



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

City Council meeting will be held via TELECONFERENCE zoom webinar only (no physical meeting space). Submit any Public Forum or agenda item comments in writing on the form online, to be read aloud by City staff.

Meeting shall be livestreamed - Go to:

Facebook: <https://www.facebook.com/CityofMilpitas/>
YouTube: <https://www.ci.milpitas.ca.gov/youtube>
Web Streaming: <https://www.ci.milpitas.ca.gov/webstreaming>

Virtual public comments may be submitted on a form from the City website:
<http://www.ci.milpitas.ca.gov/publiccomment>

For Public Hearing Item No. 13 only, voicemail message comments may be submitted to telephone number 408-586-3010 until 3:00 PM on August 4.

AGENDA

**TUESDAY, AUGUST 4, 2020
MILPITAS, CA
7:00 PM**

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

PLEDGE OF ALLEGIANCE

INVOCATION (assigned to Councilmember Montano)

PRESENTATION

- Proclaim August 2020 as *American Muslim Appreciation and Awareness Month*

PUBLIC FORUM (7:05 PM)

Those interested may address Mayor and City Council in writing on any subject not on tonight's agenda. People commenting must submit written comments via online form and may include their name and city of residence for the Clerk's record. Remarks read aloud by the City Clerk will be limited 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.

Virtual public comments may be submitted on a form from the City website: www.ci.milpitas.ca.gov/publiccomment

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

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 PM)

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

C1. Receive City Council Calendar of Meetings for August 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council Meeting Minutes of the Special and Regular City Council Meetings Held on June 16, 23 and 30, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve draft meeting minutes of June 16, 2020 regular meeting and June 23 and 30, 2020 special meetings of the Milpitas City Council.

C3. Adopt Ordinance No. 306 for Local Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Contact: Councilmember Dominguez, 408-586-3031)

Recommendation: Waive the second reading and adopt Ordinance No. 306 for local implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women.

C4. Adopt a Resolution Granting Acceptance of Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, Authorizing the City Engineer to file a Notice of Completion, and Authorizing the City Engineer to Issue Notice of Final Acceptance (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a resolution granting acceptance of Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue Notice of Final Acceptance after the one-year warranty.

C5. Adopt a Resolution Granting Acceptance of the Street Resurfacing 2019 Projects No. 4291 and No. 4296, Authorizing the City Engineer to file a Notice of Completion, and Authorize City Engineer to issue a Notice of Final Acceptance after One-Year Warranty (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Adopt a resolution granting acceptance of the Street Resurfacing 2019 Projects No. 4291 and No. 4296, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

C6. Adopt a Resolution to Approve Project Plans and Specifications, Award Construction Contract to DeSilva Gates Construction, Inc. for Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011), and Approve Related Budget Appropriation (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution to:

1. Approve Street Resurfacing 2020 Project Plans & Specifications,
2. Reject the bid received from O'Grady Paving, Inc. as non-responsive,
3. Award the construction contract to the lowest responsible and responsive bidder, DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011),
4. Authorize the City Manager to execute the construction contract with DeSilva Gates Construction, Inc.,
5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$153,799 for the project, and
6. Approve a budget appropriation of One Bay Area Grant Cycle 2 (OBAG2) funding to CIP Project No. 4296.

C7. Adopt a Resolution Approving the Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association, an Affiliate of Laborers' International Union of North America (LIUNA/UPEC), and the All Job Classifications Salary Table Effective 7/05/2020 (Staff Contact: Francine Hunt, 408-586-3085)

Recommendation: Adopt a Resolution approving a new Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association, an affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023, and the All Job Classifications Salary Table Effective July 5, 2020.

C8. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for TDK USA Corporation for TDK Headway at 497 South Hillview Drive (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for TDK USA Corp. for TDK Headway at 497 South Hillview Drive.

C9. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services and Related Budget Amendment (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations:

1. Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, decreasing the total not to exceed amount by \$248,564 from \$341,182 to \$92,618, over the five-year period, subject to annual appropriation of funds.
2. Approve a budget amendment returning FY 2020-21 contractual savings in the amount of \$31,330 to various fund balances.

C10. Approve the Award and Authorize the City Manager to Execute an Agreement with “Kaiser Permanente On-the-Job” for Medical Services for Milpitas Uniformed Fire Personnel for a Five-Year Term in an Amount Not to Exceed \$300,000 (Staff Contact: Brian Stelling, Battalion Chief, 408-586-2827)

Recommendation: Approve award and authorize the City Manager to execute an Agreement with “Kaiser Permanente On-the-Job” for Medical Services for Milpitas Uniformed Fire Personnel for a five-year term in an amount not to exceed \$300,000, subject to annual appropriation of funds.

C11. Receive and Review the Fiscal Year 2019-20 Annual Report of Sole Source Contracts (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Receive and review the FY 2019-20 annual report of sole source contracts.

C12. Approve and Authorize the City Manager to Execute a Professional Services Agreement with Ascent Environmental, Inc. to Provide Consulting Services to Update the City’s Climate Action Plan (Staff Contact: Elaine Marshall, 408-586-2603)

Recommendation: Approve and authorize the City Manager to execute a Professional Services Agreement with Ascent Environmental, Inc. to provide consulting services to update the City’s Climate Action Plan for an amount not to exceed \$204,257, subject to the annual appropriation of funds.

PUBLIC HEARING (7:45 PM)

13. Conduct Public Hearing for 2020 Weed Abatement Assessments and Adopt a Resolution to Confirm the Assessment Report (Staff Contact: Albert Zamora, 408-586-3371)

Recommendations:

1. Open the public hearing for comments, then move to close the Public Hearing.
2. Adopt a Resolution confirming the 2020 Weed Abatement Assessment Report and the Assessment List of parcels to be entered onto the Santa Clara County tax assessment roll.

COMMUNITY DEVELOPMENT (8:00 PM)

14. Receive Report and Direct Staff on the Milpitas Microenterprise Grant Program (Staff Contacts: Alex Andrade, 408-586-3046 and Sharon Goei, 408-586-3260)

Recommendations:

1. Amend the Milpitas Small Business Loan Program and approve the Milpitas Microenterprise Grant Program in its place.
2. Direct staff to launch the Milpitas Microenterprise Grant Program.
3. Authorize the City Manager, or designee, to make any necessary changes to previously Council-approved Community Development Block Grant (CDBG) documents to amend the Milpitas Small Business Loan Program of \$150,000 for Microenterprises and \$50,000 for Small Businesses to the \$200,000 Milpitas Microenterprise Grant Program, and to make any necessary changes to comply with CDBG submission guidelines.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (8:30 PM)

- 15.** Approve and Authorize the City Manager to Execute an Amendment to Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas for the Russell Middle School Fields (Staff Contact: Renee Lorentzen, 408-586-3409)

Recommendation: Approve and authorize the City Manager to execute an Amendment to the Russell Middle School Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas.

PUBLIC SAFETY (8:50 PM)

- 16.** Receive Report on the Status of COVID19 Testing in the City of Milpitas, Authorize Additional \$175,000 to Fund the City's Mobile Testing Unit and the County Fixed Testing Site through October 9 and Authorize the City Manager to Enter into Discussions with Milpitas Businesses to Provide Testing to Essential Employees Working in the City (Staff Contact: Geoffrey Maloon, 408-586-2818)

Recommendations:

1. Receive an update regarding the status of COVID-19 testing in Milpitas
2. Authorize \$175,000 to fund the City's mobile testing unit, the County mobile and pop-up testing sites and the fixed testing site at Milpitas Library through October 9, 2020.
3. Provide authorization for the City Manager to enter discussions with Milpitas businesses to provide testing services utilizing the mobile testing unit.

LEADERSHIP AND SUPPORT SERVICES (9:15 PM)

- 17.** Adopt Three Resolutions Authorizing Placement of a ¼ Cent General Transactions and Use (Sales) Tax Measure on the November 3, 2020 Ballot (Staff Contacts: Ashwini Kantak, 408-586-3053 and Walter C. Rossmann, 408-586-3111)

Recommendations:

1. Adopt a Resolution calling for the placement of a General Tax Measure on the Ballot for the November 3, 2020 General Municipal Election for submission to the qualified voters of an Ordinance to Enact a General Transactions and Use Tax at the Rate of One-Quarter Cent (1/4 ¢) for a period of eight years.
2. Adopt a Resolution requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 3, 2020 with the Statewide General Election on that date, pursuant to §10403 of the California Elections Code.
3. Adopt a Resolution providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the November 3, 2020 General Municipal Election.

- 18.** Adopt a Resolution Approving the City of Milpitas Investment Policy for Fiscal Year 2020-21 (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Adopt a Resolution approving the City of Milpitas Investment Policy for Fiscal Year 2020-21.

REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees and Agencies
(10:00 PM)

19. **Receive and Direct Staff on List of Agenda Items Requested by City Councilmembers (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Review list of items presented (list in agenda packet) that have been requested by City Councilmembers on a form, at a Council meeting, or through the City Manager. Direct items to Rules or other Council Subcommittee, to be placed onto a specific meeting date, or specify alternate direction to staff. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until the item is scheduled as a full agenda item.

20. **Discuss and Provide Direction to Staff on Agenda Topic Requested by Vice Mayor Nuñez - Community Workforce Agreement (Contact: Vice Mayor Nuñez, 408-586-3023)**

Recommendation: On February 18, 2020, Vice Mayor Nuñez requested the City Council to consider adding Community Workforce Agreement to an upcoming agenda. Council shall discuss and provide direction to staff if it would like to include this subject, requiring staff work of four hours or more, on a particular Milpitas City Council meeting agenda.

21. **Discuss and Provide Direction to Staff on Agenda Topic Requested by Councilmember Phan - Responsible Construction Ordinance (Contact: Councilmember Phan, 408-586-3032)**

Recommendation: On February 4, 2020, Councilmember Phan requested the City Council to consider adding Responsible Construction Ordinance to an upcoming agenda. Council shall discuss and provide direction to staff if it would like to include this subject, requiring staff work of four hours or more, on a particular Milpitas City Council meeting agenda.

22. **Discuss and Provide Direction to Staff on Agenda Topic Requested by Councilmember Montano - Elected Officials' Term Limits (Contact: Councilmember Montano, 408-586-3024)**

Recommendation: On June 16, 2020, Councilmember Montano requested the City Council to consider adding Councilmember term limits to an upcoming agenda. Mayor Tran recommended the discussion include all elected officials. Council shall discuss and provide direction to staff if it would like to include this subject, requiring staff work of four hours or more, on a particular Milpitas City Council meeting agenda.

23. **Discuss and Provide Direction to Staff on Agenda Topic Requested by Councilmember Phan - Campaign Finance and Open Government (Contact: Councilmember Phan, 408-586-3032)**

Recommendation: On June 30, 2020, Councilmember Phan requested the City Council to consider adding campaign finance ordinance update and open government to an upcoming agenda. Council shall discuss and provide direction to staff if it would like to include this subject, requiring staff work of four hours or more, on a particular Milpitas City Council meeting agenda.

NEXT AGENDA PREVIEW (10:55 PM)

24. **Receive List of Anticipated Agenda Items for the next Regular City Council meeting on August 18, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)**

ADJOURNMENT (11:00 PM)

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 the public inspection ~~at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and~~ on the 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.

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.

July 2020						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September 2020						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Milpitas City Council Calendar

August 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)	4 7:00 PM-City Council	5 2:00 PM-Santa Clara VTA Monthly Briefing - Northeast Group (BN) (Santa Clara) 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 (BN)	7	8
9	10	11	12 7:00 PM-Silicon Valley Clean Energy Board of Directors (CM) (Cupertino) 7:00 PM-Planning Commission	13 4:00 PM-Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM-Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM-Youth Advisory Commission (AP) 7:00 PM-Cities Assoc of SCC (CM)	14 3:00 PM-City Council Transportation Subcommittee (RT/CM) *4:30 PM-City Council Finance Subcommittee (RT/CM)	15
16	17 7:00 PM-Science, Technology, and Innovation Commission (BN)	18 7:00 PM-Closed Session 7:00 PM-City Council	19 6:00 PM-Energy and Environmental Sustainability Commission (BN)	20 2:00 PM-VTA Safety, Security, & Transit Operations (BN)	21	22
23	24	25 1:30 PM-Senior Advisory Commission (AP)	26 7:00 PM-Planning Commission	27	28	29
30	31					

*Finance Subcommittee will meet only as needed

Draft MEETING MINUTES

Minutes of: Joint Meeting of the Milpitas City Council and
Milpitas Public Financing Authority
Date: Tuesday, June 16, 2020
Time: 6:00 PM Closed Session
7:00 PM Open Session
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

CALL TO ORDER

Mayor Tran called the joint meeting to order at 6:04 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference and zoom webinar.

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

ABSENT: None

CLOSED SESSION

City Council convened into Closed Session to discuss two items listed on the agenda - one labor negotiation and one litigation matter.

At 7:10 PM, the Council exited Closed Session to begin the public part of the meeting.

ANNOUNCEMENT – from Closed Session

City Attorney Chris Diaz said that while direction was given to staff, there was no announcement out of Closed Session.

PLEDGE

Mayor Tran led the pledge of allegiance.

INVOCATION

Councilmember Phan invited Vice Mayor Nuñez to provide invocation.

PUBLIC FORUM

City Clerk and Deputy City Clerk read aloud 43 comments from the public, submitted via online form, referencing the City budget, Milpitas Police Department, Milpitas Fire Department, housing, racial justice and fairness.

PRESENTATIONS

Mayor Tran proclaimed:

- June 2020 as *LGBTQ Pride Month*
- July 2020 as *Parks and Recreation Month*
- City's Commitment to Racial Justice

ANNOUNCEMENTS

Mayor Tran announced he'd signed the Mayor's pledge of the Obama Foundation, per request of Councilmember Phan. He acknowledged recent protests and a rally held in Milpitas. The Mayor asked the City Manager to put out a statement, with a fiscal impact, concerning how the city maintained safety for all people during recent activity.

Councilmember Dominguez asked to bring back, for discussion, making implicit bias mandatory training of a two-hour duration for elected officials. Mayor Tran asked for a memo sent out to everybody on this topic, as he required more information. Councilmember Phan did not want to limit training only to elected officials, but to consider it for Commissioners and staff, too. City Council was in favor.

Vice Mayor Nuñez attended the Milpitas BART station opening, where he saw Councilmember Montano after she was injured at that event, and thus why she was not at recent marches. He reminded the public that there was a Public Safety Commission

and Councilmember Dominguez served as the Council liaison. He thanked the Mayor for signing the Mayor's pledge.

Councilmember Montano asked for an agenda item to form a Day Worker Program, essential in Milpitas, and look to other cities for expertise. She asked for another item to discuss City Council term limits to be eight years, not as currently defined.

City Attorney Diaz asked for a vote on two items requested by Councilmember Montano. All were in favor of discussion of a Day Worker program. Mayor Tran asked to revise the second one to be term limits in general (including Mayor and City Councilmembers), in August at the next regular meeting. Three favored this topic, while two did not (Phan, Dominguez).

City Manager McHarris said all these topics would go on the list of Agenda Items requested by Councilmembers.

Councilmember Dominguez reported the upcoming July 28 expiration of tenant eviction protections by the County. She wanted an emergency item for discussion on the next meeting agenda to protect residents, for the period when City Council was on recess in July – possibly an ordinance – prior to summer break. Mayor Tran suggested the June 30 meeting date. City Attorney Diaz asked for the vote on her request: 2 Ayes (Phan, Dominguez), 1 No (Nuñez), 1 Abstain (Tran) and Councilmember Montano did not participate. City Attorney Diaz said that passed, 2-1.

Councilmember Dominguez wanted a list of city charges of assistance or subsidy that could be brought back to assist the small business community. Mayor Tran asked the City Manager what fees this would concern, and Mr. McHarris responded the business license fee, and maybe tenant improvement fees if applicable to a small business.

Vice Mayor Nuñez said this topic could be discussed at item no. 20 (Small Business grant program) on this agenda, while any action would need to return in August. The City Attorney replied they could have a light discussion, and give direction to staff.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

At 8:57 PM, City Attorney Diaz asked the Mayor and City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, no conflicts or contributions were reported.

Vice Mayor Nuñez noted that he served on the Board of Directors of the Santa Clara Valley Transportation Authority. Regarding consent calendar item no.13, a property purchase from VTA, the City Attorney said Mr. Nuñez could vote on that item, so long as he did not feel he had a conflict. Mr. Nuñez agreed he did not.

APPROVAL OF AGENDA

Motion: to approve the June 16, 2020 meeting agenda, as presented

Motion/Second: Councilmember Montano/Vice Mayor Nuñez

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

CONSENT CALENDAR

Motion: to approve the consent calendar, including items no. C1 – C19, and adding items no. 22, 23, and 24

Mayor Tran asked to include agenda items no. 22 (Information Technology strategic plan), no. 23 (ordinance) and no. 24 (list of agenda items) onto consent.

City Attorney Diaz informed the City Council that he did need to read aloud the title of the Ordinance (item no. 23) before it was introduced. Councilmember Dominguez asked for a press release on the CEDAW ordinance.

The vote on the consent calendar was as follows:

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

For agenda item no. 23, the City Attorney read aloud the title of Ordinance No. 306, "An Uncodified Ordinance of the City Council of the City of Milpitas for the local implementation of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)" and City Council voted, as follows.

Motion: to waive the first reading beyond the title and introduce Ordinance No. 306 for local implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women, including formation of a Task Force

Motion/Second: Councilmember Dominguez/Vice Mayor Nuñez

AYES: 5
NOES: 0

- | | |
|--|---|
| C1. Council Calendars | Received the calendars of upcoming meetings for the months of June and July 2020. |
| C2. Meeting Minutes | Approved City Council meeting minutes of Special and Regular City Council meetings held on June 2, 2020. |
| C3. Ordinance No. 38.840 | Waived the second reading and adopted Ordinance No. 38.840, amending sections of Chapter 10 of Title XI of the Milpitas Municipal Code relating to accessory dwelling units and determine that the Ordinance is exempt from CEQA. |
| C4. Resolution – accept The District Lot 1 | Adopted Resolution No. 8983 approving acceptance and reducing performance bond for The District 1, Lot 1 Subdivision, Tract No. 10140 and granting authorization to the City Engineer to release the performance bod after the one-year warranty period. |
| C5. Resolution – purchase of SCBA for Fire Dept. | <ol style="list-style-type: none">1) Adopted Resolution No. 8984 authorizing the purchase of MSA brand Self Contained Breathing Apparatus (SCBA) for the Milpitas Fire Department from LN Curtis & Sons in an amount not to exceed \$701,648.26 via cooperative contract through the Houston-Galveston Area Council.2) Approved a budget appropriation of \$400,000 from the Equipment Fund into the non-departmental operating budget. |
| C6. Resolution – LEAP Grant | <ol style="list-style-type: none">1) Adopted Resolution No. 8985 authorizing the City Manager to submit an application for \$300,000 in non-competitive grant funding, provided per the Local Early Action Planning (LEAP) grants program, and to execute grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.2) Approved a FY 2020-21 budget appropriation for \$300,000 into the Planning Department operating budget, subject to the award of the grant. |
| C7. 2 Resolutions – update signers for LAIF | Adopted City Council Resolution No. 8986 and Public Finance Authority Resolution No. PFA26, authorizing investment of monies in the Local Agency Investment Fund and updating officers' information. |

C8. Accept SB2 Grant	Authorized acceptance of non-competitive Planning Grant funding of \$310,000 provided per the Building Homes and Jobs Act (SB2) and approved a FY 2020-21 budget appropriation for \$310,000 in the Planning Department's operating budget, subject to the award of the grant.
C9. Replace Fire Hydrants	Received report on bids and award a construction contract to the lowest responsible bidder submitting a responsive bid, Platinum Pipeline, Inc., in the amount of \$190,532; and, authorized Director of Public Works to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$9,000 for unforeseen work related to the Fire Hydrant Replacement Project.
C10. Purchase of Filters	Awarded Invitation for Bids No. 2435 and authorized the City Manager to execute a purchase order for 25,000 Fil-Trek POMF-1A-2-PS-NDS filters to ISC Sales for an amount not to exceed \$241,530.
C11. Pacific Coast Locators	Approved and authorized the City Manager to execute a Professional Services Agreement with Pacific Coast Locators, Inc. in the amount of \$201,000 for underground utility locating services.
12. Two Agreements for Homeless Camp Cleanup	This item was initially approved on consent. However, it was reconsidered later in the evening, and Councilmembers directed that this action return for a staff report and new vote at the next City Council meeting on June 23, 2020. Councilmembers suggested that issues related to services needed for homeless individuals could be referred to the City Council Housing Subcommittee. Recommendation was to approve and authorize City Manager to execute on-call maintenance service agreements with (1) Yerba Buena Engineering & Construction, Inc. and (2) Tucker Construction, Inc. for Homeless Encampment Cleanup Services, for an annual amount not to exceed \$100,000 per vendor.
C13. Property Purchase	Approved and authorized the City Manager to execute an Agreement with Santa Clara Valley Transportation Authority for the purchase of property related to the Silicon Valley Berryessa Extension (BART) Project.
C14. Contract with NTT American for Cisco Smartnet	Authorized the City Manager to execute Amendment No. 1 to the contract with NTT America Solutions, Inc. to extend the Cisco Smartnet Maintenance and Support Agreement for selected network switches and WiFi components increasing the total not to exceed contract amount by \$22,195.84 from \$825,847.04 to \$848,042.88.
C15. Release Bond for The Metro by Pulte Homes	Approved partial release of faithful performance bond for The Metro Subdivision, Tract 10349, at 1425 S. Milpitas Blvd. until improvements are accepted by City Council.
C16. Reappoint 2 Library Commissioners	Re-appointed current Library and Education Advisory Commissioners Hellie Mateo and Dana Arbaugh to new terms of three years, which will expire in June 2023.
C17. Approve Update to Meeting Schedule	Approved the revised 2020 Milpitas City Council meeting schedule, including addition of August 4, 2020 regular meeting.
C18. Delegation of Authority to City Manager	Approved delegation of authority to the City Manager, or his designee, to approve project related documents, including contract documents, and urgent administrative items during the City Council summer recess from the last City Council meeting held in June through August 3, 2020.
C19. Lighting 4 th of July	Approved red, white, and blue colored exterior lighting for the exterior of Milpitas City Hall in celebration of the 4 th of July in 2020.

COMMUNITY DEVELOPMENT

20. Small Business Assistance grant funding

Economic Development Director Alex Andrade presented an overview of the recommendation to provide financial assistance to small businesses in Milpitas using Community Development Block Grant (CDBG) additional funds granted to the City by the federal Department of Housing and Urban Development (HUD).

Councilmembers Nuñez and Phan wanted the program as loans to small businesses, not grants.

The City Clerk read aloud four comments from residents Chris Rios, Voltaire Montemayor, Urvish Mehta, and Thomas Valore.

Motion:

- (1) To approve the Milpitas Small Business Loan Program
- (2) To direct staff to include \$200,000 in Community Development Block Grant (CDBG) funds for the Milpitas Small Business Loan Program as part of the approval of the FY 2020-21 CDBG Annual Action Plan
- (3) To direct staff to use CDBG-CV (Covid-19 additional) funds for a loan program to be distributed to small and microenterprise businesses
- (4) To take additional ideas mentioned during discussion by Councilmembers, see if those not previously reviewed by staff can be moved forward administratively or return to Council for implementation in the business community

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

21. Pilot Rent Relief Program and funding

Building Safety and Housing Director Sharon Goei reported on the successful rent relief program, established by City Council in 2019, and implemented by the City of Milpitas with partner agency Silicon Valley Independent Living Center.

Earmarked CDBG funds would be allocated toward rent relief through November 2020. \$341,000 was to be allocated for the rent relief program in the next fiscal year. The City Council Housing Subcommittee's recommendation was to change the \$5000 maximum relief to a lower amount of \$3500.

City Attorney Chris Diaz described the Economic Development Corporation (EDC), established in 2012 following the dissolution of the Redevelopment Agency in 2012.

Councilmember Dominguez asked for the topic of the EDC to come back to City Council on how EDC would receive donations from any corporation.

The City Clerk read aloud comments from seven Milpitas residents: Allysson McDonald, Chris Rios, Yolie Garcia, Tiffany Vuong, Guiliana Brahim, Voltaire Montemayor and Urvish Mehta.

Councilmembers discussed the maximum rent relief, and did not change it. Councilmember Montano responded to Ms. Dominguez' request and wanted the EDC topic to come back to the next Housing Subcommittee meeting, then follow up with City Council discussion.

Motion:

- (1) To receive the staff report on the Pilot Rent Relief Program in Milpitas
- (2) To maintain program maximum assistance amount per household at \$5000
- (3) To designate total funding amount of \$341,000 and funding source as CDBG funds

- (4) To authorize the City Manager to prepare and execute an amendment or an agreement with Silicon Valley Independent Living Center accordingly
- (5) To remove the word Pilot" from the name of the program
- (6) After brief discussion of the Economic Development Corporation, directed staff to return to the City Council Housing Subcommittee and later present to City Council on what that "looks like"
- (7) To direct staff to return to City Council with data on how many families were assisted, how many per household, average need per family to pay toward rent

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

LEADERSHIP

C22. Info. Tech. Strategic Plan Item was placed onto consent and, by unanimous vote, approved the Information Technology Strategic Plan.

REPORTS

C23. Introduce Ordinance No. 306 re: CEDAW This item was added to, and voted upon, the consent calendar at the beginning of the meeting. Ordinance was introduced.

C24. Agenda Items Requested Received list of agenda items requested by City Councilmembers.

Revisited Consent Items City Attorney Diaz addressed an issue brought forward by a resident, noting that during Public Forum earlier in the meeting, the Council had received requests to remove from consent three agenda items.

Mayor Tran moved, seconded by Councilmember Dominguez, to reconsider agenda items no. 6, no. 8 and no. 12, which City Council had approved unanimously.

The City Clerk read aloud two comments submitted earlier during Public Forum from Lisa Moreno and Jackie Romero, asking to remove consent items no. 6, 8 and 12.

Mayor Tran suggested the idea for a community task force (in one public comment) could be directed to the City Council Housing Subcommittee for future discussion.

No staff reports were given on items no. 6 and no. 8, and voting proceeded.

Motion:

- 1) to adopt Resolution No. 8985 authorizing the City Manager to submit an application for \$300,000 in non-competitive grant funding, provided per the Local Early Action Planning (LEAP) grants program, and to execute grant agreement and all related documents required to secure the grant, subject to approval by the City Attorney.
- 2) to approve a FY 2020-21 budget appropriation for \$300,000 into the Planning Department operating budget, subject to the award of the grant

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

Motion: to authorize acceptance of non-competitive Planning Grant funding of \$310,000 provided per the Building Homes and Jobs Act (SB2) and to approve a FY 2020-21 budget appropriation for \$310,000 into the Planning Department's operating budget, subject to the award of the grant

Motion/Second: Vice Mayor Nuñez/Councilmember Dominguez

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

For Item No.12 (agreements with two vendors for homeless camp clean-up), Mayor Tran asked the City Clerk to read public comments. She read aloud written comments from six residents: Tiffany Vuong, Allysson McDonald, Jackie Romero, Urvish Mehta, Lisa Moreno, and Charles Schletzbaum.

Councilmember Dominguez suggested to move these contracts over to the City Council Housing Subcommittee, then bring contracts back to City Council.

Director of Public Works Tony Ndah explained the clean-up service performed by Public Works' staff presently, which vendors would handle, as needed in the future via contracts for the not-to-exceed amounts.

Councilmember Phan asked to move this item to the Council's next meeting for a more substantive conversation. Mayor Tran asked the City Manager if Council could move the item to next week's agenda and the City Manager agreed. Therefore, it was rescheduled to the June 23 meeting agenda.

ADJOURNMENT

Mayor Tran adjourned the joint meeting at 12:10 AM on Wednesday, June 17, 2020 in memory of George Floyd and others unjustly murdered, followed by a minute of silence in their memories.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*

Draft MEETING MINUTES

Minutes of: Special Meeting of the Milpitas City Council
Date: Tuesday, June 23, 2020
Time: 5:30 PM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

CALL TO ORDER

Mayor Tran called the special meeting to order at 5:34 PM. The City Clerk called the roll. The meeting took place via teleconference and zoom webinar.

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

ABSENT: None

CLOSED SESSION

City Council adjourned to Closed Session for one labor negotiation item. Council exited closed session at 6:15 PM.

CLOSED SESSION ANNOUNCEMENT

City Attorney Chris Diaz stated there was no announcement out of Closed Session while Council gave direction to staff.

PLEDGE

Mayor Tran led all in the pledge of allegiance.

ANNOUNCEMENT

City Manager McHarris asked to clarify a request made by Councilmember Dominguez the previous week on June 16, concerning a moratorium for consideration. Mr. McHarris asked the City Council if it intended to hear this topic on the last meeting in June on the 30th for a discussion. If so directed, an ordinance would be on a later meeting date. He requested clarification on what and when the Council would hear it.

City Attorney Diaz asked each Councilmember separately to respond.

Councilmembers Phan and Montano were okay to have a discussion but not to vote on an ordinance. Councilmember Dominguez wanted an ordinance brought.

Vice Mayor Nuñez and Mayor Tran did not favor an ordinance. Mr. Nuñez felt the Council could discuss this later on the agenda during his meeting.

Thus, the City Manager concluded that the topic would not come back for discussion on June 30, based on the above vote and remarks.

Vice Mayor Nuñez sat in on a recent Arts Commission meeting, where he viewed a rendering of the bridge (BART pedestrian overcrossing at Montague Expressway), which would begin construction on July 10. Adding additional art there was under consideration.

Councilmember Dominguez missed the voices of the community at City Council meetings. She asked if there was a way to have “raised hands” for the public (on zoom webinar), to participate during meetings.

PUBLIC FORUM

City Clerk read aloud 21 comments, submitted by residents in writing via form online, from: Milpitas Renters Coalition, Elena Gill, Allysson McDonald, Voltaire Montemayor, Tiffany Vuong, Adrian Alvarez, Lisa Moreno, Tom McCallister, Kyle Dacallos, Jackie Romero, Kevin Langdorf, Tina Ortiz, Gregory Cahan, Larry McConnell, Kevin

Rodriguez, Miguel Resendez, Kerry Clark, Mikaila P, Jammie Schletzbaum, no name provided and Chris Rios.

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

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

APPROVAL OF AGENDA

Motion: to approve the agenda for this special meeting on June 23, 2020

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

PUBLIC HEARING

**1. Annual Community
Development Block Grant
funding**

Director of Building Safety and Housing Sharon Goei discussed proposed funding from the federal Department of Housing and Urban Development for the annual allocation of Community Development Block Grants to the City of Milpitas in Fiscal Year 2020-21, totaling \$676,413. Including prior year funds of \$290,039 and CDBG-CV funds of \$397,911, the total funding was \$1,364,363.

Housing Manager Adam Marcus discussed the CARES Act funding allocation of additional CDBG-CV (Covid funds) awarded to Milpitas in the amount of \$397,911.

Ms. Goei summarized recommended allocations to nonprofit organizations, in the three segments of CDBG funds.

City Clerk read aloud comments submitted by four people: Joanne Price of Life Moves, Chris Rios, Voltaire Montemayor, and Georgia Bacil of Senior Adult Legal Services. The non-profit Rebuilding Together's Deanne Everton addressed the Council directly in the zoom meeting, regarding three requests related to housing.

(1) Motion: to close the public hearing, following five comments

Motion/Second: Councilmember Dominguez/Vice Mayor Nuñez

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

Mayor Tran thanked staff and the City Council CDBG Subcommittee.

Vice Mayor Nuñez commented on changes to the funding that he and Councilmember Dominguez had requested during CDBG Subcommittee meetings, to arrive at the spreadsheet on display at this meeting. He commented that the CDBG funding for capital projects at the Sunnyhills apartments was new and was starting another commitment from the City to continue to assist Sunnyhills residents.

Councilmember Montano referred to a potential Day Worker Program that could help homeless workers. She wanted this topic to be considered in the future, during the next funding cycle.

(2) Motion:

- 1) To approve the amendment to the FY 2019-2020 Annual Action Plan
- 2) To approve Community Development Block Grant funding for FY 2020-2021
- 3) To approve the draft FY 2020-2021 Annual Action Plan

- 4) To authorize the City Manager (or his designee) to make any necessary changes to the approved draft FY 2020-2021 Annual Action Plan, as needed to comply with CDBG submission guidelines
- 5) To authorize the City Manager to execute agreements for CDBG funds with the approved subrecipients (non-profit organizations)
- 6) To direct staff on any revised Council priorities to guide FY 2021-22 outreach (none were identified)
- 7) To approve a budget appropriation of \$748,629 into the Building Safety and Housing FY 2020-21 operating budget

Motion/Second: Vice Mayor Nuñez/Councilmember Dominguez

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

AGENDA ITEMS

2. Polling on potential Sales Tax ballot measure

Assistant City Manager Ashwini Kantak and Curt Below from FM3 reported on polling of Milpitas voters conducted on a potential sales tax ballot measure. Staff recommended City Council proceed with ballot measure language including a “sunset” on a special additional ¼ cent sales tax for the November 3, 2020 election.

Vice Mayor Nuñez wanted to know precisely what the money would be spent on, toward what City expenditures.

City Clerk read aloud comments from five residents: Jammie Schletzbaum, Allysson McDonald, Lisa Moreno, Voltaire Montemayor, and Jackie Romero.

Motion: to receive staff and consultant FM3 reports regarding public opinion polling for a ¼ cent General Sales Tax ballot measure, and to direct staff to return on August 4, 2020 with the ballot measure language for a ¼ cent General Sales Tax with an eight-year sunset clause for placement on the ballot for the November 3, 2020 General Election

Motion/Second: Mayor Tran/Councilmember Montano

Motion carried by a vote of: AYES: 4
NOES: 1 (Dominguez)

3. Agreement with Two Vendors for Homeless Encampment clean up services

Director of Public Works Tony Ndah detailed work done by Public Works staff, as required to clean up vacant city sites where homeless encampments had been sited. He explained homeless support services provided by City staff including by Police, Building Safety and Housing, and Public Works departments. Mr. Ndah reported that he met with union representatives on these contracts, and then responded to questions from the Mayor and Councilmembers.

Police Captain Jared Hernandez explained the work of the Homeless Outreach Team (“HOT”) of the Milpitas Police Department funded by a grant, offering assistance to homeless people in Milpitas.

City Clerk read aloud comments from 12 residents on this topic: Ilze Duarte, Jennifer Hare, Yolie Garcia, Allysson McDonald, Jammie Schletzbaum, Keith Brown, Audrey Jimenez, Kate Leary, Charles Schletzbaum, Tiffany Vuong, Voltaire Montemayor, and Jackie Romero,

Motion: (1) to approve and authorize the City Manager to execute on-call maintenance service agreements with Yerba Buena Engineering & Construction Inc. and Tucker Construction Inc. for Homeless Encampment Cleanup services, for an annual amount not to exceed \$100,000 per vendor, for a term through June 21, 2025 for a total maximum compensation of \$500,000 per vendor, subject to annual appropriation of funds; and, (2) to authorize City Manager to amend the two contracts' not to exceed amounts to allocate annual appropriations, depending on service availability of the vendors

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

4. Report on AB 398

City Attorney Diaz explained proposed legislation that Assemblymember Kansen Chu's office asked the City Council to consider. Assembly Bill 398 would add a new tax on large private for-profit businesses, of \$275 per employee for five years, to help with Covid-19 response.

After hearing comments from his colleagues and without evident support, Mayor Tran said no vote would proceed regarding support for this legislation.

City Clerk read aloud two public comments from Allysson McDonald and Voltaire Montemayor.

CONSENT CALENDAR

Consent calendar was considered and voted on earlier in the meeting, prior to the Public Hearing.

Motion: to approve the four agenda items on consent, items no. C5 – C8

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

C5. Resolution Calling Election on Nov. 3

Adopted Resolution No. 8987 calling a General Municipal Election for the City of Milpitas on Tuesday, November 3, 2020, requesting consolidation with the statewide presidential election and requesting election services from the Santa Clara County Registrar of Voters.

C6. Amendment to Agreement with Cayenta

Approved and authorized the City Manager to execute Amendment No. 2 to the agreement with Cayenta, a division of N. Harris Computer Corporation, Inc. for implementation and upgrade of the financial and utility billing software systems to extend the term of service date from July 14, 2020 to December 14, 2020.

C7. Accept Grant – CalRecycle funds

Accepted grant funding from CalRecycle's Beverage Container Recycling City/County Payment program and approved a budget appropriation for \$18,932 in the Public Works Department FY 2020-21.

C8. Accept Grant – County Youth Voter Registration

Accepted grant funding from the Santa Clara County Office of Women's Policy for Youth Voter Registration promotion and activities in the amount of \$2,000 and approved a budget appropriation for \$2,000 in Recreation and Community Services FY 2020-21 operating budget.

ADJOURNMENT

Mayor Tran adjourned the special meeting at 12:02 AM on Wednesday, June 24, 2020, after taking a moment of peace.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*

Draft MEETING MINUTES

Minutes of: Special Meeting of the Milpitas City Council
Date: Tuesday, June 30, 2020
Time: 5:30 PM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

CALL TO ORDER

Mayor Tran called the special meeting to order at 5:34 PM. City Clerk called the roll. The meeting took place via teleconference and zoom webinar.

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

ABSENT: Councilmember Montano was absent at roll call, and arrived in Closed Session

CLOSED SESSION

City Council adjourned to Closed Session to discuss four matters listed on the agenda: one labor negotiation, two litigation items, and one property negotiation.

CLOSED SESSION ANNOUNCEMENT

At 7:47 PM, returning to the dais and the open part of the meeting, City Attorney Chris Diaz reported no action out of Closed Session while direction was given to staff.

PLEDGE

Mayor Tran led all in the pledge of allegiance.

APPROVAL OF AGENDA

Motion: to approve the June 30 agenda for this special meeting, moving item no. 3 to the August 4 Council meeting agenda and adding an Announcements section

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

ANNOUNCEMENTS

Councilmember Dominguez requested a future agenda item for discussion to adopt state certification for NEC for all electrical work performed in the City, and to bring that back in the first three months after the July break. All Councilmembers were in favor of the item.

Councilmember Phan wanted the Council to take a look at and discuss, then provide direction on revising a campaign finance ordinance to regional standards, and have a broader discussion on regulations on that and/or the Open Government Ordinance. Four Councilmembers were in favor, while the Mayor abstained.

Councilmember Montano received calls from residents about weeds growing high. She formed a "Beautify Milpitas" team of volunteers to clean up weeds and anti-graffiti and requested City support.

Councilmember Dominguez said she had a group too, that was separate from the City. She wanted to ensure that any resources were available to all Councilmembers equally. The City Manager stated this could be a discussion item in August with more detail brought to City Council.

Vice Mayor Nuñez noted that the Community Advisory Commission held a "Beautification Day" each year and there was a cost for that event, paid for out of the City budget for that Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST & CONTRIBUTIONS

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

PUBLIC FORUM

City Clerk read aloud comments submitted in writing from 18 residents.

Vice Mayor Nuñez responded to comments on the police.

Mayor Tran responded on homelessness, and wanted all residents to reach out to the City for assistance with the rent relief program.

Vice Mayor Nuñez asked the City Manager to comment about Montague Expressway being closed to prepare for installation of the pedestrian overcrossing bridge.

PUBLIC HEARING

1. Amendment to Consolidated Plan for CDBG funding

Building Safety and Housing Director Sharon Goei explained the current status of Community Development Block Grant (CDBG) funding, and requested amendments to the Consolidated Plan for those grant funds, including to the citizen participation plan.

Mayor Tran opened the public hearing.

City Clerk read aloud one comment from Voltaire Montemayor.

Motion: to close the public hearing, following one comment

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

Motion:

- a) To approve substantial amendments to the FY 2017-2022 Consolidated Plan regarding Community Development Block Grant (CDBG) funding
- b) To approve amendments to the Citizen Participation Plan
- c) To authorize the City Manager (or his designee) to make any necessary changes to the Consolidated Plan and Citizen Participation Plan as needed to comply with CDBG submission guidelines

Motion/Second: Councilmember Dominguez/Councilmember Montano

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

AGENDA ITEMS

2. Milpitas Metro (TASP Update) Plan

Planning Director Ned Thomas introduced Planning Manager Jessica Garner, who gave a brief overview of Plan process. Mr. Kevin Riley, consultant manager of the Transit Area Specific Plan (TASP), gave an update to the TASP, renamed as Milpitas Metro.

Consulting firm representative Jane Lin from Urban Field Studio presented the Milpitas Metro plan, including existing conditions, preliminary approach including stakeholder engagement, area of focus and the next 20 years. Christina Paul and Teifion Rice-Evans also addressed the City Council.

Mayor and Councilmembers provided feedback and recommendations for public improvements in the Metro area around the Milpitas BART station and Transit Center.

City Clerk read aloud five comments submitted online from: Chris Rios, Voltaire Montemayor, Charles Schletzbaum, Jackie Romero and Urvish Mehta.

Mayor Tran thanked the consultants and staff for the presentation.

**3. Amend Agreement with
MUSD for Russell
School playing fields**

Item was removed from the agenda, and requested to be rescheduled to an August City Council meeting.

CONSENT CALENDAR

Vice Mayor Nuñez requested to remove item no. 5 from consent.

**C4. Agreement with MUSD
for McCandless Park
and Mattos School**

As a consent calendar item, the Council voted on this item only as follows.

Motion:

- a) To approve an amendment to the McCandless Property Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas
- b) To approve a new Agreement between the Milpitas Unified School District and the City of Milpitas for ongoing Operation and Maintenance of Joint Use Areas of McCandless Park and Mabel Mattos School

Motion/Second:

Vice Mayor Nuñez/Councilmember Dominguez

Motion carried by a vote of:

AYES: 5

NOES: 0

**4. Preview of August 4 City
Council meeting items**

Vice Mayor Nuñez asked the City Manager about which items recently requested would be added specifically to the August 4 City Council agenda. Mr. McHarris said he would get back to Mr. Nuñez and the Council on that.

City Council received the preview list of anticipated agenda items for the regular City Council meeting scheduled on August 4, 2020.

ADJOURNMENT

Mayor Tran adjourned the special meeting at 11:16 PM.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Ordinance No. 306 for Local Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
Category:	Reports of Mayor and Councilmembers
Meeting Date:	8/4/2020
Staff Contact:	Councilmember Karina Dominguez, 408-586-3031
Recommendation:	Waive the second reading and adopt Ordinance No. 306 for local implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women.

Background:

Ordinance No. 306 was introduced at the City Council meeting of June 16, 2020. It has now been updated and is ready for its second reading/adoption.

Policy Alternative:

Alternative: Do not adopt Ordinance No. 306 implementing the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Pros: None

Cons: The City would not be implementing the CEDAW principles or establishing a Task Force.

Reason not recommended: Through adoption of Resolution No. 8973, the City Council committed to moving forward with an ordinance on CEDAW.

Fiscal Impact:

None identified at this time.

California Environmental Quality Act:

Adoption of the Ordinance is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:

Waive the second reading and adopt Ordinance No. 306 for local implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women.

Attachment:

Ordinance No. 306 for adoption.

REGULAR

NUMBER: 306

TITLE: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS FOR THE LOCAL IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 16, 2020, upon motion by Councilmember Dominguez 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 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty, provides a universal definition of discrimination against women and brings attention to a whole range of issues concerning women's human rights. Countries that ratify CEDAW are mandated to condemn all forms of discrimination against women and girls and to ensure equality for women and girls in the civil, political, economic, social and cultural arenas. The United Nations General Assembly adopted CEDAW in 1979 and President Carter signed the treaty on behalf of the United States in 1980, but the United States Senate has not yet ratified CEDAW; and

WHEREAS, since 1995, state and local jurisdictions have stepped up and passed resolutions in support of CEDAW. Some have implemented ordinances establishing CEDAW principles as law. In 2014, municipalities across the nation began signing onto the Cities for CEDAW Initiative, pledging to step up where the federal government has failed and implement the principles of CEDAW at the local level; and

WHEREAS, indeed, there is a continued need for the City of Milpitas to protect the human rights of women and girls by addressing discrimination, including violence, against them and to implement, locally, the principles of CEDAW. Adherence to the principles of CEDAW on the local level will especially promote equal access to and equity in health care, employment, economic development and educational opportunities for women and girls and will also address the continuing and critical problems of violence against women and girls.

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. IMPLEMENTATION OF CEDAW

DEFINITIONS.

As used in this Article, the following words and phrases shall have the meanings indicated herein:

- (a) "City" shall mean the City of Milpitas.
- (b) "Discrimination against women" shall include, but not be limited to, any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty by family, community or government.
- (c) "Gender" shall mean the way society constructs the difference between women and men, focusing on their different roles, responsibilities, opportunities and needs, rather than their biological differences.
- (d) "Human rights" shall mean the rights every individual possesses that are intended to improve the conditions in society that protect each person's dignity and well-being and the humanity of all people.

(e) "Racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

LOCAL PRINCIPLES OF CEDAW.

It shall be the goal of the City to implement the principles underlying CEDAW by addressing discrimination against women and girls in areas including economic development, violence against women and girls and health care. In implementing CEDAW, the City recognizes the connection between racial discrimination, as articulated in the International Convention on the Elimination of All Forms of Racial Discrimination, and discrimination against women. The City shall ensure that the City does not discriminate against women in areas including employment practices, allocation of funding and delivery of direct and indirect services.

The City shall also establish a community task force to implement the principles of CEDAW.

(a) Economic Development.

(1) The City shall take all appropriate measures to eliminate discrimination against women and girls in the City of Milpitas in employment and other economic opportunities, including, but not limited to, ensuring:

(A) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment and the right to receive access to and vocational training for nontraditional jobs;

(B) The right to promotion, job security and all benefits and conditions of service, regardless of parental status, particularly encouraging the appointment of women to decision making posts, City revenue generating and managing commissions and departments, and judicial positions;

(C) The right to equal remuneration, including benefits and to equal pay in respect to work of equal value;

(D) The right to the protection of health and safety in working conditions, including supporting efforts not to purchase sweatshop goods, regular inspection of work premises, and protection from violent acts at the workplace.

(2) The City shall encourage and, where possible, fund the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities, paid family leave, family-friendly policies and work-life balance.

(3) The City shall encourage the use of public education and all other available means to urge financial institutions to facilitate women's access to bank accounts, loans, mortgages, and other forms of financial services.

(b) Violence Against Women and Girls.

(1) The City shall take and diligently pursue all appropriate measures to prevent and redress sexual and domestic violence against women and girls, including, but not limited to:

(A) Police enforcement of criminal penalties and civil remedies, when appropriate;

(B) Providing appropriate protective and support services for survivors, including counseling and rehabilitation programs;

(C) Providing gender-sensitive training of City employees regarding violence against women and girls, where appropriate; and

(D) Providing rehabilitation programs for perpetrators of violence against women or girls, where appropriate.

The City shall not discriminate on the basis of race, ethnicity, culture, language or sexual orientation, when providing the above supportive services.

(2) It shall be the goal of the City to take all necessary measures to protect women and girls from sexual harassment in their places of employment, school, public transportation, and any other places where they may be subject to harassment. Such protection shall include streamlined and rapid investigation of complaints.

(3) Prostitutes are especially vulnerable to violence because their legal status tends to marginalize them. It shall be the policy of Milpitas that the Police Department diligently investigate violent attacks against prostitutes and take efforts to establish the level of coercion involved in the prostitution, in particular where there is evidence of trafficking in women and girls. It shall be the goal of the City to develop and fund projects to help prostitutes who have been subject to violence and to prevent such acts.

(4) The City shall ensure that all public works projects include measures, such as adequate lighting in accordance with Occupational Safety and Health Organization (OSHA) standards for the type of construction work being performed, to protect the safety of women and girls.

(5) It shall be the goal of the City to fund public information and education programs to change traditional attitudes concerning the roles and status of women and men.

(c) Health Care.

(1) It shall be the goal of the City to take all appropriate measures to eliminate discrimination against women and girls in the field of health care in order to ensure, on a basis of equity, information about and access to adequate health care facilities and services, according to the needs of all communities, regardless of race, ethnicity, culture, language, and sexual orientation, including information, counseling and services in family planning.

(2) It shall be the goal of the City to ensure that women and girls receive appropriate services in connection with prenatal care, delivery, and the post-natal period, granting free services where possible, as well as adequate nutrition during pregnancy and lactation.

(d) In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

IMPLEMENTATION OF THE PRINCIPLES OF CEDAW IN MILPITAS (COMMUNITY TASK FORCE)

(a) Within six months of the effective date of this Ordinance, the City shall establish a Community Task Force to implement the principles of CEDAW in the Milpitas community.

(b) The Task Force members will represent the community at large and the composition of the Task Force shall at a minimum, include the following:

- (1) One member with subject matter expertise in Economic Development

- (2) One member with subject matter expertise in Violence Against Women and Girls
- (3) One member with subject matter expertise in Healthcare
- (4) One youth member from the club “Girl UP” from Milpitas High School (to be chosen and voted on by the members of “Girl Up” to represent the youth in the community).
- (5) One Council Liaison member (to be appointed by the Mayor with concurrence of the Council)
- (6) One Staff Liaison member (to be appointed by the City Manager)

(c) Further details about the Task Force can be established through the adoption of a resolution of the City Council.

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 Granting Acceptance of Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, Authorizing the City Engineer to file a Notice of Completion, and Authorizing the City Engineer to Issue Notice of Final Acceptance
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/4/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Adopt a resolution granting acceptance of Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue Notice of Final Acceptance after the one-year warranty.

