or involuntary, and by the majority of individuals who completed a satisfaction survey indicating that they were satisfied with the services and supports.

Counties continue to report that only a small fraction of their overall AOT program populations (voluntary plus involuntary individuals) require a court order or settlement to participate. This suggests that counties are maintaining a strong effort to engage individuals in voluntary services and avoiding the court petition process.

CONCLUSION

Seventeen counties currently have Board of Supervisors approval to operate an AOT program. During this reporting period, 12 counties submitted reports to DHCS, six of which had data to report on AOT court-ordered or settled individuals. The other reporting AOT programs did not have court-ordered or settled client data to report to DHCS, but provided information on their programs' progress. This report includes aggregate outcomes from 63 individuals from the six counties that reported court-ordered or settled AOT client data to DHCS.

The data indicates that the program was successful in reducing the need for hospitalizations and/or incarcerations, largely due to an increased amount of support, and increasing employment during this reporting period. DHCS recommends continuing to monitor the progress and effectiveness of the services in the programs as counties develop and expand their programs, and ensuring that any other counties that choose to implement Laura's Law report data to DHCS, as required.

Appendix A

History of Involuntary Treatment and the Development of Laura's Law in California

Among significant reforms in mental health care, the Lanterman-Petris-Short (LPS) Act (Chapter 1667, Statutes of 1967) created specific criteria by which an individual could be committed involuntarily to an inpatient locked facility for a mental health assessment to eliminate arbitrary hospitalizations. To meet LPS criteria, individuals must be a danger to themselves or others, or gravely disabled due to a mental illness (unable to care for daily needs). Following LPS, several state hospitals closed in 1973 to reduce the numbers of individuals housed in hospitals, and the intent at the time was to have communities provide mental health treatment and support to these discharged patients. However, due to limited funding, counties were unable to secure the resources necessary to provide adequate treatment or services. As a result, many of the individuals released from the hospitals ended up homeless or imprisoned with very little or no mental health treatment.⁹

In 1999, the state of New York (NY) passed a law that authorized court-ordered AOT for individuals with mental illness and a history of hospitalizations or violence requiring that they participate in community-based services appropriate to their needs. The law was named Kendra's Law in memory of a woman who died after being pushed in front of a New York City subway train by a man with a history of mental illness and hospitalizations. Kendra's Law defines the target population to be served by the AOT programs as "...mentally ill people who are capable of living in the community without the help of family, friends and mental health professionals, but who, without routine care and treatment, may relapse and become violent or suicidal, or require hospitalization." The program is required in all counties in NY and the individuals served by court order have priority for services. Kendra's Law improved a range of important outcomes for its recipients,¹⁰ but differs from California's Laura's Law in two significant ways. It requires that all counties in NY implement AOT programs, and requires that the clients accessing these programs have priority for services.

Patterned after Kendra's Law, California passed AB 1421 (Thomson, Chapter 1017, Statutes of 2002), known as Laura's Law, that provides for court-ordered community

⁹ For additional historical information, see Laura's Law legislative report 2011 at:

<http://www.dhcs.ca.gov/services/MH/Documents/4LaurasLawFinalReport.pdf>

¹⁰ See Kendra's Law, Final Report on the Status of Assisted Outpatient Treatment Outcomes for Recipients during the First Six Months of AOT [Office of Mental Health, State of New York 2005, http://www.omh.ny.gov/omhweb/kendra_web/finalreport/outcomes.htm] and the New York State Assisted Outpatient Treatment Program Evaluation [Swartz, MS et al. Duke University School of Medicine, Durham, NC, June, 2009, http://www.macarthur.virginia.edu/aot_finalreport.pdf].

treatment for individuals with a history of hospitalization and contact with law enforcement. It is named after a woman who was one of three killed in Nevada County by an individual with mental illness who was not following his prescribed mental health treatment. The legislation established an option for counties to utilize courts, probation, and mental health systems to address the needs of individuals who are unable to participate on their own in community mental health treatment programs without supervision. Laura's Law authorizes counties to implement an AOT program and specifies that funding for established community services may not be reduced to accommodate the program. Laura's Law has resulted in reductions in homelessness, incarceration, and hospitalization for these individuals.

**County of Santa Clara
Santa Clara Valley Health & Hospital System
Mental Health Services**



99307

DATE: December 17, 2019

TO: Board of Supervisors

FROM: Toni Tullys, Director, Behavioral Health Services

SUBJECT: Report on Safe Places and Support Services for Mentally Ill/Dually Diagnosed Individuals

RECOMMENDED ACTION

Under advisement from November 5, 2019 (Item No. 16): Receive report relating to safe places and support services for individuals who are mentally ill and dually diagnosed. (Behavioral Health Services Department)

FISCAL IMPLICATIONS

This is an informational report; therefore, there is no net fiscal impact as a result of this action.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

At the request of Supervisor Chavez and Supervisor Cortese, Board Referral Item Number 16 (ID# 98761) approved on November 5, 2019, directs the Behavioral Health Services Department (Department) to provide a report on December 17, 2019 with options for consideration relating to the provision of safe places and support services for members of the community with high needs, who are severely mentally ill (SMI), dually diagnosed, and unhoused.

The following report addresses the options available to enhance engagement and provide support to provide for this population's safety and wellbeing. In addition, these options would help ensure that traditionally hard to engage members of the community would be able to gain access to and sustain participation in services that are safe and available day and night.

To better evaluate the potential options for enhancing engagement with services, included below is an overview of the support services the County currently provides for high needs, SMI, dual diagnosed, and unhoused people.

This Fall, in an effort to increase the services available for this population, the Department stood up the Assertive Community Treatment (ACT) Program, Forensic Assertive Community Treatment (FACT) Program and the In-Home Outreach Team (IHOT). Additionally, the Department has selected vendors to provide Intensive Full-Service Partnerships (IFSPs), which are based on the ACT model. These services will provide 800 new service slots for adult/older adult consumers. Substance Use Treatment Services (SUTS) has increased outpatient services by 220 slots and anticipates serving an additional 800 clients in the next year. Community-based detoxification beds also have been increased from 28 to 36 with an expectation of serving over 500 clients.