Background:

On December 3, 2019, the City Council awarded a construction contract to Ron Paris Construction Co., Inc. the Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447 in the amount of \$207,198 ("Project"). The Project provides for minor tenant improvements to convert an existing vacant building into a temporary fire station facility. Improvements included Americans with Disability Act (ADA) compliant restroom and shower facilities, dorm room and kitchen facilities, electrical upgrades, and emergency generation facilities. The construction of this temporary fire station is required to maintain continuous operation of Fire Station No. 2 during construction of the new station.

Analysis:

The Project was successfully completed on time and within budget. Staff recommends that City Council adopt a resolution granting acceptance of the Project and authorizing the City Engineer to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code. Staff also recommends the City Council authorize the City Engineer to issue a notice of final acceptance after the one-year warranty period without further City Council action, provided that all warranty work is completed to the satisfaction of the City Engineer.

Policy Alternative:

Alternative: Do not adopt a resolution, and deny Project acceptance, deny filing a notice of completion and not begin the one-year warranty.

Pros: None

Cons: Denial would result in the City being unable to commence the one-year warranty, release the retention to the Contractor and release any funds remaining back into the Project budget.

Reason not Recommended: Denial would result in the City being unable to close out the Project and release any funds remaining back into the Project budget.

Fiscal Impact:

Adequate funds were available in the Project budget to complete the Project.

California Environmental Quality Act:

The Project is exempt under Section 15301 (Existing Facilities) of CEQA guidelines.

Recommendation:

Adopt a resolution granting acceptance of Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

Attachment:

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING ACCEPTANCE OF
THE TEMPORARY FIRE STATION NO. 2 TENANT IMPROVEMENTS, PROJECT NO. 3447**

WHEREAS, the City of Milpitas has heretofore entered into a contract with Ron Paris Construction Co., Inc., for the Temporary Fire Station No. 2 Tenant Improvements, Project No. 3447, in the amount \$207,198 ("Project"), and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 4th day of August, 2020, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account.
3. The City Council authorizes the City Engineer to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

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

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about December 3, 2019, the City Council of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Temporary Fire Station No.2 Tenant Improvements, Project No. 3447.**
2. A description of the site of which the City is co-owner for said work of improvement is: **1126 Yosemite Drive** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The name and address of the direct contractor is: **Ron Paris Construction Co., Inc., 1155 Memorex Dr. Santa Clara, CA 95050.**
4. A general statement of the kind of work done or materials furnished to the City is as follows: **The improvements include ADA compliant restroom and shower facilities, dorm room and kitchen facilities and electrical upgrades, and emergency generation facilities.**
5. Said work of improvement was accepted by the Milpitas City Council as complete on August 4, 2020.

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on August 4, 2020 at Milpitas, California.

Steve Erickson,
Engineering Director/City Engineer
City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Granting Acceptance of 2019 Street Resurfacing Projects No. 4291 and No. 4296, Authorizing the City Engineer to file a Notice of Completion, and Authorize City Engineer to issue a Notice of Final Acceptance after One-Year Warranty
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/4/2020
Staff Contact:	Steve Chan, 408-586-3324
Recommendation:	Adopt a resolution granting acceptance of the Street Resurfacing 2019 Project, Projects No. 4291 and No. 4296, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

Background:

On June 4, 2019, the City Council awarded a construction contract to DeSilva Gates Construction, Inc. for the Street Resurfacing 2019 Project, Projects No. 4291 and No. 4296 ("Project") in the amount of \$3,691,691 and authorized the City Engineer to negotiate and execute contract change order(s) in the aggregate amount not to exceed \$554,000 for the Project. The Project provided for the construction of asphalt concrete pavement repairs and resurfacing, installation of Americans with Disabilities Act (ADA) compliant curb ramps, sidewalk, driveways, and curb/gutter repairs, and install new Class II bike lanes and pavement delineation on the following streets:

- McCarthy Boulevard from North Ranch Drive to East Tasman Drive
- Bellew Drive from Cypress Drive to McCarthy Boulevard
- Technology Drive from McCarthy Boulevard to 675 feet west of McCarthy Boulevard
- SanDisk Drive from McCarthy Boulevard to Murphy Ranch Drive
- Murphy Ranch Drive from SanDisk Drive to McCarthy Boulevard
- Hillview Drive from Berryessa Creek Bridge to Los Coches Street
- Jacklin Road from North Milpitas Boulevard to 500 feet east of I-680

Analysis:

The work was successfully completed on time and within the Project budget, and the Project is ready for acceptance. Staff recommends the City Council adopt a resolution granting acceptance of the Project and authorizing the City Engineer to file the notice of completion. Staff also recommends the City Council authorize the City Engineer to issue a notice of final acceptance for the Project after the one-year warranty period without further City Council action, provided that any warranty work is completed to the satisfaction of the City Engineer.

Policy Alternative:

Alternative: Do not adopt a resolution accepting the project, deny filing a notice of completion and not begin the one-year warranty.

Pros: None.

Cons: Failure to adopt the resolution would result in the City being unable to commence the one-year warranty and close and release any funds withheld as retention.

Reason not Recommended: Denial of project acceptance would result in the City not being able to close out the Project and a delay in the release of retention.

Fiscal Impact:

Adequate funds are available in the Project budget.

California Environmental Quality Act:

The Project is exempt under Section 15301 (Existing Facilities) of the CEQA guidelines.

Recommendation:

Adopt a resolution granting acceptance of the Street Resurfacing 2019 Project, Projects No. 4291 and No. 4296, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

Attachment:

Resolution including Notice

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE OF STREET RESURFACING 2019 PROJECTS NO. 4291 AND NO. 4296

WHEREAS, the City of Milpitas has heretofore entered into a contract with DeSilva Gates Construction, Inc., for the Street Resurfacing 2019 Project (“Project”), Projects No. 4291 and No. 4296, in the amount of \$3,691,691, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept the Project as completed on this 4th day of August, 2020, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account.
3. The City Council authorizes the City Engineer to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

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

Recording Requested by and
When Recorded Mail to:

City of Milpitas
Attn: City Clerk
455 East Calaveras Boulevard
Milpitas, CA 95035

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about June 4, 2019, the City Council of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Street Resurfacing 2019 Project, Projects No. 4291 and No. 4296.**
2. A description of the site of which the City is co-owner for said work of improvement is: McCarthy Boulevard from North Ranch Drive to East Tasman Drive, Bellew Drive from Cypress Drive to McCarthy Boulevard, Technology Drive from McCarthy Boulevard to 675 feet west of McCarthy Boulevard, SanDisk Drive from McCarthy Boulevard to Murphy Ranch Drive, Murphy Ranch Drive from SanDisk Drive to McCarthy Boulevard, Hillview Drive from Berryessa Creek Bridge to Los Coches Street, Jacklin Road from North Milpitas Boulevard to 500 feet east of I-680, and S. Abbott Ave from E. Calaveras Blvd to southern end in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The name and address of the direct contractor is: **DeSilva Gates Construction, Inc., 11555 Dublin Boulevard, Dublin CA 94568.**
4. A general statement of the kind of work done or materials furnished to the City is as follows: construction of localized repair of asphalt concrete pavement, resurface asphalt concrete pavement, install ADA compliant curb ramps, repair damaged concrete sidewalk, driveways, or curb & gutter, install new class II bike lanes, reinstall pavement delineation, crosswalks, bollards, and signage.
5. Said work of improvement was accepted by the Milpitas City Council as complete on **August 4, 2020.**

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on _____, 2020 at Milpitas, California.

Steve P. Erickson,
City Engineer
City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Approve Project Plans and Specifications, Award Construction Contract to DeSilva Gates Construction, Inc. for Street Resurfacing Project 2020, Project No. 4296 Federal Project No. STPL-5314(011), and Approve a related Budget Appropriation
Category:	Consent Calendar-Community Development
Meeting Date:	8/4/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Adopt a Resolution to: 1. Approve Street Resurfacing 2020 Project Plans & Specifications, 2. Reject the bid received from O'Grady Paving, Inc. as non-responsive, 3. Award the construction contract to the lowest responsible and responsive bidder, DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011), 4. Authorize the City Manager to execute the construction contract with DeSilva Gates Construction, Inc., 5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$153,799 for the project, and 6. Approve a budget appropriation of One Bay Area Grant Cycle 2 (OBAG2) funding to CIP Project No. 4296.

Background:

Project No. 4296, Street Resurfacing Project 2020 is in the approved 2020-2025 Capital Improvement Program. The Project provides for the design and construction of localized repair of asphalt concrete pavement, resurface asphalt concrete pavement, install Americans with Disabilities Act (ADA) compliant curb ramps, repair damaged concrete sidewalk, driveways, or curb & gutter, install new class II bike lanes, and reinstall pavement delineation.

Project No. 4296 provided funding for the design of the 2020 Street Resurfacing Project, and the Plans and Specifications are complete and now ready for City Council approval. The following streets are included in the Street Resurfacing 2020 Project:

- North Hillview Road from Jacklin Road to Berryessa Creek
- Dempsey Road from Yosemite Drive to Landess Avenue
- Sycamore Drive from Barber Lane to McCarthy Boulevard
- Cottonwood Drive from Barber Lane to McCarthy Boulevard
- Buckeye Drive from Sycamore Drive to Cottonwood Drive
- Entirety of Buckeye Court

The Engineer's Construction Estimate for this project is \$2,329,180, and the project title sheet (**Attachment 2**) is included in the Council's agenda packet. The complete full-size set of plans and specifications are available electronically upon request to the City Engineer.

Analysis:

The project was advertised on March 6, 2020 in the Milpitas Post and on digital construction trade publications. Bid opening was on May 29, 2020 and 4 sealed bid proposals were received. The lowest apparent bidder was O'Grady Paving. However, their bid submittal did not contain the required Caltrans Exhibit 15-G Construction Contract DBE Commitment or Caltrans Exhibit 15-H Contractor's Good Faith Efforts as outlined in the bid instructions, and staff recommends their bid accordingly be rejected as non-responsive. The lowest responsible and responsive bidder is DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90. No bid protests were filed with the City in regard to this Project. The following is a tabulation of bidders and their respective bids. The bid result tabulation is included as **Attachment 3**.

Bidder	Total Base Bid
O'Grady Paving, Inc.	\$1,433,914.65
DeSilva Gates Construction, Inc.	\$1,537,986.90
Teichert Construction	\$1,594,419.00
McGuire and Hester	\$1,612,312.75

The base bid prices submitted by bidders varies between 24%-32% under the Engineer's Estimate. The range of variation in bid pricing from the Engineer's Estimate is due to the current construction market which likely has been influenced by COVID-19.

The Contractor, DeSilva Gate Construction, Inc., is deemed the lowest responsible and responsive bidder. Accordingly, staff recommends that the City Council reject the bid submitted by O'Grady Paving, Inc. as non-responsive and award a construction contract to DeSilva Gate Construction, Inc. for the base bid amount of \$1,537,986.90.

As previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy, see **Attachment 4**. This policy allows for a timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approve necessary change orders in order to limit potential claims or risks to the City. The construction contingency established for this Project is \$153,799; 10% of the total contract value as allowed on Federal-Aid projects per the Caltrans Local Assistant Procedures Manual. The change order authority is not anticipated to exceed this amount, and the Project would not require additional appropriation

Project No. 4296 Street Resurfacing Project 2020 is included in the 2020-2025 Capital Improvement Program. At the September 5, 2017 City Council meeting, Resolution No. 8695 was adopted accepting the One Bay Area Grant Cycle 2 ("OBAG2") \$1,609,000 grant funding and authorized staff to make applications for discretionary amounts at time of project design. Staff made the application request and was approved to use \$692,512 for this project. The remaining grant funding will be used on a future project. Staff recommends the approval of a budget appropriation as outlined in the attached Budget Change Form to appropriate the federal funding as part of the award of the Construction Contract, see **Attachment 5**.

Policy Alternatives:

Alternative 1: Deny approval of project plans and specifications and award of the construction award.

Pros: None.

Cons: A denial would cause delay in completing the needed annual repairs to the City's pavement infrastructure.

Reason not Recommended: Delay in award of construction contract will delay project completion, prolong construction activities through the rainy season, and potentially results in higher total construction cost.

Alternative 2: Deny approval of federal funding appropriation

Pros: None.

Cons: The project may require additional local funding to complete the project.

Reason not Recommended: These federal funds can only be used on this project. Denial of this would render unused federal funds which would be returned to the "pot" and the City would lose eligibility and will need to reapply for funds.

Fiscal Impact:

This action recommends appropriating \$692,512 in One Bay Area Grant Cycle 2 ("OBAG2") grant funds to 2020 Street Resurfacing Project (CIP No. 4296) and adequate funds are available in the project budget.

As of 7/17/2020, uncommitted balance to these projects are as follows:

CIP No. 4296	\$2,586,198
OBAG2 Construction	\$602,184
OBAG2 Construction Engineering	\$90,328
Total Balance Available	\$3,278,710

Summary of Estimated Construction Cost:

DeSilva Gates Construction, Inc.	\$1,537,986.90
10% Contingency	\$153,799
Total	\$1,691,785.90

There are sufficient funds available to award the construction contract.

California Environmental Quality Act:

The project is exempt under Section 15301 (Existing Facilities) of the CEQA guidelines. A Notice of Exemption (NOE) will be filed with the County of Santa Clara following the approval and contract award.

Recommendation:

Adopt a resolution to:

1. Approve Street Resurfacing 2020 Project Plans & Specifications
2. Reject the bid submitted by O'Grady Paving, Inc. as non-responsive
3. Award the construction contract to the lowest responsible and responsive bidder, DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011)
4. Authorize the City Manager to execute the construction contract with DeSilva Gates Construction, Inc.
5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$153,799 for the project
6. Approve a budget appropriation of One Bay Area Grant Cycle 2 (OBAG2) funding to CIP Project No. 4296

Attachments:

- 1: Resolution
- 2: Title Sheet & Location Map
- 3: Bid Tabulation
- 4: Change Order Policy
- 5: Budget Change Form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PROJECT PLANS AND SPECIFICATIONS, REJECTING THE BID RECEIVED FROM O'GRADY PAVING, INC., AS NON-RESPONSIVE, AWARDING THE CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIBLE AND RESPONSIVE BIDDER, DESILVA GATES CONSTRUCTION, INC., IN THE AMOUNT OF \$1,537,986.90 FOR THE STREET RESURFACING PROJECT 2020, PROJECT NO. 4296, FEDERAL PROJECT NO. STPL-5314(011), AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION CONTRACT WITH DESILVA GATES CONSTRUCTION, INC., AUTHORIZING THE ENGINEERING DIRECTOR/CITY ENGINEER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$153,799 FOR THE PROJECT, AND APPROVING THE BUDGET APPROPRIATION OF ONE BAY AREA GRANT CYCLE 2 ("OBAG2") FUNDING TO CP4296

WHEREAS, Street Resurfacing Project 2020, City Project No. 4296, Federal Project No. STPL-5314(011) (collectively referred to herein as the "Project") will include localized repair of asphalt concrete pavement, resurface asphalt concrete pavement, install ADA compliant curb ramps, repair damaged concrete sidewalk, driveways, or curb & gutter, install new class II bike lanes, and reinstall pavement delineation at the following locations:

- North Hillview Road from Jacklin Road to Berryessa Creek
- Dempsey Road from Yosemite Drive to Landess Avenue
- Sycamore Drive from Barber Lane to McCarthy Boulevard
- Cottonwood Drive from Barber Lane to McCarthy Boulevard
- Buckeye Drive from Sycamore Drive to Cottonwood Drive
- Entirety of Buckeye Court; and

WHEREAS, the Engineer's Estimate for the base bid Project work is \$2,329,180; and

WHEREAS, on May 29, 2020, 4 sealed bid proposals were received. The bid pricing ranged from \$1,433,914.65 to \$1,612,312.75. The lowest responsible bidder submitting a responsive bid is DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90; and

WHEREAS, no bid protest was filed with the City within five (5) days of the bid opening as set forth in the Project specifications; and

WHEREAS, sufficient funds to award the Project are available in the Project budget; and

WHEREAS, staff recommends the City Council approve the Project plans and specifications; and

WHEREAS, staff recommends the City Council reject the bid received from the lowest bidder, O'Grady Paving, Inc., as non-responsive because it did not contain the requisite Caltrans Exhibit 15-G Construction Contract DBE Commitment or Caltrans Exhibit 15-H Contractor's Good Faith Efforts as required by the bid documents; and

WHEREAS, staff recommends the City Council award a construction contract to DeSilva Gates Construction, Inc., the lowest responsible and responsive bidder, in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011); and

WHEREAS, staff recommends the City Council authorize the City Manager to execute a construction contract with DeSilva Gates Construction, Inc., in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed \$153,799, ten percent (10%) of the total contract value, due to the Project's tight completion schedule and staff's capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City; and

WHEREAS, staff recommends the City Council approve the budget appropriation of One Bay Area Grant Cycle 2 ("OBAG2") funding to CP 4296 as set out on the accompanying Budget Change Form.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the projects plans and specifications.
3. The City Council hereby rejects the bid submitted by O’Grady Paving, Inc. as non-responsive.
4. The City Council hereby awards the construction contract to the lowest responsible and responsive bidder, DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No. 4296 and Federal Project No. STPL-5314(011).
5. The City Manager is hereby authorized to execute the construction contract with DeSilva Gates Construction, Inc., for the Project.
6. The Director of Engineering/City Engineer is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$153,799.00 for the Project.
7. The City Council hereby approves the budget appropriation of One Bay Area Grant Cycle 2 (“OBAG2”) funding to CP 4296 as set out in the accompanying Budget Change Form.

PASSED AND ADOPTED this ____ day of August, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

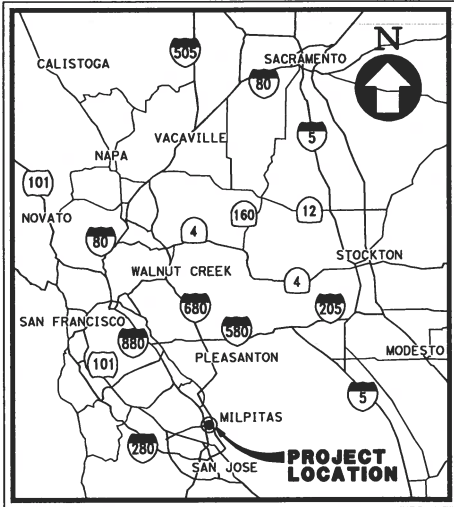
APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

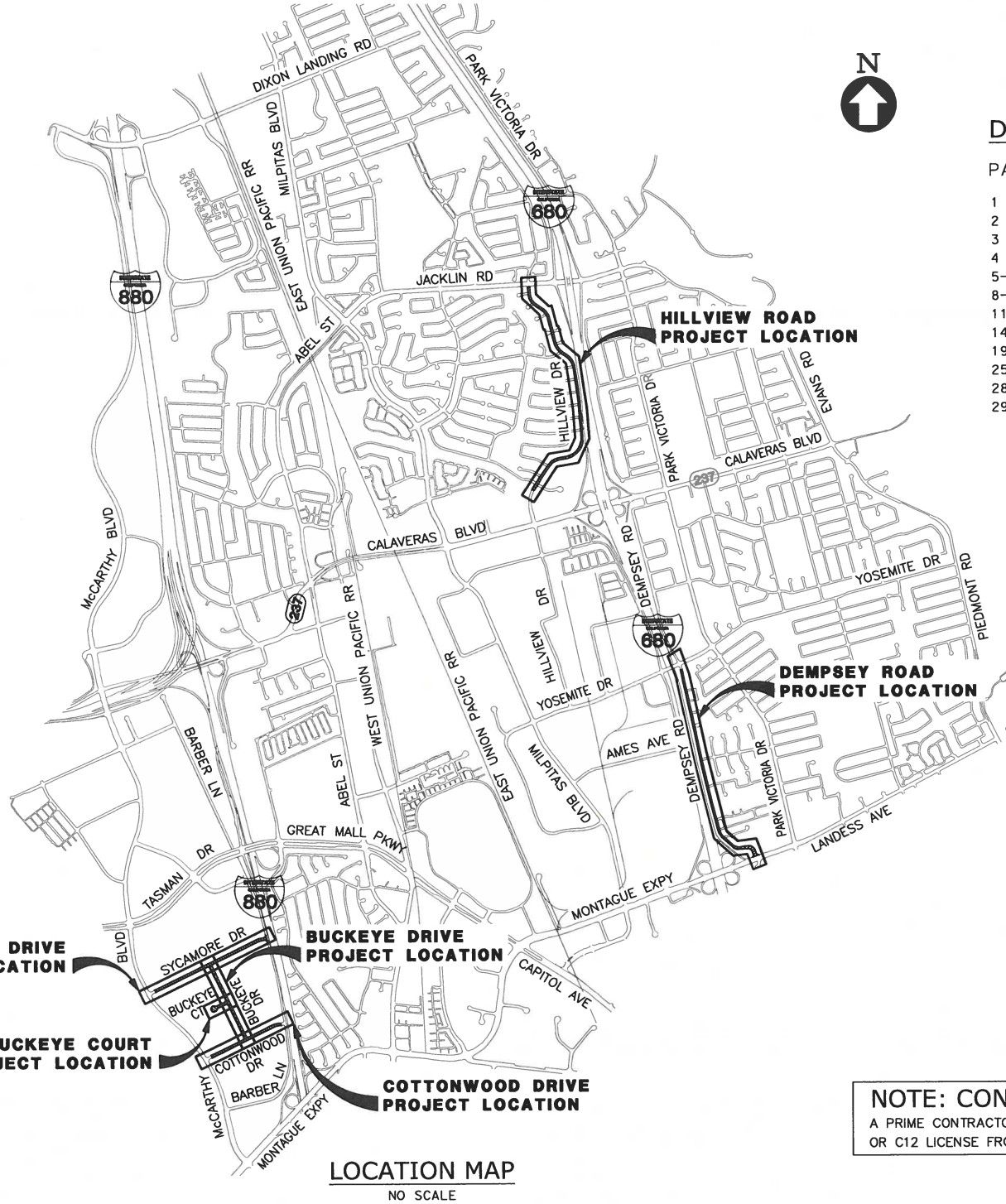


VICINITY MAP
NO SCALE

ABBREVIATIONS:

AB	AGGREGATE BASE	JT	JOINT TRENCH
ABN	ABANDON	LG	LIP OF GUTTER
AC	ASPHALT CONCRETE	MH	MANHOLE
Adj	ADJUST	MOD	MODIFIED
AP	ANGLE POINT	NB	NORTH BOUND
ARV	AIR RELEASE VALVE	NTS	NOT TO SCALE
ASB	AGGREGATE SUBBASE	SDMH	STORM DRAIN MANHOLE
Beg	BEGIN	SF	SQUARE FEET
BFP	BACKFLOW PREVENTER	SHLD	SHOULDER
BO	BLOW OFF	SS	SANITARY SEWER
BW	BACK OF WALK	SSMH	SANITARY SEWER MANHOLE
CB	CATCH BASIN	STA	STATION
CL	CENTER LINE	STD	STANDARD
CL	CLASS	SW	SIDEWALK
C&G	CURB & GUTTER	TC	TOP OF CURB
CONC	CONCRETE	Tele	TELEPHONE
COM	CITY OF MILPITAS	TG	TOP OF GRATE
CY	CUBIC YARDS	Typ, TYP	TYPICAL
DI	DRAINAGE INLET	Var, VAR	VARIES
DIP	DUCTILE IRON PIPE	VCP	VITRIFIED CLAY PIPE
DWG	DRAWING	WM	WATER METER
Dwy	DRIVEWAY	WS	WELDED STEEL PIPE
EC	END CURVE	O.C.	ON CENTER
EL	ELEVATION	OG	ORIGINAL GROUND
Elect	ELECTRICAL	OH	OVERHEAD
EP	EDGE OF PAVEMENT	(P)	PROPOSED
ETW	EDGE OF TRAVELED WAY	PCC	PORTLAND CEMENT CONCRETE
Exist, (E)	EXISTING	POT	POINT OF TANGENCY
FC	FACE OF CURB	PL	PROPERTY LINE/PLASTIC
FDC	FIRE DEPARTMENT CONNECTION	PPB	PEDESTRIAN PUSH BUTTON
FG	FINISH GROUND	PRC	POINT OF REVERSE CURVE
FH	FIRE HYDRANT	PRF	PAVEMENT REINFORCING FABRIC
FO	FIBER OPTIC	RAC	RUBBERIZED ASPHALT CONCRETE
FC, FOC	FACE OF CURB	RCP	REINFORCED CONCRETE PIPE
FS	FINISHED SURFACE	RET	RETAINING
FT	FEET	RP	REDUCED PRESSURE BACKFLOW DEVICE
Gas	GAS LINE	R/W	RIGHT OF WAY
GB	GRADE BREAK	SB	SOUTH BOUND
GV	GATE VALVE	SC	SAWCUT
HDPE	HIGH DENSITY POLYETHYLENE	SD	STORM DRAIN
HMA	HOT MIX ASPHALT	SDDI	STORM DRAIN DRAINAGE INLET
IN	INCHES		
INV	INVERT		

CITY OF MILPITAS
STREET RESURFACING 2020
CITY PROJECT No. 4296
FEDERAL PROJECT No. STPL-5314 (011)



DRAWING INDEX:

PAGE No.	DWG No.	DESCRIPTION
1	T-1	TITLE SHEET
2	GN-1	GENERAL NOTES
3	KM-1	KEY MAP
4	X-1	CROSS SECTIONS
5-7	L-1 TO L-3	LAYOUT PLAN - SYCAMORE DRIVE
8-10	L-4 TO L-6	LAYOUT PLAN - BUCKEYE DRIVE & BUCKEYE COURT
11-13	L-7 TO L-9	LAYOUT PLAN - COTTONWOOD DRIVE
14-18	L-10 TO L-14	LAYOUT PLAN - DEMPSEY ROAD
19-24	L-15 TO L-20	LAYOUT PLAN - HILLVIEW DRIVE
25-27	CD-1 TO CD-3	CONSTRUCTION DETAILS
28	WPC-1	CONSTRUCTION BEST MANAGEMENT PRACTICES (BMPS)
29-38	SS-1 TO SS-10	STRIPING PLAN

PROJECT DESCRIPTION:

THE STREET RESURFACING 2020 PROJECT CONSISTS OF REHABILITATING VARIOUS STREETS THROUGHOUT THE CITY WITHIN THE LIMITS AS SHOWN ON THESE PLANS. STREET RESURFACING SHALL INCLUDE HMA OVERLAY, AC DIGOUT/REPAIR, AND MICROSURFACING. IN ADDITION, MINOR CONCRETE WORK: UPGRADING EXISTING CURB RAMPS TO COMPLY WITH CURRENT ADA REQUIREMENTS; CURB AND GUTTER REPAIR; STRIPING; AND ADJUSTING UTILITY COVERS TO FINISHED GRADE SHALL BE COMPLETED ACCORDING TO THESE PLANS AND ALL ASSOCIATED CONTRACT DOCUMENTS.

NOTE: CONTRACTOR'S LICENSE

A PRIME CONTRACTOR BIDDING ON THIS PROJECT SHALL POSSESS A CLASS A OR C12 LICENSE FROM THE CONTRACTOR'S STATE LICENSE BOARD.



Designer Stamp: 	Record Drawings Designer: _____ Date: _____ Public Works Inspector: _____ Date: _____ Utility/Facility Dept. Head: _____ Date: _____ Project Engineer: _____ Date: _____ Public Improvements Initially Accepted by the City Council on: _____ Res. No. _____	Drawn By: AL Date: 10/25/19 Checked By: MC Date: 10/25/19 Designed By: BS Date: 10/25/19	Revisions <table><thead><tr><th>Num.</th><th>Description</th><th>Engr. Appr.</th><th>Date</th></tr></thead><tbody><tr><td>1</td><td></td><td></td><td></td></tr><tr><td>2</td><td></td><td></td><td></td></tr><tr><td>3</td><td></td><td></td><td></td></tr><tr><td>4</td><td></td><td></td><td></td></tr><tr><td>5</td><td></td><td></td><td></td></tr><tr><td>6</td><td></td><td></td><td></td></tr><tr><td>7</td><td></td><td></td><td></td></tr><tr><td>8</td><td></td><td></td><td></td></tr><tr><td>9</td><td></td><td></td><td></td></tr><tr><td>10</td><td></td><td></td><td></td></tr></tbody></table>	Num.	Description	Engr. Appr.	Date	1				2				3				4				5				6				7				8				9				10				CITY OF MILPITAS ENGINEERING DIVISION STREET RESURFACING 2020 PROJECT NO. 4296 	PROJECT No. 4296 Rec. Dwg No. T-1 SCALE: AS SHOWN SHEET 1 OF 38
				Num.	Description	Engr. Appr.	Date																																										
1																																																	
2																																																	
3																																																	
4																																																	
5																																																	
6																																																	
7																																																	
8																																																	
9																																																	
10																																																	
RECOMMENDED FOR BIDDING BY:  DATE: 11/19/19 Steven M. Chan, T.E., Transportation Manager		APPROVED FOR BIDDING BY:  DATE: 11/19/19 Steven P. Erickson, P.E., City Engineer																																															

Street Resurfacing 2020
CITY PROJECT NO. 4296
FEDERAL PROJECT NO. STPL-5314(011)
Bid Results from 5/29/2020 Bid Opening

*Did not submit DBE/GFE at time of bid

BID ITEMS					ENGINEER'S ESTIMATE		O'Grady Paving*		DeSilva Gates Construction		Teichert Construction		McGuire and Hester		Average	% Difference (DeSilva Gates)	
ITEM NO	SPEC SECT	ITEM DESCRIPTION	UNIT	UNIT PRICE	TOTAL QUANTITY	TOTAL COST	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	from Avg	From Engineer's Estimate
1	E-03	Mobilization (10% Maximum)	LS	\$ 195,000	1	\$ 195,000	\$20,000.00	\$20,000.00	\$110,350.00	\$110,350.00	\$150,000.00	\$150,000.00	\$22,000.00	\$22,000.00	\$75,587.50	46%	-43%
2	E-01	Encroachment Permits	LS	\$ 10,000	1	\$ 10,000	\$3,000.00	\$3,000.00	\$1,000.00	\$1,000.00	\$2,200.00	\$2,200.00	\$1.00	\$1.00	\$1,550.25	-35%	-90%
3	E-04	Traffic Control	LS	\$ 100,000	1	\$ 100,000	\$65,000.00	\$65,000.00	\$55,000.00	\$55,000.00	\$126,245.50	\$126,245.50	\$96,500.00	\$96,500.00	\$85,686.38	-36%	-45%
4	E-10	Water Pollution Control Program	LS	\$ 30,000	1	\$ 30,000	\$5,000.00	\$5,000.00	\$10,000.00	\$10,000.00	\$11,000.00	\$11,000.00	\$8,300.00	\$8,300.00	\$8,575.00	17%	-67%
5	E-11	Hot Mix Asphalt	TON	\$ 130.00	3,585	\$ 466,050	\$96.00	\$344,160.00	\$100.00	\$358,500.00	\$110.00	\$394,350.00	\$117.00	\$419,445.00	\$105.75	-5%	-23%
6	E-12	Base Repair (3")	SF	\$ 5.00	42,065	\$ 210,325	\$3.55	\$149,330.75	\$4.40	\$185,086.00	\$3.00	\$126,195.00	\$3.25	\$136,711.25	\$3.55	24%	-12%
7	E-13	6' Wedge Grind	LF	\$ 6.00	12,535	\$ 75,210	\$2.80	\$35,098.00	\$2.00	\$25,070.00	\$2.00	\$25,070.00	\$2.60	\$32,591.00	\$2.35	-15%	-67%
8	E-14	Curb and Gutter Removal and Replacement	LF	\$ 120.00	370	\$ 44,400	\$100.00	\$37,000.00	\$89.00	\$32,930.00	\$93.00	\$34,410.00	\$100.00	\$37,000.00	\$95.50	-7%	-26%
9	E-14	Driveway Removal and Replacement	SF	\$ 50.00	3,368	\$ 168,400	\$36.00	\$121,248.00	\$26.00	\$87,568.00	\$27.00	\$90,936.00	\$29.00	\$97,672.00	\$29.50	-12%	-48%
10	E-14	Sidewalk Removal and Replacement	SF	\$ 40.00	2,975	\$ 119,000	\$23.00	\$68,425.00	\$17.00	\$50,575.00	\$18.00	\$53,550.00	\$24.00	\$71,400.00	\$20.50	-17%	-58%
11	E-14	Curb ramp Removal and Replacement	EA	\$ 7,000.00	43	\$ 301,000	\$5,600.00	\$240,800.00	\$6,120.00	\$263,160.00	\$6,400.00	\$275,200.00	\$7,000.00	\$301,000.00	\$6,280.00	-3%	-13%
12	E-15	Adjust Storm Drain Structure to Grade	EA	\$ 1,000.00	28	\$ 28,000	\$700.00	\$19,600.00	\$1,200.00	\$33,600.00	\$750.00	\$21,000.00	\$900.00	\$25,200.00	\$887.50	35%	20%
	E-15	Adjust Sewer Structure to Grade [Non-Participating]	EA	\$ 1,000.00	15	\$ 15,000	\$700.00	\$10,500.00	\$1,200.00	\$18,000.00	\$750.00	\$11,250.00	\$900.00	\$13,500.00	\$887.50	35%	20%
13	E-15	Adjust Inlet to Grade	EA	\$ 500.00	2	\$ 1,000	\$2,000.00	\$4,000.00	\$2,000.00	\$4,000.00	\$950.00	\$1,900.00	\$4,400.00	\$8,800.00	\$2,337.50	-14%	300%
14	E-15	Lower and Raise Storm Drain Structure to Grade	EA	\$ 1,500.00	1	\$ 1,500	\$1,000.00	\$1,000.00	\$1,800.00	\$1,800.00	\$1,200.00	\$1,200.00	\$900.00	\$900.00	\$1,225.00	47%	20%
15	E-15	Adjust Water Valve Cover to Grade [Non-Participating]	EA	\$ 250.00	13	\$ 3,250	\$400.00	\$5,200.00	\$900.00	\$11,700.00	\$400.00	\$5,200.00	\$900.00	\$11,700.00	\$650.00	38%	260%
16	E-15	Lower and Raise Water Valve Cover to Grade [Non-Participating]	EA	\$ 500.00	56	\$ 28,000	\$700.00	\$39,200.00	\$1,200.00	\$67,200.00	\$600.00	\$33,600.00	\$900.00	\$50,400.00	\$850.00	41%	140%
17	E-15	Adjust Monument Cover to Grade	EA	\$ 250.00	8	\$ 2,000	\$400.00	\$3,200.00	\$900.00	\$7,200.00	\$400.00	\$3,200.00	\$2,100.00	\$16,800.00	\$950.00	-5%	260%
18	E-16	Micro-Surfacing	SY	\$ 6.00	39,323	\$ 235,940	\$4.00	\$157,292.00	\$3.30	\$129,765.90	\$3.50	\$137,630.50	\$3.50	\$137,630.50	\$3.58	-8%	-45%
19	E-17	6" Thermoplastic Stripe	LF	\$ 2.00	2,879	\$ 5,758	\$4.50	\$12,955.50	\$4.00	\$11,516.00	\$4.00	\$11,516.00	\$4.00	\$11,516.00	\$4.13	-3%	100%
20	E-17	6" Yellow Thermoplastic Stripe	LF	\$ 4.00	6,774	\$ 27,096	\$6.50	\$44,031.00	\$6.00	\$40,644.00	\$6.00	\$40,644.00	\$6.00	\$40,644.00	\$6.13	-2%	50%
21	E-17	Thermoplastic Pavement Marking	SF	\$ 6.00	1,894	\$ 11,364	\$10.00	\$18,940.00	\$9.00	\$17,046.00	\$9.00	\$17,046.00	\$9.00	\$17,046.00	\$9.25	-3%	50%
22	E-17	Pavement Marker	EA	\$ 6.00	2,492	\$ 14,952	\$3.20	\$7,974.40	\$3.00	\$7,476.00	\$3.00	\$7,476.00	\$3.00	\$7,476.00	\$3.05	-2%	-50%
23	E-17	Blue Reflectorized Pavement Marker	EA	\$ 6.00	32	\$ 192	\$30.00	\$960.00	\$25.00	\$800.00	\$25.00	\$800.00	\$2.50	\$80.00	\$20.63	21%	317%
24	E-18	Portable Changeable Message Signs	EA	\$ 3,000.00	8	\$ 24,000	\$2,500.00	\$20,000.00	\$1,000.00	\$8,000.00	\$1,600.00	\$12,800.00	\$6,000.00	\$48,000.00	\$2,775.00	-64%	-67%
						\$ 2,117,437	\$1,433,914.65		\$1,537,986.90		\$1,594,419.00		\$1,612,312.75				
CONTINGENCY - 10% (Per Caltrans LAPM)						211,744	\$143,391.47		\$153,798.69		\$159,441.90		\$161,231.28				
TOTAL PROJECT CONSTRUCTION COST						2,329,180	\$1,577,306.12		\$1,691,785.59		\$1,753,860.90		\$1,773,544.03				
Agency Construction Engineering - 15%						349,377	\$236,595.92		\$253,767.84		\$263,079.14		\$266,031.60				
GRAND TOTAL						2,678,557	\$1,813,902.03		\$1,945,553.43		\$2,016,940.04		\$2,039,575.63				
Numerical Error corrected from bid forms			SUBCONTRACTORS	Trucking		San Jose Transport											
				Concrete (8-11)		Rosas		JJR Construction		JJR Construction		JJR Construction		Casey Fogli			
				Adjust Inlet to Grade		Rosas											
				Striping (19-23)		Chrisp		Chrisp Co.		Chrisp Co.		Chrisp Co		Chrisp Co			
				Traffic Control (3)		Hernandez		Chrisp Co.		Chrisp Co.		Chrisp Co					
				Base Repair (6) cold plane/grinding		ABSC				ABSL Construction		ABSL Construction		Anrak Corp			
				Wedge Grind (7) cold plane/grinding		ABSC				ABSL Construction		ABSL Construction		Anrak Corp			
				Microsurfacing (18) crack sealing						Graham		Graham					
				Microsurfacing (18)				Bond Blacktop		Pavement Coatings		Pavement Coatings		Bond Blacktop			
				WPCP		Tully		Tully									

Numerical Error corrected from bid forms

ATTACHMENT 3

Construction Change Order Policy for Street Resurfacing Project 2020, CP 4296, Federal Project No. STPL-5314(011)

2007 City Council Approved Construction Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
Under \$50,000	\$5,000	\$7,500
Over \$50,000	10% of Award or \$25,000 whichever is smaller	15% of Award or \$100,000 whichever is smaller

Street Resurfacing Project 2020, CP 4296, Federal Project No. STPL-5314(011)

<u>Contract Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$1,537,986.90	N/A	\$153,799 (10%)

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	311-3555	\$692,512	311-951429674800	\$692,512

Adopt a Resolution to Approve Project Plans and Specifications, Award Construction Contract to DeSilva Gates Construction, Inc. for Street Resurfacing Project 2020, Project No. 4296 Federal Project No. STPL-5314(011); and Approve a Related Budget Amendment.

Background:

Project No. 4296, Street Resurfacing Project 2020 is in the approved 2020-2025 Capital Improvement Program. The Project provides for the design and construction of localized repair of asphalt concrete pavement, resurface asphalt concrete pavement, install Americans with Disabilities Act (ADA) compliant curb ramps, repair damaged concrete sidewalk, driveways, or curb & gutter, install new class II bike lanes, and reinstall pavement delineation.

Project No. 4296 provided funding for the design of the 2020 Street Resurfacing Project, and the Plans and Specifications are complete and now ready for City Council approval. The following streets are included in the Street Resurfacing 2020 Project:

- North Hillview Road from Jacklin Road to Berryessa Creek
- Dempsey Road from Yosemite Drive to Landess Avenue
- Sycamore Drive from Barber Lane to McCarthy Boulevard
- Cottonwood Drive from Barber Lane to McCarthy Boulevard
- Buckeye Drive from Sycamore Drive to Cottonwood Drive
- Entirety of Buckeye Court

The Engineer's Construction Estimate for this project is \$2,329,180, and the project title sheet (Attachment 2) is included in the Council's agenda packet. The complete full-size set of plans and specifications are available for review in the office of the City Engineer.

Analysis:

The project was advertised on March 6, 2020 in the Milpitas Post and on digital construction trade publications. Bid opening was on May 29, 2020 and 4 sealed bid proposals were received. The lowest apparent bidder was O'Grady Paving. However, their bid submittal was rejected because it did not contain the required Caltrans Exhibit 15-G Construction Contract DBE Commitment or Caltrans Exhibit 15-H Contractor's Good Faith Efforts as outlined in bid instructions. The lowest responsible and responsive bidder is DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90. No bid protests were filed with the City in regards to this project. The following is a tabulation of bidders and proposed bids. The bid result tabulation is included as Attachment 3.

Bidder	Total Base Bid
O'Grady Paving, Inc.	\$1,433,914.65
DeSilva Gates Construction, Inc.	\$1,537,986.90
Teichert Construction	\$1,594,419.00
McGuire and Hester	\$1,612,312.75

The base bid prices submitted by bidders varies between 24%-32% under the Engineer's Estimate. The range of variation in bid pricing from the Engineer's Estimate is due to the current construction market which likely have been influenced by COVID-19.

The Contractor, DeSilva Gate Construction, Inc., is deemed the lowest responsible and responsive bidder, and staff recommends City Council to award a construction contract for the base bid amount of \$1,537,986.90. **Policy**

Alternatives:

Alternative 1: Deny approval of project plans and specifications and award of the construction award.

Pros: None.

Cons: A denial would cause delay in completing the needed annual repairs to the City's pavement infrastructure.

Reason not Recommended: Delay in award of construction contract will delay project completion, prolong construction activities through the rainy season, and potentially results in higher total construction cost.

Alternative 2: Deny approval of federal funding appropriation

Pros: None.

Cons: The project may require additional local funding to complete the project.

Reason not Recommended: These federal funds can only be used on this project. Denial of this would render unused federal funds which would be returned to the "pot" and the City would lose eligibility and will need to reapply for funds.

Fiscal Impact:

This action recommends appropriating \$692,512 in One Bay Area Grant Cycle 2 ("OBAG2") grant funds to 2020 Street Resurfacing Project (CP 4296). Sufficient funds are available in the project budget.

As of 7/17/2020, uncommitted balance to these projects are as follows:

CP 4296	\$2,586,198
OBAG2 Construction	\$602,184
OBAG2 Construction Engineering	\$90,328
Total Balance Available	\$3,278,710

Summary of Estimated Construction Cost:

DeSilva Gates Construction, Inc.	\$1,537,986.90
10% Contingency	\$153,799
Total	\$1,691,785.90

There are sufficient funds available to award the construction contract.

California Environmental Quality Act: N/A

The project is exempt under Section 15301 (Existing Facilities) of the CEQA guidelines. A Notice of Exemption (NOE) will be filed with the County of Santa Clara following the approval and contract award.

Recommendations:

Adopt a resolution to:

1. Approve Project Plans & Specifications;
2. Award the Construction Contract to the Lowest Responsible, and Responsive Bidder, DeSilva Gates Construction, Inc., in the amount of \$1,537,986.90 for the Street Resurfacing Project 2020, Project No.'s 4296 Federal Project No. STPL-5314(011)
3. Authorize the City Manager to Execute the Construction Contract with DeSilva Gates Construction, Inc.
4. Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Order(s) in an Aggregate Amount Not to Exceed \$153,799 for the Project
5. Approve a Budget Amendment to Appropriate One Bay Area Grant Cycle 2 ("OBAG2") Funding to CP4296

Attachments:

Attachment 1: Resolution

Attachment 2: Title Sheet

Attachment 3: Bid Tabulation

Attachment 4: Change Order Policy

Attachment 5: Budget Change Form

☒ **Check if City Council Approval required.**

Meeting Date: August 04, 2020

Requested by:	Department Head: Steve Erickson	Date: August 04, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: August 04, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving the Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association, an Affiliate of Laborers' International Union of North America (LIUNA/UPEC), and the All Job Classifications Salary Table Effective 07/05/2020
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	8/4/2020
Staff Contact:	Francine Hunt, 408-586-3085
Recommendation:	Adopt a Resolution approving a new Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association, an Affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023, and the All Job Classifications Salary Table Effective 07/05/2020

Background:

The current Memorandum of Understanding (MOU) between the Milpitas Employees Association (MEA), an affiliate of Laborers' International Union of North America (LIUNA/UPEC), has expired as of June 30, 2020. Thus, the City needs to enter into a new agreement with MEA.

Analysis:

The City's labor negotiator, along with City representatives and representatives from MEA, met and conferred in good faith to negotiate a new Memorandum of Understanding. The City and MEA began negotiations in April 2020 and met via an online web conferencing platform eleven (11) times. A Tentative Agreement has been reached with a new successor Memorandum of Understanding (see Exhibit A) with an effective date of July 1, 2020 through June 30, 2023.

The members of MEA voted in favor of the tentative Memorandum of Understanding on July 23, 2020. The major point of the agreement is a three-year contract with a wage adjustment of 6% effective July 5, 2020; 3% wage adjustment effective July 4, 2021, and a 3% wage adjustment effective July 3, 2022.

The Memorandum of Understanding and Side Letter are included in the City Council's agenda packet as Exhibit A and Exhibit B. The draft MOU document was available for public review, upon request, for the 10-day period required by the City of Milpitas Open Government Ordinance beginning on Friday, July 24, 2020.

The draft All Job Classifications Salary Table Effective 07/05/2020 is included in the agenda packet as Exhibit C. Per the California Code of Regulations § 570.5, in order to comply with state law, the City is required to bring all pay schedules before the governing board for review and approval. CCR § 570.5 specifies the required elements necessary to meet the definition of a publicly available pay schedule. For purposes of determining the amount of "compensation earnable" pursuant to GC sections 20630,

20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule and be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.

Policy Alternative:

Alternative: Do not adopt the Resolution approving a new Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association (An Affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023.

Pros: The City would not incur additional costs due to wage and/or benefit increases

Cons: The City would not have a current MOU with MEA

Reason not recommended: The City would not have a successor Memorandum of Understanding for MEA, as the current Memorandum of Understanding expired as of June 30, 2020.

Fiscal Impact:

There is sufficient funding in the Fiscal Year 2020-21 budget to cover the costs for the proposed wage and benefit increases for the next fiscal year. The proposed wage and related benefit increase for FY 2021-22 and FY 2022-23 are assumed in the FY 2021-2030 Ten-Year General Fund Financial Forecast. The fiscal impact for the three-year MOU totals approximately \$2.1 million and includes:

1. Proposed wage and related benefit cumulative cost for the term of the MOU in the amount of \$1,958,122
2. Proposed one-time lump sum payment in the amount of \$92,382.18
3. Increase in retiree dependent health contribution by 0.11% over three (3) fiscal years in the amount of \$59,746.82
4. One Gerber/Leatherman multi-tool to all represented employees, and new employees upon hire, for year one of the MOU in the amount of \$5,600

California Environmental Quality Act:

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act pursuant to CEQA Guidelines section 15378(b)(5) in that it is a government organizational or administrative activity that will not result in direct or indirect changes in the environment.

Recommendation:

Adopt a Resolution approving a new Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association, an affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023, and the All Job Classifications Salary Table Effective 07/05/2020.

Attachments:

- 1) Resolution Approving the Memorandum of Understanding and Side Letter between the City of Milpitas and Milpitas Employees Association (An Affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023
- 2) Exhibit A – Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (An Affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023

- 3) Exhibit B – Side Letter between the City of Milpitas and Milpitas Employees Association (An Affiliate of Laborers' International Union of North America (LIUNA/UPEC) covering the period of July 1, 2020 through June 30, 2023
- 4) Exhibit C - City of Milpitas – All Job Classifications Salary Table Effective 07/05/2020 – Draft Copy

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE
MEMORANDUM OF UNDERSTANDING WITH THE MILPITAS EMPLOYEES
ASSOCIATION (AN AFFILIATE OF LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA (LIUNA/UPEC) AND A SIDE LETTER FOR THE PERIOD OF JULY 1, 2020
THROUGH JUNE 30, 2023**

WHEREAS, the most recent Memorandum of Understanding ("MOU") between the Milpitas Employees Association, an affiliate of Laborers' International Union of North America (LIUNA/UPEC), (hereafter "MEA") and the City of Milpitas covered the period of July 1, 2017, through June 30, 2020; and

WHEREAS, representatives of the MEA and the City of Milpitas met in good faith and negotiated a successor MOU; and

WHEREAS, the new MOU between the MEA and the City of Milpitas shall be effective July 1, 2020, through June 30, 2023, a copy of which is attached hereto as "**Exhibit A**"; and

WHEREAS, the Side Letter agreement attached hereto as "**Exhibit B**" between the MEA and the City of Milpitas shall be effective July 1, 2020 through June 30, 2023, which provides authority to revise section 23.09(b) of the MOU to provide that requests for the cash-out of vacation time must be submitted to Finance for payment in September by August 31 or in December by November 30 of each year. The Side Letter agreement also allows both parties to meet and confer during the term of the MOU on discussions related to a cross-training program and IRS Constructive Receipt language; 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. The updated 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 C**" ("The City of Milpitas All Job Classifications/Salary Table effective 07-05-2020") and includes the updated pay schedule of the MEA classifications as set forth in the new MEA MOU.

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 MOU between the MEA and the City of Milpitas, attached hereto as **Exhibit A**, is hereby approved and the City Representatives are hereby authorized to execute it.
3. The Side Letter between the MEA and the City of Milpitas, attached hereto as **Exhibit B**, is hereby approved and the City Representatives are hereby authorized to execute it.
4. The pay schedule entitled "All Job Classifications/Salary Table Effective July 5, 2020, attached hereto as **Exhibit C**, is hereby approved and adopted.

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

MEMORANDUM OF UNDERSTANDING

BETWEEN

**MILPITAS EMPLOYEES
ASSOCIATION**

*(An Affiliate of Laborers' International Union of North America
(LIUNA/UPEC))*

AND THE

CITY OF MILPITAS

July 1, 2020 – June 30, 2023

As Adopted by the Milpitas City Council on August 4, 2020

TABLE OF CONTENTS

SECTION 1.00 - PREAMBLE	3
SECTION 2.00 - NO DISCRIMINATION	3
SECTION 3.00 - EMPLOYEE RIGHTS	4
SECTION 4.00 - CITY RIGHTS	6
SECTION 5.00 - ADVANCE NOTICE	7
SECTION 6.00 - DISCIPLINARY ACTION/APPEALS PROCEDURE	7
SECTION 7.00 - LAYOFF	12
SECTION 8.00 - RESIGNATION	12
SECTION 9.00 - OTHER EMPLOYMENT	12
SECTION 10.00 - GRIEVANCE PROCEDURE	13
SECTION 11.00 - WORK SCHEDULES	16
SECTION 12.00 - WORKING TITLES	16
SECTION 13.00 - TEMPORARY APPOINTMENTS	17
SECTION 14.00 - ATTENDANCE	17
SECTION 15.00 - PAY PLAN	18
SECTION 16.00 - SALARY	19
SECTION 17.00 - OVERTIME	20
SECTION 18.00 - STANDBY ASSIGNMENT	21
SECTION 19.00 - BILINGUAL ASSIGNMENT	22
SECTION 20.00 - WORK OUT OF CLASS	22
SECTION 21.00 - VACANT POSITIONS AND LATERAL TRANSFERS	23
SECTION 22.00 - HOLIDAYS	24
SECTION 23.00 - VACATION LEAVE	25
SECTION 24.00 - SICK LEAVE	26
SECTION 25.00 - FAMILY LEAVE	27
SECTION 26.00 - COMPASSIONATE LEAVE	27
SECTION 27.00 - MILITARY LEAVE	28
SECTION 28.00 - WORKERS' COMPENSATION LEAVE	28
SECTION 29.00 - LEAVE OF ABSENCE	29
SECTION 30.00 - LIGHT DUTY	29
SECTION 31.00 - RETIREMENT	30
SECTION 32.00 - BENEFITS	32
SECTION 33.00 - TRAINING	33
SECTION 34.00 - UNIFORMS	33
SECTION 35.00 - HEALTH & SAFETY	34
SECTION 36.00 - MISCELLANEOUS	35
SECTION 37.00 - NO LABOR ACTION	37
SECTION 38.00 - FMLA	37
SECTION 39.00 - SEASONAL WORKERS	37
SECTION 40.00 - RETIREE CONTRIBUTION FUND	37
SECTION 41.00 - INCENTIVE PAY	38
SECTION 42.00 - LIUNA NATIONAL (INDUSTRIAL) PENSION FUND	39
SECTION 43.00 - SAVINGS CLAUSE	40
Appendix A	43

**CITY OF MILPITAS AND MILPITAS EMPLOYEES' ASSOCIATION
COMPREHENSIVE MEMORANDUM OF UNDERSTANDING ON
SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS**

July 1, 2020- through June 30, 2023

This Memorandum of Understanding (hereafter "Agreement") is made between the City of Milpitas ("the City") and the Milpitas Employees Association (hereafter "the Union"). The Union confirms that it is an affiliate of the Laborers' International Union of North America (LIUNA/UPEC), AFL-CIO, Local 792.

SECTION 1.00 PREAMBLE

- 1.01 The term of the prior MOU expired on June 30, 2020 This MOU is made and entered into on August 4, 2020. The terms and provisions of the prior MOU and any amendments are continued in full force and effect in accord with law through the beginning date of this MOU of July 1, 2020.

The term of this Agreement shall commence at 12:01 a.m. on July 1, 2020 and terminate on June 30, 2023. The Agreement is subject to all ordinances, resolutions and personnel rules of the City, except as expressly provided to the contrary by this Agreement, and all applicable federal and state laws.

- 1.02 The Union and the City shall attempt to create a working environment free from hostility and intimidation. To that end, the Union and the City shall encourage all employees to treat their fellow employees with dignity and respect.
- 1.03 The terms and conditions of employment set forth in this Agreement have been discussed in good faith by the authorized representatives of the City and the authorized representatives of the Union. The authorized representatives of the Union agree to recommend acceptance by the employees of all terms and conditions set forth herein. Following said acceptance by the employees, authorized representatives of the City agree to recommend to the Milpitas City Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.

SECTION 2.00 - NO DISCRIMINATION

- 2.01 The City of Milpitas shall not discriminate in employment practice in regard to race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.
- 2.02 The Union shall not discriminate based on race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.

SECTION 3.00 - EMPLOYEE RIGHTS

3.01 Union Membership and Dues Deduction

- 3.01.1 Any employee in the City's competitive service may join, organize or maintain membership in a labor organization if the employee so desires. The City neither encourages nor discourages these activities, nor does membership or non-membership in any labor organization affect the employee's standing or right as a City employee. The right to join, organize, or maintain membership in a labor organization is also extended to any association of municipal employees not identified with any labor organization.
- 3.01.2 The right to join a labor union or any association of municipal employees also includes the right not to join. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation, or pressure of any kind from any person. Any attempt by one City employee to unduly influence or pressure another employee regarding the employee's membership in any organization or association is contrary to this Memorandum of Understanding, and any offender shall be subject to disciplinary action. Undue influence or pressure for these purposes is an attempt to persuade an employee to change their mind by any means other than written or verbal discussion of the pros and cons of membership or non-membership.
- 3.01.3 For employees who may wish to belong to the employee's union, the City shall cause dues to be deducted from their paycheck based on written certification from the Union that it has and will maintain written authorization for the deduction from the employee. It is the responsibility of the Union to ensure that dues deductions have been authorized by the employees in writing. The employee may, for any reason, cancel his/her authorization for such a payroll deduction by providing written notice to the Union during the designated drop out period, which shall be June of each calendar year. The employee's cancellation of such authorized deductions shall in no way affect his/her job or standing as an employee. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation or pressure of any kind from any person.
- 3.01.4 The Association, as defined in this Section, shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges, or penalties incurred in responding to or defending against claims, dispute, challenges which are actually brought against the City or any of its agents, in connection with the administration or enforcement of this subsection pertaining to Union dues. Such reimbursement shall include, but not be limited to, court costs, litigation expense, and attorney's fees incurred by the City.

3.02 New Employee Orientation

3.02.1 New employee orientation generally occurs on the first day of employment. The Union will be provided not less than ten (10) calendar days' advanced notice of the time, date, and location of the Orientation. If a hire is made with less than ten (10) calendar days' notice, the Union will be notified as soon as the orientation is scheduled. The Union will be given no less than thirty (30) minutes as part of and at the end of the orientation to present Union membership information. An employee's attendance at the Union portion of the orientation is mandatory. Management and Human Resources representatives may excuse themselves during the Union portion of the orientation. Employee representatives conducting the orientation shall be granted up to thirty (30) minutes of paid release time to do so, including reasonable travel time, if needed.

3.02.2 The City will provide the Union a digital file via email to the Union President and Labor Relations Representative containing the following information for every employee:

- Name
- Job Title
- Department
- Work Location
- Work, home and personal cell phone numbers
- Personal email addresses on file with the employer
- Home address

The City shall not be required to supply information it does not have. Such information will be provided as follows:

1. For new hires, within thirty (30) days of the date of hire.
2. For existing bargaining unit employees, quarterly.

3.03 Union Activities

3.03.1 City employees participating in organizational or other labor union activities or similar activities of any employee association are required to conduct such activities on their own time and not during regularly assigned working hours, with the following exceptions:

3.03.2 A steward representing or assisting a fellow employee in the presentation of a grievance may utilize such time as is essential for the presentation of the grievance to management during working hours; however, solicitation of grievances shall be on the steward and employee's own time.

3.03.3 Officials of any organization representing City employees may meet on City time with the City Manager or other City officials when such meeting times are approved by the City Manager.

- 3.03.4 Business agents or representatives of the union or other association, or their affiliates, having business (other than recruiting of members) with the officers or individual members of the union or other recognized employee groups may meet and confer with such officers or members during the course of the working day for a reasonable period of time provided that permission is first obtained from the department head, if on duty, and the employee's immediate supervisor, and further provided that the conduct of such business shall in no way conflict with the performance of City business.
- 3.03.5 Use of the work place or premises for organizational activities other than the presentation of a grievance or the conduct of business as provided for above, is permitted before or after working hours only with the advance approval of the City Manager or designee; is subject to the availability of the desired facility, and shall in no way interfere with the performance of official duties of on-duty personnel. Official bulletin boards may be used only for notice of meetings of any employee organizations and for no other organizational purpose. The City shall, however, provide space upon request at any City facility for a union or employee association furnished, installed and maintained bulletin board for posting of notices and bulletins and a magazine rack for the distribution of union or association literature.
- 3.03.6 Time Off for Association Meeting/Training. The City shall provide annual paid release time for Association Business such as negotiations, conventions symposia, etc., excluding political activity, upon reasonable written notice to and prior approval by the appropriate department head. Release time shall not result in overtime by any employee. These events shall include but are not limited to:

Event	Personnel	Time
Labor Negotiations Training	2	5 days
LTD/Health Benefit Meetings	2	4 hours
PERS Meetings	2	1 day
Association Conferences	1	5 days
		Total 144 hours

SECTION 4.00 - CITY RIGHTS

- 4.01 The City continues to possess exclusively the rights listed below, plus all other rights to which by law the City is entitled. These rights may not be abridged or modified in any way, except by formal legislative action by the City Council (i.e. resolution or ordinance). The City has the right and may exercise its discretion:
1. To determine the mission of its constituent departments, commissions and boards;

2. To set standards of service;
3. To direct employees, make assignments, and require overtime work;
4. To take disciplinary action;
5. To relieve its employees from duty because of lack of work or other legitimate reasons;
6. To determine the methods, means, and personnel by which government operations are to be conducted;
7. To determine the procedure and standards for selection for employment and determine the content of job classifications;
8. To determine when an emergency exists and to take all necessary action to carry out its mission in emergencies, including recalling and deploying off-duty personnel and requiring that employees work overtime;
9. To exercise complete control and discretion over its organization and technology of performing its work;
10. To transfer or reassign employees, as outlined in the MOU;
11. To layoff employees by position as a result of: a material change in duties, organization, or shortage of work or funds in the Department or the City.

Any violation of the policies and procedures created by this MOU may be subject to disciplinary action as defined by this MOU. Any agreement between the City and the Association evidenced by a Memorandum of Understanding pursuant to Government Code section 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights. Such a Memorandum of Understanding will be honored in good faith during the life of this contract.

Except in cases of emergency the City shall give written notice (30 days in advance of any contract with third parties) which shall result in the lay-off, demotion, or transfer of any employee represented by the Association and shall meet and confer with the Association regarding the same upon reasonable notice.

SECTION 5.00 - ADVANCE NOTICE

- 5.01 Except in cases of emergency as provided in this section, the City shall give reasonable written notice to each recognized employee organization affected by an ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation including actions taken under City Rights that affect wages, hours and other terms and conditions of employment proposed to be adopted by the City and shall give such recognized employee organizations the opportunity to meet with City representatives.

SECTION 6.00 - DISCIPLINARY ACTION/APPEALS PROCEDURE

- 6.01 The City may take disciplinary action against any Employee for just cause. The City recognizes the practice of progressive discipline; however, depending on the severity of the misconduct, the City may immediately impose more severe discipline.
- 6.02 Causes for Disciplinary Action:
 - 6.02.1 Grounds for Discipline: Discipline may be imposed for just cause, including without limitation for the following grounds:
 - (a) Fraud in securing appointment or falsification concerning records, fellow employees, or work performed.

- (b) Failure to satisfactorily perform the duties and responsibilities of an employee's position.
- (c) Neglect of Duty.
- (d) Insubordination.
- (e) Reporting for or performing duty under impairment as a result of alcohol and/or drug use.
- (f) Dishonesty or misuse of or misappropriation of City property and funds.
- (g) Conviction of any crime involving moral turpitude, or substantially relating to the function of an employee's position.
- (h) Unauthorized absence.
- (i) Non-observance of work hours, including tardiness, and abuse of sick leave privileges.
- (j) Discourteous or non-cooperative treatment of the public or other employees.
- (k) Conduct, either during or outside of duty hours, which is of such a nature that it causes discredit to the employee's department or the City.
- (l) Failure to abide by any condition of employment stipulated in the: Municipal Code; Personnel Rules and Regulations; any City or department policies or procedures; or Memoranda of Understanding approved by formal action of the Council;
- (m) Knowingly filing or pursuing a false charge;
- (n) Threats of violence or acts of violence towards fellow employees or members of the public in the workplace.
- (o) Abuse of any City and/or Department policies and procedures.
- (p) Abandonment of job (5 days absence without authorization).

6.03 Disciplinary Action:

- 6.03.1 Written Reprimand: Repeated and/or more severe misconduct may require a more formal response by the supervisor to the employee. In the event a Written Reprimand is warranted, the employee is provided with a written memorandum, which outlines the violation(s) and the expected actions to be taken by the employee in response to the memorandum. The Written

Reprimand contains an indication of subsequent disciplinary steps to be taken in the event that the employee fails to respond appropriately. A copy of the Written Reprimand shall be placed in the employee's official personnel record. A Written Reprimand is not subject to the procedures outlined in Section 6.05.

- 6.03.2 Suspension: In the event of more severe and/or repeated misconduct, the employee may be relieved of duty by the City for a specified period of time without pay. Such suspension shall not exceed thirty (30) calendar days. Suspensions shall be subject to the procedures outlined in Section 6.05.
- 6.03.3 Reduction in Salary Range: In the event of more severe and/or repeated misconduct, the employee's salary may be reduced by the City within the range for the position held. Such Reduction in Salary shall be subject to the procedures outlined in Section 6.05. Reduction in Salary shall be made on a permanent or temporary basis.
- 6.03.4 Involuntary Demotion: In the event of more severe and/or repeated misconduct, the employee may be reduced in rank and pay by the City. Such Involuntary Demotion shall be subject to the procedures outlined in Section 6.05. Involuntary Demotions shall be made on a permanent or temporary basis.
- 6.03.5 Termination of Employment: The City may terminate the employment of an employee for more severe and/or repeated misconduct. Termination shall be subject to the procedures outlined in Section 6.05.

6.04 Authority for Disciplinary Actions:

The Department Head, or designated representative, shall have authority to take disciplinary action.

6.05 Pre-Disciplinary Procedures:

- 6.05.1 Prior to taking any disciplinary action as defined in Section 6.03, except for Written Reprimand, against a permanent employee, the City shall notify the employee in writing of the following:
 - (a) The proposed disciplinary action;
 - (b) The nature of the charges and/or violation of Section 6.02 of this MOU, City ordinances, resolutions, written procedures, municipal code, or departmental regulations and policies;
 - (c) The reasons for the proposed action;
 - (d) The materials upon which the action is based;
 - (e) The opportunity of the employee to appear before a designated City representative and respond to the charges at a specified

place and time, or to respond to the charges in writing by a date certain;

(f) The right of the employee to be represented by an attorney or other representative at any disciplinary conferences or proceedings.

(g) The employee has the right to submit a written response within 10 days to the Human Resources Director. Responses will be attached to the Written Reprimand.

6.05.2 Any employee notified pursuant to 6.05.1 above who desires an opportunity to respond pre-discipline may do so orally or in writing. If the employee wishes to respond orally, the employee must appear at the appointed place and time. The employee is not entitled to an evidentiary hearing, and the sole purpose of the pre-discipline meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the City determines that the presentation of witnesses is necessary. If the City representative determines that he or she cannot be impartial, or upon timely written request by the employee, the Human Resources Director or designee may hear the employee's response.

In the event that the employee is unable to respond to the charges within the time permitted, and demonstrates the reasonableness of a continuance, the City may grant a continuance.

As soon as practical after the employee has had an opportunity to present a response, the City will notify the employee in writing of the nature and extent of the discipline, if any, and the date the discipline will commence. The notification will also advise the employee of any right of appeal.

6.06 Notification — Disciplinary Action: The City agrees that in any disciplinary action, except oral reprimand, taken against employees represented by the Association, the Association shall be notified by memorandum within forty-eight hours (48) hours following employees notification of pending disciplinary action, subject to employee's consent to such notification.

6.07 Right of Appeal:

6.07.1 Reprisals:

No party to the discipline process shall retaliate against any other party to the discipline process because the party participated in the discipline process.

6.07.2 Written Reprimand:

The Human Resources Director shall remove a Written Reprimand from a personnel file upon written request by the employee, provided there have

been no additional disciplinary actions of a similar nature during the subsequent twenty-four (24) months.

If the employee's performance appraisal review contains any reference to the Written Reprimand which has been removed from the employee's personnel file, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the letter of reprimand shall be deleted at the written request of the employee.

Written Reprimands are not subject to the Discipline Appeal process covered in Arbitration (Section 6.07.3) and/or the Grievance Process (Section 10.00).

6.07.3 Appeals of Suspensions, Reduction in Salary, Demotion, Involuntary Termination: Arbitration

Within ten (10) working days of the receipt of notice of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request to the Department Head with a copy sent to the Human Resources Director.

If either the City or the disciplined employee so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of the discipline appeal first. No hearing on the merits of the discipline appeal will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the employee organization, if the employee organization represents the disciplined employee at the arbitration. The services of the certified court reporter are optional. However, both parties must agree if a certified court reporter is employed. Financial responsibility shall be established before the selection of an arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the issue of whether the grievant was disciplined for good or just cause, and if not, what the appropriate remedy should be. The arbitrator shall be without power or authority to make any decision or award that requires the City or the administration to do an act prohibited by law.

If, as a result of an arbitration award, an employee's disciplinary action is deleted or modified in any way and if the employee's performance appraisal review contains any reference to the disciplinary action, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the disciplinary action shall be deleted.

Decision - Final and Binding: The decision of the arbitrator shall: (a) be made in writing within thirty (30) working days of the close of the hearing or submission of written briefs and (b) shall be final and binding upon both parties.

- 6.08 Every effort shall be made to schedule meetings for the processing of disciplinary actions/appeals procedure at times which will not interfere with the regular workday of the participants. If any disciplinary meeting or hearing must be scheduled during duty hours, any employee required by either party to participate in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.
- 6.09 Waiver of Steps or Time Limits: Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived or extended upon written consent of all parties.

SECTION 7.00 - LAYOFF

- 7.01 Any layoff shall be according to seniority and the procedures as defined and set forth in Municipal Code Section VI-102 et seq.
- 7.01.1 The City Manager, after review with the Department Head and the Human Resources Director, may lay off an employee because of material change in duties, organization, or shortage of work or funds in the department or the City.
- 7.01.2 The Human Resources Director shall notify the affected Employee(s) in writing at least thirty (30) days in advance of the intended layoff and of their option to accept a voluntary demotion in lieu of layoff.
- 7.01.3 Employees laid-off or accepting demotions in lieu of layoff shall be placed on a Re-Employment List in inverse order of displacement for an appropriate Class for three (3) years.

SECTION 8.00 - RESIGNATION

- 8.01 An employee wishing to resign in good standing shall file with the Department Head a written resignation at least two calendar weeks before the effective date of termination, stating the reasons for leaving. The resignation shall be forwarded to the Human Resources Director. Failure to comply with this requirement shall be entered in the service record of the Employee and may be cause for denying future employment with the City.

SECTION 9.00 - OTHER EMPLOYMENT

- 9.01 Employees may engage in other employment or business activity that does not conflict with the Employee's duties and which does not involve time demands that would reduce the Employee's efficiency or safe operation of equipment, such as sleep deprivation or physical exhaustion prior to start of employees' shift. In no case shall the employee conduct non-city business during city work hours.

9.02 An employee's outside employment, activity or enterprise may be prohibited if it:

- (a) Involves the use for private gain or advantage of City time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of the City office or employment.
- (b) Involves receipt or acceptance by the Employee of any money or other consideration from anyone other than the City for the performance of an act which the Employee, if not performing such act, would be required or expected to render in the regular course of hours of City employment or as a part of regular duties.
- (c) Involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other Employee of the City.
- (d) Involves such time demands as would reduce the Employee's efficiency or safety.

9.03 Employees must notify the Human Resources Director of other employment or business activities in writing prior to engaging in such activities. Disapproval of other employment may be appealed to the City Manager whose decision shall be final. Documents concerning other employment shall be kept in the employee's personnel file.

9.04 Employees who engage in outside employment that conflicts with duties or who intentionally fails to submit a timely notice to engage in outside employment shall be subject to disciplinary action.

SECTION 10.00 - GRIEVANCE PROCEDURE

10.01 Definitions:

- (a) A grievance is any dispute which involves the interpretation or application of any provision of this MOU. A grievance does not include disciplinary actions, as a different review procedure for disciplinary matters is otherwise provided in this MOU. Performance appraisal reviews are not grievable.
- (b) A "grievant" is any employee, or union representative on behalf of an employee adversely affected by an alleged violation of the specific provisions of a Memorandum of Understanding.
- (c) A "working day" is any day in which the City Hall is open for business.
- (d) "Employee organization" is the Milpitas Employees Association, an affiliate of LIUNA/UPEC, Local 792.

10.02 Representation:

At any step in the grievance procedure, the employee concerned may choose to represent himself/herself; or be represented by the certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned; or by legal counsel. The employee concerned shall be personally present at all stages of the grievance procedure unless that employee specifically waives the right in writing.

10.03 Scheduling/Attendance:

Every effort will be made to schedule meetings for the processing of grievances at times which will not interfere with the regular workday of the participants. If any grievance meeting or hearing must be scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.

10.04 Informal Grievance

It is the intent to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible. In any instance of grievance, the Grievant shall first raise the issue with their immediate supervisor within thirty (30) calendar days following the occurrence, or knowledge of the events on which the grievance is based. Employees waive the right to grieve beyond this thirty (30) day period. Every effort shall be made to resolve such grievance at this level.

10.05 Formal Grievance--Level I

If a mutually satisfactory solution of a grievance as specified in the paragraph above is not reached, then within ten (10) working days of the immediate supervisor's decision, the grievant shall submit a grievance statement in writing. The written grievance shall set forth all of the issues involved; shall be dated and signed by the grievant; and shall be submitted to the Department Head. The grievance shall contain each of the following (providing the grievant possesses the knowledge required in order to comply):

- (a) A description of the specific facts and grounds upon which the grievance is based including names, dates, and places necessary for a complete understanding of the grievance;
- (b) A specific explanation of how the grievant has been adversely affected;
- (c) A listing of the provisions of the MOU which are alleged to have been violated;
- (d) A listing of specific actions requested by the grievant of the City which will remedy the grievance, including a specific dollar amount, and the basis for the dollar amount, of any alleged damages at issue;
- (e) An explanation why the grievant believes the decision at the informal grievance step was unsatisfactory;
- (f) A statement declaring self-representation; and
- (g) The name, address, and telephone number of the person(s) to whom notices may be sent regarding the grievance.

The Department Head, or designated representative, shall investigate the facts and issues and reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the department's business. Upon reaching such conclusion, but in any event within ten (10) working days of the receipt of the grievance statement, the Department Head or designated representative shall reply in writing stating the department's view of the issue involved.

10.06 Formal Grievance--Level II

If the grievance has not been disposed of at Level I, the grievant, within ten (10) working days after receipt of the department's written reply at the completion of Level I, shall forward the said written grievance to the Human Resources Director or designated

representative. The Human Resources Director or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the Human Resources Director or designee shall issue a written decision on the grievance appeal.

10.07 Formal Grievance--Level III

If the grievance has not been disposed of at Level II, the grievant, within ten (10) working days after receipt of the Human Resources Director's written reply at the completion of Level II, shall forward the said written grievance to the City Manager or designated representative. The City Manager or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the City Manager or designee shall issue a written decision on the grievance appeal.

10.08 Arbitration

Within ten (10) working days of the receipt of City Manager's final decision, the Grievant may request arbitration by filing a written request to the Human Resources Director.

If either the City or the grievant so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of a grievance first. No hearing on the merits of the grievance will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the grievant, or employee organization, if the employee organization represents the grievant at the arbitration. The services of the certified court reporter are optional; however, if any party and/or the arbitrator desires a certified court reporter, a court reporter will be employed. The parties will share the cost of the Court Reporter, including the original transcript, and shall pay for their own copies of the transcript. However, if 1) the arbitrator does not desire a transcript or require a court reporter, and 2) a party states in writing before the beginning of the hearing both that the party (a) does not desire a court reporter and (b) will not order a transcript, that party shall not be responsible for paying any portion of the cost of the court reporter. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the interpretation of this Agreement. The arbitrator shall be without power or authority to render any decision or award that requires the City or the administration to do an act prohibited by law.

10.09 Decision - Final and Binding:

The decision of the arbitrator shall (a) be made in writing within thirty (30) working days of the close of the hearing or the submission of written briefs; and (b) shall be final and binding upon both parties.

10.10 Waiver of Steps or Time Limits:

Notwithstanding any provision in this section, any time limit or stage of the procedure specified in this section may be waived or extended upon written consent of all parties involved.

SECTION 11.00 - WORK SCHEDULES

11.01 Employees shall work a 40-hour workweek. The Department Head shall have the authority to review, and as necessary, modify the work schedule each April 1 and September 1. However, any such modification shall not include changing from a four-day work week to any alternative schedule without meeting and conferring on the specifics of the proposed change. Said schedule shall be circulated 30 calendar days prior to the beginning of each April 1 and September 1, respectively to all affected employees. In establishing the schedule, consideration shall be given to the staffing needs of the department and the concerns of the employees. It is understood and agreed, however, that this shall not restrict or limit the ability of the City to modify schedules to respond to emergencies or immediate service needs of the City. Management retains the sole right to determine scheduling needs.

Employees will work a 4-10 (four ten-hour shifts per work week) work schedule. The following conditions will apply for employees assigned to work the 4/10 work schedule:

- Employees on the same work crew will work the same work schedule.
- Employees will work ten-hour shifts on four consecutive days per week, unless both parties agree to exception(s).
- Standard work hours for the 4/10 work schedule will be:
 - Day Shift: 7:00AM – 5:30PM
 - Evening Shift: 2:00PM – 12:30AM
- Employees will have a 30-minute unpaid lunch break. Rest breaks will not be taken consecutively or combined with the lunch break, but shall be scheduled approximately midway between the lunch break and the beginning and end of each shift.
- An employee may request to change their day off on the regular schedule from Monday to Friday, or Friday to Monday, if approved by the Manager and/or Department Head. Intermittent trades of days off is discouraged. The Manager or Department Head must approve any change in advance and determine that the change will not disrupt workload or coverage.
- On a quarterly basis, the City and MEA will evaluate the efficiency of the 4/10 work schedule and identify areas for improvement during the regularly scheduled Labor-Management Meetings.

11.02 In all cases, employees who are assigned to shifts in which one-half of their hours fall between the hours of 6:00 p.m. and 8:00 a.m. three or more times within an established work week shall receive a five percent (5%) premium for all hours worked. The 5% premium shall be calculated on the employee's base hourly rate of pay.

SECTION 12.00 - WORKING TITLES

- 12.01 It is agreed that working titles may be adopted within established job classifications with approval of the Department head.

SECTION 13.00 - TEMPORARY APPOINTMENTS

- 13.01 Any employee receiving a temporary appointment to a vacant position shall serve in accordance with the City's Personnel Rules and Regulations. Any employee who has satisfactorily served in a temporary capacity for three months or longer and is selected for a permanent appointment to the same class by the appointing authority, shall receive credit towards completion of the probationary period for the duration of the temporary appointment from the first date of the assignment. A performance appraisal of the employee is required at the time of the permanent appointment.

SECTION 14.00 - ATTENDANCE

- 14.01 General:

Employees shall be in attendance at their work place in accordance with the rules regarding hours of work, holidays, and leaves.

- 14.02 Unauthorized Absence:

14.02.1 An employee whose absence is not authorized shall not receive pay or benefits for the absent period and may be subject to discipline. Failure on the part of the employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the Department Head of the reason the employee is absent and of the employee's availability for duty.

14.02.2 Any employee shall report his/her absence at or prior to the beginning of shift of the same day to the supervisor or higher authority. Failure to do so may result in unauthorized absence.

- 14.03 Breaks:

Employees shall be entitled to the privilege of two 15-minute breaks during each standard work day.

- 14.04 Responsibility to Maintain Service:

No employee shall schedule a break at such time as to leave the office in which the employee works unstaffed.

14.04.1 Persons whose responsibility includes public contact shall advise a responsible person in their office before leaving for a break.

14.04.2 Persons alone in an office should leave a sign on the door, lock the door, and advise the receptionist before leaving for a break, in order to ease the handling of incoming phone calls and customers that may call at the office.

- 14.05 Limitations for Breaks:

- 14.05.1 For work days from 8:00 a.m. to 5:00 p.m. or 7:00 a.m. to 5:30 p.m., the morning break shall be taken between 9:30 a.m. and 11:00 a.m., and the afternoon break shall be taken between 2:30 p.m. and 4:00 p.m.
- 14.05.2 For irregular work days, breaks shall be taken after the first one and one-half hours and before the last hour of each half shift.

SECTION 15.00 - PAY PLAN

- 15.01 Advancement shall not be automatic but shall depend upon increased service value of an employee to the City as exemplified by the recommendations of the supervising official, length of service, performance record, special training undertaken or other pertinent evidence. No salary advancement shall be made so as to exceed the maximum rate established in the pay plan for the class to which the advanced employee's position is allocated.

The following is the basis of compensation for Employees on a five-step range.

- 15.01.1 Step "A" is the minimum rate for a position and shall be the hiring rate for said position. Initial appointment at a rate higher than step "A" may be made in the case of an unusually well qualified person or where other special conditions warrant, but only with the approval of the City Manager.
 - 15.01.2 Step "B" represents an incentive adjustment. An employee shall be eligible for step "B" only after completion of one year from the date of employment on recommendation from the Department Head and approval of the City Manager.
 - 15.01.3 Step "C" represents the rate at which a qualified and experienced employee should be paid after a reasonable period of service. An employee shall become eligible for step "C" only after he/she has proven himself/herself satisfactory in the given classification for a period of at least one year after completion of his/her probationary period, upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.4 Step "D" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall become eligible for step "D" after completion of one year at step "C" upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.5 Step "E" represents an incentive adjustment for increasingly satisfactory performance. An employee shall be eligible for step "E" after completion of one year at step "D" upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.6 A merit increase prior to the normal anniversary date may be granted to a Permanent Employee for outstanding performance or unusual employment conditions at any time, on the recommendation of the Department Head and the approval of the Human Resources Director or City Manager.
- 15.02 Performance Appraisal Review - Performance appraisals are an important personnel tool, and the City should endeavor to conduct them in a timely manner.
 - 15.03 The City shall evaluate employees annually, (1) from their date of hire, or (2) the date they entered their class (when promoted or demoted the classification date shall

supersede the hire date). In any case, an employee shall be evaluated at the completion of probation, be it initial, or as a result of promotion. If an employee does not receive a performance appraisal on the date it is due and is not at top step of the salary range for his/her classification, the Human Resources Department shall process the forms necessary to advance the employee to the next step in the pay range effective with the nearest full pay period to eligibility. The nearest full pay period is defined in Section 15.06. Supervisors must complete a Performance Appraisal Review (PAR) on a timely basis if they intend to withhold a step advancement for the employee.

If a supervisor subsequently finds that the employee would have been entitled to a step increase (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within at least 30 working days after it is due, the employee shall have the right to file a grievance under Section 10 of this Understanding.

15.04 Salary Following Promotion:

Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.

15.05 In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment. Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the Director of Financial Services.

15.06 All salary advancements specified within this section shall be effective with the nearest full pay period to eligibility. The nearest full pay period shall be defined as follows:

For eligibility dates which fall within the first seven (7) days of a pay period, any increase shall be effective at the beginning of that pay period.

For eligibility dates which fall within the second seven (7) days of a pay period, any increase shall be effective at the beginning of the following pay period.

15.07 "Y" Rate Policy - Whenever an employee would sustain an actual decrease in salary as a result of downward reclassification or reorganization within an existing department unit, without fault or inability on the part of the employee, the City Council shall adopt a "Y-Rate" to apply only to the employee so attached. A "Y-Rate" is defined as a monthly salary rate for an individual employee, which is greater than the established range for the employee's class. An employee for whom a "Y-rate" is established shall not receive an increase in salary until such time as the employee's rate of compensation is within the established range for the employee's class. An employee who accepts a reassignment to a lower paid position in lieu of layoff shall not be "Y-Rated."

SECTION 16.00 - SALARY

16.01 The monthly salary schedule labeled Appendix "A" and attached hereto is hereby made a part of this Memorandum of Understanding.

16.02 Effective the first pay period in July 2020, the salary schedule previously in effect shall be increased by 6%.

Effective the first pay period in July 2021, the salary schedule previously in effect shall be increased by 3%.

Effective the first pay period in July 2022, the salary schedule previously in effect shall be increased by 3%.

The City will provide a one-time, non-precedent setting lump sum payment equal to 2% of pay converted to equal amounts for each bargaining unit member active on payroll as of June 30, 2020.

The 2% calculation is based on the 12-month payroll data for FY 19/20, which equates to \$1,777.00 per member based on 52 active members . In accordance with PERS regulations, this will be a one-time, non-pensionable payment.

SECTION 17.00 - OVERTIME

- 17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 40-hour workweek, said employee shall be compensated as described in this section.
- 17.02 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.
- 17.03 All other overtime, scheduled or unscheduled, shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off at the option of the employee, however, that employees required to work up to eight (8) minutes beyond their normal work hours shall not receive overtime. For purposes of computing overtime pursuant to this section the City will apply a rounding up policy to the nearest quarter hour
- 17.04 Overtime occurring on a paid City holiday shall result in pay, or compensatory time off, at the rate of time and one-half in addition to base pay.
- 17.05 Compensatory time off (CTO) credits may be accrued by employees, up to a maximum of 200 hours on the last day of the pay period that includes June 30 of any year. Employees shall receive pay for the hours of compensatory time off earned which exceeds the 200-hour limit at calendar year end.
- 17.06 In the event an employee is required to work overtime beyond his/her regular shift and does not receive at least four (4) hours off before the next day's shift, he/she shall be deemed not to have left work and shall receive overtime compensation, until a break of four (4) hours or greater is taken.
- 17.07 After working overtime and not having at least eight consecutive hours of off duty, an employee shall not be required to report to work until eight hours after the completion of the overtime assignment, or such amount as may be required by federal or State of California authorities for employees holding a Commercial Driver License. The employee shall be paid from the beginning of the employee's next regular shift.
- 17.08 Permanent MEA employees will be given the first priority in the assignment of scheduled and unscheduled overtime. Temporary employees will not be assigned to scheduled or unscheduled overtime if appropriate permanent employees are reasonably available or except in the case of an emergency and/or immediate service need of the City.

- 17.09 Paid accrued leave, specifically sick leave, vacation leave, workers' compensation leave, or compensatory time off, taken by an employee during any work week shall be counted as hours worked for the purpose of calculating overtime.
- 17.10 In the event an employee is assigned to work overtime that is not pre-arranged, the City will provide meal allowance stipends under the following conditions:
- 17.10.1. An employee required to begin work two or more hours prior to the start of their regular work shift is eligible to receive a \$15 meal allowance stipend.
- 17.10.2. An employee required to work two or more hours past the end of their regular work shift is eligible to receive a \$25 meal allowance stipend.
- 17.11 All overtime is subject to prior authorization from the supervisor.

SECTION 18.00 - STANDBY ASSIGNMENT

- 18.01 The City reserves the right to assign employees to standby status during non-work hours, including week nights, weekends and holidays. Employees assigned to this status shall be required to be available for immediate return to work upon notification by their supervisor or the Police Department Communications Dispatcher. No employee shall be required to respond to a call back via cell phone, pager or other electronic device provided by the City unless they are compensated for such time waiting or on Stand-by.

When assigned to standby status, the following conditions shall apply:

- 18.01.1 Standby assignments shall be made to Maintenance Worker II's or higher with a Class B license and tanker endorsement.
- 18.01.2 A City vehicle shall be provided for use by the employee.
- 18.01.3 In the event the employee leaves home, the location and telephone number where that employee may be contacted must be provided to the Police Department Communications Dispatcher.
- 18.01.4 Travel precluding reasonable response time shall not be permitted.
- 18.01.5 Failure to respond shall automatically result in a loss of compensation for the shift of standby during which the failure to respond occurred and may cause further disciplinary action if warranted when taking the circumstances into consideration.
- 18.01.6 Preliminary standby schedules for a six-month period shall be prepared six weeks in advance. The schedule shall be distributed to standby eligible personnel for a two-week review for changes prior to release.
- 18.01.7 Employees shall have the right to refuse a stand-by assignment only in the case of a personal emergency defined as a time-sensitive and serious or life-threatening medical situation for the employee or the employee's immediate family member, or in the case of the death of an employee's immediate family member. Employees have the right to execute two changes (trades), three

weeks prior to their scheduled standby week, each fiscal year. In the event of a trade, the accepting employee shall not be deemed to have exercised one of his/her trades/changes.

- 18.01.8 No employee shall be assigned mandatory stand-by when at least two volunteers are available for assignment.
- 18.01.9 Employees on stand-by assignments shall provide coverage for the entire week and be paid four hundred twenty dollars (\$420) per week per employee on stand-by. For each holiday which occurs while an employee is on stand-by, the employee shall receive an additional fifty (\$50) dollars.
- 18.01.10 Employees on stand-by who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provide advice, shall be paid at an overtime rate or the equivalent in compensatory time off for the actual time on the phone, or one hour or the equivalent in compensatory time off, whichever is more.
- 18.01.11 Employees must complete lateral cross-training within a year to be considered for the stand-by program in an area outside of their assigned area (e.g. utility, facilities, signal, pump station alarm, etc.).
- 18.01.12 Employees on light duty or with a performance below standard (2 or less) will not be eligible for standby duty.

SECTION 19.00 - BILINGUAL ASSIGNMENT

- 19.01 Effective February 3, 2015, bilingual pay was eliminated. Those employees receiving bilingual pay at the time of the elimination shall retain the pay.

SECTION 20.00 - WORK OUT OF CLASS

- 20.01 The City agrees that upon specific assignment by the Department Head, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions.
- 20.02 Employees assigned to duties of a higher class for at least one shift shall be compensated at a rate of 10% above the employee's current base salary while working out of class, except where such increase exceeds the pay range allocated of the assigned position. The employee shall be compensated at the appropriate rate commencing with completion of one shift. Assignments shall not be made for less than one shift. Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.
- 20.03 General:
 - (a) Work out of class assignments shall be given on a rotational basis, when practical.
 - (b) Work out of class assignments shall not, as a matter of routine practice, be given to probationary employees or Maintenance Worker I's.
 - (c) Work out of class assignments shall not, as a matter of routine practice, be given to employees performing at less than a competent level as determined by the last performance appraisal.

- 20.03.1 Out of class Supervisor assignments shall be made (a) when a supervisor is unavailable for one shift, (b) usually to the next lower classification in the section, (c) for specific assignment where a lower classification must serve in a capacity of a higher class, (d) when required to perform the duties of a classification with a higher pay range and outside the bargaining unit (i.e., inspection work in lieu of a Public Works Inspector). Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.
- 20.03.2 Out of class Maintenance Worker III assignments shall be made (a) in the scheduled or unscheduled absence of the III normally assigned, (b) when assigned to operate certain heavy equipment. Exception: Work out of class assignments may not be made where permanent schedules exist without an assigned Maintenance Worker II on duty.
- 20.04 Exceptions to this policy due to working conditions and/or the needs of the City may be approved by the Department Head.
- 20.05 An employee seeking additional training in another class may waive his/her right to work out of class pay in order to pursue desired training.

SECTION 21.00 – VACANT POSITIONS AND LATERAL TRANSFERS

- 21.01 Employees shall be considered for lateral transfer subject to the following conditions:
 - 21.01.1 The transfer must be recommended by both the outgoing and incoming supervisor and approved by the Department Head.
 - 21.01.2 The transfer must be approved by both the outgoing and incoming Department and/or Division Head. Employees hired on or after January 1, 2007 must be within the same classification to be eligible for a lateral transfer. Any employee within the same classification who can clearly demonstrate knowledge and experience would be eligible to apply.
 - 21.01.3 Probationary employees shall not be eligible for lateral transfer.
 - 21.01.4 Employees who are transferred by request between Departments or between different Classifications shall be subject to a new six-month Probationary Period. Employees failing to complete Probation following such a transfer shall be reinstated to the Position from which transferred.
 - 21.01.5 Employees who are performing “below expectations” or “unsatisfactory” shall not be considered. This shall be determined by examination of the most recent employee appraisal on file. If the appraisal on file is more than twelve (12) months old, a new appraisal shall be done prior to the time the transfer is finalized.
- 21.02 The City will make reasonable effort to fill vacancies within six (6) months of a position becoming open. All vacant permanent positions shall be opened to lateral transfer and/or internal promotional candidates prior to consideration for filling that position from an outside source. Recruitments that do not yield at least three internal candidates may be open to recruitment from an outside source.

- 21.02.1 Written notice of a vacant permanent position shall be circulated by the Human Resources Department to all employees of the bargaining unit. The notice shall include the opening and closing dates for the acceptance of lateral transfer requests.
- 21.02.2 A period of ten (10) working days shall be allowed during which written requests for lateral transfer must be submitted by any interested employee.
- 21.02.3 Requests shall be reviewed, and all applicants notified of their status and scheduled for an oral interview within five (5) working days of the closing date.
- 21.02.4 Oral interviews of eligible employees shall be conducted by the hiring supervisor. Lateral transfer applicants shall be rated using a rating form pre-approved by the Department Head.
- 21.02.5 Written notice of the results of the interview process shall be made by the incoming supervisor within five (5) working days of the last interview.
- 21.02.6 Exceptions to the above process due to working conditions and/or the needs of the City may be approved by the Department Head.

SECTION 22.00 - HOLIDAYS

22.01 The following shall be paid holidays for employees:

- 1. January 1 (New Year's Day)
- 2. Third Monday in January (Observance of Dr. Martin Luther King Jr's Birthday)
- 3. February 12 (President Lincoln's Birthday)
- 4. Third Monday in February (Observance of President Washington's Birthday)
- 5. Last Monday in May (Observance of Memorial Day)
- 6. July 4 (Independence Day)
- 7. First Monday in September (Labor Day)
- 8. November 11 (Veteran's Day)
- 9. Thanksgiving Day
- 10. Day after Thanksgiving
- 11. Christmas Eve (to be observed last working day prior to Christmas Day)
- 12. Christmas Day
- 13. Each employee shall be credited with one (1) floating holiday each calendar year, which must be used by December 31, or it is lost without compensation. Section 22.03 applies in the case of the floating holiday.
- 14. In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday instead.
- 15. In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday instead.
- 16. Any other holiday declared by the City Council as a City holiday for City employees.
- 17. For other than 5-day work weeks, any work week which includes one or more holidays shall be reduced in hours commensurately. The number of days worked during the work week shall be subject to the approval of the Department Head.

18. Employees shall be permitted to take Good Friday as a vacation day by submitting a written request at least two weeks in advance to the Department Head.
- 22.02 Where one of these holidays falls on a working day, employees shall be granted the day off with eight-hours of pay and City offices shall be closed except for such municipal services that must be maintained on an around-the-clock basis seven days a week. Employees who work less than full-time shall be entitled to credit for paid holidays on a pro-rated basis. Employees required to perform their regular duties on a holiday shall be granted pay or compensatory time off, at the rate of time and one-half in addition to base salary. For the purposes of this section, a holiday shall be deemed to begin and end at 12 midnight.
- 22.03 When a holiday falls on a full-time employee's scheduled workday, the employee is entitled to be paid only eight (8) hours of holiday pay. If the workday is a ten (10) hour day, the employee may use two (2) hours of vacation or CTO to receive pay for the full shift or use two (2) hours of unpaid leave.
- 22.04 Employees who work less than full-time shall earn holiday leave on a pro-rated basis based on their regularly scheduled assignment.

SECTION 23.00 - VACATION LEAVE

- 23.01 All employees shall be entitled to paid annual vacation leave beginning at the end of the first six months of service with the City. However, vacation credits shall be accrued beginning with the date of initial appointment. The accrual rates, in hours per pay period, are as follows:

	40 Hour Workweek <u>Hours/pay period</u>
From date of hire through the fourth year of employment	3.38
From fifth through ninth year of employment	4.92
From tenth through fourteenth year of employment	6.46
From fifteenth through nineteenth year of employment	8.00
From twentieth year of employment and on	9.53

- 23.02 Employees who work less than full time shall earn vacation credits on a pro-rated basis based on their regularly scheduled assignment.
- 23.03 Each employee shall be required to have served the equivalent of one year of continuous service in the City in order to be eligible for the employee's full annual vacation leave, provided however, that after six month of continuous service, the employee may be permitted to take vacation leave not to exceed 40 work hours, depending on the employee's regular work schedule. During the first six months of initial employment an employee shall not qualify for any vacation leaves regardless of paycheck stub figures.
- 23.04 The times during a calendar year at which an employee may take vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the municipal service. If the requirements of the

municipal service are such that an employee must defer part or all of his/her annual vacation in a particular calendar year, the appointing power shall permit the employee to take such deferred vacation during the following calendar year or allow the employee to cash out said vacation at his/her option, to the extent of the deferred portion.

- 23.05 No employee may accumulate and carryover more than 300 hours of vacation as of the last day of the pay period that includes June 30 without the express written consent of the City Manager. No employee shall be allowed to be on paid leave for a period of over 225 consecutive work hours.
- 23.06 In the event one or more municipal holidays fall within the annual vacation leave, such holidays shall not be charged as vacation leave.
- 23.07 Upon separation from the City for any reason, an employee shall be compensated for accrued vacation leave.
- 23.08 Approval shall be granted after the supervisor and department head give consideration to the employee's wishes and the needs of the City. Employees may change vacation dates with the approval of the department head. In the event, the needs of the City necessitate canceling of vacation scheduled for a minimum of 90 days in advance, which results in a financial loss to an employee, the City shall reimburse the employee the full amount of loss provided the employee demonstrates the impossibility of obtaining a refund and can document the amount of loss. At the time of making an expenditure, each employee shall advise the department head of the amount of said expenditure. In the event an employee fails to advise the department head, the employee may lose all rights to reimbursement.
- 23.09 An employee may elect to cash-out a maximum of 40 hours accrued annual leave per fiscal year as follows. An employee whose accrued annual vacation leave exceeds 120 hours may elect to cash out a maximum of 80 hours per fiscal year.

Cash-outs are subject to the following:

- (a) The employee uses at least one full work day of paid vacation leave. Vacation cash-out must be requested in advance and contingent upon having an approved vacation leave within thirty (30) calendar days, either before or after.
- (b) Requests for cash-outs other than during approved vacations must be submitted to Finance for payment in June by May 31 or December by November 30 of each year.
- (c) Vacation leave may not be carried-over to cash-out in subsequent years, except upon separation from City service.

SECTION 24.00 - SICK LEAVE

- 24.01 Employees shall be granted paid sick leave credits beginning with the date of original employment at the rate of 3.69 hours for 40-hour employees on a bi-weekly basis. Employees become eligible to take accrued sick leave upon completion of one full month of continuous services. Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion but shall be allowed only in case of necessity and actual sickness or disability. Medical or dental appointments may be charged against sick leave but shall be limited to a maximum of four (4), hours per appointment and should be scheduled and approved in advance. Approval of sick leave for appointments in excess of four (4) hours are subject to the discretion of the Department/Division Head. The Human Resources Director shall direct and enforce

such administrative control as may be necessary to prevent abuse of sick leave privilege.

- 24.02 Employees who work less than full-time shall earn sick leave on a pro-rated basis based on their regularly scheduled assignment.
- 24.03 The City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) provision—see MOU section 31.0—for all employees retiring from the City through CalPERS.
- 24.04 Employees hired on or before July 17, 1999, with five or more years of service may elect to cash out accrued sick leave each November. Payout shall be in accordance with appropriate pay out formulas described in Section 24.05. However, the maximum annual amount shall not exceed 50% of employee's sick leave balance. Employees eligible for this benefit shall at all times maintain a sick leave balance of at least 240 hours.
- 24.05 For employees hired on or before July 17, 1999, the City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) or pay an employee who is separating from the City in good standing with at least five (5) years of service an amount equal to 2.5% per year of service for unused accrued sick leave. The pay-out formula shall be $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$. Good standing shall be based on the employee's overall work record and the decision of the Human Resources Director.

SECTION 25.00 - FAMILY LEAVE

- 25.01 Employees with available sick leave accruals may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.
 - 25.01.1 In this section, family medical purposes shall mean illness, accident, medical appointments or other related occurrences.
 - 25.01.2 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.
 - 25.01.3 Each employee shall be allowed to use a maximum of up to half (50%) of the employee's annual earned sick leave per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.
 - 25.01.4 Employees may use accrued sick leave up to fourteen (14) consecutive calendar days leave for birth or adoption of a child beginning with the day of adoption or birth.