To ensure that clients/consumers and family members could provide their suggestions on the new and expanded services, the Department held a Peer and Family Support Services Discussion Group Meeting on December 5, 2019. Clients/consumers, peer workers, family members and National Alliance on Mental Illness (NAMI) staff met with Department leaders and senior managers to share their ideas for the service delivery system.

Intensive Services Launched Fall 2019

The ACT program is a long-standing evidence-based practice that has been widely used across the country for individuals with intensive mental health needs. With fidelity to the ACT model, outcomes are positive for high need clients. The ACT program will provide a comprehensive approach to serve 200 severely mentally ill individuals and will assist the homeless, severely mentally ill and individuals with both mental illness and substance use disorders by using a multi-disciplinary team approach to care. The treatment will include a psychiatrist, nurse, case managers, and peer support workers. The program is characterized by 1) low client to staff ratio, 2) a shared caseload among team members providing a coordinated care approach to service delivery, and 3) 24-hour staff availability. Referrals for this level care of care can occur through system partners such as the Office of the Public Guardian (OPG), the Office of Supportive Housing (OSH), and Whole Person Care (WPC).

The FACT Program serves high-risk criminal justice-involved adults (ages 18 to 59) and older adults (ages 60 and over) with severe and persistent mental health and/or co-occurring conditions that result in substantial functional impairments or symptoms. Due to the recalcitrant nature of their symptoms, these individuals are more likely to experience a high utilization and repetitive cycle of incarceration, homelessness, substance use, crisis, and/or hospitalization.

The FACT team, upon making a determination that the consumer has a history of chronic homelessness, will complete the Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT) to quickly assess the health and social needs of homeless individuals - matching them with the most appropriate services, support and housing interventions available. Immediate assistance with securing supported housing arrangements, including linkage to safe and permanent housing upon graduation from FACT, will be provided to these individuals.

The provision of FACT services will result in a diversion of individuals from correctional/judicial systems and higher levels of care which in turn will help reverse the cycle of ongoing criminal justice involvement. From the inception of treatment, FACT teams will address housing challenges for this population by conducting the VI-SPDAT which will play a critical role in addressing resistance from participants around housing, finding appropriate housing options for this population, and teaching participants skills necessary to live independently. This will prepare the individual for a more seamless transition into long-term permanent housing.

Pay for Success “Partners in Wellness” Update and Outcomes

On October 18, 2019, the Department submitted an off-agenda report to the Board of Supervisors on the outcomes to date of the County’s Pay for Success “Partners in Wellness” program. (Attached) In 2015, the Office of the County Executive (“County”) recognized that the Department cared for many high-need individuals who make extensive use of 24-hour psychiatric services (e.g., EPS, Barbara Aarons Pavilion, Institutes of Mental Disease (IMDs) and contract inpatient psychiatric hospitals) without finding stable recovery in the community. This was obviously hard on those clients and posed significant fiscal and logistical challenges for the county. To serve such individuals more effectively, while also being a good steward of public funds, the County launched a highly innovative “pay for success” mental health initiative in 2016.

The Department contracted with Telecare Corporation, the selected vendor in a procurement process, to provide a package of ACT and Supported Housing to individuals who both experience serious mental illness and have a history of extensive, repeated 24-hour psychiatric service utilization.

The Telecare agreement included two key components. First, individuals were randomly assigned to Telecare versus standard services, which will allow a rigorous assessment of the project’s conclusion about its clinical impact on clients. Second, under a novel financial agreement, Telecare would receive financial bonuses if it were unusually successful at reducing unnecessary 24-hour psychiatric utilization and would face financial penalties if they were not successful in this task.

During the first evaluation period (January 1, 2017 – June 30, 2017) and the second evaluation period (July 1, 2017 -June 30, 2018), Telecare patients required substantially lower than expected 24-hour psychiatric services. This included Telecare exceeding targets for reduced use of acute BAP services by 50% and use of IMDs by over 60%. For both periods, Telecare received the maximum pay for success bonus because they had overperformed so significantly. Analysis of the third evaluation period (July 1, 2018 – June 30, 2019) is nearly complete and while not finalized, again indicates very strong performance by Telecare at reducing psychiatric utilization.

As noted above, the Department has implemented ACT across the Adult and Older Adult (AOA) System with the goal of improving outcomes for all clients that would benefit from this level of care.

In-Home Outreach Team Launched Fall 2019

The IHOT is comprised of county-operated and contracted providers. This program is designed to 1) serve as an after-care program for individuals referred by law enforcement to the Mobile Crisis Response Team (MCRT). The IHOT will provide intensive outreach services by engaging the individuals and linking them to on-going services. The county-operated IHOT will also coordinate with Emergency Psychiatric Services (EPS) and provide outreach and engagement services to individuals who do not meet the criteria for inpatient hospitalization but require assistance in linkage to on-going outpatient services. Finally, the IHOT will serve as a care coordination team for individuals who may be receiving services through the OSH or through a conservatorship.

Enhanced Street Outreach and Engagement

Since the implementation of the Homeless Mentally Ill Outreach and Treatment (HMIOT) program, over 200 VI-SPDAT assessments have been completed. When HMIOT identifies homeless individuals with mental illness, they are referred to the HMIOT clinical outreach team. Currently, over 40 clients are enrolled and actively working with the clinical outreach team for continual engagement, crisis intervention, and linkage to services. Among those enrolled in HMIOT program, there was zero utilization of EPS. This is a 100% reduction in EPS services. The clinical outreach team responds to special cases addressing the needs of the homeless severely mentally ill individuals on the streets. As needed and as appropriate these individuals are assessed, provided with basic needs, interim housing/shelter, and continual follow up until they are linked to services. Among those who are enrolled with the clinical outreach team, over 50% are enrolled in Permanent Supportive Housing (PSH) programs, waiting for housing to become available.

Expansion of Wellness and Drop-In Centers

The Department continues to work on implementing culturally specific wellness and drop-in centers countywide. A Request for Proposal (RFP) to expand Wellness Centers and other community-based support services will be released in December 2019. These centers are designed to help create access and linkage to behavioral health treatment for unserved and underserved individuals and their families using strategies that are non-stigmatizing. Unlike the traditional Medi-Cal authorized services, the drop-in centers will operate using an open-door policy, whereby individuals not diagnosed with behavioral health-related disorders will also be welcome and free to attend. These wellness or drop-in centers can be co-located with non-clinical cultural services. These centers are expected to begin operations in July 2020.

The Call Center: “No Wrong Door” Approach

Through the use of updated workflows, additional staff training, and technology enhancements, the Call Center has implemented a concept typically referred to as the “No Wrong Door” approach. While supporting the Department’s compliance with network adequacy requirements, this concept has also proved to be beneficial in supporting individuals with coexisting mental health and substance abuse problems. Using this approach, individuals are connected to the appropriate services, resulting in “no wrong door” for access to these services. This includes services related to “same-day” access, and/or direct access to both mental health and substance use treatment services. With the new and expanded levels of care, individuals can more easily be directed or transitioned to levels of service which best meet their needs.

Crisis Stabilization Unit and Sobering Center

These are two distinct services that are offered by the Department. The Crisis Stabilization Unit (CSU) program provides up to 23 hours of psychiatric care to individuals experiencing a mental health crisis. The CSU provides crisis intervention, crisis stabilization, limited medical evaluation, and support. The program offers linkages to culturally and linguistically appropriate follow-up care for outpatient individuals within the Department’s continuum of care. Individuals can be brought in by law enforcement, be referred by community providers, or receive referrals from the EPS for follow-up care and coordination.

The Sobering Center provides up to 23 hours of care to individuals that are under the influence of alcohol. This program provides support during the individual’s stay while they dissipate the effects of alcohol intoxication. Staff assess the health and social needs of individuals and make referrals to appropriate community resources upon discharge from the program. Referrals are principally from local law enforcement agencies, followed by the EPS and/or the Emergency Department (ED), and individuals who voluntarily enter the program.

Both programs serve the community and provide alternative services to incarceration. Individuals that are provided housing are either affected by a mental health crisis or have relapsed to alcohol use that can negatively affect their permanent housing. These interim

services allow for stabilization and augmented case management services to address the stressors that have resulted in crisis or abuse of alcohol.

Expansion of Walk-In Shelter Beds (Short-Term Needs)

As of April 2019, there were 98 programs with a total unit capacity of 1,742. Over the past year, these programs have collectively served almost 7,500 individuals.

Inclement weather utilization increased from 27% to 44% over the past year. This increase is due to improved coordination with partners such as the National Weather Service, 211, Alert SCC, and the City of San Jose. In addition, through increased outreach and advanced inclement weather episode notification to homeless individuals; there was an enhanced awareness of the availability of beds that resulted in higher utilization. The majority of individuals and families accessing shelter and transitional programs are assessed at entry. The assessment provides information about the level of need for the household, as well as adds the household to the community queue for housing programs. During this reporting period, the individuals enrolled in the shelter and transitional programs had the following characteristics:

- Forty percent (40%) of shelter participants and 23% of transitional participants were assessed in the Permanent Supportive Housing range, indicating they may need permanent assistance to obtain and retain stable housing. Thirty-six percent (36%) of shelter participants and 43% of transitional participants were assessed at the Rapid Rehousing level, indicating a need for time-limited assistance to obtain and retain housing. The number of participants assessed at these levels far exceeds the resources available to serve all participants accessing either program.
- Participants of both shelter and transitional programs indicated a significant number of challenges related to personal wellness, demonstrating a need to address a wide range of issues to increase the participants' ability to obtain and maintain stable housing. This includes 51% of shelter participants and 25% of transitional participants reporting abuse or trauma and 27% of shelter participants and 12% of transitional participants reported a mental health issue or concern.
- Approximately a quarter (23%) of participants leaving shelter and half (48%) of the participants leaving Transitional Housing are exiting to a permanent destination. Until additional housing programs are available to serve participants (as they leave either of these programs), this percentage will likely remain stable.

New Adult Residential Treatment Program

The Department is implementing a new Adult Residential Treatment (ART) program designed for individuals who can take part in programs in the general community, but who without the supportive counseling in a therapeutic setting would be at risk of hospitalization. Without the long-term unlocked residential treatment, these individuals are more likely to be hospitalized. The ART program's goal is to provide a structured recovery-oriented residential setting that assists consumers to improve life skills and reduce functional impairments. The ART will serve individuals diagnosed with SMI and substance use disorders. The program is expected to engage adults and older adults with complex risk factors that include violence, homelessness, neglect, justice-involved and those exposed to trauma.

The ART RFP was released on November 20, 2019, with the intent of selecting one or more vendors by May 12, 2020 with an estimated contract start date on July 1, 2020. The RFP is requesting proposals that can provide both direct services and manage facility needs.

Measures to Increase and Prevent Decline of Board and Care Homes and Beds

The AOA System of Care is working with the OSH and Facilities and Fleet (FAF) to purchase board and care homes that have plans to close and go out of business. To support potential purchase(s) for the SMI/co-occurring population, the Department included the County's maximum allowable Mental Health Services Act (MHSA) funding (\$8 million) in the MHSA Plan Update to purchase and operate residential care facilities; this funding can be used for up to ten (10) years. By purchasing and preventing the closure of these homes, the intention is to mitigate the displacement of consumers currently living in these homes and abate further homelessness.

In addition, the Department recently received the Los Angeles County Mental Health Department (LADMH) report on stabilizing board and care facilities, recognizing the critical importance of maintaining and increasing these facilities. This report was approved by the Los Angeles County Board of Supervisors on November 12, 2019 and the Department, with OSH, plans to follow up with the LADMH team in December 2019.

In an effort to increase and prevent the decline of the board and care homes and beds, the AOA System of Care Division Director convenes a quarterly stakeholder meeting with the State Community Care Licensing staff and the Public Guardian Office. This meeting is used to collaborate and discuss ways to provide on-going support for existing board and care facilities that are struggling to maintain their licensure due to several deficiencies in their facility.

Hospital Discharge Transition Treatment Team

The Department continues to work on reducing the use of inpatient psychiatric hospital services for individuals diagnosed with serious mental illness. The readmission rate measures the unplanned readmissions of individuals who have been discharged from acute psychiatric

hospitals within the past 30 days. The AOA Hospital Liaison implemented a practice management solution to improve data captured at the Barbara Aarons Pavilion (BAP) and contract hospitals to allow for more efficient intervention.