SECTION 26.00 - COMPASSIONATE LEAVE

- 26.01 The City agrees to provide compassionate leave when death occurs to a member of the employee's immediate family, not to exceed one work week (40 hours).
- 26.02 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild,

adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.

- 26.03 Salary paid during this leave is not deducted from any leave balance. Additional leave may be granted in special circumstances by the Human Resources Director.
- 26.04 In special circumstances, the Human Resources Director may allow an employee to utilize compassionate leave for individuals who are not members of the employee's immediate family.

SECTION 27.00 - MILITARY LEAVE

- 27.01 Military leave shall be granted in accordance with the provision of State and Federal law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave shall be taken. An employee shall notify and provide applicable orders to the Department Head of the need for military leave as soon as possible after learning of the need.

SECTION 28.00 - WORKERS' COMPENSATION LEAVE

- 28.01 Employees unable to work because of a work-related illness or injury are eligible for workers' compensation leave, provided that the Employee has notified superiors of the illness or injury and the claim has not been denied by the Human Resources Director or worker's compensation insurance administrator authorized by the City.

Workers' Compensation leave shall be 100% of regular pay for two (2) calendar weeks (80 hours or 75 hours, depending on the employee's regular work schedule), followed by 80% of regular pay for six weeks (32 hours or 30 hours per week, depending on the employee's regular work schedule) to a maximum of sixty (60) calendar days. This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available workers' compensation leave. Leave accruals shall be prorated accordingly.

In addition, any employee incurring such an injury or disability shall be entitled to compensation to the extent provided in the State Workers' Compensation Insurance Act. An employee who has exhausted eligible workers' compensation leave shall receive full salary to the extent the employee's accrued sick leave or vacation time may be integrated. Charges to the employee's leave accounts shall be based on the ratio with Workers' Compensation Insurance temporary disability payments payment received by the City to the employee's salary for the same time period, provided that such full salary payments are subject to the following conditions:

- (a) Compensation insurance payments received by the employee, except for payments received for permanent total or partial disability, shall be withheld by the City for the period subject employee continues to receive full salary from the City through the use of leave balances.
- (b) Upon expiration of available workers' compensation leave, all time lost (including doctors' appointments and therapy treatments less than one full workday) shall be charged to earned vacation and sick leave, if available.
- (c) Upon expiration of available earned comp time, vacation and sick leave, payment of salary by the City shall be discontinued and compensation insurance payments shall be sent to the subject employee.

- 28.02 An employee returning from a work-related injury shall be reinstated to the position occupied at the time the injury occurred subject to written release by the attending physician.
- 28.03 Injured employees designated permanent and stationary or accepted into a qualified rehabilitation program and unable to return to their prior occupations may be retired (if eligible) or involuntarily terminated.

SECTION 29.00 - LEAVE OF ABSENCE

- 29.01 The Human Resources Director may grant a Permanent employee leave of absence one time per calendar year without pay not to exceed one year. Leave shall be considered upon written request of the Employee.
- 29.01.1 In evaluating employee requests, the Human Resources Director shall consider the recommendation of the Department Head, departmental workload, the best interests of the City, the employee's duration of employment, the employee's performance record, and the reason for the leave.
- 29.01.2 Any Permanent employee with a non-work-related injury or medical condition who has exhausted all sick leave may request a leave of absence with a doctor's certificate. At the City's discretion and expense, the City at any time may require a medical exam at a facility selected by the City.
- 29.01.3 An employee who is on leave without pay status shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement benefits, credit for time employed or seniority entitlements of any kind) for the period of such status. It is the intent of this subsection that one on leave without pay status is deemed unemployed for the period of such status in terms of earning benefits.
- 29.01.4 The Human Resources Director may authorize continuation of the employee's elected medical and/or dental coverage for all or part of the duration of leave without pay. This shall be done only in extraordinary circumstances and when it is deemed to be in the best interest of the City.
- 29.02 A department head shall have the authority to approve an unpaid leave not to exceed 150 work hours each fiscal year.
- 29.03 Nothing herein shall preclude an employee from waiving in writing the right to reinstatement as a condition to approval for a leave of absence. Any employee who waives the right may be reinstated in accordance with the City's Personnel Rules & Regulations as if they had been subject to a reduction in workforce, except that they shall be placed at the bottom of a reemployment list for any position for which they qualify.
- 29.04 Failure on the part of an employee on leave to report to duty on the date and time that leave terminates may be cause for discharge.

SECTION 30.00 - LIGHT DUTY

- 30.01 The City recognizes the importance of providing support and encouragement to employees who are recovering from an injury or illness in an effort to assist in making a

complete and healthy recovery. Therefore, the City agrees to make every reasonable effort to temporarily provide light duty as follows:

- 30.01.1 Any assignment of light duty shall be conditioned upon receipt of a statement from a physician which either recommends or requires light duty.
- 30.01.2 No employee assigned to light duty shall be required to return to their regular duties without a written release from a physician.
- 30.01.3 The temporary assignment of light duty may be in any department of the City provided that the assignment is compatible with the employee's ability, consistent with the written recommendations of the employee's physician, and is subject to the approval of the Department Head.
- 30.01.4 Said employee shall not be increased nor reduced in pay or benefit solely by virtue of said temporary transfer.
- 30.01.5 Provided that the City may verify said disability by having said employee examined by a physician of the City's choosing at the City's expense.
- 30.01.6 In the event of conflicting medical opinions, no employee shall be required to accept a light duty assignment.
- 30.01.7 The City is currently developing a policy on the subject of light duty. MEA agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 31.00 - RETIREMENT

- 31.01 The City will provide the 2% at 62 CalPERS retirement plan based on the highest 3 year annual average pensionable compensation depending on the eligibility of the new hires, hired on or after January 1, 2013. Employee shall be responsible for the member portion of the contribution to CalPERS retirement.

The City will provide the 2% at 60 CalPERS retirement plan based on the highest 3-year annual average pensionable compensation plan to all new hires (Section 20475: Different Level of Benefits Provided for New Employees) hired on or after October 9, 2011 the effective date of PERS ordinance adopted by the City Council. Employees shall be responsible for the 7% member contribution to CalPERS retirement.

For employees hired before October 9, 2011, the City shall continue, during the term of this Understanding, the present retirement plan, commonly referred to as the 2.7% at 55 plan, including the final year compensation amendment and 1959 Survivors Benefit in full force and effect. Employees shall be responsible for 8% member contribution to CalPERS retirement.

- 31.02 Upon retirement, disability retirement or death, for those employees who were hired on or before July 17, 1999 only, and who had at least five (5) years of service, the City shall pay the separating employee, or his or her estate, for unused accrued sick leave. The amount paid shall be equal to 2.5% per year of service for unused sick leave. The pay-out formula shall be: $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$; or

- 31.02.1 Upon retiring with CalPERS, all eligible employees may participate in the PERS Credit for Unused Sick Leave (GC 20965) provision of the City's CalPERS retirement plan.
- 31.03 For the purpose of this section, an employee who is retiring is one who has submitted an application for retirement to the California Public Employees Retirement System (CalPERS) and had it approved.
- 31.04 Retiree Medical
- 31.04.1 For employees hired before June 30, 1996, the City agrees to pay the premiums for employee-only health coverage for all employees, with at least five (5) years of service, who retire after July 17, 1999 and as long as the employee maintains enrollment in one of the City health plans. Employees receiving disability retirements shall be eligible for retiree health coverage until they are covered by another health plan (such as another employer or through a spouse). Retirees may elect to continue coverage for a spouse under the retiree group medical plan provided that the spouse is covered by the group plan at the time the employee retires and maintains enrollment. The retiree is responsible for the additional monthly premium.
- 31.04.2 When the City contributes toward retiree premiums, the maximum allowable shall be based on the lowest single rate for active employees. This maximum allowable City contribution shall not apply to persons who retire prior to the date this MOU is adopted by the Milpitas City Council.
- 31.04.3 Employees hired after June 30, 1996, shall be subject to the following provisions with respect to the retiree health plan benefits:
- Upon completion of the first through the ninth year of service, and upon retirement, the City shall provide 25% of the lowest cost single medical insurance premium payment for the employee only (no more than any active employee's single lowest cost premium rate), as long as the employee remains in one of the City sponsored health care programs.
- Upon completion of the ninth year, this payment of the retiree's medical insurance shall increase to 50%.
- Upon completion of the fourteenth year, this payment of the retiree's medical insurance shall increase to 75%.
- Upon completion of the nineteenth year, this payment of the retiree's medical insurance shall increase to 100%.
- 31.05 PERS Contract Amendment - Credit for Unused Sick Leave
- 31.05.1 Effective July 18, 1999, the City has amended its PERS contract to provide for the Credit for Unused Sick Leave as set forth in Government Code Section 20862.8.
- 31.05.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out. Sections 24.03 and 31.02 of the MOU shall not apply to them.

SECTION 32.00 - BENEFITS

32.01 The City shall provide active employees the CalPERS medical insurance for health benefits. The total monthly health benefit per employee shall be based on the Kaiser rates for employee, employee +1, and family plan. Only employees who have eligible dependents shall be compensated above the single rate plans.

1. The aforementioned health care plan is currently being offered by the City of Milpitas. The City reserves the right to discontinue offering CalPERS due to the following:
 - a. The plan imposes exorbitant costs upon the City;
 - b. The health care carrier refuses to provide services to the City;
 - c. The health care provider no longer offers the services; or
 - d. The health plan is discontinued.
2. If the City discontinues use of CalPERS Health, they will provide a health care provider with similar services.
3. The City will provide a life insurance policy in the amount of \$50,000.00 for each employee.
4. The City shall continue to provide a Short-Term Disability Plan at the current benefit level.
5. The City shall continue to provide a Long-Term Disability Plan at the current benefit level.
6. The City will provide a vision plan for each employee and eligible dependents.
7. Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.
8. Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars (\$125.00) per month, paid bi-weekly (\$57.70) over 26 pay periods. Employees who wish to waive health insurance coverage must complete the City of Milpitas' "Health Insurance Waiver" indicating they agree to abide by the terms and conditions of the waiver.

32.02 Benefit Contribution Part Time Employees: The City agrees to contribute monthly premiums for medical, dental and life insurance in an amount to reflect hours budgeted, pro-rated against the amount contributed for full time employees. For example, if an employee is budgeted to work twenty (20) hours per week, the City will contribute fifty percent (50%) of the benefit contribution for full time employees. Similarly, if a part-time employee is budgeted to work thirty (30) hours per week, the City will contribute seventy-five percent (75%) of the benefit contribution. The City agrees to provide short-term disability and long-term disability insurance benefits, with similar coverage to the coverage employees possess, at no cost to part-time employees.

32.03 Constructive Receipts: The City and MEA agree to continue discussions regarding the Internal Revenue Service (IRS) regulations and opinions on rules related to constructive

receipt of income. Discussions would include what information is to be reported, and which taxes to be withheld on the value of paid leave accruals that an employee earns and is eligible to cash out in a taxable year, as well as “emergency usage” provisions.

SECTION 33.00 - TRAINING

- 33.01 If an employee is directed to participate in a training program, which is related to their job, the City shall provide compensation for the following:
- a. Regular wages for time away from the job (if during working hours);
 - b. Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the scheduled work day;
 - c. Costs of tuition and/or registration for the training;
 - d. Reimbursement for authorized transportation cost to and from the training. (i.e. Mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employees car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).
- 33.02 Participation in and successful completion of training course may be considered in making employment advancements and promotions.
- 33.03 The City of Milpitas provides a tuition reimbursement program for educational activities, which are job related and approved in advance by the Department Head and the Human Resources Director. The amount of the fund shall not exceed the amount budgeted for this purpose. Subject to the availability of monies in the fund, individual employees are subject to a total reimbursement of \$1,400 per fiscal year. Reimbursement is subject to the guidelines outlined in the Tuition Reimbursement Standard Operating Procedure (S.O.P. 6-13).

SECTION 34.00 - UNIFORMS

- 34.01 The City agrees to provide uniform work clothes for MEA employees who are required to wear such uniforms on an annual basis. Uniforms are to identify City employees. Shirts and hats shall have the city emblem, department name, and/or the words City of Milpitas.
- 34.02 The following shall be provided:
- (a) Nine (9) work pants
 - (b) A combination of fourteen (14) tee-shirts, polo shirts and tailored shirts. A maximum of nine (9) may be the tailored shirts.
 - (c) Four (4) sweatshirts
 - (d) One (1) jacket
 - (e) Choice of five (5) baseball type or brim type hats per employee annually with two (2) beanies
 - (f) Five (5) pair of coveralls
- 34.02.1 In the event a uniform becomes damaged in the course of work, the City shall replace the damaged item.

- 34.02.2 The City will endeavor to provide uniforms to employees by September 1st of each year.
- 34.02.3 The City will provide one Gerber/Leatherman multi-tool to current members who have not been issued a multi-tool. In addition, all new members will receive a multi-tool as part of their uniform package. The City will replace multi-tools if needed, with Department Head approval.

34.03 Exemption from wearing uniform:

- 34.03.1 If it is determined by a physician that there is a medical reason which prevents an employee from wearing a City uniform (i.e., fiber content), then such employee shall not be required to wear a uniform. To be eligible for this exemption, the employee must submit a physician's statement to his/her supervisor verifying the above. The City reserves the right to have the employee examined by the City physician (at the City's expense) at any time.
- 34.04 Uniform option: It is agreed that field maintenance employees shall be allowed to wear tailored walking shorts. No athletic shorts or "cut-offs" are permitted.
- 34.05 Uniform colors: All employees will wear same color uniforms, and the color and quality of uniforms shall be approved by the Department Head. The City is agreeable to two different colors to be determined by the Department Head.

SECTION 35.00 - HEALTH & SAFETY

- 35.01 The City shall reimburse up to \$200 (\$225 for bifocals) per employee per fiscal year towards the purchase of safety prescription eyeglasses provided that they are not covered by the employee's health plan. Replacement costs may be covered upon approval of the City Manager or his/her designee if there has been a significant change in the employee's prescription or damage occurred as a result of a work-related incident.
- 35.02 In addition, the City shall provide a maximum of \$250 reimbursement per employee per fiscal year for the purchase of safety shoes. If additional funds after the purchase of the shoes are available, the employee may use the funds for related footwear accessories or repairs. The wearing of said items is mandatory and said footwear must meet safety guidelines set by the City.
- 35.03 Employee Fitness Program:
- 35.03.1 Purpose: To provide employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.
 - 35.03.2 Scope of Services: This program shall allow employee participation in all adult fitness and sports related activities offered by the Recreation and Community Services Department. Employees shall be granted use of all sports facilities operated and/or maintained by the Recreation and Community Services Department at the Milpitas Sports Center.
 - 35.03.3 Cost: Programs shall be offered at no cost to employees. Spouses shall be required to pay full registration and non-resident fees if applicable. Each non-employee participant in an organized team activity shall be required to pay a

fee equal to the team registration fee divided by the number of participants. The City agrees to waive fees for use of City parks by employees for softball team practice, except for costs if field lights are used.

35.03.4 Restrictions:

- (a) Each employee shall be required to complete a registration form, medical history card, and a contract and/or a participant waiver form limiting the City's liability during the employee's participation in a particular program or activity.
- (b) Organized adult athletic programs and leagues, such as softball or basketball, require that employees register in advance. Employees choosing to participate in any of the drop-in programs shall either be issued a pass (for programs which utilize passes) or use their employee ID card (which is issued to all employees at the time of initial appointment) for admission purposes.
- (c) Employees shall not be afforded preferential treatment in instances where a program or activity has already reached its maximum enrollment and shall be added to an established waiting list as appropriate.
- (d) Participation in program requiring advanced registration shall follow the same time schedule as those established by the Department for local residents.
- (e) No limit shall be placed on the number of programs or activities in which an employee may participate except that the activity must be within the scope of services offered by the Recreation and Community Services Department.
- (f) Participation in the program is voluntary and must not conflict with normal work schedules and shall take place during off-duty periods.

35.04.5 These items are not meant to be an all-inclusive list of provisions and restrictions that shall otherwise need to be applied to this program, as it is likely that instances will arise that will require further adjustments. This program shall be evaluated annually with respect to its overall effectiveness and possible application to other Recreation Services programs outside of those offered at the Milpitas Sports Center.

SECTION 36.00 - MISCELLANEOUS

36.01 When available, the City shall furnish vehicles from the City's car pool to conduct official City business. In the event a pool car is unavailable, the employee shall use the employee's own vehicle on a temporary basis.

- (a) An employee shall receive authorization from their Department Head or their designee prior to using the employee's own vehicle.
- (b) Temporary basis shall be defined as no more than five (5) consecutive working days unless otherwise agreed to by the employee. Employees who use their car on a temporary basis shall be reimbursed by the City at the rate established by the IRS.

- (c) Any employee who drives their own vehicle on official City business must have a valid California driver's license and proof of valid insurance.
- 36.02 The City recognizes that air-conditioned City-owned/leased vehicles can contribute to a comfortable and productive working environment. When ordering new vehicles, the City intends within reason to order air-conditioning in said vehicles when said equipment is offered by the manufacturer as an option.
- 36.03 Experimentation, Working Hours - Any experimentation with hours of employment or other related criteria shall be subject to meeting and conferring.
- 36.04 Replacement of Personal Articles - The City shall replace, within reason, personal articles damaged or stolen during performance of duty upon recommendation of the individual's immediate supervisor and Department Head, and approval of the City Manager. The prior condition of the article, precautions taken to protect the article, and the exercise of proper judgment of wearing or using an expensive article on the job that has certain hazards connected with it shall be considered in determining the amount of replacement. An employee shall obtain approval from his/her supervisor to bring in and use personal articles in the line of work.
- 36.05 Seniority - The City agrees to recognize and consider seniority as a factor in approving requests for vacation leave, work schedules, work assignments, and lateral transfers, when all other factors for employees are equal. The needs of the City, however, shall also be considered, and may in some instances be the determining factor for approving such requests. If seniority is not the deciding factor, an employee not selected may within 10 days of the decision make a request in writing/email to the Human Resources Director for a meeting to discuss.
- 36.06 The City agrees to provide sick and vacation leave balances on employee's biweekly pay stubs.
- 36.07 Employees assigned as pesticide applicators shall be able to use required respirator equipment safely.
- 36.08 Copying Charges: The City agrees to waive copying charges for Association business that fall below \$10.00 per month providing that:
 - (a) the Association shall not use City copying facilities or supplies to promote positions or causes which could be inflammatory or cause adverse reactions against the City;
 - (b) if the copying charge for any one month exceeds \$10.00, then the full amount shall be payable to the Accounting Office within 30 days of receipt of statement;
 - (c) the City shall have the right to withdraw this privilege for non-compliance with 1 and 2 above.
- 36.09 Special Equipment Operation: A field maintenance employee who is assigned to operate the ten- wheel dump truck or the hydraulic vacuum line cleaning truck shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding.

- 36.10 The Utilities Camera Truck (CCTV) and Sewer Truck will be operated by employees holding the classification of Equipment Maintenance Worker II or Equipment Maintenance Worker III.
- 36.11 The City shall provide for commercial drivers to obtain the required California Department of Motor Vehicles (DMV) medical examination through the City's health care provider. Employees who choose to obtain a DMV medical through their personal doctor are eligible for reimbursement up to \$125 per employee per fiscal year towards the medical examination. Employees must submit receipts and Evidence of Benefit (EOB) coverage sheets to be eligible for reimbursement.
- 36.12 All employees shall be permitted release time to vote in public elections as provided for in Election Code 14000.
- 36.13 The City and MEA are aware that department heads and/or their designees do periodically promulgate SOPS. The City acknowledges that when the effect of any such SOP is a change regarding matters within the scope of representation, the SOP implementation shall be undertaken in accord with the Meyers-Milias-Brown-Act.

SECTION 37.00 - NO LABOR ACTION

- 37.01 Neither the Association nor its agents or any employee, for any reason, shall authorize, institute, aid, condone, or engage in a work stoppage, slowdown, strike, sick-out, or any other interference with the work and statutory functions or obligations of the City while this Memorandum of Understanding is in effect. While this Memorandum is in effect, neither the City nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Memorandum.

SECTION 38.00 - FMLA

- 38.01 The City and MEA / Local 792 agree to meet and confer to the extent required by law prior to implementation of any changes to the City's Family and Medical Leave Act (FMLA) Policy.

SECTION 39.00 - SEASONAL WORKERS

- 39.01 Seasonal workers shall be limited to nine hundred ninety-nine (999) hours of work per fiscal year. Seasonal workers shall be limited to the duties they may perform according to section. Seasonal workers may operate any class C vehicle that is not equipped for a special purpose. The only-power equipment they may operate is equipment in the 600 & 6000 series, with the exception of chain saws and augers.

SECTION 40.00 - RETIREE CONTRIBUTION FUND

- 40.01 Effective with the term of this MOU, the City shall contribute 1.11% of the bargaining unit's payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.
- 40.02 The City's commitment to the fund will be determined as of the last full pay period of June of each year. At that time, the benefit figure will be recalculated. By approximately mid-August, the computed amount will be contributed to the MILPITAS EMPLOYEES TRUST fund.

- 40.04 This agreement does not guarantee or commit future City funding for retiree or retiree dependent health insurance premiums.

SECTION 41.00 - INCENTIVE PAY

41.01 Professional Certification Incentive Program

Employees shall be eligible for the Professional Certification Incentive Program when possessing an authorized license or certificate that reflects their achievement in attaining certification for professional excellence and experience as follows:

41.01.01 Qualifying License/Certification

The professional certificate or license must be of the highest measure and meet the following criteria:

- (a) The professional license or certification must be issued by either the State of California or a nationally recognized professional organization that administers a nationwide competency examination recognized by the City as a standard of excellence and professional competency.
- (b) The license or professional certification shall enhance the employee's ability to do their job and be over and above the basic job qualifications required for the position held.
- (c) The license or certification must be current and not expired.
- (d) All licenses or certifications must be evaluated and approved by the Public Works Director before they may be considered for this program. Decisions by the Public Works Director regarding eligibility are final.

41.01.02 Conditions and Exceptions

- (a) Employees possessing a license or certificate that meets the criteria established above, and that has been authorized by Public Works Director must submit a transmittal along with proof of license or certification.
- (b) In addition to proof of license or certification, an employee must maintain their certificate consistent with the certifying organization's criteria.
- (c) The qualified period for additional compensation under the Professional Certification Incentive Program is determined annually and is based on the month in which the license or certification is received. Once eligible, qualified employees will receive the incentive pay on the first pay period following the date that they were granted the license or certification.

41.01.03 Compensation

Incentive Pay shall be paid at a four percent (4%) base salary increase. At no time will an employee receive additional compensation for holding more than one qualifying license or certification.

41.02 Additional Pay Incentive

For the period of this Memorandum of Understanding, employees will be entitled to an additional 4% incentive pay if they hold the appropriate license or certificate listed under section 41.02.01 below. Employees are not eligible for the "Additional Pay Incentive" when the license or certification is required in the employee's existing job classification or if the license or certification is used to qualify for incentive pay under section 41.10 of this Memorandum of Understanding.

41.02.01 Grade D2 or higher Water Distribution Operation Certificate from California State Water Resources Board.

All employees receiving an Additional Pay Incentive under this section July 1, 2020, for obtaining and maintaining a California Water Distribution Operator certification under the terms and conditions of the 2017-2020 Memorandum of Understanding, are considered grandfathered in terms of the minimum certification requirement listed in section 41.02.01.

41.03 Longevity Pay

Employees shall be eligible for longevity pay as follows:

- (a) Effective the first full pay-period after the employee's 9th year of service, a longevity incentive of one-half percent (.5%) over base pay.
- (b) Effective the first full pay-period after the employee's 14th year of service, a longevity incentive of one-half percent (.5%) over base pay, (i.e. an additional one-half percent above the previous one-half percent (.5%) for a total of 1% over base pay).
- (c) Effective the first full-pay period after the employee's 19th year of service, a longevity incentive on one-half percent (.5%) over base pay, (i.e. an additional one-half percent (.5%) over the previous 1% for a total of 1.5% over base pay).

SECTION 42.00 – LIUNA NATIONAL (INDUSTRIAL) PENSION FUND

42.01 MEA members currently participate in the LIUNA National Pension Fund under terms set forth in former Section 42.00 of the Memorandum of Understanding approved by City Council on June 7, 2011, (hereafter "PRIOR MOU") and the Standard Form of Participation Agreement signed by the City and MEA in 2002. It is agreed between the Parties that this section 42.00 shall replace that earlier Section 42.00 part of the PRIOR MOU for now and in the future until such time as MEA, or its successor bargaining group or individual employee successors no longer participate in the LIUNA National Pension Fund and there exists no obligation on behalf of the City or MEA or its successor bargaining group or individual employee successors to contribute funds to the LIUNA National Pension Fund, or this Section 42.00 is rescinded or modified by mutual agreement.

42.02 It is further agreed between the Parties that all obligation to make payments to the LIUNA National Pension Fund (including the \$1.00 City contribution referred to in

Section 42.01 of the PRIOR MOU) for pension coverage for MEA employees shall be paid by MEA employees and the City will have the right to deduct the payment from MEA employee wages and make such payments as are due directly to the LIUNA National Pension Fund. This shall include any obligation to make payments to the LIUNA National Pension Fund as now exist or increased amounts which may be imposed in the future for rehabilitation plans imposed, plan restructuring, election for "preferred" benefits under the current Rehabilitation Plan or any other reason. It is further agreed that the City as employer shall elect, if such option is available, the "preferred" payment option, allowing MEA employees enhanced benefits, payment for which MEA employees will be responsible, as agreed and set forth above, but with the understanding that if payments are also due for past obligations under the "preferred" plan, then MEA employees shall be responsible for such amounts which the City may also deduct in reasonable payment amounts from MEA employee wages.

- 42.03 Employee liability for LIUNA pension payments as described in paragraph 42.02 above do not include any fund liability for the City's unilateral withdrawal from the LIUNA National Pension Fund, were that to occur in the future. Responsibility for such liability, were it to occur, shall remain subject to future negotiations between the Parties.
- 42.04 Deductions from MEA employee wages, as set forth in paragraph 42.02 above, shall be processed and deducted as pre-tax pension benefit payments from current and future MEA employees and will include a pro rata share of the indebtedness owed for MEA employees, including retirees, for the period from January 1, 2012, through the present time, until such time as that indebtedness is satisfied.
- 42.05 This section does not constitute a change in conditions from those set forth in the PRIOR MOU and any LOU incorporated therein, governing MEA and the City. To the extent this Section is inconsistent with the PRIOR MOU and any LOU incorporated therein, this Section shall constitute the intent and govern the rights of the Parties.
- 42.06 By inclusion of this section in this MOU, all parties agree that this matter has been fully discussed amongst the Parties and all meet and confer obligations under the law, including the Meyers-Milias Brown Act, have been fully complied with.

SECTION 43.00 - SAVINGS CLAUSE

- 43.01 If any section, subsection, sentence, or clause or phrase of this MOU is for any reason held illegal, invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Date: _____

City Representatives:

Richard C. Bolanos

Francine Hunt

Steven McHarris

Union Representatives:

Robert DeLong

Sunny Gallegos

Debbie Barbey

Pete Scrempo

Matt Garcia

LaDondi Ceasar

Angel Lopez Jr

Ryan Heron, UPEC Local 792

Steve Allen, UPEC Local 792

Chris Darker, UPEC Business Manager

Appendix A

Effective July 5, 2020 6% Salary Increase

Classification	Monthly			
Assistant Water Operator	\$	6,537.51	-	\$ 7,946.40
Assistant Water Operator - 40	\$	6,972.74	-	\$ 8,476.53
Equip Maint Worker I - 40	\$	6,378.88	-	\$ 7,751.50
Equip Maint Worker II - 40	\$	7,014.20	-	\$ 8,528.05
Equip Maint Worker III - 40	\$	7,902.51	-	\$ 9,608.54
Equipment Maint. Worker I	\$	5,943.18	-	\$ 7,224.01
Equipment Maint. Worker II	\$	6,537.51	-	\$ 7,946.40
Equipment Maint. Worker III	\$	7,366.00	-	\$ 8,953.37
Fleet Maint Worker I -40	\$	6,089.38	-	\$ 7,402.40
Fleet Maint Worker II - 40	\$	6,697.71	-	\$ 8,141.25
Fleet Maint Worker III -40	\$	7,703.57	-	\$ 9,363.92
Fleet Maintenance Worker I	\$	5,708.80	-	\$ 6,938.99
Fleet Maintenance Worker II	\$	6,279.71	-	\$ 7,632.86
Fleet Maintenance Worker III	\$	7,221.59	-	\$ 8,777.90
Maint Worker III - 40	\$	6,559.16	-	\$ 7,973.29
Maintenance Custodian I	\$	4,380.17	-	\$ 5,324.20
Maintenance Custodian I - 40	\$	4,672.25	-	\$ 5,679.09
Maintenance Custodian II	\$	4,818.29	-	\$ 5,856.60
Maintenance Custodian II - 40	\$	5,139.53	-	\$ 6,247.10
Maintenance Custodian III	\$	5,540.94	-	\$ 6,735.13
Maintenance Custodian III - 40	\$	5,910.70	-	\$ 7,183.56
Maintenance Worker I	\$	4,818.29	-	\$ 5,856.60
Maintenance Worker I-40	\$	5,186.38	-	\$ 6,303.50
Maintenance Worker II	\$	5,300.06	-	\$ 6,442.25
Maintenance Worker II-40	\$	5,703.64	-	\$ 6,932.86
Maintenance Worker III	\$	6,095.01	-	\$ 7,408.58
Senior Public Works Lead	\$	8,695.26	-	\$ 10,569.43
Water Meter Reader I	\$	4,818.13	-	\$ 5,856.56
Water Meter Reader I -40	\$	5,139.71	-	\$ 6,247.99
Water Meter Reader II	\$	5,300.06	-	\$ 6,442.25
Water Meter Reader II -40	\$	5,653.68	-	\$ 6,872.38
Water Systems Operator	\$	7,365.98	-	\$ 8,953.37
Water Systems Operator - 40	\$	7,856.14	-	\$ 9,550.64

Appendix A

Effective July 4, 2021 3% Salary Increase

Classification	Monthly		
Assistant Water Operator	\$ 6,733.63	-	\$ 8,184.79
Assistant Water Operator - 40	\$ 7,181.93	-	\$ 8,730.83
Equip Maint Worker I - 40	\$ 6,570.24	-	\$ 7,984.05
Equip Maint Worker II - 40	\$ 7,224.63	-	\$ 8,783.89
Equip Maint Worker III - 40	\$ 8,139.59	-	\$ 9,896.80
Equipment Maint. Worker I	\$ 6,121.47	-	\$ 7,440.73
Equipment Maint. Worker II	\$ 6,733.63	-	\$ 8,184.79
Equipment Maint. Worker III	\$ 7,586.98	-	\$ 9,221.98
Fleet Maint Worker I -40	\$ 6,272.06	-	\$ 7,624.48
Fleet Maint Worker II - 40	\$ 6,898.64	-	\$ 8,385.48
Fleet Maint Worker III -40	\$ 7,934.68	-	\$ 9,644.84
Fleet Maintenance Worker I	\$ 5,880.06	-	\$ 7,147.16
Fleet Maintenance Worker II	\$ 6,468.10	-	\$ 7,861.84
Fleet Maintenance Worker III	\$ 7,438.24	-	\$ 9,041.24
Maint Worker III - 40	\$ 6,755.94	-	\$ 8,212.49
Maintenance Custodian I	\$ 4,511.58	-	\$ 5,483.93
Maintenance Custodian I - 40	\$ 4,812.41	-	\$ 5,849.46
Maintenance Custodian II	\$ 4,962.84	-	\$ 6,032.29
Maintenance Custodian II - 40	\$ 5,293.71	-	\$ 6,434.51
Maintenance Custodian III	\$ 5,707.17	-	\$ 6,937.19
Maintenance Custodian III - 40	\$ 6,088.02	-	\$ 7,399.06
Maintenance Worker I	\$ 4,962.84	-	\$ 6,032.29
Maintenance Worker I-40	\$ 5,341.97	-	\$ 6,492.61
Maintenance Worker II	\$ 5,459.07	-	\$ 6,635.51
Maintenance Worker II-40	\$ 5,874.75	-	\$ 7,140.84
Maintenance Worker III	\$ 6,277.86	-	\$ 7,630.84
Senior Public Works Lead	\$ 8,956.12	-	\$ 10,886.51
Water Meter Reader I	\$ 4,962.68	-	\$ 6,032.26
Water Meter Reader I -40	\$ 5,293.90	-	\$ 6,435.43
Water Meter Reader II	\$ 5,459.07	-	\$ 6,635.51
Water Meter Reader II -40	\$ 5,823.29	-	\$ 7,078.55
Water Systems Operator	\$ 7,586.96	-	\$ 9,221.98
Water Systems Operator - 40	\$ 8,091.82	-	\$ 9,837.16

Appendix A

Effective July 3, 2022

3% Salary Increase

Classification	Monthly			
Assistant Water Operator	\$	6,935.64	-	\$ 8,430.33
Assistant Water Operator - 40	\$	7,397.38	-	\$ 8,992.75
Equip Maint Worker I - 40	\$	6,767.35	-	\$ 8,223.57
Equip Maint Worker II - 40	\$	7,441.36	-	\$ 9,047.41
Equip Maint Worker III - 40	\$	8,383.77	-	\$ 10,193.70
Equipment Maint. Worker I	\$	6,305.12	-	\$ 7,663.95
Equipment Maint. Worker II	\$	6,935.64	-	\$ 8,430.33
Equipment Maint. Worker III	\$	7,814.59	-	\$ 9,498.64
Fleet Maint Worker I -40	\$	6,460.23	-	\$ 7,853.21
Fleet Maint Worker II - 40	\$	7,105.60	-	\$ 8,637.05
Fleet Maint Worker III -40	\$	8,172.72	-	\$ 9,934.19
Fleet Maintenance Worker I	\$	6,056.47	-	\$ 7,361.58
Fleet Maintenance Worker II	\$	6,662.14	-	\$ 8,097.70
Fleet Maintenance Worker III	\$	7,661.38	-	\$ 9,312.48
Maint Worker III - 40	\$	6,958.62	-	\$ 8,458.86
Maintenance Custodian I	\$	4,646.93	-	\$ 5,648.44
Maintenance Custodian I - 40	\$	4,956.79	-	\$ 6,024.94
Maintenance Custodian II	\$	5,111.73	-	\$ 6,213.26
Maintenance Custodian II - 40	\$	5,452.52	-	\$ 6,627.55
Maintenance Custodian III	\$	5,878.38	-	\$ 7,145.30
Maintenance Custodian III - 40	\$	6,270.66	-	\$ 7,621.03
Maintenance Worker I	\$	5,111.73	-	\$ 6,213.26
Maintenance Worker I-40	\$	5,502.23	-	\$ 6,687.39
Maintenance Worker II	\$	5,622.84	-	\$ 6,834.58
Maintenance Worker II-40	\$	6,050.99	-	\$ 7,355.07
Maintenance Worker III	\$	6,466.20	-	\$ 7,859.77
Senior Public Works Lead	\$	9,224.81	-	\$ 11,213.11
Water Meter Reader I	\$	5,111.56	-	\$ 6,213.23
Water Meter Reader I -40	\$	5,452.71	-	\$ 6,628.49
Water Meter Reader II	\$	5,622.84	-	\$ 6,834.58
Water Meter Reader II -40	\$	5,997.99	-	\$ 7,290.91
Water Systems Operator	\$	7,814.57	-	\$ 9,498.64
Water Systems Operator - 40	\$	8,334.58	-	\$ 10,132.28

Appendix B

Special Equipment Operation

Pursuant to MEA MOU Article 36.09, a field maintenance employee who is assigned to operate the following equipment shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding. This list of equipment will be periodically reviewed and may be updated during Labor-Management Meetings with approval of both parties.

- Ten- wheel dump truck
- Ten-wheel hydraulic vacuum line cleaning truck

INDEX

ADVANCE NOTICE.....	7
ATTENDANCE	17
BENEFITS	32
BILINGUAL ASSIGNMENT	22
CITY RIGHTS	6
COMPASSIONATE LEAVE.....	27
DISCIPLINARY ACTION/APPEALS PROCEDURE	7
EMPLOYEE RIGHTS.....	4
FAMILY LEAVE.....	27
FMLA.....	37
GRIEVANCE PROCEDURE	13
HEALTH & SAFETY	34
HOLIDAYS	22
INCENTIVE PAY	38
LATERAL TRANSFERS	23
LAYOFF	12
LEAVE OF ABSENCE.....	29
LIGHT DUTY	29
LIUNA NATIONAL (INDUSTRIAL) PENSION FUND	39
MILITARY LEAVE	28
MISCELLANEOUS	35
NO DISCRIMINATION.....	3
NO LABOR ACTION	37
OTHER EMPLOYMENT	12
OVERTIME	20
PAY PLAN.....	18
PREAMBLE.....	3
RESIGNATION	12
RETIREE CONTRIBUTION FUND	37
RETIREMENT.....	30
SALARY	19
SAVINGS CLAUSE	40
SEASONAL WORKERS	37
STANDBY ASSIGNMENT	21
TEMPORARY APPOINTMENTS	17
TRAINING	33
UNIFORMS.....	33
VACATION LEAVE	25
WORK OUT OF CLASS	22
WORK SCHEDULES.....	16
WORKERS' COMPENSATION LEAVE.....	28
WORKING TITLES	16



Exhibit B

SIDE LETTER OF AGREEMENT

This Side Letter of Agreement is entered into by and between the City of Milpitas (“City”) and the Milpitas City Employees Association (“MEA”). Having completed the meet and confer process for a successor Memorandum of Understanding (“MOU”), the City and MEA agree to the following terms and conditions outside of the MOU:

1. During the term of the 2020-2023 MOU, the Public Works Department reserves the right to develop and present to MEA an employee cross-training program. Implementation of the cross-training program will be subject to the statutory meet and confer process.
2. During the term of the MOU, and as contemplated by section 32.03 of the MOU, the City and MEA will meet and confer over the addition of “constructive receipt” language to section 23 of the MOU. MEA’s obligation to meet and confer over constructive receipt language is conditioned on the City reaching agreement with the Mid-Con and Pro-Tech bargaining units to also meet and confer during the term of the parties’ respective labor agreement over the inclusion of constructive receipt language.
3. Conditioned on the execution of this Side Letter by the City and MEA, section 23.09(b) of the MOU is revised to provide that requests for the cash out of vacation time must be submitted to Finance for payment in September by August 31 or December by November 30 of each year.

For the City of Milpitas:

Francine Hunt
Employee Relations Officer

Date

Steven McHarris
City Manager

Date



CITY OF MILPITAS

Phone (408) 586-3090
Fax (408) 586-3092

For the Union:

Ryan Heron, MEA Representative
LIUNA/UPEC

Date

Robert DeLong
President, MEA

Date

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Accountant	500	2101	A	45.15	3,611.94	7,825.87	93,910.44
5	Accountant	500	2101	B	47.41	3,792.51	8,217.11	98,605.26
5	Accountant	500	2101	C	49.77	3,981.38	8,626.32	103,515.88
5	Accountant	500	2101	D	52.27	4,181.38	9,059.66	108,715.88
5	Accountant	500	2101	E	54.87	4,389.69	9,511.00	114,131.94
5	Accounting Technician I	513	6104	A	29.40	2,352.28	5,096.61	61,159.28
5	Accounting Technician I	513	6104	B	30.87	2,469.92	5,351.49	64,217.92
5	Accounting Technician I	513	6104	C	32.42	2,593.42	5,619.08	67,428.92
5	Accounting Technician I	513	6104	D	34.04	2,723.09	5,900.03	70,800.34
5	Accounting Technician I	513	6104	E	35.74	2,859.24	6,195.02	74,340.24
5	Accounting Technician II	514	6105	A	32.34	2,587.50	5,606.25	67,275.00
5	Accounting Technician II	514	6105	B	33.96	2,716.91	5,886.64	70,639.66
5	Accounting Technician II	514	6105	C	35.66	2,852.76	6,180.98	74,171.76
5	Accounting Technician II	514	6105	D	37.44	2,995.43	6,490.10	77,881.18
5	Accounting Technician II	514	6105	E	39.31	3,145.13	6,814.45	81,773.38
8	Administrative Analyst I	801	2102	A	40.39	3,231.27	7,001.09	84,013.02
8	Administrative Analyst I	801	2102	B	-	-	-	-
8	Administrative Analyst I	801	2102	C	-	-	-	-
8	Administrative Analyst I	801	2102	D	-	-	-	-
8	Administrative Analyst I	801	2102	E	53.17	4,253.76	9,216.48	110,597.76
8	Administrative Analyst II	802	2103	A	44.61	3,568.56	7,731.88	92,782.56
8	Administrative Analyst II	802	2103	B	-	-	-	-
8	Administrative Analyst II	802	2103	C	-	-	-	-
8	Administrative Analyst II	802	2103	D	-	-	-	-
8	Administrative Analyst II	802	2103	E	58.71	4,697.05	10,176.94	122,123.30
8	Administrative Assistant	828	6111	A	38.53	3,082.72	6,679.23	80,150.72
8	Administrative Assistant	828	6111	B	40.46	3,236.85	7,013.17	84,158.10
8	Administrative Assistant	828	6111	C	42.48	3,398.72	7,363.89	88,366.72
8	Administrative Assistant	828	6111	D	44.61	3,568.63	7,732.03	92,784.38
8	Administrative Assistant	828	6111	E	46.84	3,747.05	8,118.61	97,423.30

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
7	Adult Crossing Guard	725	8401	A	15.40	1,232.00	2,669.33	32,032.00
7	Adult Crossing Guard	725	8401	B	-	-	-	-
7	Adult Crossing Guard	725	8401	C	-	-	-	-
7	Adult Crossing Guard	725	8401	D	-	-	-	-
7	Adult Crossing Guard	725	8401	E	18.46	1,476.80	3,199.73	38,396.80
7	Adult Crossing Guard Superviso	720	8402	A	17.71	1,416.80	3,069.73	36,836.80
7	Adult Crossing Guard Superviso	720	8402	B	-	-	-	-
7	Adult Crossing Guard Superviso	720	8402	C	-	-	-	-
7	Adult Crossing Guard Superviso	720	8402	D	-	-	-	-
7	Adult Crossing Guard Superviso	720	8402	E	21.21	1,696.80	3,676.40	44,116.80
6	Assistant Chief of Police	649	1405	A	99.42	7,953.39	17,232.35	206,788.14
6	Assistant Chief of Police	649	1405	B	-	-	-	-
6	Assistant Chief of Police	649	1405	C	-	-	-	-
6	Assistant Chief of Police	649	1405	D	-	-	-	-
6	Assistant Chief of Police	649	1405	E	139.18	11,134.75	24,125.29	289,503.50
6	Assistant City Engineer	639	1205	A	71.03	5,682.77	12,312.67	147,752.02
6	Assistant City Engineer	639	1205	B	-	-	-	-
6	Assistant City Engineer	639	1205	C	-	-	-	-
6	Assistant City Engineer	639	1205	D	-	-	-	-
6	Assistant City Engineer	639	1205	E	99.45	7,955.88	17,237.74	206,852.88
6	Assistant City Manager	666	1104	A	94.63	7,570.49	16,402.73	196,832.74
6	Assistant City Manager	666	1104	B	-	-	-	-
6	Assistant City Manager	666	1104	C	-	-	-	-
6	Assistant City Manager	666	1104	D	-	-	-	-
6	Assistant City Manager	666	1104	E	132.48	10,598.70	22,963.85	275,566.20
5	Assistant Civil Engineer	502	2201	A	48.92	3,913.48	8,479.21	101,750.48
5	Assistant Civil Engineer	502	2201	B	51.36	4,109.15	8,903.16	106,837.90
5	Assistant Civil Engineer	502	2201	C	53.93	4,314.59	9,348.28	112,179.34
5	Assistant Civil Engineer	502	2201	D	56.63	4,530.35	9,815.76	117,789.10
5	Assistant Civil Engineer	502	2201	E	59.46	4,756.89	10,306.60	123,679.14

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Assistant Director of Finance	669	1109	A	68.10	5,448.11	11,804.24	141,650.86
6	Assistant Director of Finance	669	1109	B	-	-	-	-
6	Assistant Director of Finance	669	1109	C	-	-	-	-
6	Assistant Director of Finance	669	1109	D	-	-	-	-
6	Assistant Director of Finance	669	1109	E	95.34	7,627.54	16,526.34	198,316.04
6	Assistant Fire Marshal	632	2501	A	78.14	6,251.40	13,544.70	162,536.40
6	Assistant Fire Marshal	632	2501	B	-	-	-	-
6	Assistant Fire Marshal	632	2501	C	-	-	-	-
6	Assistant Fire Marshal	632	2501	D	-	-	-	-
6	Assistant Fire Marshal	632	2501	E	109.40	8,751.98	18,962.62	227,551.48
5	Assistant Planner	503	2801	A	46.91	3,752.51	8,130.44	97,565.26
5	Assistant Planner	503	2801	B	49.25	3,940.23	8,537.16	102,445.98
5	Assistant Planner	503	2801	C	51.71	4,136.53	8,962.48	107,549.78
5	Assistant Planner	503	2801	D	54.29	4,343.31	9,410.51	112,926.06
5	Assistant Planner	503	2801	E	57.01	4,560.57	9,881.23	118,574.82
7	Assistant Pool Manager	709	5609	A	17.45	1,396.00	3,024.67	36,296.00
7	Assistant Pool Manager	709	5609	B	-	-	-	-
7	Assistant Pool Manager	709	5609	C	-	-	-	-
7	Assistant Pool Manager	709	5609	D	-	-	-	-
7	Assistant Pool Manager	709	5609	E	24.44	1,955.20	4,236.27	50,835.20
2**	Assistant Water Operator	221	7212	A	40.23	3,017.31	6,537.51	78,450.09
2**	Assistant Water Operator	221	7212	B	42.24	3,168.18	6,864.39	82,372.71
2**	Assistant Water Operator	221	7212	C	44.35	3,326.59	7,207.61	86,491.27
2**	Assistant Water Operator	221	7212	D	46.58	3,492.90	7,567.95	90,815.44
2**	Assistant Water Operator	221	7212	E	48.90	3,667.57	7,946.40	95,356.77
2**	Assistant Water Operator - 40	226	8611	A	40.23	3,218.19	6,972.74	83,672.99
2**	Assistant Water Operator - 40	226	8611	B	42.24	3,379.43	7,322.10	87,865.14
2**	Assistant Water Operator - 40	226	8611	C	44.35	3,548.07	7,687.49	92,249.93
2**	Assistant Water Operator - 40	226	8611	D	46.58	3,725.98	8,072.97	96,875.60
2**	Assistant Water Operator - 40	226	8611	E	48.90	3,912.25	8,476.53	101,718.45

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Associate Civil Engineer	504	2202	A	56.26	4,500.48	9,751.04	117,012.48
5	Associate Civil Engineer	504	2202	B	59.07	4,725.53	10,238.65	122,863.78
5	Associate Civil Engineer	504	2202	C	62.02	4,961.82	10,750.61	129,007.32
5	Associate Civil Engineer	504	2202	D	65.12	5,209.90	11,288.12	135,457.40
5	Associate Civil Engineer	504	2202	E	68.38	5,470.42	11,852.58	142,230.92
5	Associate Planner	505	2802	A	53.93	4,314.71	9,348.54	112,182.46
5	Associate Planner	505	2802	B	56.64	4,531.02	9,817.21	117,806.52
5	Associate Planner	505	2802	C	59.47	4,757.81	10,308.59	123,703.06
5	Associate Planner	505	2802	D	62.44	4,995.08	10,822.67	129,872.08
5	Associate Planner	505	2802	E	65.56	5,244.74	11,363.60	136,363.24
8	Budget Manager	839	1115	A	58.88	4,710.20	10,205.43	122,465.20
8	Budget Manager	839	1115	B	-	-	-	-
8	Budget Manager	839	1115	C	-	-	-	-
8	Budget Manager	839	1115	D	-	-	-	-
8	Budget Manager	839	1115	E	77.50	6,200.00	13,433.33	161,200.00
6	Building & Housing Director	658	1802	A	82.30	6,584.13	14,265.62	171,187.38
6	Building & Housing Director	658	1802	B	-	-	-	-
6	Building & Housing Director	658	1802	C	-	-	-	-
6	Building & Housing Director	658	1802	D	-	-	-	-
6	Building & Housing Director	658	1802	E	115.22	9,217.78	19,971.86	239,662.28
8	Building Inspection Manager	848	3809	A	61.34	4,906.93	10,631.68	127,580.18
8	Building Inspection Manager	848	3809	B	-	-	-	-
8	Building Inspection Manager	848	3809	C	-	-	-	-
8	Building Inspection Manager	848	3809	D	-	-	-	-
8	Building Inspection Manager	848	3809	E	74.56	5,964.45	12,922.97	155,075.70
7	Building Inspector Apprentice	770	8610	A	28.00	2,240.00	4,853.33	58,240.00
7	Building Inspector Apprentice	770	8610	B	-	-	-	-
7	Building Inspector Apprentice	770	8610	C	-	-	-	-
7	Building Inspector Apprentice	770	8610	D	-	-	-	-
7	Building Inspector Apprentice	770	8610	E	35.00	2,800.00	6,066.67	72,800.00