To address the readmission rate, a pilot project using an Inpatient Liaison was instituted at the BAP in 2017, with the aim to provide care coordination for patients discharging from the hospital. Care coordination has improved for consumers transitioning from inpatient hospitals back into the community. In addition, the Inpatient Liaison has improved relationships with the Outpatient Treatment Team service providers and inpatient providers by instituting quarterly meetings with the inpatient and outpatient providers to discuss challenging issues that affect clients. Another area of improvement is the Inpatient Liaison's ability to flag consumers with two hospitalizations, through early identification and proactive case management of these high-risk patients, thereby reducing readmissions. The AOA System continues to track the monthly readmission rate, which is currently 10.7 %, a slight increase in the readmission rate due to several high-need, high acuity clients waiting for state hospital beds.

New Step Down Service Option to Support Wellness and Recovery

The new Wellness and Recovery Medication Services (WARMS) was initially piloted in County-operated mental health clinics and has been fully implemented at the Downtown Mental Health and Narvaez Clinics. WARMS was developed to support adult outpatient clients in maintaining their level of wellness with case management, peer support and medication support that is provided every 4-12 weeks from a psychiatrist and licensed psychiatric technician. For this lower level of care, clients continue to receive: 1) an annual mental health assessment, 2) ongoing treatment planning, and 3) light touch case management. In the past fiscal year, mental health contract providers communicated their interest in implementing WARMS to support their outpatient level of care. Currently, there are six (6) contract providers utilizing this option, and in the next fiscal year, the program will be expanded to all AOA outpatient providers.

Exploration of Medical-Detoxification Services (MHTC)

The MHTC is a service benefit covered under the Drug Medi-Cal Organized Delivery System Waiver (DMC-ODS). This would not be a "center," but rather a medical service provided in a hospital setting. The Department is working with Valley Medical Center leadership to explore implementation of an MHTC service that would provide medical detoxification and supportive treatment for clients. The intervention addresses severe addiction to drugs and/or alcohol that requires medical supervision as the individual detoxes from the substance. For individuals who are severely addicted to alcohol and other drugs, such as benzodiazepines, detoxification can be life-threatening during the early stages of detoxification. This is further exacerbated when an individual also has a chronic health condition that can further complicate the detoxification process.

To manage detoxification in these circumstances, medical interventions (including the administering of medication to minimize the deleterious effects of the detoxification process) are required. The services offered through SUTS are routinely provided to individuals that are homeless, involved with the criminal justice system, and have co-occurring mental health symptoms. These augmented services would effectively address and stabilize individuals with acute addiction issues who are involved with all system partners that also serve this population.

Enhanced Lanterman-Petris-Short (LPS) Act Conservatorship

Mental health conservatorships, also known as LPS conservatorships, are established to provide mental health services for Santa Clara County residents who are gravely disabled (unable to provide for their food, clothing or shelter) due to serious mental illness. These individuals have been found by the Court unable or unwilling to accept voluntary treatment. Mental health conservatorships are also known as Lanterman-Petris-Short conservatorships or “LPS”, named after the state Assemblyman and Senators who wrote the legislation. The law went into effect in 1972. This procedure is established in the California Welfare and Institutions Code (WIC).

Mental health conservatorship is a legal procedure through which the Superior Court appoints a conservator of the person to authorize psychiatric treatment, including the use of psychotropic medications and placement in a locked facility. The conservatee must meet the narrow definition of grave disability due to a serious mental disease.

LPS conservatorships may only be initiated by a psychiatrist while a client is in an acute psychiatric setting. Only psychiatric facilities (including jail psychiatry), may make referrals for conservatorships. Clinicians have discretion about when to refer; the treating physician may choose not to refer if it is believed that a client will recover before the hold expires. If a person reaches the 17-day limit for a hospital hold, they must be released unless a conservatorship is in place.

LPS conservatorships start with a 72-hour psychiatric hold (also known as a Welfare and Institution Code (WIC) Section 5150 hold). If clients continue to be considered gravely disabled and need additional intensive treatment, a psychiatric clinician may file for a 14-day hold (WIC Section 5250 hold). Under these WIC provisions, a patient can be held for a maximum of 17 days without conservatorship. After the first three days, the client has the right to a hearing and representation by the Public Defender.

Upon receiving a referral, the Public Guardian Conservator will determine if the referral is appropriate (that the client is a Santa Clara County resident and is on an involuntary hospital hold). If deemed appropriate, the Public Guardian Conservator works with County Counsel to petition the Superior court to grant a temporary conservatorship (T-con). This ensures that

the client will continue to receive appropriate care during the judicial process. Once the T-con is granted, the Public Conservator completes an investigation, including consulting with the psychiatrist, reviewing medical records and meeting with family (if appropriate). The Public Guardian Conservator then works with County Counsel to file a petition with the Court for continued conservatorship. If the T-con expires before the petition is ready, the Court may grant a 30-day extension.

Proposed conservatees are appointed representation by an attorney from the Office of the Public Defender. If the Court determines that the client is gravely disabled due to serious mental illness and are unable or unwilling to accept voluntary treatment, the client is placed on a “permanent” conservatorship, which lasts up to one year. The client has a right to appeal the conservatorship and may request a trial.

The Public Guardian Conservator works with the Department’s 24-Hour Care team to place the client in treatment, which generally includes finding an appropriate residential facility based on the physician’s recommendation and the needs of the client. The Public Guardian Conservator:

- Prepares reports for the Court
- Recommends appropriate level of placement, seeking the best and most independent living environment available, within the conservatee’s abilities and resources
- Monitors psychiatric care in collaboration with treatment team
- Consents to medical treatment and psychiatric medications when authorized
- Advocates on behalf of conservatees
- Provides case management for clients

A general LPS conservatorship lasts for a year or until it is determined that the conservatee no longer meets the legal criteria for conservatorship. At the end of the year, if the conservatee continues to meet the criteria for conservatorship, County Counsel files a petition for renewal of conservatorship.

Implementation of Assisted Outpatient Treatment (AOT)

In 2002, California passed The Assisted Outpatient Treatment Demonstration Project Act, aka Laura’s Law, authorizing the provision of assisted outpatient treatment (AOT). As explained in reports to the Health and Hospital Committee (HHC) on September 13, 2017 (ID# 88121) and August 22, 2019 (ID# 97937),¹ this law allows courts, in certain circumstances after following a specific set of procedures, to order people to receive

¹ These reports are attached to this report for ease of reference.

involuntary outpatient mental health services.² The 2002 law did not provide any funding for implementing AOT³ and specifies that funding for voluntary mental health programs may not be reduced as a result of the implementation of AOT. Each County Board of Supervisors must approve AOT implementation in its county.

Currently, 20 counties have implemented AOT and are able to use the court system to enroll in involuntary outpatient treatment people with serious mental illness who are unable and/or unwilling to participate in treatment and meet the criteria established in Welfare & Institutions Code § 5346. As part of the AOT process, before AOT proceedings can begin, the person must have been offered an opportunity to participate in a treatment plan and continue to fail to engage in treatment. So far, the vast majority of people involved in an AOT program voluntarily engaged with services before court proceedings began.

The most recent information available about the outcomes of those 20 AOT programs is derived from data six counties provided⁴ to the California Department of Health Care Services (DHCS) for the 2016-2017⁵ time period. During that time period, there were 63 court-involved individuals in the six reporting counties. All of the data collected indicates that those 63 people benefited from being connected to treatment via AOT: homelessness, hospitalization, and contact with law enforcement decreased; some people secured employment; and most individuals remained fully engaged with services at the end of their court ordered treatment. However, none of the reports used standardized measures, followed participants for a standard period of time, included a large enough sample size, or compared the AOT participants to a control group that did not face the threat of court order to enter treatment. Given these limitations, the utility of this outcome data is quite limited and cannot demonstrate a causal relationship between the AOT process and the outcomes for the participants.⁶

As detailed in other sections of this report, Santa Clara County recently stood up new FACT, ACT, and FSP services. These services use evidence-based practices to provide the level of care most AOT participants would require, using a “whatever it takes” approach. The Department has also been making efforts to expand the breadth and methods of its community engagement. AOT participants have the option of engaging Mobile Crisis Response Team, In-Home Treatment program, Crisis Text Line, Homeless Mentally Ill Outreach and Treatment program, and call center. With the recent expansion of services and

² Please see the September 13, 2017 report for more detailed description of the goals of AOT (packet pages 585-86), eligibility criteria (586-87), court process (587), and service program requirements (588).

³ Orange County and Nevada County estimated treatment costs at \$35,000-\$40,000 per person per year.

⁴ The other counties did not have enough data to report.

⁵ Most of the counties currently using AOT, did not begin implementation until 2015-2016.

⁶ San Francisco and Contra Costa Counties have also released evaluation reports on their AOT implementation. These counties reported similar findings and the utility of their data is similarly limited.

continued efforts at voluntary engagement, the Department is already providing many of the beneficial pieces associated with AOT in Santa Clara County.

At the August 22, 2019 HHC meeting, Supervisors Ellenberg and Simitian asked the Department to provide the HHC with quarterly reports on the progress of these new services and include in those reports an analysis of the possibility of implementing an AOT program. Given how new the ACT, FACT, and FSP services are to the County, these reports will allow the HHC to keep a close eye on their implementation and gauge their effectiveness.

The recommended action supports the County of Santa Clara Health System's Strategic Road Map goals by increasing the number of healthy life years through improving access to safe, supportive, and effective care.

CHILD IMPACT

The recommended action would have a positive impact on children by providing information on projects and resources for homeless, dually diagnosed, and severely mentally ill clients from this target population.

SENIOR IMPACT

The recommended action would have a positive impact on seniors by providing information on projects and resources for homeless, dually diagnosed, and severely mentally ill clients from this target population.

SUSTAINABILITY IMPLICATIONS

The recommended action balances public policy and program interests and enhances the Board of Supervisors' sustainability goals of social equity and safety by outlining and developing processes and procedures to address the needs and engage homeless individuals, dually diagnosed and SMI individuals in Santa Clara County.

BACKGROUND

At the August 22, 2019 HHC, the Department provided information on the Fiscal Year (FY) 2019 Work Plan and accomplishments, including expansion of the AOA System's crisis continuum, diversion and post justice services and planned implementation of new and expanded services (ID# 97937). These services include Assertive Community Treatment, Forensic Assertive Community Treatment, Intensive Full-Service Partnerships and the In-Home Outreach Teams. In addition, the Blackbird House, a new Peer Respite program operated by Caminar, opened its door in December 2018. The Department also reviewed the FY2020 Work Plan (ID# 97937) which includes new services in both County-operated programs and RFPs for new contract provider services. These services were designed to meet the needs of clients with intensive mental health and substance use issues.

CONSEQUENCES OF NEGATIVE ACTION

Failure to approve recommended action would result in the inability of the Board of Supervisors to receive a report on the current and future projects, plans, and services that would help engage house, and serve homeless, dually diagnosed, and SMI individuals.

LINKS:

- Linked To: 98761 : 98761
- Linked To: 88121 : 88121
- Linked To: 97937 : 97937



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women
Category:	Reports of Mayor and Councilmembers
Meeting Date:	2/18/2020
Staff Contact:	Councilmember Karina Dominguez, 408-586-3031; Councilmember Anthony Phan, 408-586-3032
<u>Recommendation:</u>	Adopt Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women

Background:

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world. To date, 187 out of 193 United Nations member states have ratified CEDAW. The United States is one of only six countries—along with Iran, Sudan, Somalia, Palau and Tonga—that have not ratified CEDAW. CEDAW defines discrimination and provides a practical blueprint to promote human rights and open opportunities for women and girls in all areas of society. The treaty calls on each ratifying country to overcome barriers to discrimination in the political, social, economic, and cultural fields. This includes addressing issues of domestic violence, trafficking, affordable health care and child care, economic security, pay inequities, paid family leave, and educational and vocational opportunities.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women.

Analysis:

The Convention of Elimination of All Forms of Discrimination Against Women lays out specific universal standards that affirm the fundamental rights of women and girls and offers a framework to foster gender equality and eliminate discrimination against women. It defines what constitutes discrimination against women broadly to encompass policies that negatively affect women's human rights, and offers a blueprint to create more equitable opportunities and outcomes for the City of Milpitas.