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Building Official	676	1804	A	72.39	5,791.50	12,548.25	150,579.00
6	Building Official	676	1804	B	-	-	-	-
6	Building Official	676	1804	C	-	-	-	-
6	Building Official	676	1804	D	-	-	-	-
6	Building Official	676	1804	E	101.35	8,108.10	17,567.55	210,810.60
5	Building Permit Technician	508	5801	A	35.82	2,865.53	6,208.65	74,503.78
5	Building Permit Technician	508	5801	B	37.61	3,009.13	6,519.78	78,237.38
5	Building Permit Technician	508	5801	C	39.50	3,160.09	6,846.86	82,162.34
5	Building Permit Technician	508	5801	D	41.47	3,317.50	7,187.92	86,255.00
5	Building Permit Technician	508	5801	E	43.54	3,483.20	7,546.93	90,563.20
5	Building/NP Inspector	507	3801	A	47.48	3,798.11	8,229.24	98,750.86
5	Building/NP Inspector	507	3801	B	49.85	3,988.05	8,640.77	103,689.30
5	Building/NP Inspector	507	3801	C	52.34	4,187.41	9,072.72	108,872.66
5	Building/NP Inspector	507	3801	D	54.96	4,396.81	9,526.42	114,317.06
5	Building/NP Inspector	507	3801	E	57.71	4,616.62	10,002.68	120,032.12
8	Buyer	803	2106	A	40.02	3,201.98	6,937.62	83,251.48
8	Buyer	803	2106	B	-	-	-	-
8	Buyer	803	2106	C	-	-	-	-
8	Buyer	803	2106	D	-	-	-	-
8	Buyer	803	2106	E	52.69	4,214.80	9,132.07	109,584.80
5	Case Manager	544	5612	A	32.09	2,567.53	5,562.98	66,755.78
5	Case Manager	544	5612	B	-	-	-	-
5	Case Manager	544	5612	C	-	-	-	-
5	Case Manager	544	5612	D	-	-	-	-
5	Case Manager	544	5612	E	40.05	3,204.23	6,942.50	83,309.98
6	Chief Fire Enforcement Officer	656	1505	A	68.25	5,459.80	11,829.57	141,954.80
6	Chief Fire Enforcement Officer	656	1505	B	-	-	-	-
6	Chief Fire Enforcement Officer	656	1505	C	-	-	-	-
6	Chief Fire Enforcement Officer	656	1505	D	-	-	-	-
6	Chief Fire Enforcement Officer	656	1505	E	95.55	7,643.72	16,561.39	198,736.72

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Chief of Police	650	1402	A	104.39	8,350.82	18,093.44	217,121.32
6	Chief of Police	650	1402	B	-	-	-	-
6	Chief of Police	650	1402	C	-	-	-	-
6	Chief of Police	650	1402	D	-	-	-	-
6	Chief of Police	650	1402	E	146.14	11,691.17	25,330.87	303,970.42
6	CIP Manager	642	2211	A	62.54	5,003.05	10,839.94	130,079.30
6	CIP Manager	642	2211	B	-	-	-	-
6	CIP Manager	642	2211	C	-	-	-	-
6	CIP Manager	642	2211	D	-	-	-	-
6	CIP Manager	642	2211	E	87.56	7,004.82	15,177.11	182,125.32
6	City Clerk	605	1101	A	62.58	5,006.35	10,847.09	130,165.10
6	City Clerk	605	1101	B	-	-	-	-
6	City Clerk	605	1101	C	-	-	-	-
6	City Clerk	605	1101	D	-	-	-	-
6	City Clerk	605	1101	E	87.62	7,009.69	15,187.66	182,251.94
6	City Council	699	1107	A	104.35	417.40	904.37	10,852.40
6	City Council	699	1107	B	-	-	-	-
6	City Council	699	1107	C	-	-	-	-
6	City Council	699	1107	D	-	-	-	-
6	City Council	699	1107	E	130.47	521.88	1,130.74	13,568.88
6	City Manager	697	1102	A	160.75	12,860.28	27,863.94	334,367.28
6	City Manager	697	1102	B	-	-	-	-
6	City Manager	697	1102	C	-	-	-	-
6	City Manager	697	1102	D	-	-	-	-
6	City Manager	697	1102	E	160.75	12,860.28	27,863.94	334,367.28
5	Code Enforcement Officer	515	5804	A	41.51	3,320.95	7,195.39	86,344.70
5	Code Enforcement Officer	515	5804	B	43.59	3,487.05	7,555.28	90,663.30
5	Code Enforcement Officer	515	5804	C	45.78	3,662.15	7,934.66	95,215.90
5	Code Enforcement Officer	515	5804	D	48.07	3,845.24	8,331.35	99,976.24
5	Code Enforcement Officer	515	5804	E	50.47	4,037.37	8,747.64	104,971.62

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Comm Svc Engmt & Incl Admin	659	1121	A	64.58	5,166.00	11,193.00	134,316.00
6	Comm Svc Engmt & Incl Admin	659	1121	B	-	-	-	-
6	Comm Svc Engmt & Incl Admin	659	1121	C	-	-	-	-
6	Comm Svc Engmt & Incl Admin	659	1121	D	-	-	-	-
6	Comm Svc Engmt & Incl Admin	659	1121	E	90.41	7,232.40	15,670.20	188,042.40
4	Communications Dispatch Superv	456	6409	A	53.74	4,299.33	9,315.22	111,782.58
4	Communications Dispatch Superv	456	6409	B	56.43	4,514.29	9,780.96	117,371.54
4	Communications Dispatch Superv	456	6409	C	59.25	4,740.02	10,270.04	123,240.52
4	Communications Dispatch Superv	456	6409	D	62.21	4,977.02	10,783.54	129,402.52
4	Communications Dispatch Superv	456	6409	E	65.32	5,225.88	11,322.74	135,872.88
4	Communications Dispatcher	455	6408	A	46.53	3,722.52	8,065.46	96,785.52
4	Communications Dispatcher	455	6408	B	48.86	3,908.62	8,468.68	101,624.12
4	Communications Dispatcher	455	6408	C	51.30	4,104.04	8,892.09	106,705.04
4	Communications Dispatcher	455	6408	D	53.87	4,309.21	9,336.62	112,039.46
4	Communications Dispatcher	455	6408	E	56.56	4,524.68	9,803.47	117,641.68
5	Community Service Officer	551	5807	A	39.72	3,177.42	6,884.41	82,612.92
5	Community Service Officer	551	5807	B	41.70	3,336.29	7,228.63	86,743.54
5	Community Service Officer	551	5807	C	43.79	3,503.11	7,590.07	91,080.86
5	Community Service Officer	551	5807	D	45.98	3,678.25	7,969.54	95,634.50
5	Community Service Officer	551	5807	E	48.28	3,862.19	8,368.08	100,416.94
8	Confidential Fiscal Asst II	805	6121	A	32.93	2,634.13	5,707.28	68,487.38
8	Confidential Fiscal Asst II	805	6121	B	34.57	2,765.81	5,992.59	71,911.06
8	Confidential Fiscal Asst II	805	6121	C	36.30	2,904.10	6,292.22	75,506.60
8	Confidential Fiscal Asst II	805	6121	D	38.12	3,049.30	6,606.82	79,281.80
8	Confidential Fiscal Asst II	805	6121	E	40.02	3,201.78	6,937.19	83,246.28
8	Crime Analyst	809	2105	A	48.35	3,868.13	8,380.95	100,571.38
8	Crime Analyst	809	2105	B	-	-	-	-
8	Crime Analyst	809	2105	C	-	-	-	-
8	Crime Analyst	809	2105	D	-	-	-	-
8	Crime Analyst	809	2105	E	63.65	5,091.65	11,031.91	132,382.90

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
8	Customer Services Supervisor	847	2127	A	46.89	3,750.82	8,126.78	97,521.32
8	Customer Services Supervisor	847	2127	B	-	-	-	-
8	Customer Services Supervisor	847	2127	C	-	-	-	-
8	Customer Services Supervisor	847	2127	D	-	-	-	-
8	Customer Services Supervisor	847	2127	E	61.71	4,936.91	10,696.64	128,359.66
8	Deputy City Clerk	835	6102	A	46.04	3,683.30	7,980.48	95,765.80
8	Deputy City Clerk	835	6102	B	-	-	-	-
8	Deputy City Clerk	835	6102	C	-	-	-	-
8	Deputy City Clerk	835	6102	D	-	-	-	-
8	Deputy City Clerk	835	6102	E	55.96	4,477.07	9,700.32	116,403.82
6	Deputy City Manager	672	1119	A	92.74	7,419.08	16,074.67	192,896.08
6	Deputy City Manager	672	1119	B	-	-	-	-
6	Deputy City Manager	672	1119	C	-	-	-	-
6	Deputy City Manager	672	1119	D	-	-	-	-
6	Deputy City Manager	672	1119	E	129.78	10,382.40	22,495.20	269,942.40
6	Deputy Fire Chief	633	1504	A	98.47	7,877.33	17,067.55	204,810.58
6	Deputy Fire Chief	633	1504	B	-	-	-	-
6	Deputy Fire Chief	633	1504	C	-	-	-	-
6	Deputy Fire Chief	633	1504	D	-	-	-	-
6	Deputy Fire Chief	633	1504	E	137.85	11,028.26	23,894.56	286,734.76
6	Deputy Public Works Director	654	1207	A	73.00	5,840.10	12,653.55	151,842.60
6	Deputy Public Works Director	654	1207	B	-	-	-	-
6	Deputy Public Works Director	654	1207	C	-	-	-	-
6	Deputy Public Works Director	654	1207	D	-	-	-	-
6	Deputy Public Works Director	654	1207	E	102.20	8,176.15	17,714.99	212,579.90
6	Dir of Recr & Community Svcs	655	1208	A	80.60	6,447.78	13,970.19	167,642.28
6	Dir of Recr & Community Svcs	655	1208	B	-	-	-	-
6	Dir of Recr & Community Svcs	655	1208	C	-	-	-	-
6	Dir of Recr & Community Svcs	655	1208	D	-	-	-	-
6	Dir of Recr & Community Svcs	655	1208	E	113.06	9,044.49	19,596.40	235,156.74

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
8	Economic Development Coord	852	8623	A	50.81	4,064.56	8,806.55	105,678.56
8	Economic Development Coord	852	8623	B	-	-	-	-
8	Economic Development Coord	852	8623	C	-	-	-	-
8	Economic Development Coord	852	8623	D	-	-	-	-
8	Economic Development Coord	852	8623	E	63.00	5,040.00	10,920.00	131,040.00
6	Economic Development Director	653	1206	A	75.71	6,056.41	13,122.22	157,466.66
6	Economic Development Director	653	1206	B	-	-	-	-
6	Economic Development Director	653	1206	C	-	-	-	-
6	Economic Development Director	653	1206	D	-	-	-	-
6	Economic Development Director	653	1206	E	105.99	8,478.95	18,371.06	220,452.70
6	Economic Development Manager	611	1203	A	60.91	4,872.90	10,557.95	126,695.40
6	Economic Development Manager	611	1203	B	-	-	-	-
6	Economic Development Manager	611	1203	C	-	-	-	-
6	Economic Development Manager	611	1203	D	-	-	-	-
6	Economic Development Manager	611	1203	E	79.22	6,337.69	13,731.66	164,779.94
8	Economic Development Spec	850	8606	A	48.38	3,870.68	8,386.47	100,637.68
8	Economic Development Spec	850	8606	B	-	-	-	-
8	Economic Development Spec	850	8606	C	-	-	-	-
8	Economic Development Spec	850	8606	D	-	-	-	-
8	Economic Development Spec	850	8606	E	58.40	4,672.29	10,123.30	121,479.54
5	Electrical/Building Inspector	511	3802	A	49.85	3,988.04	8,640.75	103,689.04
5	Electrical/Building Inspector	511	3802	B	52.34	4,187.41	9,072.72	108,872.66
5	Electrical/Building Inspector	511	3802	C	54.96	4,396.80	9,526.40	114,316.80
5	Electrical/Building Inspector	511	3802	D	57.71	4,616.62	10,002.68	120,032.12
5	Electrical/Building Inspector	511	3802	E	60.59	4,847.46	10,502.83	126,033.96
8	Emergency Services Coordinator	836	2502	A	53.46	4,276.47	9,265.68	111,188.22
8	Emergency Services Coordinator	836	2502	B	-	-	-	-
8	Emergency Services Coordinator	836	2502	C	-	-	-	-
8	Emergency Services Coordinator	836	2502	D	-	-	-	-
8	Emergency Services Coordinator	836	2502	E	70.36	5,628.41	12,194.89	146,338.66

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Employee Relations Officer	677	1209	A	62.73	5,018.17	10,872.70	130,472.42
6	Employee Relations Officer	677	1209	B	-	-	-	-
6	Employee Relations Officer	677	1209	C	-	-	-	-
6	Employee Relations Officer	677	1209	D	-	-	-	-
6	Employee Relations Officer	677	1209	E	87.82	7,025.42	15,221.74	182,660.92
5	Engineering Aide	512	3201	A	38.90	3,112.21	6,743.12	80,917.46
5	Engineering Aide	512	3201	B	40.85	3,267.83	7,080.30	84,963.58
5	Engineering Aide	512	3201	C	42.89	3,431.21	7,434.29	89,211.46
5	Engineering Aide	512	3201	D	45.03	3,602.75	7,805.96	93,671.50
5	Engineering Aide	512	3201	E	47.29	3,782.89	8,196.26	98,355.14
6	Engineering Director/City Eng	606	1201	A	82.30	6,584.13	14,265.62	171,187.38
6	Engineering Director/City Eng	606	1201	B	-	-	-	-
6	Engineering Director/City Eng	606	1201	C	-	-	-	-
6	Engineering Director/City Eng	606	1201	D	-	-	-	-
6	Engineering Director/City Eng	606	1201	E	115.22	9,217.78	19,971.86	239,662.28
5	Engineering Permit Technician	540	2210	A	35.02	2,801.53	6,069.98	72,839.78
5	Engineering Permit Technician	540	2210	B	36.77	2,941.62	6,373.51	76,482.12
5	Engineering Permit Technician	540	2210	C	38.61	3,088.69	6,692.16	80,305.94
5	Engineering Permit Technician	540	2210	D	40.54	3,243.09	7,026.69	84,320.34
5	Engineering Permit Technician	540	2210	E	42.57	3,405.26	7,378.06	88,536.76
1	Entry Firefighter	112	4510	A	34.67	3,883.39	8,414.01	100,968.14
1	Entry Firefighter	112	4510	B	36.06	4,038.73	8,750.58	105,006.98
1	Entry Firefighter	112	4510	C	-	-	-	-
1	Entry Firefighter	112	4510	D	-	-	-	-
1	Entry Firefighter	112	4510	E	-	-	-	-
1	Entry Firefighter/Paramedic	113	4511	A	38.83	4,349.39	9,423.68	113,084.14
1	Entry Firefighter/Paramedic	113	4511	B	40.39	4,523.39	9,800.68	117,608.14
1	Entry Firefighter/Paramedic	113	4511	C	-	-	-	-
1	Entry Firefighter/Paramedic	113	4511	D	-	-	-	-
1	Entry Firefighter/Paramedic	113	4511	E	-	-	-	-

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
1	Entry Level Fire Inspector	114	3508	A	42.32	3,385.74	7,335.77	88,029.24
1	Entry Level Fire Inspector	114	3508	B	44.44	3,555.03	7,702.56	92,430.78
1	Entry Level Fire Inspector	114	3508	C	46.66	3,732.79	8,087.71	97,052.54
1	Entry Level Fire Inspector	114	3508	D	48.99	3,919.43	8,492.10	101,905.18
1	Entry Level Fire Inspector	114	3508	E	50.97	4,077.95	8,835.56	106,026.70
8	Envir & Regulatory Comply Spec	851	8624	A	51.64	4,131.05	8,950.61	107,407.30
8	Envir & Regulatory Comply Spec	851	8624	B	-	-	-	-
8	Envir & Regulatory Comply Spec	851	8624	C	-	-	-	-
8	Envir & Regulatory Comply Spec	851	8624	D	-	-	-	-
8	Envir & Regulatory Comply Spec	851	8624	E	67.97	5,437.65	11,781.58	141,378.90
5	Environmental Inspector	553	2213	A	49.85	3,988.04	8,640.75	103,689.04
5	Environmental Inspector	553	2213	B	52.34	4,187.44	9,072.79	108,873.44
5	Environmental Inspector	553	2213	C	54.96	4,396.82	9,526.44	114,317.32
5	Environmental Inspector	553	2213	D	57.71	4,616.65	10,002.74	120,032.90
5	Environmental Inspector	553	2213	E	60.59	4,847.46	10,502.83	126,033.96
2**	Equip Maint Worker I - 40	227	8612	A	36.80	2,944.10	6,378.88	76,546.52
2**	Equip Maint Worker I - 40	227	8612	B	38.63	3,089.82	6,694.60	80,335.20
2**	Equip Maint Worker I - 40	227	8612	C	40.56	3,244.58	7,029.91	84,358.96
2**	Equip Maint Worker I - 40	227	8612	D	42.59	3,407.48	7,382.87	88,594.38
2**	Equip Maint Worker I - 40	227	8612	E	44.72	3,577.62	7,751.50	93,018.03
2**	Equip Maint Worker II - 40	228	8613	A	40.47	3,237.32	7,014.20	84,170.44
2**	Equip Maint Worker II - 40	228	8613	B	42.50	3,399.35	7,365.25	88,382.99
2**	Equip Maint Worker II - 40	228	8613	C	44.62	3,569.48	7,733.87	92,806.37
2**	Equip Maint Worker II - 40	228	8613	D	46.86	3,748.67	8,122.11	97,465.39
2**	Equip Maint Worker II - 40	228	8613	E	49.21	3,936.02	8,528.05	102,336.62
2**	Equip Maint Worker III - 40	229	8614	A	45.59	3,647.31	7,902.51	94,830.10
2**	Equip Maint Worker III - 40	229	8614	B	47.88	3,830.13	8,298.61	99,583.37
2**	Equip Maint Worker III - 40	229	8614	C	50.28	4,022.01	8,714.36	104,572.29
2**	Equip Maint Worker III - 40	229	8614	D	52.79	4,222.93	9,149.69	109,796.28
2**	Equip Maint Worker III - 40	229	8614	E	55.44	4,434.71	9,608.54	115,302.50

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
2**	Equipment Maint. Worker I	200	7202	A	36.57	2,743.00	5,943.18	71,318.11
2**	Equipment Maint. Worker I	200	7202	B	38.40	2,880.16	6,240.35	74,884.10
2**	Equipment Maint. Worker I	200	7202	C	40.32	3,024.19	6,552.41	78,628.96
2**	Equipment Maint. Worker I	200	7202	D	42.34	3,175.40	6,880.04	82,560.39
2**	Equipment Maint. Worker I	200	7202	E	44.46	3,334.16	7,224.01	86,688.05
2**	Equipment Maint. Worker II	201	7203	A	40.23	3,017.31	6,537.51	78,450.09
2**	Equipment Maint. Worker II	201	7203	B	42.24	3,168.18	6,864.39	82,372.71
2**	Equipment Maint. Worker II	201	7203	C	44.35	3,326.59	7,207.61	86,491.27
2**	Equipment Maint. Worker II	201	7203	D	46.58	3,492.90	7,567.95	90,815.44
2**	Equipment Maint. Worker II	201	7203	E	48.90	3,667.57	7,946.40	95,356.77
2**	Equipment Maint. Worker III	202	7204	A	45.33	3,399.70	7,366.00	88,392.09
2**	Equipment Maint. Worker III	202	7204	B	47.59	3,569.62	7,734.18	92,810.23
2**	Equipment Maint. Worker III	202	7204	C	49.98	3,748.13	8,120.95	97,451.33
2**	Equipment Maint. Worker III	202	7204	D	52.47	3,935.53	8,526.97	102,323.67
2**	Equipment Maint. Worker III	202	7204	E	55.10	4,132.33	8,953.37	107,440.46
8	Executive Assistant	812	6117	A	42.38	3,390.50	7,346.08	88,153.00
8	Executive Assistant	812	6117	B	44.50	3,560.05	7,713.44	92,561.30
8	Executive Assistant	812	6117	C	46.73	3,738.05	8,099.11	97,189.30
8	Executive Assistant	812	6117	D	49.06	3,924.94	8,504.04	102,048.44
8	Executive Assistant	812	6117	E	51.52	4,121.20	8,929.27	107,151.20
6	Finance Director	627	1103	A	82.66	6,612.72	14,327.56	171,930.72
6	Finance Director	627	1103	B	-	-	-	-
6	Finance Director	627	1103	C	-	-	-	-
6	Finance Director	627	1103	D	-	-	-	-
6	Finance Director	627	1103	E	115.71	9,257.07	20,056.99	240,683.82
6	Finance Manager	647	1116	A	58.34	4,666.96	10,111.75	121,340.96
6	Finance Manager	647	1116	B	-	-	-	-
6	Finance Manager	647	1116	C	-	-	-	-
6	Finance Manager	647	1116	D	-	-	-	-
6	Finance Manager	647	1116	E	81.67	6,533.78	14,156.52	169,878.28

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Finance Technician	501	5101	A	35.58	2,846.40	6,167.20	74,006.40
5	Finance Technician	501	5101	B	37.36	2,988.68	6,475.47	77,705.68
5	Finance Technician	501	5101	C	39.23	3,138.13	6,799.28	81,591.38
5	Finance Technician	501	5101	D	41.19	3,295.01	7,139.19	85,670.26
5	Finance Technician	501	5101	E	43.25	3,459.76	7,496.15	89,953.76
8	Financial Analyst I	844	2125	A	37.71	3,017.11	6,537.07	78,444.86
8	Financial Analyst I	844	2125	B	-	-	-	-
8	Financial Analyst I	844	2125	C	-	-	-	-
8	Financial Analyst I	844	2125	D	-	-	-	-
8	Financial Analyst I	844	2125	E	49.64	3,971.40	8,604.70	103,256.40
8	Financial Analyst II	845	2126	A	41.65	3,332.14	7,219.64	86,635.64
8	Financial Analyst II	845	2126	B	-	-	-	-
8	Financial Analyst II	845	2126	C	-	-	-	-
8	Financial Analyst II	845	2126	D	-	-	-	-
8	Financial Analyst II	845	2126	E	54.83	4,386.11	9,503.24	114,038.86
1	Fire Battalion Chief	153	2508	A	52.44	5,873.58	12,726.09	152,713.08
1	Fire Battalion Chief	153	2508	B	-	-	-	-
1	Fire Battalion Chief	153	2508	C	-	-	-	-
1	Fire Battalion Chief	153	2508	D	-	-	-	-
1	Fire Battalion Chief	153	2508	E	73.42	8,223.01	17,816.52	213,798.26
1	Fire Battalion Chief - 40	154	2509	A	73.42	5,873.58	12,726.09	152,713.08
1	Fire Battalion Chief - 40	154	2509	B	-	-	-	-
1	Fire Battalion Chief - 40	154	2509	C	-	-	-	-
1	Fire Battalion Chief - 40	154	2509	D	-	-	-	-
1	Fire Battalion Chief - 40	154	2509	E	102.79	8,223.01	17,816.52	213,798.26
1	Fire Captain	100	2504	A	45.90	5,140.39	11,137.51	133,650.14
1	Fire Captain	100	2504	B	48.13	5,390.99	11,680.48	140,165.74
1	Fire Captain	100	2504	C	50.48	5,654.12	12,250.59	147,007.12
1	Fire Captain	100	2504	D	52.95	5,930.37	12,849.14	154,189.62
1	Fire Captain	100	2504	E	55.54	6,220.47	13,477.68	161,732.22

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
1	Fire Captain - 40	108	2507	A	64.25	5,140.39	11,137.51	133,650.14
1	Fire Captain - 40	108	2507	B	67.39	5,390.99	11,680.48	140,165.74
1	Fire Captain - 40	108	2507	C	70.68	5,654.12	12,250.59	147,007.12
1	Fire Captain - 40	108	2507	D	74.13	5,930.37	12,849.14	154,189.62
1	Fire Captain - 40	108	2507	E	77.76	6,220.47	13,477.68	161,732.22
6	Fire Chief	630	1502	A	108.56	8,684.85	18,817.17	225,806.10
6	Fire Chief	630	1502	B	-	-	-	-
6	Fire Chief	630	1502	C	-	-	-	-
6	Fire Chief	630	1502	D	-	-	-	-
6	Fire Chief	630	1502	E	151.99	12,158.82	26,344.11	316,129.32
1	Fire Engineer	102	4501	A	40.47	4,532.80	9,821.07	117,852.80
1	Fire Engineer	102	4501	B	42.44	4,753.02	10,298.21	123,578.52
1	Fire Engineer	102	4501	C	44.50	4,984.22	10,799.14	129,589.72
1	Fire Engineer	102	4501	D	46.67	5,226.98	11,325.12	135,901.48
1	Fire Engineer	102	4501	E	48.95	5,481.88	11,877.41	142,528.88
1	Fire Engineer/Paramedic	151	4505	A	45.19	5,061.24	10,966.02	131,592.24
1	Fire Engineer/Paramedic	151	4505	B	47.39	5,307.92	11,500.49	138,005.92
1	Fire Engineer/Paramedic	151	4505	C	49.70	5,566.86	12,061.53	144,738.36
1	Fire Engineer/Paramedic	151	4505	D	52.13	5,838.72	12,650.56	151,806.72
1	Fire Engineer/Paramedic	151	4505	E	54.68	6,124.23	13,269.17	159,229.98
1	Fire Prevention Inspector	106	3501	A	64.88	5,190.53	11,246.15	134,953.78
1	Fire Prevention Inspector	106	3501	B	68.05	5,443.63	11,794.53	141,534.38
1	Fire Prevention Inspector	106	3501	C	71.37	5,709.37	12,370.30	148,443.62
1	Fire Prevention Inspector	106	3501	D	74.85	5,988.39	12,974.85	155,698.14
1	Fire Prevention Inspector	106	3501	E	78.52	6,281.37	13,609.64	163,315.62
1	Fire Protection Engineer	110	3507	A	64.88	5,190.53	11,246.15	134,953.78
1	Fire Protection Engineer	110	3507	B	68.05	5,443.63	11,794.53	141,534.38
1	Fire Protection Engineer	110	3507	C	71.37	5,709.37	12,370.30	148,443.62
1	Fire Protection Engineer	110	3507	D	74.85	5,988.39	12,974.85	155,698.14
1	Fire Protection Engineer	110	3507	E	78.52	6,281.37	13,609.64	163,315.62

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
1	Firefighter	103	4502	A	37.82	4,236.39	9,178.85	110,146.14
1	Firefighter	103	4502	B	39.66	4,441.71	9,623.70	115,484.46
1	Firefighter	103	4502	C	41.58	4,657.36	10,090.95	121,091.36
1	Firefighter	103	4502	D	43.61	4,883.81	10,581.59	126,979.06
1	Firefighter	103	4502	E	45.73	5,121.48	11,096.54	133,158.48
1	Firefighter Trainee	109	4509	A	46.68	3,734.04	8,090.42	97,085.04
1	Firefighter Trainee	109	4509	B	46.68	3,734.04	8,090.42	97,085.04
1	Firefighter Trainee	109	4509	C	46.68	3,734.04	8,090.42	97,085.04
1	Firefighter Trainee	109	4509	D	46.68	3,734.04	8,090.42	97,085.04
1	Firefighter Trainee	109	4509	E	46.68	3,734.04	8,090.42	97,085.04
1	Firefighter/Paramedic	104	4503	A	42.23	4,729.28	10,246.77	122,961.28
1	Firefighter/Paramedic	104	4503	B	44.28	4,959.20	10,744.93	128,939.20
1	Firefighter/Paramedic	104	4503	C	46.44	5,200.75	11,268.29	135,219.50
1	Firefighter/Paramedic	104	4503	D	48.70	5,454.30	11,817.65	141,811.80
1	Firefighter/Paramedic	104	4503	E	51.08	5,720.60	12,394.63	148,735.60
1	Firefighter/Paramedic Trainee	107	4504	A	37.34	4,182.11	9,061.24	108,734.86
1	Firefighter/Paramedic Trainee	107	4504	B	37.34	4,182.11	9,061.24	108,734.86
1	Firefighter/Paramedic Trainee	107	4504	C	37.34	4,182.11	9,061.24	108,734.86
1	Firefighter/Paramedic Trainee	107	4504	D	37.34	4,182.11	9,061.24	108,734.86
1	Firefighter/Paramedic Trainee	107	4504	E	37.34	4,182.11	9,061.24	108,734.86
7	Fitness Instructor	713	5620	A	35.00	2,800.00	6,066.67	72,800.00
7	Fitness Instructor	713	5620	B	-	-	-	-
7	Fitness Instructor	713	5620	C	-	-	-	-
7	Fitness Instructor	713	5620	D	-	-	-	-
7	Fitness Instructor	713	5620	E	75.00	6,000.00	13,000.00	156,000.00
2**	Fleet Maint Worker I -40	230	8615	A	35.13	2,810.48	6,089.38	73,072.58
2**	Fleet Maint Worker I -40	230	8615	B	36.89	2,951.33	6,394.55	76,734.48
2**	Fleet Maint Worker I -40	230	8615	C	38.73	3,098.66	6,713.75	80,565.05
2**	Fleet Maint Worker I -40	230	8615	D	40.67	3,253.41	7,049.04	84,588.53
2**	Fleet Maint Worker I -40	230	8615	E	42.71	3,416.50	7,402.40	88,828.91

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
2**	Fleet Maint Worker II - 40	231	8616	A	38.64	3,091.25	6,697.71	80,372.40
2**	Fleet Maint Worker II - 40	231	8616	B	40.58	3,245.99	7,032.97	84,395.61
2**	Fleet Maint Worker II - 40	231	8616	C	42.60	3,408.15	7,384.33	88,612.01
2**	Fleet Maint Worker II - 40	231	8616	D	44.73	3,578.66	7,753.75	93,045.04
2**	Fleet Maint Worker II - 40	231	8616	E	46.97	3,757.50	8,141.25	97,694.96
2**	Fleet Maint Worker III -40	232	8617	A	44.45	3,555.49	7,703.57	92,442.85
2**	Fleet Maint Worker III -40	232	8617	B	46.67	3,733.42	8,089.06	97,068.80
2**	Fleet Maint Worker III -40	232	8617	C	48.99	3,919.66	8,492.59	101,911.09
2**	Fleet Maint Worker III -40	232	8617	D	51.44	4,115.16	8,916.19	106,994.26
2**	Fleet Maint Worker III -40	232	8617	E	54.02	4,321.81	9,363.92	112,367.08
2**	Fleet Maintenance Worker I	213	7207	A	35.13	2,634.83	5,708.80	68,505.62
2**	Fleet Maintenance Worker I	213	7207	B	36.89	2,766.54	5,994.16	71,929.95
2**	Fleet Maintenance Worker I	213	7207	C	38.73	2,904.90	6,293.95	75,527.35
2**	Fleet Maintenance Worker I	213	7207	D	40.67	3,050.09	6,608.52	79,302.25
2**	Fleet Maintenance Worker I	213	7207	E	42.70	3,202.61	6,938.99	83,267.85
2**	Fleet Maintenance Worker II	214	7208	A	38.65	2,898.33	6,279.71	75,356.48
2**	Fleet Maintenance Worker II	214	7208	B	40.58	3,043.20	6,593.59	79,123.11
2**	Fleet Maintenance Worker II	214	7208	C	42.60	3,195.40	6,923.37	83,080.45
2**	Fleet Maintenance Worker II	214	7208	D	44.73	3,355.17	7,269.52	87,234.29
2**	Fleet Maintenance Worker II	214	7208	E	46.97	3,522.86	7,632.86	91,594.28
2**	Fleet Maintenance Worker III	215	7209	A	44.45	3,333.04	7,221.59	86,659.11
2**	Fleet Maintenance Worker III	215	7209	B	46.66	3,499.67	7,582.63	90,991.54
2**	Fleet Maintenance Worker III	215	7209	C	48.99	3,674.63	7,961.69	95,540.32
2**	Fleet Maintenance Worker III	215	7209	D	51.44	3,858.36	8,359.77	100,317.30
2**	Fleet Maintenance Worker III	215	7209	E	54.02	4,051.34	8,777.90	105,334.87
5	GIS Technician	552	2212	A	48.92	3,913.48	8,479.21	101,750.48
5	GIS Technician	552	2212	B	51.36	4,109.15	8,903.16	106,837.90
5	GIS Technician	552	2212	C	53.93	4,314.62	9,348.34	112,180.12
5	GIS Technician	552	2212	D	56.63	4,530.33	9,815.72	117,788.58
5	GIS Technician	552	2212	E	59.46	4,756.91	10,306.64	123,679.66

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
1	Hazardous Materials Inspector	105	3502	A	64.88	5,190.53	11,246.15	134,953.78
1	Hazardous Materials Inspector	105	3502	B	68.05	5,443.63	11,794.53	141,534.38
1	Hazardous Materials Inspector	105	3502	C	71.37	5,709.37	12,370.30	148,443.62
1	Hazardous Materials Inspector	105	3502	D	74.85	5,988.39	12,974.85	155,698.14
1	Hazardous Materials Inspector	105	3502	E	78.52	6,281.37	13,609.64	163,315.62
8	Housing & Neigh Svcs Manager	849	2812	A	51.79	4,142.91	8,976.31	107,715.66
8	Housing & Neigh Svcs Manager	849	2812	B	-	-	-	-
8	Housing & Neigh Svcs Manager	849	2812	C	-	-	-	-
8	Housing & Neigh Svcs Manager	849	2812	D	-	-	-	-
8	Housing & Neigh Svcs Manager	849	2812	E	68.17	5,453.54	11,816.00	141,792.04
6	Housing Authority Adminr	673	1120	A	60.90	4,872.01	10,556.02	126,672.26
6	Housing Authority Adminr	673	1120	B	-	-	-	-
6	Housing Authority Adminr	673	1120	C	-	-	-	-
6	Housing Authority Adminr	673	1120	D	-	-	-	-
6	Housing Authority Adminr	673	1120	E	85.26	6,820.77	14,778.34	177,340.02
8	Human Resources Analyst I	843	2124	A	40.39	3,231.27	7,001.09	84,013.02
8	Human Resources Analyst I	843	2124	B	-	-	-	-
8	Human Resources Analyst I	843	2124	C	-	-	-	-
8	Human Resources Analyst I	843	2124	D	-	-	-	-
8	Human Resources Analyst I	843	2124	E	53.17	4,253.76	9,216.48	110,597.76
8	Human Resources Analyst II	842	2123	A	44.61	3,568.56	7,731.88	92,782.56
8	Human Resources Analyst II	842	2123	B	-	-	-	-
8	Human Resources Analyst II	842	2123	C	-	-	-	-
8	Human Resources Analyst II	842	2123	D	-	-	-	-
8	Human Resources Analyst II	842	2123	E	58.71	4,697.05	10,176.94	122,123.30
8	Human Resources Assistant	846	2108	A	28.77	2,301.78	4,987.19	59,846.28
8	Human Resources Assistant	846	2108	B	30.21	2,416.79	5,236.38	62,836.54
8	Human Resources Assistant	846	2108	C	31.72	2,537.63	5,498.20	65,978.38
8	Human Resources Assistant	846	2108	D	33.31	2,664.52	5,773.13	69,277.52
8	Human Resources Assistant	846	2108	E	34.97	2,797.74	6,061.77	72,741.24

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Human Resources Director	613	1105	A	82.19	6,575.51	14,246.94	170,963.26
6	Human Resources Director	613	1105	B	-	-	-	-
6	Human Resources Director	613	1105	C	-	-	-	-
6	Human Resources Director	613	1105	D	-	-	-	-
6	Human Resources Director	613	1105	E	115.07	9,205.74	19,945.77	239,349.24
8	Human Resources Technician	816	2107	A	34.90	2,791.77	6,048.84	72,586.02
8	Human Resources Technician	816	2107	B	36.65	2,931.97	6,352.60	76,231.22
8	Human Resources Technician	816	2107	C	38.47	3,077.91	6,668.81	80,025.66
8	Human Resources Technician	816	2107	D	40.41	3,232.41	7,003.56	84,042.66
8	Human Resources Technician	816	2107	E	42.42	3,393.61	7,352.82	88,233.86
6	I T Director	624	2113	A	81.11	6,489.01	14,059.52	168,714.26
6	I T Director	624	2113	B	-	-	-	-
6	I T Director	624	2113	C	-	-	-	-
6	I T Director	624	2113	D	-	-	-	-
6	I T Director	624	2113	E	113.56	9,084.60	19,683.30	236,199.60
8	I T Manager	819	2116	A	60.81	4,864.52	10,539.79	126,477.52
8	I T Manager	819	2116	B	-	-	-	-
8	I T Manager	819	2116	C	-	-	-	-
8	I T Manager	819	2116	D	-	-	-	-
8	I T Manager	819	2116	E	80.04	6,403.49	13,874.23	166,490.74
5	I T Technician	542	3101	A	38.92	3,113.72	6,746.39	80,956.72
5	I T Technician	542	3101	B	40.87	3,269.39	7,083.68	85,004.14
5	I T Technician	542	3101	C	42.91	3,432.82	7,437.78	89,253.32
5	I T Technician	542	3101	D	45.06	3,604.46	7,809.66	93,715.96
5	I T Technician	542	3101	E	47.31	3,784.70	8,200.18	98,402.20
8	Information Services Analyst	831	2118	A	51.15	4,092.12	8,866.26	106,395.12
8	Information Services Analyst	831	2118	B	-	-	-	-
8	Information Services Analyst	831	2118	C	-	-	-	-
8	Information Services Analyst	831	2118	D	-	-	-	-
8	Information Services Analyst	831	2118	E	67.33	5,386.43	11,670.60	140,047.18

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Junior Civil Engineer	519	2203	A	44.47	3,557.69	7,708.33	92,499.94
5	Junior Civil Engineer	519	2203	B	46.69	3,735.58	8,093.76	97,125.08
5	Junior Civil Engineer	519	2203	C	49.03	3,922.36	8,498.45	101,981.36
5	Junior Civil Engineer	519	2203	D	51.48	4,118.48	8,923.37	107,080.48
5	Junior Civil Engineer	519	2203	E	54.06	4,324.41	9,369.56	112,434.66
5	Junior Planner	520	2804	A	40.26	3,221.11	6,979.07	83,748.86
5	Junior Planner	520	2804	B	42.28	3,382.17	7,328.03	87,936.42
5	Junior Planner	520	2804	C	44.39	3,551.27	7,694.42	92,333.02
5	Junior Planner	520	2804	D	46.61	3,728.88	8,079.24	96,950.88
5	Junior Planner	520	2804	E	48.94	3,915.28	8,483.11	101,797.28
7	Lifeguard	710	5610	A	15.40	1,232.00	2,669.33	32,032.00
7	Lifeguard	710	5610	B	-	-	-	-
7	Lifeguard	710	5610	C	-	-	-	-
7	Lifeguard	710	5610	D	-	-	-	-
7	Lifeguard	710	5610	E	21.56	1,724.80	3,737.07	44,844.80
2**	Maint Worker III - 40	234	8619	A	37.84	3,027.31	6,559.16	78,709.98
2**	Maint Worker III - 40	234	8619	B	39.74	3,178.90	6,887.62	82,651.34
2**	Maint Worker III - 40	234	8619	C	41.72	3,337.75	7,231.79	86,781.48
2**	Maint Worker III - 40	234	8619	D	43.81	3,504.78	7,593.70	91,124.38
2**	Maint Worker III - 40	234	8619	E	46.00	3,679.98	7,973.29	95,679.50
2**	Maintenance Custodian I	203	8101	A	26.96	2,021.62	4,380.17	52,562.16
2**	Maintenance Custodian I	203	8101	B	28.30	2,122.71	4,599.21	55,190.55
2**	Maintenance Custodian I	203	8101	C	29.72	2,228.86	4,829.20	57,950.41
2**	Maintenance Custodian I	203	8101	D	31.21	2,340.30	5,070.65	60,847.79
2**	Maintenance Custodian I	203	8101	E	32.76	2,457.32	5,324.20	63,890.42
2**	Maintenance Custodian I - 40	222	8107	A	26.96	2,156.42	4,672.25	56,066.96
2**	Maintenance Custodian I - 40	222	8107	B	28.30	2,264.21	4,905.80	58,869.54
2**	Maintenance Custodian I - 40	222	8107	C	29.72	2,377.44	5,151.12	61,813.50
2**	Maintenance Custodian I - 40	222	8107	D	31.21	2,496.32	5,408.69	64,904.35
2**	Maintenance Custodian I - 40	222	8107	E	32.76	2,621.12	5,679.09	68,148.99

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
2**	Maintenance Custodian II	204	8102	A	29.65	2,223.83	4,818.29	57,819.50
2**	Maintenance Custodian II	204	8102	B	31.13	2,335.00	5,059.17	60,709.99
2**	Maintenance Custodian II	204	8102	C	32.69	2,451.77	5,312.17	63,746.00
2**	Maintenance Custodian II	204	8102	D	34.32	2,574.28	5,577.61	66,931.39
2**	Maintenance Custodian II	204	8102	E	36.04	2,703.04	5,856.60	70,279.10
2**	Maintenance Custodian II - 40	223	8108	A	29.65	2,372.09	5,139.53	61,674.32
2**	Maintenance Custodian II - 40	223	8108	B	31.13	2,490.64	5,396.39	64,756.63
2**	Maintenance Custodian II - 40	223	8108	C	32.69	2,615.20	5,666.26	67,995.21
2**	Maintenance Custodian II - 40	223	8108	D	34.32	2,745.91	5,949.47	71,393.63
2**	Maintenance Custodian II - 40	223	8108	E	36.04	2,883.27	6,247.10	74,965.13
2**	Maintenance Custodian III	205	8103	A	34.10	2,557.36	5,540.94	66,491.26
2**	Maintenance Custodian III	205	8103	B	35.81	2,685.21	5,817.96	69,815.54
2**	Maintenance Custodian III	205	8103	C	37.60	2,819.48	6,108.89	73,306.57
2**	Maintenance Custodian III	205	8103	D	39.47	2,960.46	6,414.34	76,972.05
2**	Maintenance Custodian III	205	8103	E	41.45	3,108.52	6,735.13	80,821.63
2**	Maintenance Custodian III - 40	233	8618	A	34.10	2,728.02	5,910.70	70,928.42
2**	Maintenance Custodian III - 40	233	8618	B	35.81	2,864.22	6,205.80	74,469.60
2**	Maintenance Custodian III - 40	233	8618	C	37.60	3,007.85	6,517.00	78,203.98
2**	Maintenance Custodian III - 40	233	8618	D	39.47	3,157.96	6,842.26	82,107.03
2**	Maintenance Custodian III - 40	233	8618	E	41.45	3,315.49	7,183.56	86,202.72
2**	Maintenance Worker I	206	8202	A	29.65	2,223.83	4,818.29	57,819.50
2**	Maintenance Worker I	206	8202	B	31.13	2,335.00	5,059.17	60,709.99
2**	Maintenance Worker I	206	8202	C	32.69	2,451.77	5,312.17	63,746.00
2**	Maintenance Worker I	206	8202	D	34.32	2,574.34	5,577.73	66,932.77
2**	Maintenance Worker I	206	8202	E	36.04	2,703.04	5,856.60	70,279.10
2**	Maintenance Worker I-40	207	8203	A	29.92	2,393.71	5,186.38	62,236.54
2**	Maintenance Worker I-40	207	8203	B	31.41	2,512.62	5,444.02	65,328.22
2**	Maintenance Worker I-40	207	8203	C	32.99	2,638.81	5,717.42	68,608.97
2**	Maintenance Worker I-40	207	8203	D	34.63	2,770.42	6,002.57	72,030.82
2**	Maintenance Worker I-40	207	8203	E	36.37	2,909.31	6,303.50	75,642.00

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
2**	Maintenance Worker II	208	8204	A	32.62	2,446.18	5,300.06	63,600.76
2**	Maintenance Worker II	208	8204	B	34.25	2,568.48	5,565.03	66,780.36
2**	Maintenance Worker II	208	8204	C	35.96	2,696.88	5,843.25	70,118.98
2**	Maintenance Worker II	208	8204	D	37.76	2,831.75	6,135.45	73,625.44
2**	Maintenance Worker II	208	8204	E	39.64	2,973.34	6,442.25	77,306.90
2**	Maintenance Worker II-40	209	8205	A	32.90	2,632.45	5,703.64	68,443.61
2**	Maintenance Worker II-40	209	8205	B	34.56	2,764.07	5,988.81	71,865.73
2**	Maintenance Worker II-40	209	8205	C	36.28	2,902.96	6,289.74	75,476.92
2**	Maintenance Worker II-40	209	8205	D	38.09	3,047.28	6,602.43	79,229.21
2**	Maintenance Worker II-40	209	8205	E	39.99	3,199.78	6,932.86	83,194.27
2**	Maintenance Worker III	210	8206	A	37.50	2,813.08	6,095.01	73,140.11
2**	Maintenance Worker III	210	8206	B	39.38	2,953.74	6,399.78	76,797.32
2**	Maintenance Worker III	210	8206	C	41.35	3,101.44	6,719.80	80,637.53
2**	Maintenance Worker III	210	8206	D	43.42	3,256.50	7,055.75	84,669.01
2**	Maintenance Worker III	210	8206	E	45.59	3,419.35	7,408.58	88,903.05
7	Maintenance Worker/Seasonal	760	8207	A	19.88	1,590.40	3,445.87	41,350.40
7	Maintenance Worker/Seasonal	760	8207	B	-	-	-	-
7	Maintenance Worker/Seasonal	760	8207	C	-	-	-	-
7	Maintenance Worker/Seasonal	760	8207	D	-	-	-	-
7	Maintenance Worker/Seasonal	760	8207	E	24.85	1,988.00	4,307.33	51,688.00
8	Management Analyst	854	2128	A	53.55	4,284.00	9,282.00	111,384.00
8	Management Analyst	854	2128	B	-	-	-	-
8	Management Analyst	854	2128	C	-	-	-	-
8	Management Analyst	854	2128	D	-	-	-	-
8	Management Analyst	854	2128	E	74.99	5,998.91	12,997.64	155,971.66
5	Marketing Coordinator	548	5614	A	37.79	3,023.56	6,551.05	78,612.56
5	Marketing Coordinator	548	5614	B	39.68	3,174.74	6,878.60	82,543.24
5	Marketing Coordinator	548	5614	C	41.67	3,333.47	7,222.52	86,670.22
5	Marketing Coordinator	548	5614	D	43.75	3,500.15	7,583.66	91,003.90
5	Marketing Coordinator	548	5614	E	45.94	3,675.16	7,962.85	95,554.16

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Mayor	696	1118	A	130.47	521.88	1,130.74	13,568.88
6	Mayor	696	1118	B	-	-	-	-
6	Mayor	696	1118	C	-	-	-	-
6	Mayor	696	1118	D	-	-	-	-
6	Mayor	696	1118	E	130.47	521.88	1,130.74	13,568.88
5	Neighbhd Preservation Asst	510	5802	A	31.73	2,538.74	5,500.60	66,007.24
5	Neighbhd Preservation Asst	510	5802	B	33.32	2,665.70	5,775.68	69,308.20
5	Neighbhd Preservation Asst	510	5802	C	34.99	2,798.97	6,064.44	72,773.22
5	Neighbhd Preservation Asst	510	5802	D	36.74	2,938.96	6,367.75	76,412.96
5	Neighbhd Preservation Asst	510	5802	E	38.57	3,085.86	6,686.03	80,232.36
5	Office Assistant I	516	6108	A	25.57	2,045.53	4,431.98	53,183.78
5	Office Assistant I	516	6108	B	26.85	2,147.80	4,653.57	55,842.80
5	Office Assistant I	516	6108	C	28.19	2,255.20	4,886.27	58,635.20
5	Office Assistant I	516	6108	D	29.60	2,367.92	5,130.49	61,565.92
5	Office Assistant I	516	6108	E	31.08	2,486.33	5,387.05	64,644.58
5	Office Assistant II	517	6109	A	28.12	2,249.99	4,874.98	58,499.74
5	Office Assistant II	517	6109	B	29.53	2,362.45	5,118.64	61,423.70
5	Office Assistant II	517	6109	C	31.01	2,480.64	5,374.72	64,496.64
5	Office Assistant II	517	6109	D	32.56	2,604.67	5,643.45	67,721.42
5	Office Assistant II	517	6109	E	34.19	2,734.83	5,925.47	71,105.58
5	Office Specialist	518	6110	A	32.34	2,587.48	5,606.21	67,274.48
5	Office Specialist	518	6110	B	33.96	2,716.88	5,886.57	70,638.88
5	Office Specialist	518	6110	C	35.66	2,852.76	6,180.98	74,171.76
5	Office Specialist	518	6110	D	37.44	2,995.43	6,490.10	77,881.18
5	Office Specialist	518	6110	E	39.31	3,145.13	6,814.45	81,773.38
4	Patrol Officer	404	4401	A	49.75	3,980.00	8,623.33	103,480.00
4	Patrol Officer	404	4401	B	52.24	4,178.99	9,054.48	108,653.74
4	Patrol Officer	404	4401	C	54.85	4,387.92	9,507.16	114,085.92
4	Patrol Officer	404	4401	D	57.59	4,607.33	9,982.55	119,790.58
4	Patrol Officer	404	4401	E	60.47	4,837.66	10,481.60	125,779.16