By using an intersectional approach, the City of Milpitas, can help women by building policies that address all aspects of their identity. CEDAW seeks to foster not only equal opportunities, but also more equitable outcomes. Furthermore, the City of Milpitas will be able to form outcomes that will help prevent workplace violence, discrimination and sexual harassment.

Fiscal Impact:

None.

California Environmental Quality Act:

N/A.

Recommendation:

Adopt the resolution in support of the principles of the United Nation Convention on The Elimination of All Forms of Discrimination Against Women, referenced as “CEDAW.”

Attachments:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS IN SUPPORT OF
THE PRINCIPLES OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

WHEREAS, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a comprehensive international women's rights treaty that calls for appropriate measures, such as legislation, to ensure women's rights and equality in all aspects of life, including in the political, social, economic, cultural, and civil fields; and the CEDAW was adopted by the United Nations General Assembly in 1979 and ratified by 187 countries but the United States remains one of only six countries that have not ratified the treaty; and

WHEREAS, the spirit of the Convention is rooted in the goals of the United Nations to affirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and as CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex; and

WHEREAS, CEDAW, sometimes called an International Bill of Rights for Women, obligates those countries which have ratified or acceded to it to take all appropriate measures to ensure the full development and advancement of women in all spheres; political, educational, employment, health care, economic, social, legal, marriage and family relations, as well as to modify the social and cultural patterns of conduct of men and women to eliminate prejudice, customs and all other practices based on the idea of inferiority or superiority of either sex; and

WHEREAS, fifty-two countries, including the United States, signed CEDAW during the 1980 Mid-Decade Conference for Women in Copenhagen, Denmark, and to date 161 countries, representing over half of the world's countries, have now ratified or acceded to the Convention, and yet the United States has not ratified or acceded to it; and

WHEREAS, municipal governments have an appropriate and legitimate role in affirming the importance of international law in our communities as universal norms and to serve as guides for public policy; and

WHEREAS, there are vast gender disparities at the local, state, and national level; women, particularly women of color, disabled women, Native women, immigrant women, trans women, and women from marginalized communities suffer from unequal pay in Santa Clara County; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practice in relation to women and girls and to rectify discrimination based on gender; and

WHEREAS, the adoption would further support the initiative of the California State Legislature in endorsing ratifications of CEDAW, when by resolution in 1997, it encouraged the United States Senate to ratify the Convention.

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 supports the principles of the United Nations Convention on The Elimination of All Forms of Discrimination Against Women referenced as “CEDAW.”
- 3. The City Council hereby directs staff to come back with an ordinance to implement in the City of Milpitas using the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in city operations.

PASSED AND ADOPTED this _____ day of _____, 2020, 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



ECONOMIC DEVELOPMENT & TRADE COMMISSION (EDTC) WORK PLAN FY 2019-2020

EDTC Mission Statement:

Advise the City Council on business issues, cultivate international trade relationships, and make recommendations on the design, development, and implementation of economic development in the City of Milpitas.

Topic/Overall Goal	Specific Action(s) Required	Resources	Goal Deadlines
Economic Development Strategy	EDTC will review and provide recommendations, participate in strategy development and implementation.	EDTC, staff, local stakeholders	Spring 2020
International Trade	EDTC will help cultivate relationships with local businesses who have a global presence in international trade, commerce, B2B and workforce development. Promote FTZ.	EDTC, staff, local businesses	Ongoing
Manufacturing Day 2019 & 2020	EDTC members provided recommendations for event, planned, and attended the 10/4/19 tour. They will help plan program strategy and participate in the 2020 event preparation.	EDTC, staff, various community partners	Fall 19 & 20
Better Block	EDTC Subcommittee will provide work plan recommendations, act as ambassadors of program strategy, participate in event, and review final draft report.	EDTC Subcomm., staff, local partners	Spring 2020
EPS Real Estate Findings	EDTC will receive presentation on project findings and provide recommendation.	EDTC and staff	Spring 2020
Business Seminars	EDTC assist in development of 6 workshops and promote events to small business comm.	EDTC, SBDC, staff	2020
General Plan Update – Economic Development Element	EDTC review/provide feedback on GP Update and Economic Development Element.	EDTC and staff	2019 and 2020
Pilot Façade Improvement Grant Program	EDTC Subcommittee will review applications and make recommendations on grants.	EDTC Subcomm., staff, businesses	Spring 2020
FlexFactor Initiative	EDTC will provide recommendations and market the workforce development plan.	EDTC, staff, MUSD	Spring 2020
Annual Report	EDTC will assist staff in preparing annual report and accomplishments.	EDTC and staff	2020
Development Projects – Specific Plans	EDTC will provide feedback on development projects and specific plan documents.	EDTC and staff	Ongoing



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Economic Development and Trade Commission Work Plan for Fiscal Year 2019-2020 and receive a Trade Progress Report
Category:	Community Development
Meeting Date:	2/18/2020
Staff Contact:	Alex Andrade, 408-586-3046, Margaret Tamisiea, 408-586-3047
Recommendation:	1. Approve proposed Fiscal Year 2019-2020 Economic Development and Trade Commission Work Plan; 2. Receive an International Trade Progress Report.

Background:

The Milpitas Economic Development Commission was originally established on February 18, 2003 by City Council with the purpose of advising City Council on matters pertaining to business attraction, retention and expansion and implementation of the Economic Development work program. On August 21, 2018, the City Council approved a merger of the Economic Development Commission with the Sister Cities Commission to form the Economic Development and Trade Commission (EDTC). The merger of the two commissions allows for cultivating international trade initiatives and relationships.

It is important to make a distinction between the Office of Economic Development's work effort on trade and the Parks and Recreation and Community Services Department's focus on Sister Cities Cultural and Community Relationship Program. On February 4, 2020, Council approved and directed staff to implement the Sister Cities Cultural and Community Relationship Program through the Milpitas Parks, Recreation and Cultural Resources Commission (PRCRC). Regarding cultural and community relationships, staff from Recreation and Community Services will provide support for the creation of informal Friendship Cities or Associations in concert with Council approval. If new relationship requests are proposed for trade, EDTC and Office of Economic Development staff would be assigned to evaluate the request and application. Therefore, the revised Sister Cities Program will be community-based and led, with staff taking a less extensive role.