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
4	Patrol Officer Trainee	458	4402	A	48.68	3,894.53	8,438.15	101,257.78
4	Patrol Officer Trainee	458	4402	B	51.11	4,089.18	8,859.89	106,318.68
4	Patrol Officer Trainee	458	4402	C	53.67	4,293.69	9,303.00	111,635.94
4	Patrol Officer Trainee	458	4402	D	56.35	4,508.34	9,768.07	117,216.84
4	Patrol Officer Trainee	458	4402	E	59.17	4,733.72	10,256.39	123,076.72
5	Payroll Specialist	546	5102	A	34.54	2,763.49	5,987.56	71,850.74
5	Payroll Specialist	546	5102	B	36.27	2,901.66	6,286.93	75,443.16
5	Payroll Specialist	546	5102	C	38.08	3,046.74	6,601.27	79,215.24
5	Payroll Specialist	546	5102	D	39.99	3,199.09	6,931.36	83,176.34
5	Payroll Specialist	546	5102	E	41.99	3,358.99	7,277.81	87,333.74
5	Plan Check Engineer	521	3807	A	57.57	4,605.56	9,978.71	119,744.56
5	Plan Check Engineer	521	3807	B	60.44	4,835.36	10,476.61	125,719.36
5	Plan Check Engineer	521	3807	C	63.47	5,077.46	11,001.16	132,013.96
5	Plan Check Engineer	521	3807	D	66.64	5,330.91	11,550.31	138,603.66
5	Plan Check Engineer	521	3807	E	70.01	5,600.96	12,135.41	145,624.96
5	Plan Checker	522	3803	A	49.09	3,927.23	8,509.00	102,107.98
5	Plan Checker	522	3803	B	51.54	4,123.54	8,934.34	107,212.04
5	Plan Checker	522	3803	C	54.13	4,330.08	9,381.84	112,582.08
5	Plan Checker	522	3803	D	56.82	4,545.94	9,849.54	118,194.44
5	Plan Checker	522	3803	E	59.67	4,773.88	10,343.41	124,120.88
6	Plan Review Manager	678	1210	A	63.90	5,112.39	11,076.85	132,922.14
6	Plan Review Manager	678	1210	B	-	-	-	-
6	Plan Review Manager	678	1210	C	-	-	-	-
6	Plan Review Manager	678	1210	D	-	-	-	-
6	Plan Review Manager	678	1210	E	83.11	6,649.14	14,406.47	172,877.64
6	Planning & Neigh Svcs Director	607	1803	A	82.30	6,584.13	14,265.62	171,187.38
6	Planning & Neigh Svcs Director	607	1803	B	-	-	-	-
6	Planning & Neigh Svcs Director	607	1803	C	-	-	-	-
6	Planning & Neigh Svcs Director	607	1803	D	-	-	-	-
6	Planning & Neigh Svcs Director	607	1803	E	115.22	9,217.78	19,971.86	239,662.28

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
7	Planning Commissioners	698	1108	A	1.00	80.00	173.33	2,080.00
7	Planning Commissioners	698	1108	B	-	-	-	-
7	Planning Commissioners	698	1108	C	-	-	-	-
7	Planning Commissioners	698	1108	D	-	-	-	-
7	Planning Commissioners	698	1108	E	1.00	80.00	173.33	2,080.00
6	Planning Manager	602	2803	A	62.73	5,018.17	10,872.70	130,472.42
6	Planning Manager	602	2803	B	-	-	-	-
6	Planning Manager	602	2803	C	-	-	-	-
6	Planning Manager	602	2803	D	-	-	-	-
6	Planning Manager	602	2803	E	87.82	7,025.42	15,221.74	182,660.92
4	Police Assistant	450	6401	A	47.27	3,781.86	8,194.03	98,328.36
4	Police Assistant	450	6401	B	49.64	3,970.92	8,603.66	103,243.92
4	Police Assistant	450	6401	C	52.12	4,169.45	9,033.81	108,405.70
4	Police Assistant	450	6401	D	54.72	4,377.95	9,485.56	113,826.70
4	Police Assistant	450	6401	E	57.46	4,596.86	9,959.86	119,518.36
6	Police Captain	651	1401	A	94.68	7,574.39	16,411.18	196,934.14
6	Police Captain	651	1401	B	-	-	-	-
6	Police Captain	651	1401	C	-	-	-	-
6	Police Captain	651	1401	D	-	-	-	-
6	Police Captain	651	1401	E	132.55	10,604.10	22,975.55	275,706.60
4	Police Clerk I	451	6402	A	33.88	2,710.80	5,873.40	70,480.80
4	Police Clerk I	451	6402	B	35.58	2,846.35	6,167.09	74,005.10
4	Police Clerk I	451	6402	C	37.36	2,988.65	6,475.41	77,704.90
4	Police Clerk I	451	6402	D	39.23	3,138.10	6,799.22	81,590.60
4	Police Clerk I	451	6402	E	41.19	3,294.94	7,139.04	85,668.44
4	Police Clerk II	452	6403	A	37.27	2,981.81	6,460.59	77,527.06
4	Police Clerk II	452	6403	B	39.14	3,130.99	6,783.81	81,405.74
4	Police Clerk II	452	6403	C	41.09	3,287.52	7,122.96	85,475.52
4	Police Clerk II	452	6403	D	43.15	3,451.92	7,479.16	89,749.92
4	Police Clerk II	452	6403	E	45.31	3,624.44	7,852.95	94,235.44

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
4	Police Clerk Supervisor	454	6404	A	43.05	3,444.07	7,462.15	89,545.82
4	Police Clerk Supervisor	454	6404	B	45.20	3,616.30	7,835.32	94,023.80
4	Police Clerk Supervisor	454	6404	C	47.46	3,797.07	8,226.99	98,723.82
4	Police Clerk Supervisor	454	6404	D	49.84	3,986.95	8,638.39	103,660.70
4	Police Clerk Supervisor	454	6404	E	52.33	4,186.28	9,070.27	108,843.28
4	Police Evidence Technician	459	8607	A	39.53	3,162.29	6,851.63	82,219.54
4	Police Evidence Technician	459	8607	B	41.50	3,320.38	7,194.16	86,329.88
4	Police Evidence Technician	459	8607	C	43.58	3,486.42	7,553.91	90,646.92
4	Police Evidence Technician	459	8607	D	45.76	3,660.76	7,931.65	95,179.76
4	Police Evidence Technician	459	8607	E	48.05	3,843.79	8,328.21	99,938.54
4	Police Lieutenant	400	2402	A	76.31	6,104.74	13,226.94	158,723.24
4	Police Lieutenant	400	2402	B	80.12	6,409.98	13,888.29	166,659.48
4	Police Lieutenant	400	2402	C	84.13	6,730.51	14,582.77	174,993.26
4	Police Lieutenant	400	2402	D	88.34	7,067.05	15,311.94	183,743.30
4	Police Lieutenant	400	2402	E	92.75	7,420.38	16,077.49	192,929.88
4	Police Officer	403	4403	A	54.40	4,352.17	9,429.70	113,156.42
4	Police Officer	403	4403	B	57.12	4,569.84	9,901.32	118,815.84
4	Police Officer	403	4403	C	59.98	4,798.31	10,396.34	124,756.06
4	Police Officer	403	4403	D	62.98	5,038.19	10,916.08	130,992.94
4	Police Officer	403	4403	E	66.13	5,290.16	11,462.01	137,544.16
4	Police Officer Trainee	457	4404	A	53.23	4,258.69	9,227.16	110,725.94
4	Police Officer Trainee	457	4404	B	55.90	4,471.68	9,688.64	116,263.68
4	Police Officer Trainee	457	4404	C	58.69	4,695.30	10,173.15	122,077.80
4	Police Officer Trainee	457	4404	D	61.63	4,930.03	10,681.73	128,180.78
4	Police Officer Trainee	457	4404	E	64.71	5,176.53	11,215.82	134,589.78
4	Police Sergeant	401	4405	A	65.72	5,257.54	11,391.34	136,696.04
4	Police Sergeant	401	4405	B	69.01	5,520.43	11,960.93	143,531.18
4	Police Sergeant	401	4405	C	72.46	5,796.44	12,558.95	150,707.44
4	Police Sergeant	401	4405	D	76.08	6,086.34	13,187.07	158,244.84
4	Police Sergeant	401	4405	E	79.88	6,390.65	13,846.41	166,156.90

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
6	Police Support Services Mgr	657	1404	A	60.83	4,866.75	10,544.63	126,535.50
6	Police Support Services Mgr	657	1404	B	-	-	-	-
6	Police Support Services Mgr	657	1404	C	-	-	-	-
6	Police Support Services Mgr	657	1404	D	-	-	-	-
6	Police Support Services Mgr	657	1404	E	85.17	6,813.76	14,763.15	177,157.76
7	Pool Manager	708	5608	A	18.74	1,499.20	3,248.27	38,979.20
7	Pool Manager	708	5608	B	-	-	-	-
7	Pool Manager	708	5608	C	-	-	-	-
7	Pool Manager	708	5608	D	-	-	-	-
7	Pool Manager	708	5608	E	26.23	2,098.40	4,546.53	54,558.40
8	Principal Civil Engineer	822	2204	A	63.90	5,112.39	11,076.85	132,922.14
8	Principal Civil Engineer	822	2204	B	-	-	-	-
8	Principal Civil Engineer	822	2204	C	-	-	-	-
8	Principal Civil Engineer	822	2204	D	-	-	-	-
8	Principal Civil Engineer	822	2204	E	83.11	6,649.14	14,406.47	172,877.64
8	Principal Planner	823	2811	A	65.89	5,271.00	11,420.50	137,046.00
8	Principal Planner	823	2811	B	-	-	-	-
8	Principal Planner	823	2811	C	-	-	-	-
8	Principal Planner	823	2811	D	-	-	-	-
8	Principal Planner	823	2811	E	79.80	6,384.00	13,832.00	165,984.00
5	Program Coordinator	523	5606	A	35.25	2,819.73	6,109.42	73,312.98
5	Program Coordinator	523	5606	B	-	-	-	-
5	Program Coordinator	523	5606	C	-	-	-	-
5	Program Coordinator	523	5606	D	-	-	-	-
5	Program Coordinator	523	5606	E	46.39	3,711.60	8,041.80	96,501.60
6	Public Information Officer	674	1122	A	60.38	4,830.00	10,465.00	125,580.00
6	Public Information Officer	674	1122	B	-	-	-	-
6	Public Information Officer	674	1122	C	-	-	-	-
6	Public Information Officer	674	1122	D	-	-	-	-
6	Public Information Officer	674	1122	E	84.53	6,762.01	14,651.02	175,812.26

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Public Services Assistant I	524	6601	A	29.40	2,352.28	5,096.61	61,159.28
5	Public Services Assistant I	524	6601	B	30.87	2,469.92	5,351.49	64,217.92
5	Public Services Assistant I	524	6601	C	32.42	2,593.44	5,619.12	67,429.44
5	Public Services Assistant I	524	6601	D	34.04	2,723.11	5,900.07	70,800.86
5	Public Services Assistant I	524	6601	E	35.74	2,859.24	6,195.02	74,340.24
5	Public Services Assistant II	525	6602	A	32.34	2,587.50	5,606.25	67,275.00
5	Public Services Assistant II	525	6602	B	33.96	2,716.91	5,886.64	70,639.66
5	Public Services Assistant II	525	6602	C	35.66	2,852.75	6,180.96	74,171.50
5	Public Services Assistant II	525	6602	D	37.44	2,995.44	6,490.12	77,881.44
5	Public Services Assistant II	525	6602	E	39.31	3,145.13	6,814.45	81,773.38
6	Public Works Director	635	1204	A	84.63	6,770.19	14,668.75	176,024.94
6	Public Works Director	635	1204	B	-	-	-	-
6	Public Works Director	635	1204	C	-	-	-	-
6	Public Works Director	635	1204	D	-	-	-	-
6	Public Works Director	635	1204	E	118.48	9,478.28	20,536.27	246,435.28
5	Public Works Inspector	526	3202	A	47.48	3,798.11	8,229.24	98,750.86
5	Public Works Inspector	526	3202	B	49.85	3,988.05	8,640.77	103,689.30
5	Public Works Inspector	526	3202	C	52.34	4,187.41	9,072.72	108,872.66
5	Public Works Inspector	526	3202	D	54.96	4,396.81	9,526.42	114,317.06
5	Public Works Inspector	526	3202	E	57.71	4,616.62	10,002.68	120,032.12
6	Public Works Manager	648	1117	A	56.33	4,506.05	9,763.11	117,157.30
6	Public Works Manager	648	1117	B	-	-	-	-
6	Public Works Manager	648	1117	C	-	-	-	-
6	Public Works Manager	648	1117	D	-	-	-	-
6	Public Works Manager	648	1117	E	78.86	6,308.46	13,668.33	164,019.96
8	Purchasing Agent	826	1106	A	52.76	4,220.55	9,144.52	109,734.30
8	Purchasing Agent	826	1106	B	-	-	-	-
8	Purchasing Agent	826	1106	C	-	-	-	-
8	Purchasing Agent	826	1106	D	-	-	-	-
8	Purchasing Agent	826	1106	E	68.04	5,443.33	11,793.88	141,526.58

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
7	Recreation Administrative Asst	712	5619	A	15.40	1,232.00	2,669.33	32,032.00
7	Recreation Administrative Asst	712	5619	B	-	-	-	-
7	Recreation Administrative Asst	712	5619	C	-	-	-	-
7	Recreation Administrative Asst	712	5619	D	-	-	-	-
7	Recreation Administrative Asst	712	5619	E	21.56	1,724.80	3,737.07	44,844.80
7	Recreation Attendant	711	5618	A	15.40	1,232.00	2,669.33	32,032.00
7	Recreation Attendant	711	5618	B	-	-	-	-
7	Recreation Attendant	711	5618	C	-	-	-	-
7	Recreation Attendant	711	5618	D	-	-	-	-
7	Recreation Attendant	711	5618	E	21.56	1,724.80	3,737.07	44,844.80
7	Recreation Instructors	707	5607	A	18.82	1,505.60	3,262.13	39,145.60
7	Recreation Instructors	707	5607	B	-	-	-	-
7	Recreation Instructors	707	5607	C	-	-	-	-
7	Recreation Instructors	707	5607	D	-	-	-	-
7	Recreation Instructors	707	5607	E	37.64	3,011.20	6,524.27	78,291.20
7	Recreation Leader	706	5617	A	15.40	1,232.00	2,669.33	32,032.00
7	Recreation Leader	706	5617	B	-	-	-	-
7	Recreation Leader	706	5617	C	-	-	-	-
7	Recreation Leader	706	5617	D	-	-	-	-
7	Recreation Leader	706	5617	E	21.56	1,724.80	3,737.07	44,844.80
6	Recreation Services Manager	616	2602	A	52.05	4,163.84	9,021.65	108,259.84
6	Recreation Services Manager	616	2602	B	-	-	-	-
6	Recreation Services Manager	616	2602	C	-	-	-	-
6	Recreation Services Manager	616	2602	D	-	-	-	-
6	Recreation Services Manager	616	2602	E	67.70	5,415.93	11,734.51	140,814.18
8	Recreation Services Supervisor	827	2601	A	50.40	4,031.71	8,735.37	104,824.46
8	Recreation Services Supervisor	827	2601	B	-	-	-	-
8	Recreation Services Supervisor	827	2601	C	-	-	-	-
8	Recreation Services Supervisor	827	2601	D	-	-	-	-
8	Recreation Services Supervisor	827	2601	E	66.33	5,306.26	11,496.90	137,962.76

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Recreation Svcs Assistant I	527	8601	A	16.62	1,329.61	2,880.82	34,569.86
5	Recreation Svcs Assistant I	527	8601	B	17.45	1,396.08	3,024.84	36,298.08
5	Recreation Svcs Assistant I	527	8601	C	18.32	1,465.92	3,176.16	38,113.92
5	Recreation Svcs Assistant I	527	8601	D	19.24	1,539.18	3,334.89	40,018.68
5	Recreation Svcs Assistant I	527	8601	E	20.20	1,616.18	3,501.72	42,020.68
5	Recreation Svcs Assistant II	528	8602	A	19.73	1,578.68	3,420.47	41,045.68
5	Recreation Svcs Assistant II	528	8602	B	20.72	1,657.78	3,591.86	43,102.28
5	Recreation Svcs Assistant II	528	8602	C	21.76	1,740.62	3,771.34	45,256.12
5	Recreation Svcs Assistant II	528	8602	D	22.85	1,827.70	3,960.02	47,520.20
5	Recreation Svcs Assistant II	528	8602	E	23.99	1,919.04	4,157.92	49,895.04
5	Recreation Svcs Assistant III	529	8603	A	22.68	1,814.66	3,931.76	47,181.16
5	Recreation Svcs Assistant III	529	8603	B	23.82	1,905.34	4,128.24	49,538.84
5	Recreation Svcs Assistant III	529	8603	C	25.01	2,000.62	4,334.68	52,016.12
5	Recreation Svcs Assistant III	529	8603	D	26.26	2,100.64	4,551.39	54,616.64
5	Recreation Svcs Assistant III	529	8603	E	27.57	2,205.71	4,779.04	57,348.46
5	Recreation Svcs Assistant IV	530	8604	A	26.61	2,129.08	4,613.01	55,356.08
5	Recreation Svcs Assistant IV	530	8604	B	27.94	2,235.51	4,843.61	58,123.26
5	Recreation Svcs Assistant IV	530	8604	C	29.34	2,347.29	5,085.80	61,029.54
5	Recreation Svcs Assistant IV	530	8604	D	30.81	2,464.67	5,340.12	64,081.42
5	Recreation Svcs Assistant IV	530	8604	E	32.35	2,587.88	5,607.07	67,284.88
8	Senior Accountant	829	2110	A	46.89	3,750.82	8,126.78	97,521.32
8	Senior Accountant	829	2110	B	-	-	-	-
8	Senior Accountant	829	2110	C	-	-	-	-
8	Senior Accountant	829	2110	D	-	-	-	-
8	Senior Accountant	829	2110	E	61.71	4,936.91	10,696.64	128,359.66
5	Senior Accounting Technician	539	6106	A	35.58	2,846.25	6,166.88	74,002.50
5	Senior Accounting Technician	539	6106	B	37.36	2,988.59	6,475.28	77,703.34
5	Senior Accounting Technician	539	6106	C	39.23	3,138.02	6,799.04	81,588.52
5	Senior Accounting Technician	539	6106	D	41.19	3,294.95	7,139.06	85,668.70
5	Senior Accounting Technician	539	6106	E	43.25	3,459.66	7,495.93	89,951.16

** MEA 6% Salary Increase

CITY OF MILPITAS
All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
8	Senior Administrative Analyst	834	2112	A	51.79	4,142.91	8,976.31	107,715.66
8	Senior Administrative Analyst	834	2112	B	-	-	-	-
8	Senior Administrative Analyst	834	2112	C	-	-	-	-
8	Senior Administrative Analyst	834	2112	D	-	-	-	-
8	Senior Administrative Analyst	834	2112	E	68.17	5,453.54	11,816.00	141,792.04
5	Senior Building Inspector	531	3804	A	54.83	4,386.79	9,504.71	114,056.54
5	Senior Building Inspector	531	3804	B	57.58	4,606.18	9,980.06	119,760.68
5	Senior Building Inspector	531	3804	C	60.46	4,836.46	10,479.00	125,747.96
5	Senior Building Inspector	531	3804	D	63.48	5,078.25	11,002.88	132,034.50
5	Senior Building Inspector	531	3804	E	66.65	5,332.18	11,553.06	138,636.68
8	Senior Executive Assistant	855	6123	A	44.61	3,568.56	7,731.88	92,782.56
8	Senior Executive Assistant	855	6123	B	-	-	-	-
8	Senior Executive Assistant	855	6123	C	-	-	-	-
8	Senior Executive Assistant	855	6123	D	-	-	-	-
8	Senior Executive Assistant	855	6123	E	58.71	4,697.05	10,176.94	122,123.30
8	Senior HR Analyst	841	2122	A	48.35	3,868.16	8,381.01	100,572.16
8	Senior HR Analyst	841	2122	B	-	-	-	-
8	Senior HR Analyst	841	2122	C	-	-	-	-
8	Senior HR Analyst	841	2122	D	-	-	-	-
8	Senior HR Analyst	841	2122	E	63.65	5,091.65	11,031.91	132,382.90
5	Senior Plan Check Engineer	534	3806	A	63.33	5,066.11	10,976.57	131,718.86
5	Senior Plan Check Engineer	534	3806	B	66.49	5,319.56	11,525.71	138,308.56
5	Senior Plan Check Engineer	534	3806	C	69.82	5,585.29	12,101.46	145,217.54
5	Senior Plan Check Engineer	534	3806	D	73.30	5,864.27	12,705.92	152,471.02
5	Senior Plan Check Engineer	534	3806	E	76.97	6,157.43	13,341.10	160,093.18
8	Senior Planner	830	2805	A	60.40	4,832.13	10,469.62	125,635.38
8	Senior Planner	830	2805	B	-	-	-	-
8	Senior Planner	830	2805	C	-	-	-	-
8	Senior Planner	830	2805	D	-	-	-	-
8	Senior Planner	830	2805	E	73.42	5,873.65	12,726.24	152,714.90

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
5	Senior Public Works Inspector	535	3203	A	54.84	4,386.82	9,504.78	114,057.32
5	Senior Public Works Inspector	535	3203	B	57.58	4,606.18	9,980.06	119,760.68
5	Senior Public Works Inspector	535	3203	C	60.46	4,836.47	10,479.02	125,748.22
5	Senior Public Works Inspector	535	3203	D	63.48	5,078.25	11,002.88	132,034.50
5	Senior Public Works Inspector	535	3203	E	66.65	5,332.18	11,553.06	138,636.68
2**	Senior Public Works Lead	225	8609	A	50.17	4,013.20	8,695.26	104,343.18
2**	Senior Public Works Lead	225	8609	B	52.67	4,213.86	9,130.02	109,560.34
2**	Senior Public Works Lead	225	8609	C	55.31	4,424.56	9,586.53	115,076.63
2**	Senior Public Works Lead	225	8609	D	58.08	4,645.78	10,065.86	120,790.28
2**	Senior Public Works Lead	225	8609	E	60.98	4,878.19	10,569.43	126,833.16
7	Special Project Associate	750	5105	A	20.00	1,600.00	3,466.67	41,600.00
7	Special Project Associate	750	5105	B	-	-	-	-
7	Special Project Associate	750	5105	C	-	-	-	-
7	Special Project Associate	750	5105	D	-	-	-	-
7	Special Project Associate	750	5105	E	50.00	4,000.00	8,666.67	104,000.00
5	Sr Code Enforcement Officer	545	5806	A	48.72	3,897.29	8,444.13	101,329.54
5	Sr Code Enforcement Officer	545	5806	B	51.14	4,091.40	8,864.70	106,376.40
5	Sr Code Enforcement Officer	545	5806	C	53.71	4,296.52	9,309.13	111,709.52
5	Sr Code Enforcement Officer	545	5806	D	56.40	4,511.66	9,775.26	117,303.16
5	Sr Code Enforcement Officer	545	5806	E	59.21	4,736.78	10,263.02	123,156.28
8	Sr. Information Analyst/Dev	853	2119	A	53.84	4,307.52	9,332.96	111,995.52
8	Sr. Information Analyst/Dev	853	2119	B	-	-	-	-
8	Sr. Information Analyst/Dev	853	2119	C	-	-	-	-
8	Sr. Information Analyst/Dev	853	2119	D	-	-	-	-
8	Sr. Information Analyst/Dev	853	2119	E	70.88	5,670.01	12,285.02	147,420.26
5	Sr. Public Services Assistant	549	5615	A	36.08	2,886.19	6,253.41	75,040.94
5	Sr. Public Services Assistant	549	5615	B	37.88	3,030.50	6,566.08	78,793.00
5	Sr. Public Services Assistant	549	5615	C	39.78	3,182.03	6,894.40	82,732.78
5	Sr. Public Services Assistant	549	5615	D	41.76	3,341.13	7,239.12	86,869.38
5	Sr. Public Services Assistant	549	5615	E	43.85	3,508.18	7,601.06	91,212.68

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
7	Sr. Special Projects Associate	749	5106	A	50.00	4,000.00	8,666.67	104,000.00
7	Sr. Special Projects Associate	749	5106	B	-	-	-	-
7	Sr. Special Projects Associate	749	5106	C	-	-	-	-
7	Sr. Special Projects Associate	749	5106	D	-	-	-	-
7	Sr. Special Projects Associate	749	5106	E	125.00	10,000.00	21,666.67	260,000.00
7	Staff Assistant	745	5104	A	15.40	1,232.00	2,669.33	32,032.00
7	Staff Assistant	745	5104	B	-	-	-	-
7	Staff Assistant	745	5104	C	-	-	-	-
7	Staff Assistant	745	5104	D	-	-	-	-
7	Staff Assistant	745	5104	E	24.64	1,971.20	4,270.93	51,251.20
7	Student Intern	740	5103	A	15.40	1,232.00	2,669.33	32,032.00
7	Student Intern	740	5103	B	-	-	-	-
7	Student Intern	740	5103	C	-	-	-	-
7	Student Intern	740	5103	D	-	-	-	-
7	Student Intern	740	5103	E	24.64	1,971.20	4,270.93	51,251.20
6	Transporation & Traffic Mgr	675	1202	A	60.38	4,830.00	10,465.00	125,580.00
6	Transporation & Traffic Mgr	675	1202	B	-	-	-	-
6	Transporation & Traffic Mgr	675	1202	C	-	-	-	-
6	Transporation & Traffic Mgr	675	1202	D	-	-	-	-
6	Transporation & Traffic Mgr	675	1202	E	84.53	6,762.01	14,651.02	175,812.26
8	Video Media Specialist	840	2121	A	41.65	3,332.14	7,219.64	86,635.64
8	Video Media Specialist	840	2121	B	-	-	-	-
8	Video Media Specialist	840	2121	C	-	-	-	-
8	Video Media Specialist	840	2121	D	-	-	-	-
8	Video Media Specialist	840	2121	E	54.83	4,386.11	9,503.24	114,038.86
2**	Water Meter Reader I	216	8104	A	29.65	2,223.75	4,818.13	57,817.57
2**	Water Meter Reader I	216	8104	B	31.13	2,335.00	5,059.17	60,709.99
2**	Water Meter Reader I	216	8104	C	32.69	2,451.76	5,312.15	63,745.73
2**	Water Meter Reader I	216	8104	D	34.32	2,574.28	5,577.61	66,931.39
2**	Water Meter Reader I	216	8104	E	36.04	2,703.03	5,856.56	70,278.83

** MEA 6% Salary Increase

CITY OF MILPITAS

All Job Classifications Salary Table Effective 07/05/2020

Code	Classification	Pay Grade	Occ Code	Step	Hourly	BiWeekly	Monthly	Annual
2**	Water Meter Reader I -40	235	8620	A	29.65	2,372.17	5,139.71	61,676.52
2**	Water Meter Reader I -40	235	8620	B	31.13	2,490.79	5,396.70	64,760.49
2**	Water Meter Reader I -40	235	8620	C	32.69	2,614.96	5,665.74	67,988.87
2**	Water Meter Reader I -40	235	8620	D	34.32	2,745.61	5,948.83	71,385.91
2**	Water Meter Reader I -40	235	8620	E	36.05	2,883.69	6,247.99	74,975.88
2**	Water Meter Reader II	217	8105	A	32.62	2,446.18	5,300.06	63,600.76
2**	Water Meter Reader II	217	8105	B	34.25	2,568.46	5,565.01	66,780.08
2**	Water Meter Reader II	217	8105	C	35.96	2,696.87	5,843.23	70,118.70
2**	Water Meter Reader II	217	8105	D	37.76	2,831.73	6,135.41	73,624.89
2**	Water Meter Reader II	217	8105	E	39.64	2,973.34	6,442.25	77,306.90
2**	Water Meter Reader II -40	236	8621	A	32.62	2,609.39	5,653.68	67,844.18
2**	Water Meter Reader II -40	236	8621	B	34.25	2,740.06	5,936.80	71,241.50
2**	Water Meter Reader II -40	236	8621	C	35.96	2,876.27	6,231.91	74,782.96
2**	Water Meter Reader II -40	236	8621	D	37.76	3,020.83	6,545.13	78,541.59
2**	Water Meter Reader II -40	236	8621	E	39.64	3,171.87	6,872.38	82,468.61
2**	Water Systems Operator	219	7211	A	42.50	3,399.69	7,365.98	88,391.81
2**	Water Systems Operator	219	7211	B	44.62	3,569.31	7,733.50	92,801.96
2**	Water Systems Operator	219	7211	C	46.85	3,748.12	8,120.93	97,451.06
2**	Water Systems Operator	219	7211	D	49.19	3,935.53	8,526.97	102,323.67
2**	Water Systems Operator	219	7211	E	51.65	4,132.33	8,953.37	107,440.46
2**	Water Systems Operator - 40	237	8622	A	45.33	3,625.91	7,856.14	94,273.67
2**	Water Systems Operator - 40	237	8622	B	47.59	3,807.53	8,249.65	98,995.80
2**	Water Systems Operator - 40	237	8622	C	49.98	3,998.43	8,663.25	103,959.08
2**	Water Systems Operator - 40	237	8622	D	52.47	4,197.64	9,094.90	109,138.70
2**	Water Systems Operator - 40	237	8622	E	55.10	4,407.99	9,550.64	114,607.71



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for TDK USA Corporation for TDK Headway at 497 South Hillview Drive
Category:	Consent Calendar-Community Development
Meeting Date:	8/4/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for TDK USA Corp. for TDK Headway at 497 South Hillview Drive.

Background:

On December 13, 2017, the Planning Commission approved Site Development Permit No. SD17-0015 and Conditional Use Permit No. UP17-0016 to allow for a 9,996 square foot cleanroom expansion and 1,297 square foot utility yard addition to an existing 104,389 square foot industrial building located at 497 South Hillview Drive ("Project").

In accordance with state law and the City's Municipal Regional Stormwater NPDES Permit ("MRP") issued by the Regional Water Quality Control Board ("RWQCB"), new development and redevelopment projects that create and/or replace 10,000 square feet or more of impervious surface are required to incorporate Low Impact Development ("LID") post construction stormwater control measures into the project. LID control measures include, for example, bioretention areas, flow-through planters, permeable pavement, infiltration trenches and tree well filters.

Analysis:

MRP section C.3.h.ii.(1)(a) and Milpitas Municipal Code Title XI Chapter 16 require development project property owners meeting the 10,000 square-foot threshold to execute and record a Stormwater Management Facilities Operation and Maintenance Agreement ("O&M Agreement") with the City for the perpetual operation, maintenance and annual inspection of LID stormwater treatment facilities.

The Project owner has complied with the LID requirements and has executed the required O&M Agreement, which has been reviewed by the City Attorney as to form and by the City Engineer as to content.

Policy Alternative:

Alternative:

Not approve the Agreement with the City for operation, maintenance and annual inspection of stormwater treatment facilities.

Pros: None

Cons: Not approving the Agreement would cause the project to be not in compliance with the conditions of development and the City's Municipal Code and would be prohibitive by federal and state law.

Reason not recommended: To be in compliance with federal and state law, including the MRP, and to allow for the on-going maintenance and annual City Inspection of the installed stormwater treatment devices, staff recommends approval of the Agreement.

Fiscal Impact:

The developer will pay for the required annual maintenance and inspection of the stormwater facilities.

California Environmental Quality Act:

This Agreement ensures the continuation of an administrative or maintenance activity. Execution of the Agreement is not considered a project under CEQA Guidelines section 15378(b)(4) as there will be no direct or reasonably foreseeable indirect physical change in the environment from this action to ensure continuing administrative and maintenance activities.

Recommendation:

Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for TDK USA Corporation for TDK Headway at 497 South Hillview Drive.

Attachment:

Stormwater Management Facilities Operation and Maintenance Agreement with Exhibits A and B

Control No. 2020-_____
Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479

Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is \$ 0

() Computed on full value of property conveyed

() Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$ 0

APN: 086-38-028

STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this _____ day of _____ 2020 ("Effective Date"), by and between TDK U.S.A. Corporation ("Property Owner") and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS

This AGREEMENT is made and entered into with reference to the following facts:

- A. **WHEREAS**, the Property Owner is the owner of real property more particularly depicted and described on the attached as **Exhibit A** ("Property") and fully incorporated herein by reference; and
- B. **WHEREAS**, the Property Owner received entitlements from the City allowing the development of the Property, including the construction of a 9,996 square foot addition and 1,297 square foot utility yard addition to an existing 104,389 square foot industrial building with stormwater treatment measures on a 6.02 acre site located at 497 South Hillview Drive in Milpitas and more commonly known as TDK Headway Technologies Inc., Project No. PJ1391, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):
 - 1. Resolution No. 17-034 approving Site Development Permit No. SD17-0015 and Conditional Use Permit No. UP17-0016.

- C. **WHEREAS**, discharges to the City's municipal separate storm sewer system ("MS4") are regulated under state and federal law pursuant to Waste Discharge Requirements and National Pollutant Discharge Elimination System permit ("MS4 Permit") issued by the Regional Water Quality Control Board, San Francisco Region ("Regional Board").
- D. **WHEREAS**, pursuant to the requirements of the MS4 Permit and the City's Stormwater and Urban Runoff Pollution Control Ordinance as codified in Milpitas Municipal Code Chapter 16 ("Ordinance"), the City Approvals require the Property Owner to install, operate and maintain, at no cost or expense to the City, the Permanent Stormwater Pollution Prevention Measures ("BMPs") more particularly described in the City-approved Stormwater Control Operation and Maintenance Plan (sometimes referred to herein as "Plan") for the Project attached hereto as **Exhibit B** and fully incorporated herein by reference; and
- E. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan may be subsequently modified from time to time with City's written approval and such changes shall be fully incorporated as part of this Agreement by this reference; and
- F. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan includes provisions for the BMP Operation and Maintenance and an annual inspection checklist for the BMPs constructed on the Property, and
- G. **WHEREAS**, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Stormwater Control Operation and Maintenance Plan.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1. Responsibility for Operation and Maintenance:

The Property Owner, at its sole cost and expense, shall construct and install the BMPs shown in Exhibit B in accordance with the plans approved by and on file with the City. Property Owner shall diligently maintain in perpetuity the BMPs in a manner assuring peak performance at all times, shall make such changes or modifications to the BMPs, subject to City's prior approval as may be reasonably necessary for the BMPs to continue to operate as designed and approved and to accomplish its intended purpose and in good repair, and in compliance with all applicable Federal, State, County and local laws and regulations, including but not limited to the Ordinance, as the same may be amended, revised, and/or replaced from time to time. The Owner shall be responsible for the costs incurred in operating, maintaining, repairing and replacing the BMPs. Property Owner shall not destroy or remove the BMPs or modify any measure in any manner that would lessen its effectiveness. Property Owner shall make available copies of the approved Stormwater Control Operation and Maintenance Plan at the site with the facility or property manager.

SECTION 2: Inspection by Property Owner:

The Property Owner, at its sole cost and expense, shall conduct annual inspections of all permanent installed BMPs per the Plan. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Property Owner shall submit the Inspection Report on these BMPs to the City Engineer no later than July 15th of each year.

SECTION 3. Facility Inspection by the City:

- (a) Right of Entry. The Property Owner, on its behalf and on behalf of its successors and assigns, grants permission to the City, the inspectors of the Regional Board, and local mosquito and vector control agency, and their authorized agents and employees, to enter the Property, and to inspect the BMPs whenever the City deems necessary to enforce provisions of the Ordinance, this Agreement, or any other local or state requirements. The City may enter the premises at any reasonable time during normal business hours and upon at least 48 hours prior written notice (except that prior written notice is not required in case of emergency) to inspect the premises related to BMPs and BMP operation and maintenance, to inspect and copy records related to storm water compliance, and to collect samples and take measurements related to BMPs. The Property Owner shall deposit and maintain a Private Job Account with the City a minimum balance of **Four Thousand Dollars (\$4,000)** for inspection by City Staff pursuant to this Section 3. The deposit of **Four Thousand Dollars (\$4,000)** shall be made simultaneously with the execution of this Agreement.
- (b) Security. The City may require the Owner, its successors and assigns, from time to time, to post security in a form, amount, and for a time period satisfactory to City to guarantee performance of the obligations stated herein. Should the Owner, its successors and assigns, fail to perform the obligations under this Agreement, the City may, in the case of a cash bond, act for the Owner, its successors and assigns, using the proceeds from such cash bond, or in the case of a surety bond, require the surety to perform the obligations of this Agreement.

SECTION 4. Failure to Perform Required Facility Repairs or Maintenance by the Property Owner:

- (a) Enforcement Action. If the Property Owner or its successors fail to operate and maintain the BMPs in good working order and in accordance with the approved Plan and the City's Ordinance, the City may, but is not required to, pursue any enforcement action available at law or in equity to cause the completion of all maintenance and may charge the costs of such enforcement action against the Property Owner in any manner authorized by law or in equity.
- (b) City Maintenance. In the event of Property Owner's failure to operate and maintain BMPs in accordance with the Plan and the City's Ordinance, the City may also, with prior written notice, enter the Property to return the BMPs to good working order; provided however that the Property Owner shall have 30 days after any such notice, or such other time provided by law, to cure the relevant failure and provided further that the Property Owner shall have such additional time after the initial 30 days to complete a cure so long as Property Owner commences the cure within the initial 30 days and diligently prosecutes the cure to completion. Notwithstanding the foregoing, City may in its sole discretion enter the Property to return the BMPs to good working in an emergency and take any other necessary action to mitigate an emergency without any notice to Property Owner. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this Section 4 takes any action to return the BMPs to good working order, the Property Owner

shall reimburse the City for all the reasonable costs and expenses incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and expenses and the Property Owner shall make full payments to the City within thirty (30) days of the date of the invoice. If the Property Owners fails to pay the invoice within thirty (30) days, the City shall be entitled to cause a lien for any such unpaid maintenance expense bill to be recorded against the Property. In addition, the City shall be entitled to have the unpaid amount of the invoice placed as a special assessment on the next regular tax bill levied against the Property, after which such assessment shall be collected in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and same procedures under foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes. The actions described in this section are in addition to and not in lieu of other legal remedies provided by law. Notwithstanding the above, it is understood that City is under no obligation to repair or maintain the BMPs, and in no event shall this Agreement be construed to impose any such obligation on City.

- (c) Specific Performance. The provisions of this Agreement are expressly declared to be for the benefit of the City. The City may bring an action to obtain specific performance of this Agreement and may recover its costs, including attorney fees, incurred in bringing such action.

SECTION 5: Successors and Assigns:

Property Owner hereby declares that the Property shall be held, transferred, encumbered, used, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements and rights set forth herein for the use and benefit of each of the Lots. All of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Property and shall be binding upon Property Owner, its successors and assigns, any and all parties having or acquiring any right, title or interest in or to the Property or any part thereof or interest therein and shall inure to the benefit of and be binding upon each successor-in-interest thereto.

Upon transfer of the property, the Property Owner shall provide the new owner with the current Plan and a copy of this Agreement and shall, in any event, be released from all obligations under this Agreement as of the effective date of the transfer of the Property.

SECTION 6. Indemnity:

The Property Owner, on Property Owner's behalf and on behalf of all successors in interest pursuant to Section 5 of this Agreement, shall indemnify, release, hold harmless, and defend the City and its authorized agents and employees from and against any and all demands, suits, liabilities, fines, losses, damages, accidents, casualties, occurrences or claims, including reasonable attorneys' fees, against the City which may in anyway arise or relate to the construction, operation, presence, existence or maintenance of the BMPs, or from any personal injury or property damage that may arise or relate from the City entering the property under Section 4. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the claim and any resulting litigation at its sole cost and expense, with counsel approved by City. If any judgment is entered against the City, or its authorized agents or employees, the Property Owner must pay all costs and expenses to satisfy the judgment.

SECTION 7. Severability:

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions, and all other provisions shall remain in full force and effect.

SECTION 8. Non-Discrimination:

The Property Owner shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 9. Governing Law:

City and Property Owner agree that the law governing this Agreement shall be that of the State of California and that Property Owner shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 10. Recordation:

Property Owner shall, within 10 days after the effective date of this Agreement, record or cause the Agreement to be recorded in the Office of the Recorder, Santa Clara County, California, at the expense of the Property Owner, which recording shall constitute notice of the obligations herein set forth and a covenant running with the land and shall be binding upon all of the successors and assigns in title to the Property. In the event Property Owner fails to timely record this Agreement, City shall be authorized but not required to record the Agreement.

SECTION 11. Books and Records:

- A. The Property Owner shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements or in anyway relating to the performance of this Agreement for a minimum period of three (3) years, or for any longer period required by law.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at reasonable any time during regular business hours, upon at least 48 hours' prior written request by the City Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Property Owner's address indicated for receipt of notices in this Agreement.

SECTION 12. Notices:

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

City of Milpitas (Engineering Department)
Attn: Land Development Engineer
455 East Calaveras Blvd.
Milpitas, CA 95035

To PROPERTY OWNER:

TDK U.S.A. Corporation
Attn: Mike Greene
497 S Hillview Dr
Milpitas, CA 95035

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 13. Venue:

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 14. Interpretation, Prior Agreements:

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this Agreement, the terms specified in the body of this Agreement shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties execute this Stormwater Management Facilities Operation and Maintenance Agreement as of the last date set forth below:

PROPERTY OWNER:

TDK U.S.A. Corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CITY:

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Recommended for approval

By:

Steve Erickson, City Engineer

Approved as to form

By:

Christopher J. Diaz, City Attorney

Approved as to content

By:

Steven McHarris, City Manager

By:

Walter Rossmann, Risk
Manager/Director of Finance

Please note that this is a placeholder for the acknowledgement. So use the most current version of the acknowledgement

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 _____, before me, _____, a Notary Public, personally appeared

_____,
_____ personally known to me;
_____ or _____, 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 _____

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

____ Individual(s)
____ Corporate Officer(s) Titles _____ and _____
____ Partner(s) _____ Limited _____ General
____ Attorney-in-Fact
____ Trustee(s)
____ Guardian/Conservator
____ Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document _____

Number of pages: _____ Date of document: _____

Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A

Plat and Description for the site

EXHIBIT B

Operation and Maintenance Plan

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

ALL OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF THE MILPITAS RANCHO" WHICH MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 3, 1981 IN BOOK 493 OF MAPS, PAGES 19 AND 20, AND AS CORRECTED BY THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 1984 IN BOOK J084, PAGE 647, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERAL AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID, SAID MINERALS BY ANY MEANS OR METHODS SUITABLE, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE LANDS, AS RESERVED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION IN INSTRUMENT RECORDED DECEMBER 5, 1984 IN BOOK J091, PAGE 479, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

THAT PORTION OF PARCEL 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF THE MILPITAS RANCHO" WHICH MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 3, 1981 IN BOOK 493 OF MAPS, PAGES 19 AND 20, AND AS CORRECTED BY THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED DECEMBER 3, 1984 IN BOOK J084, PAGE 647, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF HILLVIEW DRIVE, SAID POINT BEING AT THE INTERSECTION THEREOF WITH THE COMMON BOUNDARY LINE BETWEEN PARCEL 2 AND PARCEL 3, AS SAID HILLVIEW DRIVE, PARCEL 2 AND PARCEL 3 ARE SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING, ALONG SAID RIGHT OF WAY LINE NORTH 23° 59' 40" WEST, 32.50 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 32.50 FEET, MEASURED AT RIGHT ANGLES FROM THE AFORESAID COMMON BOUNDARY LINE BETWEEN PARCEL 2 AND PARCEL 3; THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 66° 00' 20" WEST, 416.76 TO THE SOUTHWESTERLY BOUNDARY LINE OF PARCEL 3; THENCE LEAVING SAID PARALLEL LINE ALONG SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 23° 59' 40" EAST, 32.50 FEET TO THE SOUTHERLY BOUNDARY CORNER OF SAID PARCEL 3; THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY LINE ALONG SAID COMMON BOUNDARY LINE BETWEEN PARCEL 2 AND PARCEL 3 NORTH 66° 00' 20" EAST, 416.75 FEET TO THE POINT OF BEGINNING, BEING AN APPROVED LOT LINE ADJUSTMENT BY INSTRUMENT RECORDED OCTOBER 22, 1986 IN BOOK J890, PAGE 2131, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERAL AND ALL MINERAL RIGHTS OF EVERY KIND AND

CHARACTER NOW KNOWN TO EXIST OF HEREAFTER DISCOVERED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID, SAID MINERALS BY ANY MEANS OR METHODS SUITABLE, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE LANDS, AS RESERVED BY SACRAMENTO NORTHERN RAILWAY, A CALIFORNIA CORPORATION BY DEED RECORDED OCTOBER 21, 1986 IN BOOK J890, PAGE 2143, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS.

PARCEL THREE:

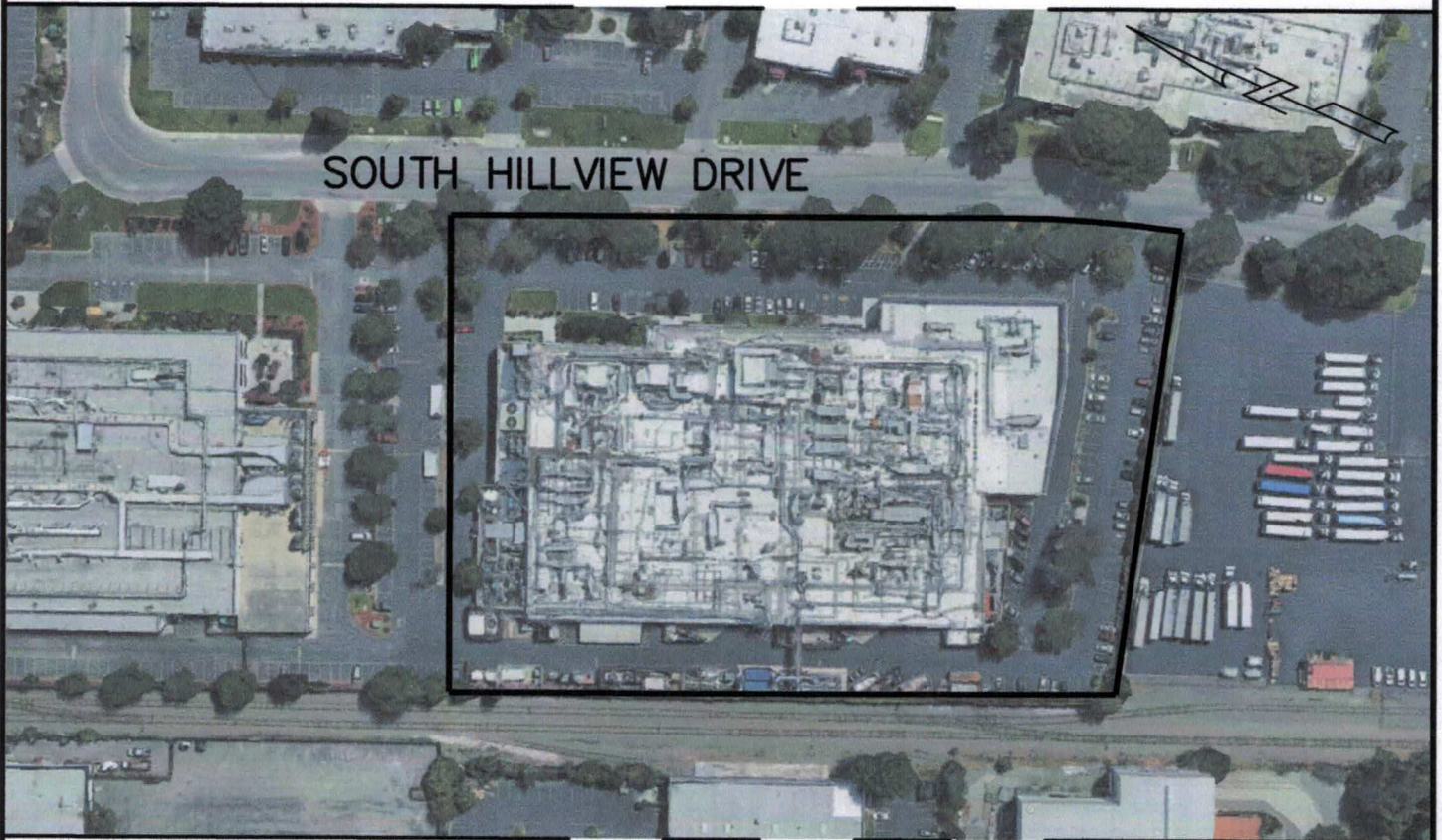
A NON-EXCLUSIVE EASEMENT, AS AN APPURTENANCE TO PARCELS ONE AND TWO ABOVE, FOR INGRESS AND EGRESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED MAY 24, 1988 IN BOOK K546, PAGE 775, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS, OVER A PORTION OF PARCEL 3, AS SAID PARCEL IS SHOWN ON THE MAP RECORDED DECEMBER 3, 1981 IN BOOK 493 OF MAPS, PAGES 19 AND 20, OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 3; THENCE FROM SAID POINT OF COMMENCEMENT ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCEL 3 NORTH 23° 59' 40" WEST, 32.50 FEET; THENCE LEAVING SAID LINE, AT A RIGHT ANGLE AND PARALLEL WITH THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL 3 NORTH 66° 00' 20" EAST, 22.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING AND CONTINUING ALONG SAID NORTH 66° 00' 20" EAST, 352.77 FEET; THENCE AT A RIGHT ANGLE AND PARALLEL WITH THE AFORESAID MENTIONED SOUTHWESTERLY BOUNDARY LINE NORTH 23° 59' 40" WEST, 12.50 FEET; THENCE AT A RIGHT ANGLE AND PARALLEL WITH THE AFOREMENTIONED SOUTHWESTERLY BOUNDARY LINE SOUTH 23° 59' 40" EAST, 12.50 FEET TO THE TRUE POINT OF BEGINNING.