Analysis:

At its October 14, 2019 meeting, EDTC discussed and voted to forward their Fiscal Year 2019-20 Work Plan to City Council for final approval. On January 23, 2020, EDTC reviewed the Work Plan and approved establishing Subcommittees for Better Block and the Pilot Façade Improvement Grant Program. Commissioners and members of the proposed Subcommittees are responsible for promoting, marketing, researching and assisting staff on implementation of these work efforts. The Work Plan represents new work efforts as well as ongoing initiatives and programs that may take multiple years to complete (Attachment A). Below are a few significant Work Plan items underway:

- **Economic Development Strategy** – review, provide recommendations and participate in strategy development;
- **International Trade** – promote Foreign Trade Zone, assist in developing educational criteria for training sessions pertaining to trade, business-to-business and workforce development;

- **Better Block** – Subcommittee will assist in program development, act as ambassadors, promote and participate in the event; and
- **Pilot Façade Improvement Grant Program** – Subcommittee will assist by reviewing applications, providing input on grants, façade design, and implementation.

During the calendar year of 2019, a total of 6 new EDTC members were appointed by the City Council. There are two current vacancies on the EDTC, which are meant to represent the hospitality and real estate industries.

International Trade Progress Report

On August 21, 2018, the City Council approved a merger of the Economic Development Commission with the Sister Cities Commission to form the Economic Development and Trade Commission (EDTC), effectively incorporating a trade component of the former Sister Cities Commission. Per Council direction, EDTC is now charged with enhancing relationships with Milpitas-based businesses that have a global presence for trade and commerce, business-to-business opportunities and workforce development. Below is a Trade Progress Report.

The Office of Economic Development is actively incorporating “trade” into EDTC in various ways. On April 16, 2019, a former Sister Cities Commissioner, Dipak Awasthi, was appointed to the EDTC by Council to integrate topics formerly associated with the Sister Cities Commission. On October 15, 2019, Casey McNeil (Flex) was appointed by Council and serves as EDTC’s technology and trade representative, which further aides’ the Commission and staff in achieving Council’s direction of incorporating trade. In addition, staff has established a relationship with Governor Gavin Newsom’s Office of Business and Economic Development via monthly calls since July 2019 with the International Affairs and Trade team to cover topics regarding state and federal resources, foreign direct investment, foreign trade shows, importing/exporting, etc. And, the International Affairs and Trade team has pledged support in guiding EDTC and staff on developing a successful City trade program. Furthermore, in December 2019, Margaret Tamisiea began working with the Economic Development team as a part-time, Special Projects Associate, assisting with incorporating trade and other work plan initiatives.

Since the December 17, 2019 City Council meeting resulting in direction to renew a Sister City Memorandum with the City of Dagupan, Philippines, staff has been conducting research on best practices to incorporate trade into the work program. Best practices research includes meetings or calls with the State’s International Affairs and Trade team, Cities of San Jose and San Francisco, Mission College Centers for International Trade Development, and the U.S. Department of Commerce to learn more about the Foreign Trade Zone (FTZ), Foreign Direct Investment (FDI), Select USA, trade shows and export and import programs.

Governor Newsom’s Office of International Affairs & Trade

On January 16, 2020, a call took place with Governor Newsom’s Office of International Affairs and Trade Office. Discussion topics included a statewide effort on export trading program being launched and led by the Mission College Centers for International Trade Development, investment incentives through FDI, trade show participation subsidies for small-medium sized businesses, FTZ, and a potential partnership with Select USA.

City of San Jose - Foreign Trade Zone

On January 17, 2020, a meeting was conducted with San Jose’s Office of Economic Development to learn more about FTZ #18, which was established in 1974 for a service area that includes Santa Clara County, portions of Santa Cruz, and southern part of Alameda County. FTZs allow U.S. businesses to remain globally competitive and retain jobs through manufacturing and trade policies. Manufacturing and distribution businesses are eligible to apply to become an FTZ and the benefit includes a delay, reduction or elimination of duties on foreign goods admitted in the zone. The FTZ is a regional economic asset, but there are no businesses located in Milpitas that are part of the program. Staff will assist local businesses in determining the overall duties savings if they become an FTZ.

San Francisco Office of Economic and Workforce Development

On January 17, 2020, a call occurred with representatives from San Francisco's Office of Economic Development and Workforce Development to discuss international trade, foreign offices and consulates, China SF program, federal partnership with Select USA to attract investors from overseas, and FDI. Based on these learnings, staff will seek partnership opportunities with Culture Center of Taipei Economic and Cultural Office in San Francisco located in Milpitas, as well as SEMI, the global industry association serving the product design and manufacturing chain for the electronics industry, which is also located in Milpitas.

Mission College Centers for International Trade Development

On January 29, 2020, staff participated on a call with Mission College's head of the Centers for International Trade and Development. Staff learned that in the year 2000 the California Trade and Commerce Department was eliminated, and funds were re-appropriated to community colleges. Mission College is the trade education leader of the Bay Area. There will be an opportunity for the Office of Economic Development to partner with Mission College on co-sponsoring workshops for informing and educating small-medium sized business. The partnership may result in working with the state's Office of Business and Economic Development (Go-Biz) and Mission College to build an educational model and host 2-3 training sessions.

U.S. Department of Commerce

On January 29, 2020, a meeting transpired with representatives of the U.S. Department of Commerce through their San Jose office of the U.S. Commercial Service. The U.S. Commercial Service helps businesses through leveraging global networks and trade expertise to meet the exporting needs of the corporate community. They are known globally for their export promotion services, trade shows, international partner searches and Select USA. Select USA is dedicated to connecting early stage and startup technology companies to prospects and advance the U.S. market. There is an opportunity to attend the 2020 Select USA Investment Summit in Washington, D.C. between June 1-3, 2020. After the 2020 Select USA Investment Summit concludes, there may be a San Francisco or San Jose Select USA Tech Spinoff Event to highlight the strategic benefits of locating business operations in the region.

Strategies for Trade Work Program

Partnerships between the City of Milpitas' Office of Economic Development and local businesses can play a critical role in deepening our commercial relationships and shaping a well-functioning international trade program. The goal for the trade program will be to strengthen the competitiveness of Milpitas businesses while promoting trade and investment. EDTC and staff will assist the local business community through education and information on the benefits of international trade and increase the awareness of government resources that help importers, exporters and investors. The goals for the trade work program are to build value for local businesses in international markets so they can compete at home and abroad, develop trade, commerce, business-to-business and workforce development opportunities, and retain existing jobs in Milpitas and create new job opportunities.