APN: 086-38-028

STORMWATER MANAGEMENT PLAN

497 S. HILLVIEW DRIVE
CITY OF MILPITAS



Milpitas, CA 95035

APN: 086-38-026

Stormwater C.3 Guideline Compliance

Prepared By:

Mission Engineers, Inc.

2355 De La Cruz Boulevard, Santa Clara, CA. 95050

TABLE OF CONTENTS

CONTENTS	1
PROJECT DESCRIPTION	2
SITE CONSTRAINTS	3
SITE DESIGN ELEMENTS	3
HMP APPLICABILITY	3
INFILTRATION/HARVESTING AND USE FEASIBILITY	3
BMP SELECTION AND DESCRIPTION	4
POST CONSTRUCTION BMP MAINTENANCE	4
SOURCE CONTROL MEASURES	4

APPENDICES

A – Vicinity Map

B – Stormwater Management Data Form and Infiltration/Harvesting and Use Feasibility
Screening Worksheet

C –Maintenance and Inspection

- Post Construction BMP Maintenance and/or Source Control Activities
- Bioretention Area Maintenance procedures
- Standard Stormwater Treatment BMP Inspection Checklist

D – BMP Sizing Calculation

E – Existing Conditions Map

F – Proposed Conditions Map

G – Bioretention Area Detail

H – Stormwater Management Plan

I – Conditions of Approval

J – Soils Report

PROJECT DESCRIPTION

This Stormwater Management Plan (SWMP) for 497 S. Hillview Dr. in Milpitas is submitted to the City of Milpitas to provide recommendations on the use of permanent Best Management Practices (BMPs) for the proposed building addition project. It is the location of an Industrial Facility on a 6.02 acre parcel located at 497 S. Hillview Dr., Milpitas, CA. The project will consist of a 9,996 SF building addition and 1,297 SF expansion of an existing utility yard. BMP technical requirements are based on the San Francisco Bay Municipal Regional Stormwater NPDES Permit and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) C.3 Stormwater Handbook.

Existing Site Features

The Headway project site is located at 497 S Hillview Dr. (APN 086-38-028), in the City of Milpitas. A Vicinity Map can be found in Appendix A. The site is surrounded by industrial facilities.

The site is in Zone X area as shown on FEMA Map Number 06085C0067J, dated 2/19/14. Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

The site consists of one building used for manufacturing and is surrounded by parking and equipment yards with minimal landscaping. Approximately 5.3 acres (88%) of the total site area is impervious. See Appendix E for existing site conditions.

Existing Site Drainage

Existing site topography is generally flat with slopes up to 2%. Site runoff surface flows into the onsite storm system which is connected to a storm main parallel to the northwesterly boundary line. This storm drain main flows westerly to Wrigley Creek.

Proposed Site Use

This project will include the removal of existing parking, walks and landscape within the proposed expansion area. And consist of a new 9,996 SF building addition and 1,297 SF expansion of an existing utility yard. Approximately 5.42 acres (90%) of the site will be covered by impervious surface upon construction of the proposed improvements.

The proposed building addition roof downspouts will be connected to a new storm drain line that will daylight into the proposed Bioretention Area in an existing planter adjacent to the northwesterly boundary. Water treated in the Bioretention Area is collected with a perforated drain pipe which drains into the storm drain main along the westerly boundary line.

Pollutants of Concern

Pollutants of concern include oil, grease, sediments, pesticides, and trash.

Existing Soil Data

A geotechnical investigation report was prepared by BAGG Engineers in November 2010. See attached soils report for their detailed findings. According to the Boring Logs from the Soils Report prepared by BAGG Engineers in November 2010 (Job No: ADCON-03-00):

Soil Type:

0 to 9.5 Foot Depth: Fat Clay, dark gray, moist, very stiff, with caliche

9.5 to 17.5 Foot Depth: Clayey Sand, pale brown, saturated, medium dense, with caliche, moderately plastic

17.5 to 22.5 Foot Depth: Silty Fine Sand, pale brown, saturated, very stiff, with trace clay and caliche

22.5 to 32 Foot Depth: Lean Clay, pale brown, saturated, very stiff, sandy with caliche

32 to 33 Foot Depth: Silty Sand, brown, saturated, dense to medium dense

33 to 37 Foot Depth: Lean Clay, pale brown, saturated

37 to 40 Foot Depth: Silty Sand, gray brown, saturated, medium dense, medium to fine sand

40 to 44 Foot Depth: Lean Clay, pale brown, very stiff, trace caliche and oxidation stains

44 to 45 Foot Depth: Silty Sand, pale brown, saturated, medium dense, fine sand

45 to 49.5 Foot Depth: Lean Clay, pale brown, saturated, very stiff

49.5 to 50 Foot Depth: Well Graded Sand, gray brown, saturated, dense, with trace fine subrounded gravel

Boring was terminated at 50 feet.

Groundwater Depth:

Groundwater was encountered at 7.5 feet.

SITE CONSTRAINTS

The building addition and equipment yard is bounded by driveways to the northeast and northwest leaving little landscaping adjoining the building and is unsuitable for treatment. As a result roof drains are proposed to be hard piped and daylight into the proposed Bioretention Area in the large landscape island adjoining the northwest boundary line (see appendix H).

SITE DESIGN ELEMENTS

The SWMP has identified the following design strategies which will aid in achieving these goals.

- Minimize land disturbed
- Self-retaining area

HMP APPLICABILITY

Project is exempt from hydro modification since it does not create or replace one acre or more of impervious area.

INFILTRATION/HARVESTING AND USE FEASIBILITY

This site already utilizes recycled water. Installing a second non-potable water system for harvesting rainwater is impractical.

BMP SELECTION AND DESCRIPTION

As stated in Conditions of Approval, this site shall comply with the City of Los Altos Municipal Regional Stormwater (MRP) NPDES Permit No. CA S612008, Order R2-2009-0074 dated October 14, 2009. Landscape based Bioretention is proposed for storm water treatment. See Appendix G for detail and Appendix I for Conditions of Approval.

POST CONSTRUCTION BMP MAINTENANCE

Coordination with the Landscape Architect will take place to ensure pest reducing landscape design techniques will be implemented. These techniques will follow the Landscape Maintenance Techniques for Pest Reduction found under Operational Source Control BMPs section below.

A maintenance agreement will be required stating which parties are responsible for maintenance and upkeep of the stormwater treatment facilities. BMP's must be regularly maintained to ensure they continue to be effective and do not cause flooding or other harmful nuisances.

Please see Appendix C for Maintenance and Inspection Tables. Maintenance and Inspection Checklist should be kept up to date at all times.

Property Owner / Management

Property Owner / Management will be responsible for the maintenance and cost associated with the of all BMP measures.

Record Keeping Procedures

The responsible party in charge shall maintain an up to date Post Construction BMP Maintenance Checklist (Appendix C). The required frequency of these inspections and maintenance procedures can be found in Appendix C.

SOURCE CONTROL MEASURES

Pollution sources for the site include grease, oil, sediment, litter, pesticides and waste. The following outline identifies potential pollutant source and the associated source control BMP.

Permanent Source Control BMP

- On-Site Drain Inlets: On-site signage will be provided with "NO DUMPING-DRAINS TO BAY."
- Landscape / Outdoor Pesticide Use: Landscaping will be designed to minimize required irrigation and runoff, to promote surface infiltration, and to minimize the use of fertilizers and pesticides that can contribute to storm water pollution. Where possible, pest-resistant plants will be selected, especially for locations adjacent to hardscape. Plants will be selected appropriate to site soils, slopes, climate, sun, wind, rain, land use, air movement, ecological consistency, and plant interactions.

- Fire Sprinkler Test Water: Sanitary sewer connections shall be provided to drain fire sprinkler test water.
- Refuse Areas: Refuse area is covered and drains to sanitary sewer.

Operational Source Control BMPs

- On-Site Drain Inlets: Inlet markings will be inspected annually and replaced or renewed as needed.
- Paved Sidewalks and Parking Areas: Sidewalks and parking areas shall be swept regularly to prevent the accumulation of litter and debris.
- Landscape / Outdoor Pesticide Use: All on-site landscaping is to be privately maintained by the property owner / HOA using Integrated Pest Management (IPM) principles, with minimal or no use of pesticides.
- Pest Reduction Measures: Please see the following pages for Pest Reduction Measures

APPENDIX A
VICINITY MAP



YOSEMITE DRIVE

S. MILPITAS BLVD.

SITE

S. HILLVIEW DRIVE

VISTA WAY

LOS COCHES STREET

E CALAVERAS BLVD

SINCLAIR

FRONTAGE ROAD



VICINITY MAP

497 SOUTH HILLVIEW DRIVE

CITY OF MILPITAS

SANTA CLARA COUNTY, CALIFORNIA



MISSION ENGINEERS, INC.

RESPONSIVE, RELIABLE RESULTS SINCE 1953

2355 De La Cruz Blvd. Santa Clara, Calif 95050 (408) 727-8262 FAX:(408) 727-8285

SCALE:	N.T.S.
DATE	12-01-17
DWN	JS ME16
CH'KD	
JOB NO.	10042
DWG. NO.	S14864-1

APPENDIX B

STORMWATER MANAGEMENT DATA FORM



City of Milpitas – Stormwater Requirements C.3 Data Form

Santa Clara Valley Urban Run-Off Pollution Prevention Program

Which Projects Must Comply with Stormwater Requirements?

All projects that create and/or replace **10,000 sq. ft.** or more of impervious surface on the project site must fill out this worksheet and submit it with the development project application.

All restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects (stand-alone or part of another development project, including the top uncovered portion of parking structures) that create and/or replace **5,000 sq. ft.** or more of impervious surface on the project site must also fill out this worksheet.

Interior remodeling projects, routine maintenance or repair projects such as re-roofing and re-paving, and single family homes that are not part of a larger plan of development are **NOT** required to complete this worksheet.

What is an Impervious Surface?

An impervious surface is a surface covering or pavement that prevents the land's natural ability to absorb and infiltrate rainfall/stormwater. Impervious surfaces include, but are not limited to rooftops, walkways, paved patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering. Pervious pavement, underlain with pervious soil or pervious storage material (e.g., drain rock), that infiltrates rainfall at a rate equal to or greater than surrounding unpaved areas OR that stores and infiltrates the water quality design volume specified in Provision C.3.d of the Municipal Regional Stormwater Permit (MRP) is not considered an impervious surface.

For More Information

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment in Santa Clara County: http://www.scvurppp-w2k.com/c3_handbook_2012.shtml

1. Project Information

Project Name: HWY EXPANSION **APN #** 086-38-028

Project Address: 497 S. HILLVIEW DR. MILPITAS, CA 95035

Cross Streets: YOSEMITE DR. / E. CALAVERAS

Applicant/Developer Name: ADVANCE DESIGN CONSULTAN ENGINEERS INC.

Project Phase(s): 1 of 1 **Engineer:** MISSION ENGINEERS, INC.

Project Type (Check all that apply): ☐ New Development ☐ Redevelopment

☐ Residential ☐ Commercial ☒ Industrial ☐ Mixed Use ☐ Public ☐ Institutional

☐ Restaurant ☐ Uncovered Parking ☐ Retail Gas Outlet ☐ Auto Service (SIC code) _____
(5013-5014, 5541, 7532-7534, 7536-7539)

☐ Other _____

Project Description: Expansion of Existing Building (9,996 s.f.) and the Expansion of Existing Utility Yard (1,297s.f.)

Project Watershed/Receiving Water (creek, river, or bay): Wrigley Creek

2. Project Size

a. Total Site Area: 6.02 acre		b. Total Site Area Disturbed: 0.259 acre (including clearing, grading, or excavating)		
	Existing Area (ft²)	Proposed Area (ft²)		Total Post-Project Area (ft²)
		Replaced	New	
Impervious Area				
Roof	104,389	0	9,996	114,385
Parking	126,460	0	1,297	121,706
Sidewalks and Streets	0	0	0	0
c. Total Impervious Area	230,849	0	11,293	236,091
d. Total new and replaced impervious area		11,293		
Pervious Area				
Landscaping	31,382	0	258	26,140
Pervious Paving	0	0	0	
Other (e.g. Green Roof)	0	0	0	
e. Total Pervious Area	31,382	0	258	26,140
f. Percent Replacement of Impervious Area in Redevelopment Projects (Replaced Total Impervious Area ÷ Existing Total Impervious Area) x 100% = 4.9 %				

3. State Construction General Permit Applicability:

a. Is #2.b. equal to one acre or more?

- ☐ Yes, applicant must obtain coverage under the State Construction General Permit (i.e., file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan) (see www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml for details).
- ☒ No, applicant does not need coverage under the State Construction General Permit.

4. MRP Provision C.3 Applicability:

a. Is #2.d. equal to 10,000 sq. ft. or more, or 5,000 sq. ft. or more for restaurants, auto service facilities, retail gas outlets, and uncovered parking?

- ☒ Yes, C.3. source control, site design, and treatment requirements apply.
- ☐ No, C.3. source control and site design requirements may apply – check with local agency

b. Is #2.f. equal to 50% or more?

- ☐ Yes, C.3. requirements (site design, source control, as appropriate, and stormwater treatment) apply to entire site.
- ☒ No, C.3. requirements only apply to impervious area created and/or replaced.

5. Hydromodification Management (HM) Applicability:

a. Does project create and/or replace one acre or more of impervious surface AND is the total post-project impervious area greater than the pre-project (existing) impervious area?

- ☐ Yes (continue) ☒ No – exempt from HM, go to page 3

b. Is the project located in an area of HM applicability (green area) on the HM Applicability Map? (www.scvurppp-w2k.com/hmp_maps.htm)

- ☐ Yes, project must implement HM requirements
- ☐ No, project is exempt from HM requirements

6. Selection of Specific Stormwater Control Measures:

Site Design Measures

- ☒ Minimize land disturbed
- ☒ Minimize impervious surfaces
- ☒ Minimum-impact street or parking lot design
- ☐ Cluster structures/pavement
- ☐ Disconnected downspouts
- ☐ Pervious pavement
- ☐ Green roof
- ☐ Microdetention in landscape
- ☒ Other self-treating area
- ☐ Self-retaining area
- ☐ Rainwater harvesting and use (e.g., rain barrel, cistern connected to roof drains) ¹
- ☐ Preserved open space:
_____ ac. or sq. ft.
(circle one)
- ☐ Protected riparian and wetland areas/buffers
(Setback from top of bank: _____ ft.)
- ☐ Other _____

Source Control Measures

- ☐ Alternative building materials
- ☐ Wash area/racks, drain to sanitary sewer²
- ☐ Covered dumpster area, drain to sanitary sewer²
- ☐ Sanitary sewer connection or accessible cleanout for swimming pool/spa/fountain²
- ☐ Beneficial landscaping (minimize irrigation, runoff, pesticides and fertilizers; promotes treatment)
- ☐ Outdoor material storage protection
- ☒ Covers, drains for loading docks, maintenance bays, fueling areas
- ☒ Maintenance (pavement sweeping, catch basin cleaning, good housekeeping)
- ☒ Storm drain labeling
- ☐ Other _____

Treatment Systems

- ☐ None (all impervious surface drains to self-retaining areas)

LID Treatment

- ☐ Rainwater harvest and use (e.g., cistern or rain barrel sized for C.3.d treatment)
- ☐ Infiltration basin
- ☐ Infiltration trench
- ☐ Exfiltration trench
- ☐ Underground detention and infiltration system (e.g. pervious pavement drain rock, large diameter conduit)

Biotreatment ³

- ☒ Bioretention area
- ☐ Flow-through planter
- ☐ Tree box with bioretention soils
- ☐ Other _____

Other Treatment Methods

- ☐ Proprietary tree box filter⁴
- ☐ Media filter (sand, compost, or proprietary media)⁴
- ☐ Vegetated filter strip⁵
- ☐ Dry detention basin⁵
- ☐ Other _____

Flow Duration Controls for Hydromodification Management (HM)

- ☐ Detention basin
- ☐ Underground tank or vault
- ☐ Bioretention with outlet control
- ☐ Other _____

¹ Optional site design measure; does not have to be sized to comply with Provision C.3.d treatment requirements.

² Subject to sanitary sewer authority requirements.

³ Biotreatment measures are allowed only with completed feasibility analysis showing that infiltration and rainwater harvest and use are infeasible.

⁴ These treatment measures are only allowed if the project qualifies as a "Special Project".

⁵ These treatment measures are only allowed as part of a multi-step treatment process.

7. Treatment System Sizing for Projects with Treatment Requirements

Indicate the hydraulic sizing criteria used and provide the calculated design flow or volume:

Treatment System Component	Hydraulic Sizing Criteria Used ³	Design Flow or Volume (cfs or cu.ft.)
Bioretention Area	4% rule	452 SF

- ³Key: 1a: Volume – WEF Method
1b: Volume – CASQA BMP Handbook Method
2a: Flow – Factored Flood Flow Method
2b: Flow – CASQA BMP Handbook Method
2c: Flow – Uniform Intensity Method
3: Combination Flow and Volume Design Basis

8. **Alternative Certification:** Was the treatment system sizing and design reviewed by a qualified third-party professional that is not a member of the project team or agency staff?

☐ Yes ☐ No

Name of Reviewer: _____

9. Operation & Maintenance Information

A. Property Owner's Name: _____

B. Responsible Party for Stormwater Treatment/Hydromodification Control O&M:

a. Name: _____

b. Address: _____

c. Phone/E-mail: _____

This section to be completed by City of Milpitas staff.

O&M Responsibility Mechanism

Indicate how responsibility for O&M is assured. Check all that apply:

☐ O&M Agreement

☐ Other mechanism that assigns responsibility (describe below):

Reviewed:

Planning Department

Planning Division: _____

Other (Specify): _____

Public Works Department

Land Development: _____

Other (Specify): _____



Infiltration/Harvesting and Use Feasibility Screening Worksheet

Apply these screening criteria for **C.3 Regulated Projects*** required to implement Provision C.3 stormwater treatment requirements. See the Glossary (Attachment 1) for definitions of terms marked with an asterisk (*). Contact municipal staff to determine whether the project meets **Special Project*** criteria. If the project meets Special Project criteria, it may receive LID treatment reduction credits.

1. Applicant Info

Site Address: 497 S. HILLVIEW DR. MILPITAS, CA APN: 086-38-028
Applicant Name: _____ Phone No.: _____
Mailing Address: _____

2. Feasibility Screening for Infiltration

Do site soils either (a) have a **saturated hydraulic conductivity*** (Ksat) that will NOT allow infiltration of 80% of the annual runoff (that is, the Ksat is LESS than 1.6 inches/hour), or, if the Ksat rate is not available, (b) consist of Type C or D soils?¹

☒ Yes (continue)

☐ No – complete the Infiltration Feasibility Worksheet. If infiltration of the C.3.d amount of runoff is found to be feasible, there is no need to complete the rest of this screening worksheet.

3. Recycled Water Use

Check the box if the project is installing and using a recycled water plumbing system for non-potable water use.

☒ The project is installing a recycled water plumbing system, and installation of a second non-potable water system for harvested rainwater is impractical, and considered infeasible due to cost considerations. Skip to Section 6.

4. Calculate the Potential Rainwater Capture Area* for Screening of Harvesting and Use

Complete this section for the entire project area. If rainwater harvesting and use is infeasible for the entire site, and the project includes one or more buildings that each have an individual roof area of 10,000 sq. ft. or more, then complete Sections 4 and 5 of this form for each of these buildings.

4.1 Table 1 for (check one): ☐ The whole project ☐ Area of 1 building roof (10,000 sq.ft. min.)

Table 1: Calculation of the Potential Rainwater Capture Area*				
The Potential Rainwater Capture Area may consist of either the entire project area or one building with a roof area of 10,000 sq. ft. or more.				
	1	2	3	4
	Pre-Project Impervious surface ² (sq.ft.), if applicable	Proposed Impervious Surface ² (IS), in sq. ft.		Post-project landscaping (sq.ft.), if applicable
		Replaced ³ IS	Created ⁴ IS	
a. Enter the totals for the area to be evaluated:				
b. Sum of replaced and created impervious surface:	N/A			N/A
c. Area of existing impervious surface that will NOT be replaced by the project.		N/A		N/A

¹ Base this response on the site-specific soil report, if available. If this is not available, consult soil hydraulic conductivity maps in Attachment 3.

² Enter the total of all impervious surfaces, including the building footprint, driveway(s), patio(s), impervious deck(s), unroofed porch(es), uncovered parking lot (including top deck of parking structure), impervious trails, miscellaneous paving or structures, and off-lot impervious surface (new, contiguous impervious surface created from road projects, including sidewalks and/or bike lanes built as part of new street). Impervious surfaces do NOT include vegetated roofs or pervious pavement that stores and infiltrates rainfall at a rate equal to immediately surrounding, unpaved landscaped areas, or that stores and infiltrates the C.3.d amount of runoff*.

³ "Replaced" means that the project will install impervious surface where existing impervious surface is removed.

⁴ "Created" means the project will install new impervious surface where there is currently no impervious surface.

* For definitions, see Glossary (Attachment 1).

- 4.2 Answer this question ONLY if you are completing this section for the entire project area. If existing impervious surface will be replaced by the project, does the area to be replaced equal 50% or more of the existing area of impervious surface? (Refer to Table 1, Row "a". Is the area in Column 2 > 50% of Column 1?)

- ☐ Yes, C.3. stormwater treatment requirements apply to areas of impervious surface that will remain in place as well as the area created and/or replaced. This is known as the 50% rule.
- ☐ No, C.3. requirements apply only to the impervious area created and/or replaced.

- 4.3 Enter the square footage of the **Potential Rainwater Capture Area***. If you are evaluating only the roof area of a building, or you answered "no" to Question 4.2, this amount is from Row "b" in Table 1. If you answered "yes" to Question 4.2, this amount is the sum of Rows "b" and "c" in Table 1.:

_____ square feet.

- 4.4 Convert the measurement of the **Potential Rainwater Capture Area*** from square feet to acres (divide the amount in Item 4.3 by 43,560):

_____ acres.

5. Feasibility Screening for Rainwater Harvesting and Use

- 5.1 Use of harvested rainwater for landscape irrigation:

Is the onsite landscaping LESS than 2.5 times the size of the **Potential Rainwater Capture Area*** (Item 4.3)? (Note that the landscape area(s) would have to be contiguous and within the same Drainage Management Area to use harvested rainwater for irrigation via gravity flow.)

- ☐ Yes (continue) ☐ No – Direct runoff from impervious areas to **self-retaining areas*** OR refer to Table 11 and the curves in Appendix F of the LID Feasibility Report to evaluate feasibility of harvesting and using the C.3.d amount of runoff for irrigation.

- 5.2 Use of harvested rainwater for toilet flushing or non-potable industrial use:

- a. Residential Projects: Proposed number of dwelling units: _____
Calculate the dwelling units per impervious acre by dividing the number of dwelling units by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:

Is the number of dwelling units per impervious acre LESS than 100 (assuming 2.7 occupants/unit)?

- ☐ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet.

- b. Commercial/Industrial Projects: Proposed interior floor area: _____ (sq. ft.)

Calculate the proposed interior floor area (sq.ft.) per acre of impervious surface by dividing the interior floor area (sq.ft.) by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:

Is the square footage of the interior floor space per impervious acre LESS than 70,000 sq. ft.?

- ☐ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet

- c. School Projects: Proposed interior floor area: _____ (sq. ft.)

Calculate the proposed interior floor area per acre of impervious surface by dividing the interior floor area (sq.ft.) by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:

Is the square footage of the interior floor space per impervious acre LESS than 21,000 sq. ft.?

- ☐ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet

* For definitions, see Glossary (Attachment 1).

d. Mixed Commercial and Residential Use Projects

- Evaluate the residential toilet flushing demand based on the dwelling units per impervious acre for the residential portion of the project, following the instructions in Item 5.2.a, except you will use a prorated acreage of impervious surface, based on the percentage of the project dedicated to residential use.
- Evaluate the commercial toilet flushing demand per impervious acre for the commercial portion of the project, following the instructions in Item 5.2.a, except you will use a prorated acreage of impervious surface, based on the percentage of the project dedicated to commercial use.

e. Industrial Projects: Estimated non-potable water demand (gal/day): _____Is the non-potable demand LESS than 2,400 gal/day per acre of the Potential Rainwater Capture Area?

- ☐ Yes (continue) ☐ No – refer to the curves in Appendix F of the LID Feasibility Report to evaluate feasibility of harvesting and using the C.3.d amount of runoff for industrial use.

6. **Use of Biotreatment**

If only the "Yes" boxes were checked for all questions in Sections 2 and 5, or the project will have a recycled water system for non-potable use (Section 3), then the applicant may use appropriately designed bioretention facilities for compliance with C.3 treatment requirements. The applicant is encouraged to maximize infiltration of stormwater if site conditions allow.

7. **Results of Screening Analysis**

Based on this screening analysis, the following steps will be taken for the project (check all that apply):

- ☒ Implement biotreatment measures (such as an appropriately designed bioretention area).
- ☐ Conduct further analysis of infiltration feasibility by completing the Infiltration Feasibility Worksheet.
- ☐ Conduct further analysis of rainwater harvesting and use (check one):
 - ☐ Complete the Rainwater Harvesting and Use Feasibility Worksheet for:
 - ☐ The entire project
 - ☐ Individual building(s), if applicable, describe: _____
 - ☐ Evaluate the feasibility of harvesting and using the C.3.d amount of runoff for irrigation, based on Table 11 and the curves in Appendix F of the LID Feasibility Report
 - ☐ Evaluate the feasibility of harvesting and using the C.3.d amount of runoff for non-potable industrial use, based on the curves in Appendix F of the LID Feasibility Report.

APPENDIX C

MAINTENANCE PLAN & INSPECTION REPORT

Bioretention Area Maintenance

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1.

Table 1 Routine Maintenance Activities for Bioretention Areas		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, weeds, debris and trash from bioretention area and its inlets and outlets; and dispose of properly.	Quarterly, or as needed after storm events
2	Inspect bioretention area for standing water. If standing water does not drain within 2-3 days, till and replace the surface biotreatment soil with the approved soil mix and replant.	Quarterly, or as needed after storm events
3	Check underdrains for clogging. Use the cleanout riser to clean any clogged underdrains.	Quarterly, or as needed after storm events
4	Maintain the irrigation system and ensure that plants are receiving the correct amount of water (if applicable).	Quarterly
5	Ensure that the vegetation is healthy and dense enough to provide filtering and protect soils from erosion. Prune and weed the bioretention area. Remove and/or replace any dead plants.	Annually, before the wet season begins
6	Use compost and other natural soil amendments and fertilizers instead of synthetic fertilizers, especially if the system uses an underdrain.	Annually, before the wet season begins
7	Check that mulch is at appropriate depth (2 - 3 inches per soil specifications) and replenish as necessary before wet season begins. It is recommended that 2" - 3" of arbor mulch be reapplied every year.	Annually, before the wet season begins
8	Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch. Remove accumulated sediment.	Annually, before the wet season begins
9	Inspect overflow pipe to ensure that it can safely convey excess flows to a storm drain. Repair or replace damaged piping.	Annually, before the wet season begins
10	Replace biotreatment soil and mulch, if needed. Check for standing water, structural failure and clogged overflows. Remove trash and debris. Replace dead plants.	Annually at the end of the rainy season, and/or after large storm events
11	Inspect bioretention area using the attached inspection checklist.	Annually, before the wet season

II. Use of Pesticides

Do not use pesticides or other chemical applications to treat diseased plants, control weeds or removed unwanted growth. Employ non-chemical controls (biological, physical and cultural controls) to treat a pest problem. Prune plants properly and at the appropriate time of year. Provide adequate irrigation for landscape plants. Do not over water.

Bioretention Area Maintenance Plan

Property Address: _____

Date of Inspection: _____

Treatment Measure No.: _____

III. Vector Control

Standing water shall not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact the Santa Clara Valley Vector Control District (District). Mosquito larvicides shall be applied only when absolutely necessary, as indicated by the District, and then only by a licensed professional or contractor. Contact information for the District is provided below.

Santa Clara Valley Vector Control District
1580 Berger Dr.

San José, California 95112

Phone: (408) 918-4770 / (800) 675-1155 - Fax: (408) 298-6356

www.sccgov.org/portal/site/vector

IV. Inspections

The attached Bioretention Area Inspection and Maintenance Checklist shall be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted.

Bioretention Area Inspection and Maintenance Checklist

Property Address: _____ Property Owner: _____

Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: ☐ Quarterly ☐ Pre-Wet Season
☐ After heavy runoff ☐ End of Wet Season
☐ Other: _____

Inspector(s): _____

Defect	Conditions When Maintenance Is Needed	Maintenance Needed? (Y/N)	Comments (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	Results Expected When Maintenance Is Performed
1. Standing Water	Water stands in the bioretention area between storms and does not drain within 2-3 days after rainfall.			There should be no areas of standing water once storm event has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
2. Trash and Debris Accumulation	Trash and debris accumulated in the bioretention area, inlet, or outlet.			Trash and debris removed from bioretention area and disposed of properly.
3. Sediment	Evidence of sedimentation in bioretention area.			Material removed so that there is no clogging or blockage. Material is disposed of properly.
4. Erosion	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.			Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
5. Vegetation	Vegetation is dead, diseased and/or overgrown.			Vegetation is healthy and attractive in appearance.
6. Mulch	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 2 inches in depth.			All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 2 – 3 inches.
7. Miscellaneous	Any condition not covered above that needs attention in order for the bioretention area to function as designed.			Meets the design specifications.

APPENDIX D

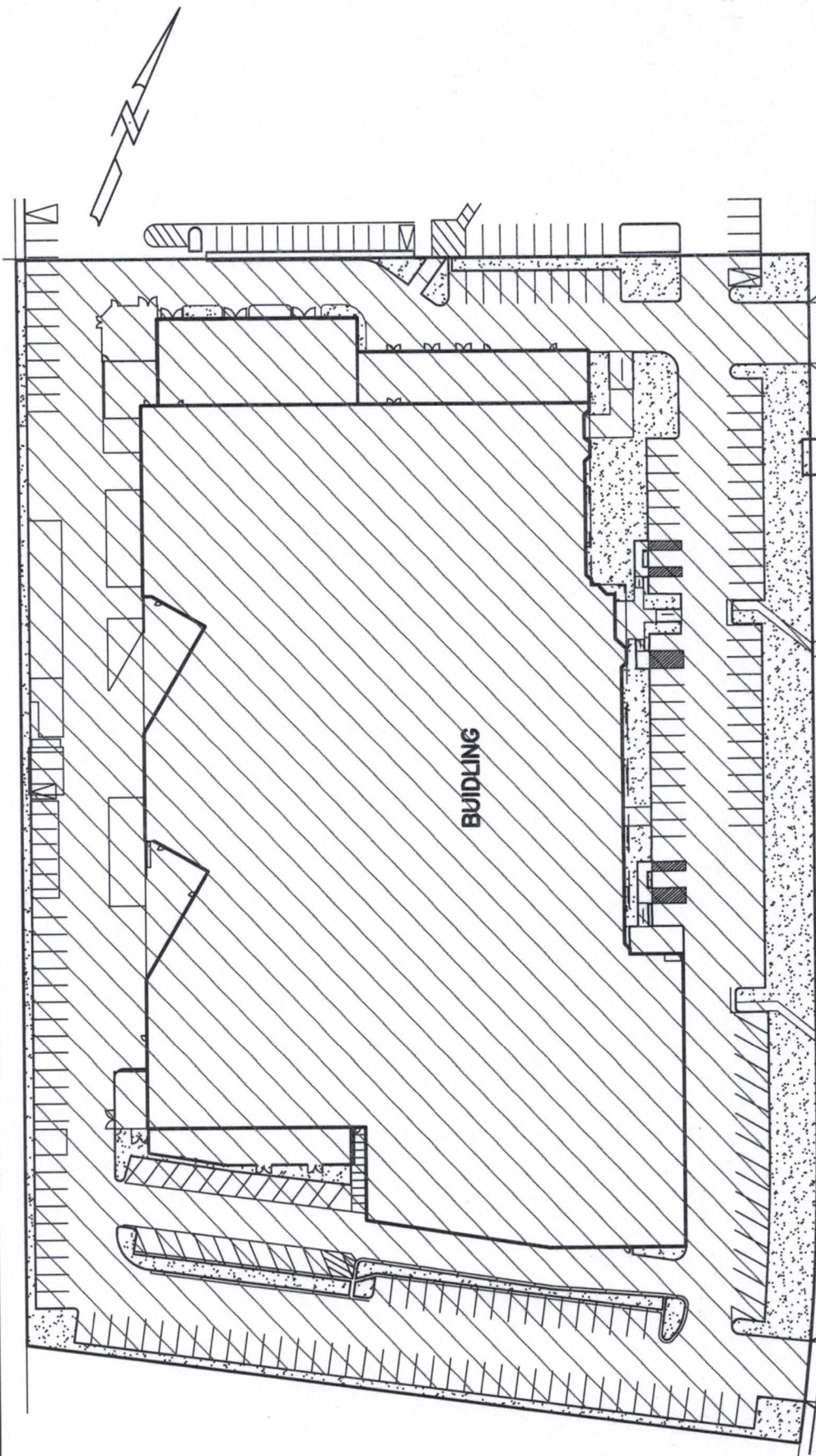
BMP SIZING CALCULATION

BMP SIZING:

	NEW IMPERVIOUS AREA (SF)	4% OF IMPERVIOUS AREA (SF)	REQUIRED BIO-RETENTION AREA (SF)	PROPOSED BIO-RETENTION AREA (SF)	% OF IMPERVIOUS TREATED
TOTAL	11,293	452	452	456	4.0%

APPENDIX E

EXISTING CONDITIONS MAP



S. HILL VIEW DRIVE

LEGEND

PROJECT BOUNDARY

IMPERVIOUS AREA

PERVIOUS AREA



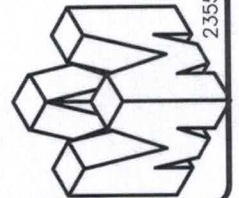
EXISTING CONDITIONS

497 SOUTH HILL VIEW DRIVE

CITY OF MILPITAS

SANTA CLARA COUNTY, CALIFORNIA

MISSION ENGINEERS, INC.

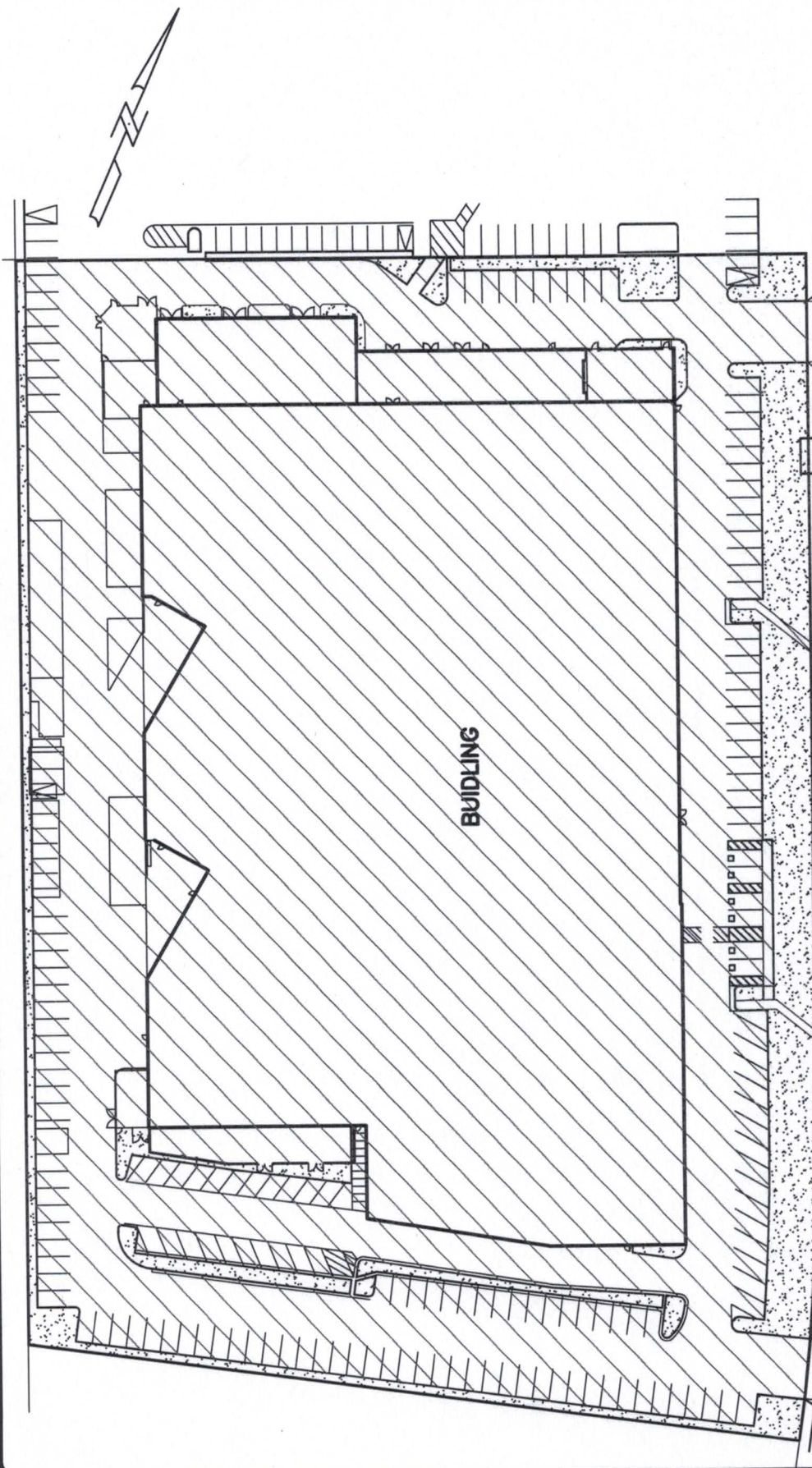


2355 De La Cruz Blvd. Santa Clara, Calif 95050 (408) 727-8262 FAX: (408) 727-8285
RESPONSIVE, RELIABLE RESULTS SINCE 1953

SCALE:	1"=80'
DATE	12-01-17
DWN	JS ME16
CH'D	CH'D
JOB NO.	10042
DWG. NO.	S14864-2

APPENDIX F

PROPOSED CONDITIONS MAP



S. HILLVIEW DRIVE

LEGEND

PROJECT BOUNDARY



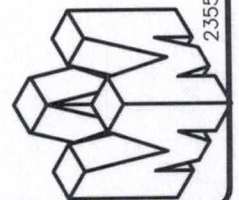
IMPERVIOUS AREA

PERVIOUS AREA



PROPOSED CONDITIONS

497 SOUTH HILLVIEW DRIVE
CITY OF MILPITAS
SANTA CLARA COUNTY, CALIFORNIA



MISSION ENGINEERS, INC.

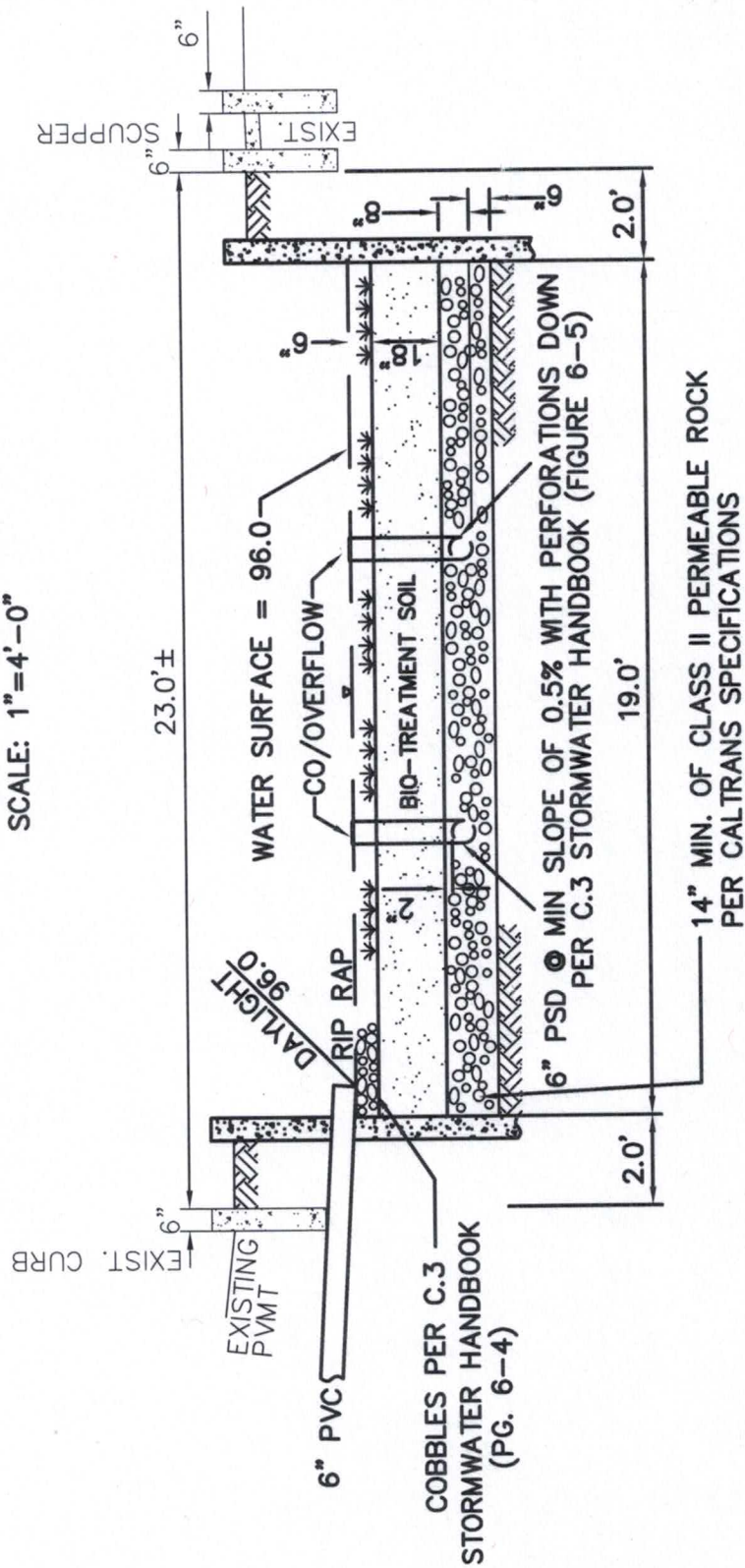
2355 De La Cruz Blvd. Santa Clara, Calif 95050 (408) 727-8262 FAX: (408) 727-8285
RESPONSIVE, RELIABLE RESULTS SINCE 1953

SCALE:	1"=80'
DATE	12-01-17
DWN	JS ME16
CH'D	CH'D
JOB NO.	10042
DWG. NO.	S14864-3

APPENDIX G
TYPICAL SECTION - BIORETENTION

TYPICAL BIORETENTION BASIN SECTION

SCALE: 1"=4'-0"



APPENDIX H

STORMWATER MANAGEMENT PLAN

APPENDIX I

CONDITIONS OF APPROVAL

RESOLUTION NO. 17-034

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD17-0015 AND CONDITIONAL USE PERMIT NO. UP17-0016 TO ALLOW FOR A 9,996 SQUARE FOOT CLEANROOM EXPANSION AND 1,297 SQUARE FOOT UTILITY YARD ADDITION TO AN EXISTING 104,389 SQUARE FOOT INDUSTRIAL BUILDING (TDK HEADWAY) LOCATED AT 497 SOUTH HILLVIEW (APN 086-38-028)

WHEREAS, on August 25, 2017, an application was submitted by Lorenzo Rios, Jr., of Advanced Design Consultants, Inc. (the “applicant”) for a Site Development Permit No. SD17-0015 and Conditional Use Permit No. UP17-0016, to allow for a 9,996 sq. ft. cleanroom addition and 1,297 sq. ft. utility yard addition to an existing 104,389 sq. ft. industrial building, known as TDK Headway (the “project”). The property is located within the Heavy Industrial (M2) with a Site and Architectural (-S) Overlay; and

WHEREAS, Conditional Use Permit No. UP17-0016 is required to allow for an increase of the allowable floor area within the Heavy Industrial zoning district from 0.40 to 0.44; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the proposed project is exempt from further CEQA review pursuant to Section 15301 (Existing Facilities); and

WHEREAS, on December 13, 2017, 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 Project; 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 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 incorporated herein by reference.

SECTION 2. CEQA Finding

The project is exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 for “Existing Facilities” as the project consists of an addition to an existing structure that will not result in an increase of more

than 10,000 square feet and the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and is in area that is not environmentally sensitive. Also known as Class 1, Section 15301 includes additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet, as long as the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the project location is not located in an environmentally sensitive area. 497 South Hillview is located in an area where public services and facilities are available and is not located in an environmentally sensitive area.

SECTION 3. Site Development Permit (Section XI-10-57.03(F)(1)) - *The Planning Commission makes the following findings based on the evidence in the public record in approving Site Development Permit No. SD17-0015:*

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project layout is designed in a manner that contributes to the industrial character of the adjacent, business community. The existing industrial area are surrounded with large, smooth stucco industrial buildings with limited architectural features. The proposed addition will blend in with the existing building seamlessly by utilizing a smooth stucco exterior with matching maroon band to be painted along the top half portion of the building. Such a design will allow the proposal to remain compatible and aesthetically harmonious with the adjacent and surrounding development within the immediate area.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The proposed project, associated use, and development criteria are consistent with the Milpitas zoning ordinance within the Heavy Industrial Zoning District, as demonstrated and outlined in the table below:

Table 1: Summary of Development Standards

Development Standards	Required	Existing/Proposed	Complies
Setbacks (Minimum)			
Front Setback	35'	76'	Yes
Left Side Setback	None	89'	Yes
Right Side Setback	None	77'	Yes
Rear Setback	None	65'	Yes
Floor Area Ratio	0.40	0.44	Requires CUP
Building Height	None	36'	Yes
Parking (Minimum)	1 space / 1,500 sq. ft. of floor area	191	Yes
	114,385 sq. ft. / 1,500 =		

Development Standards	Required	Existing/Proposed	Complies
	76 spaces		
Landscaping	Front Yard	Front Yard	Yes

As demonstrated above, the proposed project is consistent with the development standards and zoning regulations pertaining to the M2 zoning district.

3. *The project is consistent with the Milpitas General Plan.*

The General Plan designation for the project site is Manufacturing and Warehousing (MW). This classification encompasses a variety of light and heavy industrial activities, such as manufacturing, packaging, processing, warehousing and distribution, and ancillary support uses. The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies.

Table 2: General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-4: Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial uses.</i>	Consistent: The project is consistent with this policy in that the availability of land use tools that provide exceptions to maximum FAR limits for appropriate uses in order to spur growth - and the requested use of such tools by the applicant - promotes Milpitas as a place which recognizes and rewards compatible industrial and commercial uses.
<i>2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.</i>	Consistent: The project is consistent with this policy in that TDK Headway is thriving and wants to expand their business within our City. This growth will assist the City to maintain a balanced economic base that can resist downturns in any one economic sector.
<i>2.a-I-7: Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication and promote business retention.</i>	Consistent. The project is consistent with this policy in that by allowing the expansion of TDK Headway, the City will give the business the opportunity to expand employment and promote business retention via the ability to create new technology.

As demonstrated with the above table, the project is consistent with the policies and objectives of the General Plan.

SECTION 4: Conditional Use Permit (Section XI-10-57.04(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP17-0016:

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed use to allow an exception to increase the allowable floor area above the maximum limits set forth within the zoning district will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, or general welfare in due to the use and design of such space. The use (manufacturing and researching) and design (mimicking the front façade of the existing building) of the proposed addition will allow additional equipment capacity within an area that remains consistent with the industrial feel and character of the building. Per the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, a worst case scenario would be 6.4 peak trips during the AM peak and 6.9 peak trips during the PM peak. Such traffic volumes would not significantly impact peak-hour traffic. Such use and design will neither increase the peak-hour traffic to the site nor create a dominant visual prominence to the building.

2. *The proposed use must be consistent with the Milpitas General Plan*

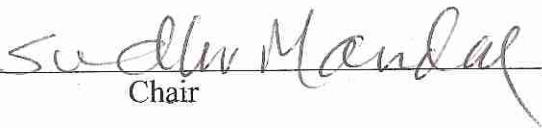
The proposed project and associated use is consistent with the Milpitas General Plan, as demonstrated and outlined in Table 2 above.

3. *The proposed use must be consistent with the Milpitas Zoning Ordinance.*

The proposed project, associated use, and development criteria are consistent with the Milpitas zoning ordinance, as demonstrated and outlined in Table 1 above.

SECTION 5: The Planning Commission of the City of Milpitas hereby approves Site Development Permit No. SD17-0015 and Conditional Use Permit No. UP17-0016, subject to the Findings and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on December 13, 2017.