Based on best practices research and meetings with experts in the field, staff has developed the following proposed strategies for EDTC implementation. The strategies for the Milpitas trade program include, but are not limited to, the following:

- Develop FTZ #18 marketing plan for Milpitas technology and advanced manufacturing companies; the marketing plan explains how the FTZ can reduce or eliminate duties.
- Explore building an educational trade model and host 2-3 training sessions for small-medium sized business with Mission College's Centers for International Trade and Development focused on import/export programs that create jobs, global digital marketing and expand trade knowledge;

- Develop marketing plan for Milpitas businesses in partnership with the U.S. Department of Commerce and Select USA for the purpose of export promotion services, trade shows and business-to-business opportunities within the U.S. market;
- Develop local and regional partnerships on trade with the Culture Center of Taipei Economic and Cultural Office, SEMI, Silicon Valley Leadership Group (SVLG), Silicon Valley Economic Development Alliance (SVEDA), East Bay Economic Development Alliance;
- Investigate creating and leading a Bay Area-wide trade and commerce working cohort. This regional collaboration will be focused on international trade and education; and
- Assess Milpitas business relationships to foster expansion and retention through international city relationships, governance and exchange of mutually beneficial ideas and funding.

EDTC and staff expect the strategies outlined above to be implemented and successful. Other strategies to research in the future include developing a targeted FDI program and seek trade offices and consulate partnerships for an export trading program locally.

Milpitas companies need to be in global markets and being in Silicon Valley is the best location for these businesses. EDTC and staff are exploring the possibility of enhancing relationships with Milpitas-based businesses that have a global presence for trade and commerce, business-to-business opportunities and workforce development. Businesses such as Flex, View, Nanometrics, KLA and Cisco have global offices throughout Western and Eastern Europe, Middle East, Asia, Latin America, Australia, Canada and Africa. This exercise may result in establishing new foreign relationships and is part of the recommended new technology and trade EDTC category necessitated by the commission mergers.

Fiscal Impact:

There are no fiscal impacts to the Fiscal Year 2019-20 budget associated with any of the items on the proposed Work Plan with the exception of \$50,000 budgeted under community beautification for Better Block and \$100,000 budgeted for the Pilot Façade Improvement Grant Program (under Fiscal Year 2019-2020), which are both currently underway.

There are no fiscal impacts associated with the Trade Progress Report.

The City's budget for Sister Cities Program supplies is \$6,240. These funds will be shared between Sister Cities Programs related to cultural and community relationships (Recreation and Community Services) and trade and commerce (Office of Economic Development). This budgeted amount is adequate for the Sister Cities Program for the remainder of the fiscal year.

Recommendation:

1. Approve proposed Fiscal Year 2019-2020 Economic Development and Trade Commission Work Plan;
2. Receive a Trade Progress Report.

Attachment

Attachment A - Draft Fiscal Year 2019-2020 EDTC Work Plan Matrix

JOINT MEETING OF THE MILPITAS CITY COUNCIL AND MILPITAS HOUSING AUTHORITY

PREVIEW OF AGENDA ITEMS

MARCH 3, 2020

PRESENTATION

- Proclaim American Red Cross month

CONSENT CALENDAR

- 1) Accept City Council calendar for March 2020 (Mary Lavelle)
- 2) Approve City Council meeting minutes of January 28 and February 18, 2020 (Mary Lavelle)
- 3) 2nd reading/Adopt Ordinance No. 38.835 for short term rental regulations (Daniel Degu)
- 4) Adopt a Resolution to Initiate Proceedings for Annual Levy and Collection of Assessments and Ordering Preparation of Annual Engineer's Report for LLMD No. 95-1, McCarthy Ranch (Kan Xu)
- 5) Adopt a Resolution to Initiate Proceedings for Annual Levy and Collection of Assessments and Ordering Preparation of Annual Engineer's Report for LLMD No. 98-1, Sinclair Horizon (Kan Xu)
- 6) Adopt a Resolution for receipt of Compliance Report of Fire Inspection per SB 1205 (Albert Zamora)
- 7) Award Contract for Park Maintenance Project (Tony Ndah)
- 8) Approve Amendment to Agreement with HydroScience Engineers, Inc. for Consultant Engineering Services for Sewer Master Plan (Tony Ndah)
- 9) Approve list of prequalified bidders and authorize advertisement for bid proposal for Fire Station No. 2 Replacement Project No. 3447 (Steve Erickson)
- 10) Approve MOU with County of Santa Clara for Crime Lab for major case work (Henry Kwong)
- 11) Consider requested Fee Waiver of Special Event Permit fee and Park Rental fee for Christ Community Church on-site event on April 4, 2020 (Mary Lavelle)
- 12) Consider requested Fee Waiver of Temporary Banner Sign Permit fee for Friends of the Milpitas Library book sale banner to placed on Library in June & September 2020 (Mary Lavelle)

PUBLIC HEARING

- 13) Adopt a Resolution for Annual Weed Abatement program (Albert Zamora)

COMMUNITY DEVELOPMENT

- 14) Report on Santa County Grant to address smoking policy for multi-unit housing (Jessica Garner)
- 15) Receive Report on Milpitas Pilot Rent Relief Program (Sharon Goei)
- 16) Receive 2019 Housing Element Annual Progress Report and Successor Agency Annual Report (Sharon Goei)

COMMUNITY SERVICES

- 17) Approve Joint Use Agreement and Operations and Maintenance Agreement with Milpitas Unified School District for McCandless Park (Renee Lorentzen)

LEADERSHIP

- 18) Receive Pension Actuarial Report (Walter Rossman)

REPORTS (no AR) From Mayor/Councilmembers on assigned Committees, Commissions, outside bodies

- 19) Rules Subcommittee Minutes with requested Council agenda items
- 20) Transportation Subcommittee – Minutes and / or Reports
- 21) Housing Subcommittee – Minutes and / or Reports

PREVIEW NEXT AGENDA

- 22) Preview list of items for March 17, 2020 (Mary Lavelle)