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 December 13, 2017, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella			✓	
Ray Maglalang	✓			
Rajeev Madnawat	✓			
Sudhir Mandal	✓			
Demetress Morris			✓	
Gurdev Sandhu			✓	
Zeya Mohsin	✓			
Evelyn Chua (Alternate)	✓			

**CONDITIONS OF APPROVAL FOR
TDK HEADWAY
SITE DEVELOPMENT PERMIT NO. P-SD17-0015 AND
CONDITIONAL USE PERMIT NO. P-UP17-0016
497 SOUTH HILLVIEW (APN 086-38-028)**

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Site Development Permit NO. SD 17-0015 and Conditional Use Permit NO. UP17-0016 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans (dated December 1, 2017), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. **(P)**
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative

map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project:

- a. Completes a foundation associated with the project; or
- b. Dedicates any land or easement as required from the zoning action; or
- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)
9. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. (E)
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. (CA/P)
11. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any and all third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void or annul the City's approval of SITE DEVELOPMENT PERMIT NO. P-SD17-0015 AND CONDITIONAL USE PERMIT NO. P-UP17-0016; including any environmental determination made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then the

Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Permittee. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to SITE DEVELOPMENT PERMIT NO. P-SD17-0015 AND CONDITIONAL USE PERMIT NO. P-UP17-0016, and the balance of the Permit shall be unaffected by said Government Code section. (CA)

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
16. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. (F)
17. Compliance with Building Department. The project shall comply with the requirements of the Building Department and the International Building Code. (B)

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

*The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. (E)*

18. Modifications: The Site Development Plan dated December 1, 2017, is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
19. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all landscape submittal plans.

20. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
21. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The deposit amount shall be \$4000.

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

*The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

22. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.
23. Pothole Encroachment Permit: Due to public storm drain and sanitary sewer facilities near the proposed stormwater treatment area, Permittee shall pothole and verify all potential utility crossing conflict as part of the construction drawings during the design stage.

PRIOR TO BUILDING PERMIT ISSUANCE

*The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)*

24. Stormwater Control Plan: Permittee shall submit City approved final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
25. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit a Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).
26. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.

27. Recycled Water Approval: Permittee shall use recycled water for landscape irrigation purpose where the potable water shall be used for irrigation. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled "*Water Recycling Criteria*", CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled "*Drinking Water Supply*" and all other recycled water regulations as listed under the publication titled "*California Department of Public Health Regulations Related to Recycled Water June 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water.
28. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 ('Water Efficient Landscapes') for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
29. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
30. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc.
31. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
- a) What materials will be salvaged.
 - b) How materials will be processed during demolition.
 - c) Intended locations or businesses for reuse or recycling.
 - d) Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

32. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.

33. Development Fees. Permittee shall pay the following development fees. The information listed in item "a" is based upon current fee rates; however, that fee rate is subject to change. The exact fee amount shall be determined at the time of building permit fee payment.
- a) Calaveras Boulevard Widening Traffic Impact fee per Resolution No. 7894, in the amount of \$741.45 per thousand square feet of increased building area.
 - b) 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.

DURING CONSTRUCTION

*The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. (E)*

34. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
35. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling.
36. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.
37. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

PRIOR TO FINAL INSPECTION

*The following conditions shall be met **prior to** final inspection, unless otherwise approved the Director of Engineering/City Engineer.*

38. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department. The subject O&M Agreement shall be referenced in the CC&Rs, if applicable.
39. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City.

40. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.

41. Assessment District: This project is located within the Landscaping and Lighting and Maintenance Assessment district No. 98-1, therefore, is subject to special tax.

Key:

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(CA) = City Attorney

APPENDIX J

SOILS REPORT



REPORT

**GEOTECHNICAL ENGINEERING INVESTIGATION
PROPOSED CLEANROOM EXPANSION, PH-1
HEADWAY TECHNOLOGIES, INC.
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA**

Prepared for

ADVANCE DESIGN CONSULTANTS, INC.

November 2010

By



Copyright ©November 2010

November 18, 2010
BAGG Job No: ADCON-03-00

Advance Design Consultants, Inc.
998 Park Avenue
San Jose, California 95126

Attention: Mr. Lorenzo Rios, Jr.

REPORT
Geotechnical Engineering Investigation
Proposed Cleanroom Expansion, PH-1
Headway Technologies, Inc.
497 S. Hillview Drive
Milpitas, California

Dear Mr. Rios, Jr.,

Transmitted herewith is our geotechnical engineering investigation report addressing the proposed cleanroom expansion, PH-1, in Fremont, California. The report presents data regarding the subsurface conditions at the location of the proposed building expansion, and our recommendations for the support and construction of the proposed expansion.

Thank you for the opportunity to be of service on this project. Please do not hesitate to contact us, should you have any questions or comments.

Very truly yours,

BAGG Engineers

Ajay Singh
Senior Engineer
Civil engineer 53647

Distribution: 6 copies

REPORT

Geotechnical Engineering Investigation
Proposed Cleanroom Expansion, PH-1
Headway Technologies, Inc.
497 S. Hillview Drive
Milpitas, California

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	PROJECT DESCRIPTION	1
3.0	PURPOSE.....	2
4.0	SCOPE OF SERVICES.....	3
5.0	SITE DESCRIPTION	4
6.0	FIELD EXPLORATION AND LABORATORY TESTING	4
7.0	GEOLOGY AND SEISMICITY	5
7.1	Regional Geology	5
7.2	Seismicity	6
8.0	SITE CONDITIONS	6
8.1	Pavement	6
8.2	Subsurface Soil Conditions.....	6
8.3	Groundwater	7
9.0	LIQUEFACTION POTENTIAL & SEISMIC COMPACTION	7
10.0	CONCLUSIONS AND RECOMMENDATIONS	8
10.1	General	8
10.2	2007 California Building Code Site Characterization.....	10
10.3	Foundations.....	11
10.4	Lateral Design	11
10.5	Settlements	12
10.6	Retaining Walls.....	12
10.7	Site Grading	13
10.8	Underground Utilities	15
10.9	Concrete Slab-on-Grade Floors	16
10.10	Pavements.....	17

10.10.1	Flexible Pavements	17
10.10.2	Rigid Pavements	18
10.11	Drainage	19
10.12	Plan Review	19
10.13	Observation and Testing	20
11.0	CLOSURE	20

ATTACHED PLATES:

Plate 1	Vicinity Map
Plate 2	Site Plan
Plate 3	Regional Geology Map
Plate 4	Regional Fault Map
Plate 5	Unified Soil Classification System
Plate 6	Soil Terminology
Plate 7	Boring Log Notes
Plate 8	Key to Symbols
Plates 9 and 10	Boring Logs
Plate 11	Plasticity Data

ASFE document titled “Important Information About Your Geotechnical Engineering Report”

REPORT**GEOTECHNICAL ENGINEERING INVESTIGATION
PROPOSED CLEANROOM EXPANSION, PH-1
HEADWAY TECHNOLOGIES, INC.
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA****1.0 INTRODUCTION**

This report presents the results of our geotechnical engineering investigation performed to address the proposed expansion of the cleanroom building at the Headway Technologies facilities at 497 S. Hillview Drive in Milpitas, California. The attached Plate 1, Vicinity Map, shows the general location of the site, Plate 2, Site Plan, depicts the layout of the building, the expansion area, and the approximate location of our exploratory borings drilled for this investigation.

This report was prepared in accordance with the scope of services outlined in our proposal number 10-354, dated October 22, 2010. As per our proposal, two borings were advanced in the general area of the proposed building expansion to explore the soil and foundation conditions.

2.0 PROJECT DESCRIPTION

It is our understanding that the proposed project includes the construction of an approximately 12,000 square foot expansion of the existing cleanroom. The area proposed for building

expansion is located at the southeast corner of the existing building and is currently occupied by asphalt paved parking and minor landscaping. The building loads were not available at the time this report was issued but it is our understanding that the building loads will be relatively minor and typical of a light industrial building.

3.0 PURPOSE

The purpose of our services was to collect subsurface Information from the site, conduct a laboratory testing program, and perform engineering analysis to develop conclusions, opinions, and recommendations regarding:

- geology and seismicity of the project site, including the appropriate soil profile type and seismic parameters per the 2007 Edition of the CBC,
- specific soil conditions discovered by our borings, such as loose, saturated, or expansive surface soils that may require special mitigation measures or impose restrictions on the project, including the type and consistency of any fill soils encountered in the borings,,
- appropriate grading recommendations for preparation of the building pads, placement of fills and backfills, and utility trench backfill,
- foundation design recommendations for the support of the proposed building loads,
- estimates of the total post-construction static settlement and differential settlements,
- criteria for the support of slab-on-grade pads and exterior flatwork,
- general provisions for the control of drainage in the area of the proposed improvements.

4.0 SCOPE OF SERVICES

Information required to fulfill the above purpose was obtained by drilling two borings at the location of the proposed building expansion using a truck-mounted drilling rig. Boring B-1 was drilled to 20 feet below ground surface (bgs) and Boring B-2 was drilled to 50 feet bgs. Samples of the subsurface materials were generally taken at 3- to 5-foot-depth intervals. Selected samples were then tested in our laboratory to measure the strength and index properties of the subsurface materials. Information obtained from these tasks was used to develop conclusions, opinions, and recommendations oriented toward the above purpose of our services. Accordingly, the scope of our services consisted of the following specific tasks:

1. Review available geologic and geotechnical reports including geologic maps and reports pertinent to the site and the immediate vicinity.
2. Obtain a permit for drilling the soil borings from the Santa Clara Valley Water District, as required.
3. Mark the planned boring locations in the field, and coordinate the drilling with the client representatives. Notify Underground Service Alert (USA).
4. Drill, log, and sample two borings to depths of 20 and 50 feet with a truck-mounted drilling rig using hollow-stem augers under the supervision of one of our engineers who also obtained disturbed bulk, Standard Penetration Test, and relatively undisturbed ring samples of the subsurface materials for visual classification and laboratory testing. Measure the depth to groundwater, as encountered within the depths explored. Backfill the borings with neat cement grout.
5. Perform a laboratory-testing program on the collected soil samples to evaluate the engineering characteristics of the subsurface soils. Tests included direct shear tests, classification tests, and moisture-density measurements, as judged appropriate.
6. Perform engineering analyses based on the results obtained from the above tasks and oriented towards the above-stated purpose of the investigation.

7. Prepare six copies of a report summarizing our findings and recommendations, and including a vicinity map, a site plan, a regional geology map, a regional fault map, boring logs, laboratory test results, and our conclusions, opinions, and recommendations.

5.0 SITE DESCRIPTION

The subject site is located roughly ½-mile south of Calaveras Boulevard and ½-mile west of Highway 680 at 497 S. Hillview Drive in Milpitas, California. The site area is relatively flat, and contains a 425 feet by 250 feet, one-story, light industrial building with concrete tilt-up panel walls and concrete slab-on-grade floors. The surrounding area is covered with minor landscaping and asphaltic concrete paved parking areas. The subject property is bordered by South Hillview Drive to the east, railroad tracks to the west, and light industrial buildings to the north and south.

6.0 FIELD EXPLORATION AND LABORATORY TESTING

Subsurface conditions at the project site were explored by advancing two borings to depths of 20 and 50 feet bgs. The attached Plate 2, Site Plan, depicts the approximate location of the borings advanced by BAGG Engineers at the subject site. A laboratory testing program was then designed and conducted on samples collected from the borings to evaluate the engineering quality and consistency of the subsurface materials. The laboratory tests consisted of index properties, classification, direct shear strength tests at natural and artificially increased moisture contents, and moisture-density measurements.

The graphical representation of the materials encountered in the borings, and the results of laboratory tests as well as explanatory/illustrative data are attached, as follows:

- Plate 5, Unified Soil Classification System, illustrates the general features of the soil classification system used on the boring logs.

- Plate 6, Soil Terminology, lists and describes the soil engineering terms used on the boring logs.
- Plate 7, Boring Notes and Plate 8 Key to Symbols, describes general and specific conditions that apply to the boring logs, and various symbols used on boring logs.
- Plates 9 and 10, Boring Logs, describe the subsurface materials encountered, show the depths and blow counts for the samples, and summarize the results of the strength tests, classification tests, and moisture-density data.
- Plate 11, Plasticity Data, graphs and presents the Atterberg Limits test data for near surface soil sample obtained from the boring.

Selected undisturbed samples were tested in direct shear to evaluate the strength characteristics of the subsurface materials. Tests were performed at natural and at artificially increased moisture contents, and under various surcharge pressures. The moisture content and dry density of the undisturbed samples were measured to aid in correlating their engineering properties. Atterberg Limits tests were performed to classify the soils, as well as obtain an indication of the expansive characteristics of the clayey soils. The results of our laboratory strength, classification tests, and moisture-density data are summarized on the boring logs and on the plate described above.

7.0 GEOLOGY AND SEISMICITY

7.1 Regional Geology

Quaternary Geologic Map of Milpitas 7.5 Minute Quadrangle, modified from Knudsen and Others, included as Plate 1.1 in the Seismic Hazards Report 051 indicates the general site area is underlain by Holocene Alluvial Fan Deposits (Qhaf - Holocene). The attached Plate 3, Regional Geology Map, depicts the geology of the general site area. The site area is located within the zone identified as a "Liquefaction Zone"; therefore further investigation is required to estimate

permanent ground displacement resulting from a design-level seismic event on one of the nearby known faults.

7.2 Seismicity

The site area is located within a seismically active San Francisco Bay Area, which has one of the highest rates of seismic moment release per square mile of any urban area in the United States. The entire region is emerging from the stress shadow of the 1906 San Francisco Earthquake and future large earthquakes are considered a certainty.

Various fault and geologic maps and Google Earth 2009 (see references) indicate the fault trace located closest to the site is Southeast Extension of Hayward fault, which is located approximately 2.3 km southeast of the subject building. Other more distant active faults in the region include the Calaveras (5 km to the east), Greenville (31 km to the east), Monte Vista-Shannon (19.5 km to the west) and San Andreas. (25.5 km to the west). Plate 4, Regional Fault Map, depicts the site location with respect to nearby active faults.

8.0 SITE CONDITIONS

8.1 Pavement

The borings were drilled on the paved parking lot/driveway adjacent to the southwest corner of the building. Both borings encountered 2.5 inches of asphaltic concrete underlain by approximately 10 inches of aggregate base.

8.2 Subsurface Soil Conditions

The soil borings drilled at the site indicate the presence of dark gray, very stiff, Fat Clay in the top 6 feet below the pavement layer at the location of Boring B-1, and 9 feet at the location of

Boring B-2. A sample of this material was tested in our laboratory and the test results indicated a Liquid Limit of 82 and a Plasticity Index of 58. Based on the results of the Atterberg Limits Test, the near surface soil at the site was judged to have critically high shrink-swell potential. Fat clays undergo pronounced volume changes with moisture fluctuations: they expand with absorption of water, and shrink with the moisture loss. When confined, these soils exert high swelling potential pressures on the overlying structures as they expand.

In general, the cohesive soils within the zone of influence of the building loads were logged to be very stiff and the granular soils were logged to be to medium dense. Most of the sandy layers present within the top 30 feet bgs had significant proportion of clay. Boring B-2 indicated the presence of thin layers of silty sand sandwiched between lean clay layers at 32 to 33 feet; 37 to 40 feet, and 44 to 45 feet bgs. A well graded sand layer was encountered at 49½ feet bgs in boring B-2.

8.3 Groundwater

Groundwater was encountered at approximately 7 feet bgs in both the soil borings which generally conforms with the historical high depth to groundwater (5 to 10 feet) shown on Plate 1.1 in Seismic Hazards Zone Report 051. It should be noted that groundwater levels usually undergo fluctuations due to seasonal changes and seepage may develop in the subsurface during the rainy winter months.

9.0 LIQUEFACTION POTENTIAL & SEISMIC COMPACTION

Soil liquefaction is a phenomenon in which saturated (submerged) cohesionless soils can be subject to a temporary loss of strength due to buildup of excess pore pressure, and reduction of soil effective stress during cyclic loading, such as those produced by an earthquake. In the process, the soil acquires mobility sufficient to permit both horizontal and vertical movements,

if not confined. Soils most susceptible to liquefaction are loose, clean, saturated, and uniformly graded, fine-grained sands. Silty sands and clayey sands may also be susceptible to liquefaction during strong ground shaking, although to a lesser extent. Loose to medium dense sand layers can also be subjected to seismic compaction, if they are above the water table.

Although free groundwater was encountered at a depth of 7 feet below the site ground surface, much of the sandy soil deposits present below the water table contained significant clayey fines. Well-graded sand with little to no fines were present below a depth of 48 ½ feet, however, the amount of overburden is enough such that the effects of liquefaction would be very minor.

A procedure presented by Idriss and Boulanger, 2008 was used to estimate the magnitude of seismic settlement of the sandy soil deposits underlying the site. Using the blow count information from the boring and peak ground acceleration value of 0.57g with magnitude 7.5 earthquake (Figure 3.5, Seismic Hazard Zone Report 51), we estimated the total settlement during a design level seismic event will be on the order of 1-inch. The differential settlement is estimated to be approximately one-half of the total settlement. The actual settlements are expected to be less than the calculated settlements because the site is mantled by a relatively thick clay mantle.

10.0 CONCLUSIONS AND RECOMMENDATIONS

10.1 General

Based on the subsurface exploration conducted at the subject site and the results obtained from our laboratory testing program, it is our opinion that the proposed building expansion is feasible from a geotechnical engineering standpoint, provided the recommendations presented in this report are incorporated into the project design and implemented during construction.

When the improvement plans become available, they should be submitted to our office for review prior to construction to confirm that the intent of our recommendations is reflected in the plans, and to confirm that our recommendations properly address the proposed building expansion in its final form.

This investigation has not identified any geotechnical constraints that would preclude construction of the proposed building expansion. However, the subject building is situated within the seismically active San Francisco Bay Area, and will therefore experience severe shaking during the lifetime of the proposed structure. While it is not possible to totally preclude damage to structures during major earthquakes, strict adherence to good engineering design and construction practices will help reduce the risk of damage. The 2007 California Building Code defines the minimum standards of good engineering practice.

The results obtained from our laboratory-testing program indicate the near surface soils at the site have very high shrink/swell potential. These materials can undergo significant volume changes with variations in their moisture content. Such volume changes may cause differential movements and cracking of the shallow foundations, floor slabs, and pavements. Our laboratory strength tests also indicate the on-site clayey fill and soils become weak upon receiving moisture and becoming saturated. As such, to protect the existing and new site features, control of drainage and the moisture content of the soil before it is covered with permanent construction materials, will be very important. During construction, the exposed soils should not be allowed to dry up and crack, or become overly saturated and weak from the winter rains. After construction, exterior grades that slope away from the building foundations and improvements should be provided. Catch basins and area drains must be incorporated with the proposed building expansion for removing the surface runoff and storm water.

10.2 2007 California Building Code Site Characterization

The Structural Engineering Design Provisions in Chapter 16 of the 2007 California Building Code (CBC) have recently been revised to reflect the changing knowledge regarding shaking from major earthquakes. The new code uses mapped spectral acceleration values for periods of 0.2 and 1.0 seconds, to better represent the probabilistic shaking that can be expected for various types of structures at a given site. The “mapped” values generally represent “bedrock” shaking with a 2 percent probability of being exceeded in a 50-year period. The values are then modified for site-specific use based on broad classification of the soil profile at the site.

Based on the information obtained from our borings, the soil profile at the site is classified as Class “D”, a stiff soil profile with undrained shear strength of the cohesive soil between 1,000 and 2,000 pounds per square foot (psf), and blow count (standard penetration resistance) values of the granular soils between 15 and 50 in the top 100 feet. Using a Latitude of 37.4262° North, and a Longitude of 121.8927° West (Google Earth), the earthquake ground motion parameters in accordance with 2007 California Building Code are listed in the following table.

Table 1
Parameters for Seismic Design

CBC, 2007	Site Parameter
Location	37.4262° N and 121.8927° W
Site Class, Table 1613.5.2	Stiff Soil Profile, “D”
S_s , Figure 1613.5(3)	1.542g
S_1 , Figure 1613.5(4)	0.60g
F_a , Table 1613.5.3(1)	1.0
F_v , Table 1613.5.3(2)	1.5

10.3 Foundations

The proposed building loads can be adequately supported using conventional spread/strip footings established in firm native and/or fill soils. Exterior (perimeter) footings with a minimum trenching depth of 30 inches below the lowest adjacent ground surface, and interior footings with a minimum depth of 24 inches below the finished soil subgrade, can be designed based on a permissible bearing value of 2,500 psf for dead and 3,200 psf for total design loads. These values may be increased by one-third when wind or seismic loads are included. The minimum width of the continuous and isolated spread footings should not be less than 12 and 24 inches, respectively. Structural considerations may dictate deeper or larger footings.

Footings should be established in neat excavations without the use of side forms. The bottom of all footing excavations should be free from loose cuttings and soft/yielding soils. If weak soils are exposed at the bottom of the footings, it may be necessary to deepen the footing, and/or compact the bottom. The footings excavations should not be allowed to dry out and crack before reinforcing steel and concrete is placed, or become saturated from the winter rains. Should this condition be present at the site, appropriate recommendations, including but not limited to, over-excavation, aeration or misting/sprinkling with water will be provided in the field by the Geotechnical Engineer.

10.4 Lateral Design

Lateral loads, such as wind or seismic loads, may also be resisted by friction between the bottom of the concrete footings and soil and passive earth pressures acting on the sides of foundations members which have been poured in neat excavations. The allowable passive resistance to wind or seismic loads may be taken as an equivalent fluid pressure of 300 pounds per cubic foot (pcf). Passive resistance against the upper 18 inches of footing should be ignored, unless these features are confined by concrete slabs or pavement. The base friction

should be calculated using a coefficient of friction value of 0.30. Both base friction and passive resistance may be used in combination.

10.5 Settlements

We have estimated that the total post-construction, static settlements of the proposed columns with loads in the range of 100 to 150 kips supported on spread footing foundations will not exceed $\frac{3}{4}$ -inch. Differential settlements between various columns is expected to be limited to approximately one-half of the total estimated settlements.

We have also estimated that the total seismic settlement of the silty fine sand layers encountered in Boring B-2 within the top 50 feet to be approximately 1-inch. Such ground surface settlements will affect the surficial site features in the form of minor differential settlements. Seismic settlements will be additive to static settlements resulting from the dead and live loads acting on various features.

10.6 Retaining Walls

Retaining walls less than 10 feet in height should be designed to resist lateral earth pressures from natural materials and backfills. Site retaining walls may be supported on conventional spread/strip footings; designed as recommended earlier.

The active earth pressures acting on the site retaining walls may be taken as an equivalent fluid pressure of 60 pounds per cubic foot (pcf). Retaining walls that are restrained from movement at the top or are a part of the building foundations should be designed to resist at-rest earth pressure equal to an equivalent fluid pressure of 75 pcf. Where a sloping surface exists above the retaining wall, the above-noted pressures should be increased by 3 pcf for every 5 degree increase in the slope angle, up to a maximum gradient of 2.5:1, horizontal to vertical.

Because of the close proximity of existing active faults to the subject site, all site and building retaining walls should also be designed to withstand the impact of severe shaking by seismic activities on the nearby faults. The earthquake loading on the site and building retaining walls should be taken as a uniform pressure of $8H$ psf, where H is the retaining wall height.

The above lateral pressures do not include hydrostatic pressures resulting from groundwater, seepage water, or infiltration of natural rainfall and/or irrigation water behind the walls. Therefore, all walls over three feet in height should be provided with a drainage blanket behind the wall. The drainage blanket should consist of a pre-manufactured drainage panel or a one-foot thick blanket of Caltrans Class II Permeable Material or free-draining gravel or drain rock encapsulated by a suitable filter fabric. A 12-inch cap of relatively impermeable soil should be placed at the top of the drainage blanket to minimize infiltration of surface water. The cap material should be compacted to 90 percent relative compaction. A 4-inch diameter perforated PVC pipe (perforations placed down) should be installed at the base of the drainage blanket to facilitate removal of water collected behind the wall.

10.7 Site Grading

Site grading may consist of pavement removal, planter removal, preparation of the building pad, minor excavations for the new foundations, and trenching work for the new underground utilities.

As used in this report, the term “compact” and its derivatives mean that all on-site clayey soils should be compacted to between 88 and 92 percent of maximum dry density, as determined by ASTM Test Method D1557. The top 12 inches of pavement subgrade should be compacted to at least 90 percent relative compaction. It also implies that all on-site clayey soils should be compacted while at a moisture content that is at least 3 percent *over* optimum, and that each lift should be thoroughly moisture conditioned and compacted before subsequent lifts are

placed. Imported, non-expansive soils should be compacted to 95 percent compaction while slightly over optimum moisture content.

The following grading procedures should be followed in the areas to receive fills and backfills, pavements, concrete slabs, or flatwork:

1. After demolition and/or clearing, remove remnants of old foundations and abandoned underground utilities from the site surface.
2. Strip and remove the topsoil and organic material from the planter areas, trees, bushes, other vegetation, and debris from the area of the proposed improvements. Stockpile the strippings for disposal at an off-site location, or for later use in landscaping areas only. The depth of stripping in the planter areas is estimated to be approximately 4 inches, and should be verified in the field by the Geotechnical Engineer at the time of construction. Tree removal should include all roots over 1 inch in diameter.
3. If deemed necessary by the Geotechnical Engineer in the field, scarify the over-excavated surfaces within the exposed subgrades and the depressions from pavement and planter removal to a depth of 8 inches. Thoroughly moisture condition the scarified surfaces to a moisture content that is at least 3 percent over optimum, and re-compact as specified above. Further, over-excavate as necessary any area still containing weak and/or yielding (pumping) soils, as determined in the field by the Geotechnical Engineer.
4. Place fill on the over-excavated surfaces, in the holes/depressions created by the above actions in uniformly moisture conditioned and compacted lifts not exceeding 8 inches in loose thickness. Rocks or cobbles larger than 4 inches in maximum dimensions should not be allowed to remain within the foundation areas, unless they can be crushed in-place by the construction equipment.
5. The end result of grading in concrete slab areas should be to provide at least 18 inches of non-expansive soils within the subgrade. This can include existing pavement materials that have been properly prepared and/or imported soils.

Imported fill soils, if required, should be predominantly granular in nature and be approved by the Geotechnical Engineer before importing to the site. As a general guide of acceptance, the material should have a Plasticity Index less than 15, a minimum R-value of 20, a fines content between 15 and 65 percent, and no more than 5 percent by weight over 2 inches in size. All aspects of site grading including clearing/stripping, demolition and placement of fills or backfills should be performed under the observation of BAGG's field representatives.

If the existing pavement to be removed is recycled and reused, as well as the concrete resulting from the demolition of parts of the existing building, it should be pulverized in a manner that 100 percent of the particles will be less than 2 inches in size, and 90 percent finer than 1 inch. The material may then be reused as structural fill or recycled Class 2 aggregate subbase (minimum R-value=50). Use as recycled Class 2 aggregate base (minimum R-value=78) will require R-value testing during construction to confirm its R-value. However, the recycled concrete and asphalt should be stockpiled separately as their reuse will be selective.

It must be the Contractor's responsibility to select equipment and procedures that will accomplish the grading as described above. The Contractor must also organize his work in such a manner that one of our field representatives can observe and test the grading operations, including clearing, excavation, compaction of fill and backfill, and compaction of subgrades

10.8 Underground Utilities

Within areas over-excavated and re-compacted as described above, it is our opinion that the sides of temporary un-shored trenches should stand nearly vertical, provided that the trench depths do not exceed 5 feet and heavy equipment is not allowed within 5 feet of the edge of the trench. It is not advisable to excavate unshored trenches to depths greater than 5 feet. Temporary shoring should be provided to protect workers in excavations deeper than 5 feet, and all work associated with trench shoring must conform to the State of California, Division of

Industrial Safety requirements. The soils at this site may be classified as “Type B” soil per State of California Department of Transportation’s Trenching and Shoring manual (Jan. 1990/Rev. No. 12, 01/00).

Trench backfill materials and compaction should conform to the requirements of the applicable agency. We recommend the following as a minimum:

- The backfill material should be compacted by mechanical means to 90 percent for the full depth of the trenches, except for the upper 12 inches of the trench backfill in the pavement areas must be compacted to at least 95 percent relative compaction.
- Trench jetting should not be allowed.
- Native soils excavated from utility excavations are suitable for trench backfill, except where the material will serve for pipe bedding, or drain materials surrounding pipes. Pipe bedding material may consist of pea gravel or sand. Drain material surrounding the pipes may consist of 3/4-inch crushed rock, or Caltrans Permeable materials.
- Where permeable backfill is used, the top 18 inches of the trench must be backfilled with clayey soils to minimize infiltration of surface water. Additionally, a 5-foot-long plug of native clayey soils must be placed within the trench where it crosses into the building envelope; the intent is to prevent the trench from becoming a conduit to moisture and its migration beneath the structure.

10.9 Concrete Slab-on-Grade Floors

Due to the presence of soils with high shrink-swell potential at shallow depths, the proposed concrete floor slabs should be underlain by a minimum of 18-inches of non-expansive import fill below the specified 4-inch thick layer of No. 4 by ¾-inch, clean, angular layer drain rock layer. The concrete slab should be cast over a 15-mil thick Stegowrap or equivalent vapor barrier layer placed on top of the ¾-inch angular baserock layer. The import fill layer should be compacted to a minimum of 90 percent relative compaction while slightly above optimum moisture

content. All slabs and walkways should be reinforced with properly-spaced deformed bars. Prior to placement of the non-expansive import fill, the top 8 inches of underlying native soil should be scarified, moisture conditioned, and compacted as recommended earlier. In all cases, the subgrade moisture content and condition must be approved by the Geotechnical Engineer immediately before the concrete pour takes place.

In exterior flatwork areas, at least 4 inches of approved, clean, free draining $\frac{3}{4}$ -inch angular gravel should be installed beneath the concrete walkway slabs. The exterior flatwork should be underlain by a minimum of 12 inches thick layer of non-expansive fill compacted to a minimum of 90 percent relative compaction while at slightly above optimum moisture content.

10.10 Pavements

10.10.1 Flexible Pavements

Performance of R-value tests was not in the scope of our services; however, based on our experience with moderately expansive lean clays typical of the site materials, an R-value of 5 would be suitable for the design of new pavements. Using this R-value and Traffic Indices of 5.0, 6.0, and 7.0, our recommended pavement sections are tabulated below. Note that a Traffic Index of 5.0 is appropriate for automobile parking stalls, 6.0 for driveways and where the pavement will be subject to the weight of pickup trucks, vans and occasional garbage trucks, and 7.0 or more for moderate truck traffic.

The pavement sections tabulated below were calculated using the procedure described in CalTrans Highway Design Manual, Topic 604, December 20, 2004. The design pertains to a life expectancy of 20 years for the pavements. The method characterizes the subgrade soil conditions with laboratory R-value tests, and characterizes the traffic loading conditions with a Traffic Index.

Table 2
Flexible Pavement Sections
(Subgrade R-Value=5)

Pavement Component	T.I.= 5.0		T.I.= 6.0		T.I.= 7.0	
Asphaltic Concrete (AC)	3	3	3½	3½	4	4
Class 2 Aggregate Base, R _{Min} =78	10	4	12½	5	16	5
Class 2 Aggregate Subbase (ASB), R _{Min} =50	-	7	-	8	-	12
<i>Total Thickness in Inches</i>	13	14	16	16½	20	21

All materials and construction procedures, including placement and compaction of pavement components, should be performed in conformance with the latest edition of the CalTrans Standard Specifications (except that compaction should be performed in accordance with ASTM Test Method D1557). The upper 12 inches of the pavement subgrade should be compacted as recommended earlier, and the Class 2 aggregate base and asphaltic concrete, should be compacted to at least 95 percent of maximum dry density.

10.10.2 Rigid Pavements

Rigid concrete pavements subject to vehicular loads should consist of 6 inches of concrete with a minimum compressive strength of 3,000 psi placed upon 6 inches of Class 2 aggregate base compacted to a minimum of 95% relative compaction. The upper 12 inches of clayey soil subgrade should also be compacted to a minimum of 90 percent of the maximum dry density while at a moisture content that is 3% over optimum (see Site Grading).

Concrete pavements should be reinforced with deformed bars in both directions to control cracking, and joints should be provided in both directions within the pavement to prevent formation of irregular cracks.

Where the concrete pavement meets an asphalt pavement section and at all construction joints that are not doweled or keyed, the concrete pavement should have a thickened edge to compensate for the lack of load transfer. The Portland Cement Association suggests the edge should be increased by 20 percent, or about 1¼ inches in this case, and tapered back to normal slab thickness over a distance of 10 times the slab thickness, or about 5 feet.

10.11 Drainage

Measures to control and collect surface run-off should be considered an integral part of the proposed project. The ground surface adjacent to all sides of the proposed building expansion should be sloped to drain away from the new foundations and improvements.

The run-off from building roofs and intercepted water from surface and subsurface drainage should be discharged to suitable outfall locations in *closed pipes* and in a manner that will not allow ponding adjacent to foundations or otherwise adversely impact the new building additions. Any area where surface run-off becomes concentrated should be provided with a catch basin that drains to a suitable discharge point. Surface and subsurface drainage facilities and catchment areas should be checked frequently and cleaned or maintained throughout the project life, as necessary.

10.12 Plan Review

It is recommended that the Geotechnical Engineer (BAGG Engineers or Bay Area Geotechnical Group) be retained to review the final construction plans. This review is to assess general

suitability of the earthwork, foundation, and drainage recommendations contained in this report, as well as and to verify the appropriate implementation of our recommendations into the project plans and specifications.

10.13 Observation and Testing

It is recommended that the Geotechnical Engineer (BAGG) be retained to provide observation and testing services during foundation construction. This is intended to verify that the work in the field is performed as recommended and in accordance with the approved plans and specifications, as well as verify that subsurface conditions encountered during construction are similar to those anticipated during the design phase.

11.0 CLOSURE

This report has been prepared in accordance with generally-accepted engineering practices for the strict use of Advance Design Consultants, Headway Technologies, Inc., and other professionals associated with the specific project described in this report. The recommendations presented in this report are based on our understanding of the proposed construction as described herein, and upon the subsurface conditions encountered in the two exploratory borings drilled for this investigation.

The conclusions and recommendations contained in this report are based on subsurface conditions revealed by widely-spaced borings, and a review of available geotechnical and geologic literature pertaining to the project site. It is not uncommon for unanticipated conditions to be encountered during site grading and/or foundation installation and it is not possible for all such variations to be found by a field exploration program appropriate for this type of project. The recommendations contained in this report are therefore contingent upon the review of the final improvement plans by this office, and upon geotechnical observation

and testing by BAGG of all pertinent aspects of site grading including building pad preparation, and utility trench backfill.

Subsurface conditions and standards of practice change with time. Therefore, we should be consulted to update this report if the construction does not commence within 18 months from the date this report is submitted. Additionally, the recommendations of this report are only valid for the proposed project as described herein. If the proposed project is modified, our recommendations should be reviewed and approved or modified by this office in writing.

The following references and plates are attached and complete this report:

Plate 1	Vicinity Map
Plate 2	Site Plan
Plate 3	Regional Geology Map
Plate 4	Regional Fault Map
Plate 5	Unified Soil Classification System
Plate 6	Soil Terminology
Plate 7	Boring Log Notes
Plate 8	Key to Symbols
Plates 9 and 10	Boring Logs
Plate 11	Plasticity Data

ASFE document titled "Important Information About Your Geotechnical Engineering Report"

12.0 REFERENCES

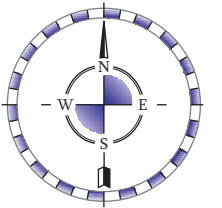
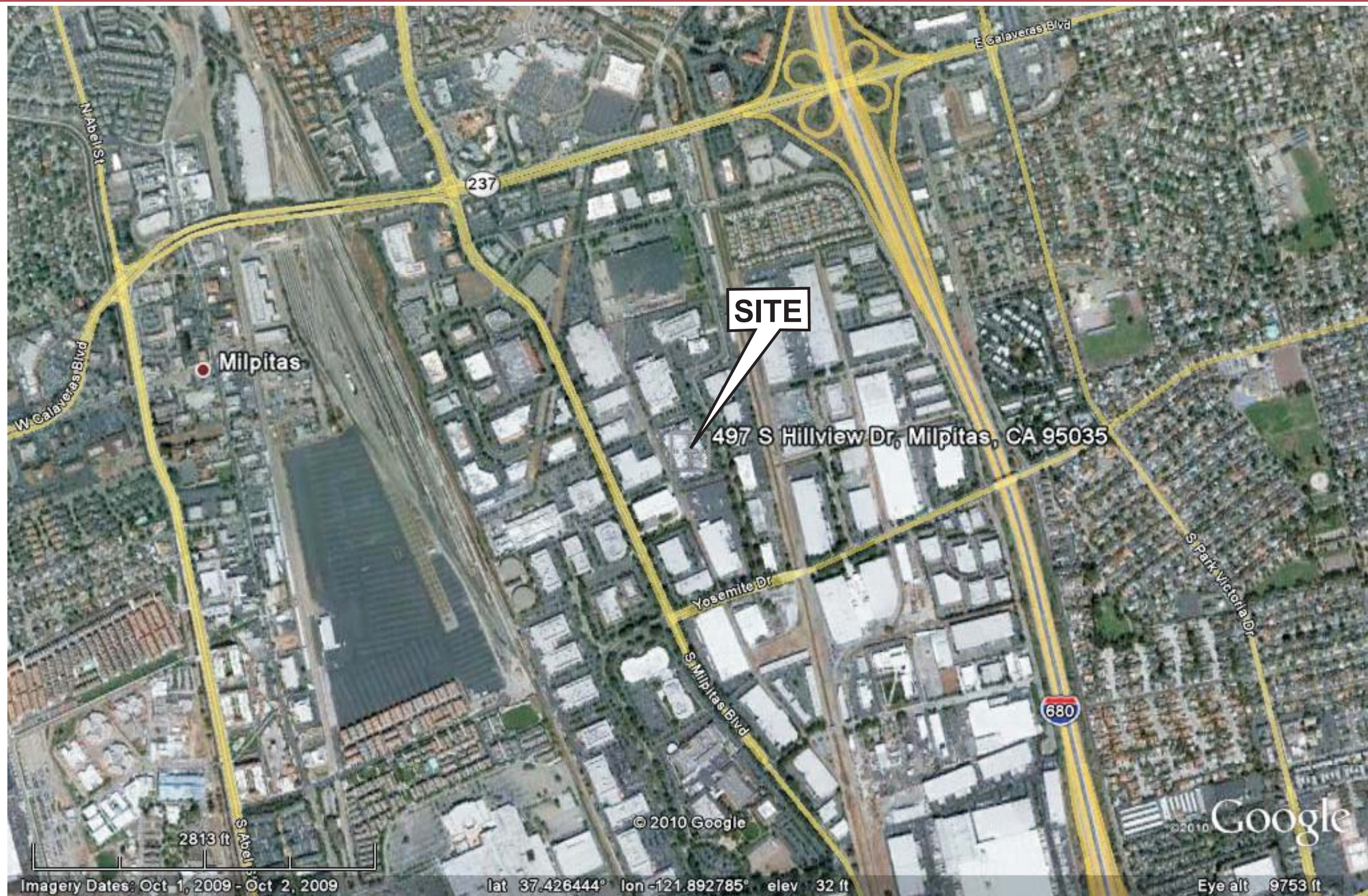
- Al Atik, Linda, Spread Sheet to Calculate Weighted Average of the Natural Logarithm of the Spectral Values Based on the 2008 NGA Models by Abrahamson & Silva, Boore & Atkinson, Campbell & Bozorgnia, Chiou & Youngs, and Idriss, PEER, September 2009.
- California Code of Regulations, Title 24, Part 2, Volume 2 of 2, 2007 California Building Code, California Building Standards Commission, Based on 2006 International Building Code, 1/1/2008.
- California Department of Transportation, Highway Design Manual, Caltrans, Fifth Edition, July 1, 2008.
- California Department of Transportation, Standard Specifications, Caltrans, May 2006.
- California Department of Transportation, Trenching and Shoring Manual, Issued by Office of Structure Construction, January 1990, Revision 12, 01/00.
- Cetin, et al, Standard Penetration Test-Based Probabilistic and Deterministic Assessment of Seismic Soil Liquefaction Potential, ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol. 130, No. 12, December 2004.
- Fang, Hsai-Yang, Editor, Foundation Engineering Handbook, Second Edition, Van Nostrand Reinhold, 1991.
- Google™, Google Earth, <http://earth.google.com>, August 25, 2009.
- Helley, E.J., and Graymer, R.W., Quaternary Geology of Alameda County and Surrounding Areas, California: Derived from the Digital Database Open-File 97-97, U.S. Geological Survey, 1997.
- Portland Cement Association (PCA), Thickness Design for Concrete Highway and Street Pavements, EB109.01P, Skokie, Illinois, 1984.
- State of California, Seismic Hazard Zone Report 051 for the Milpitas 7.5 Minute Quadrangle, Alameda and Santa Clara Counties, California, Department of Conservation, California Geologic Survey, 2001.
- State of California, Special Studies Zones, Milpitas Quadrangle, Division of Mines and Geology, Revised Official Map dated January 1, 1982.

State of California, Special Studies Zones, Niles Quadrangle, Division of Mines and Geology, Revised Official Map dated January 1, 1980.

U.S. Geological Survey, Seismic Hazard Curves and Uniform Hazard Response Spectra, v5.0.9a, October 21, 2009.

Working Group on California Earthquake Probabilities, The Uniform California Earthquake Rupture Forecast, Version 2 (UCERF 2), U.S. Geological Survey Open File Report 2007-1437, 2008.

Working Group on Northern California Earthquake Potential, Database of Potential sources for Earthquake Larger Than Magnitude 6 in Northern California, Open-File Report 96-705, U.S. Geological Survey, 1996.



Base Map: Google Earth

HEADWAY TECHNOLOGIES, INC.
CLEANROOM EXPANSION, PH-1
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA



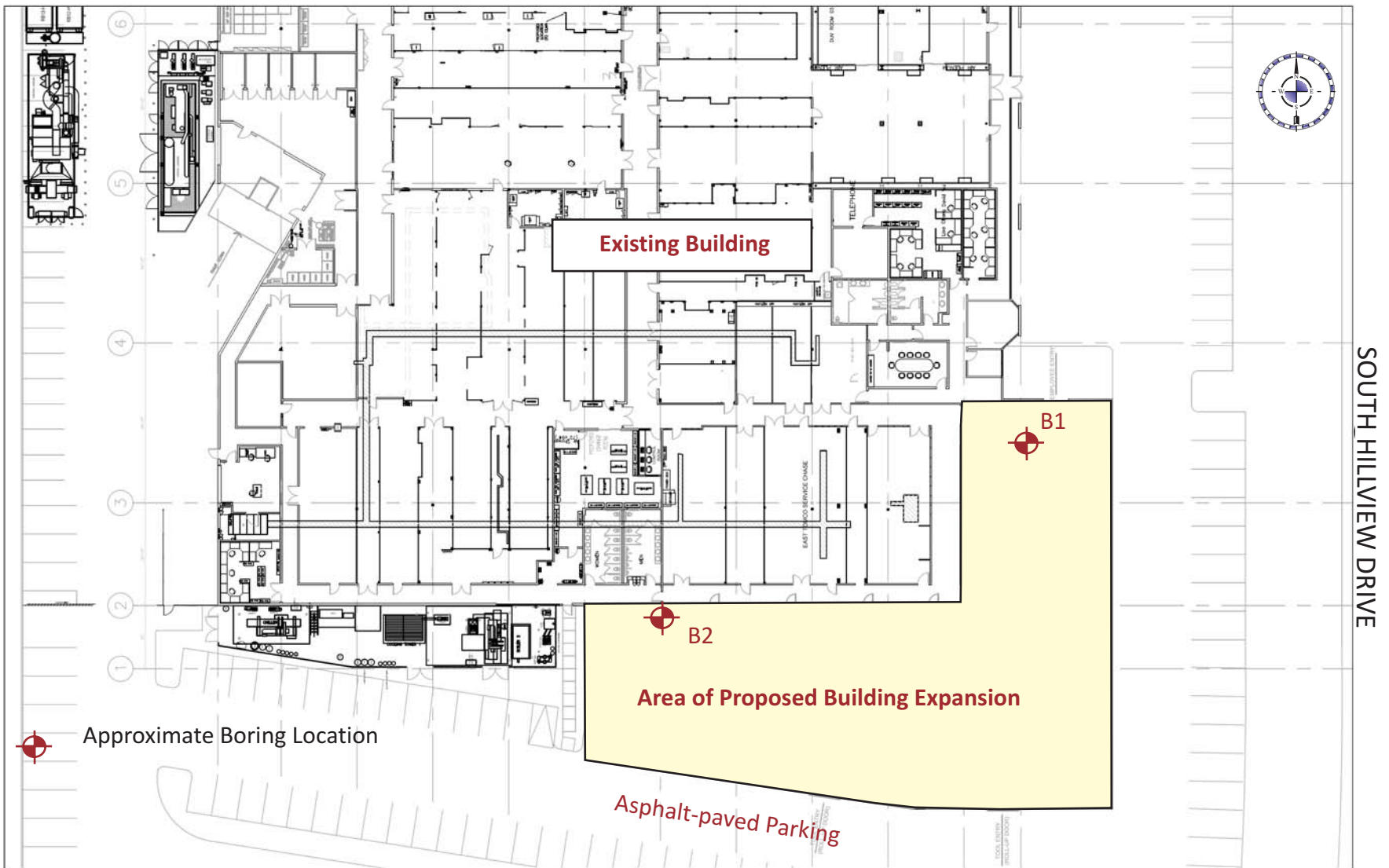
SITE VICINITY MAP

JOB NO.
ADCON-03-00

SCALE
nts

DATE
November 2010

PLATE
1



HEADWAY TECHNOLOGIES, INC.
CLEANROOM EXPANSION, PH-1
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA

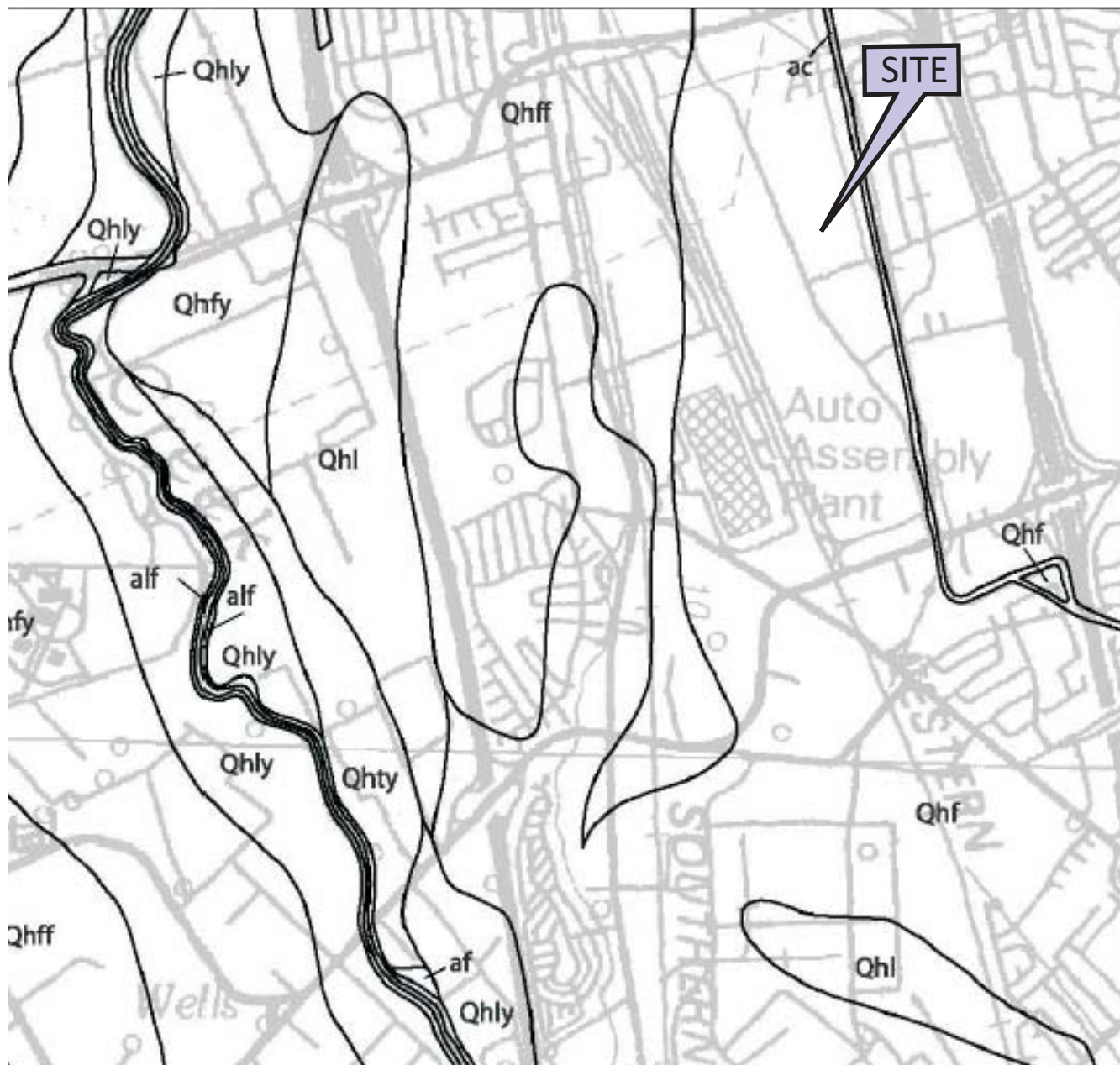


SITE PLAN

DATE:
NOV 2010

JOB NUMBER:
ADCON-03-00

PLATE:
2



Source: Seismic Hazards Zone Report for the Milpitas Quadrangle, Alameda and Santa Clara Counties, California, Seismic Hazards Report 051

LEGEND

Qhf	Holocene alluvial fan deposits	alf	- Artificial fill, levee
Qhl	Holocene alluvial fan levee deposits		
Qhff	Holocene alluvial fan deposits, fine grained facies		
Qhly	Latest holocene alluvial fan levee deposits		
Qhty	Latest holocene stream terrace deposits		

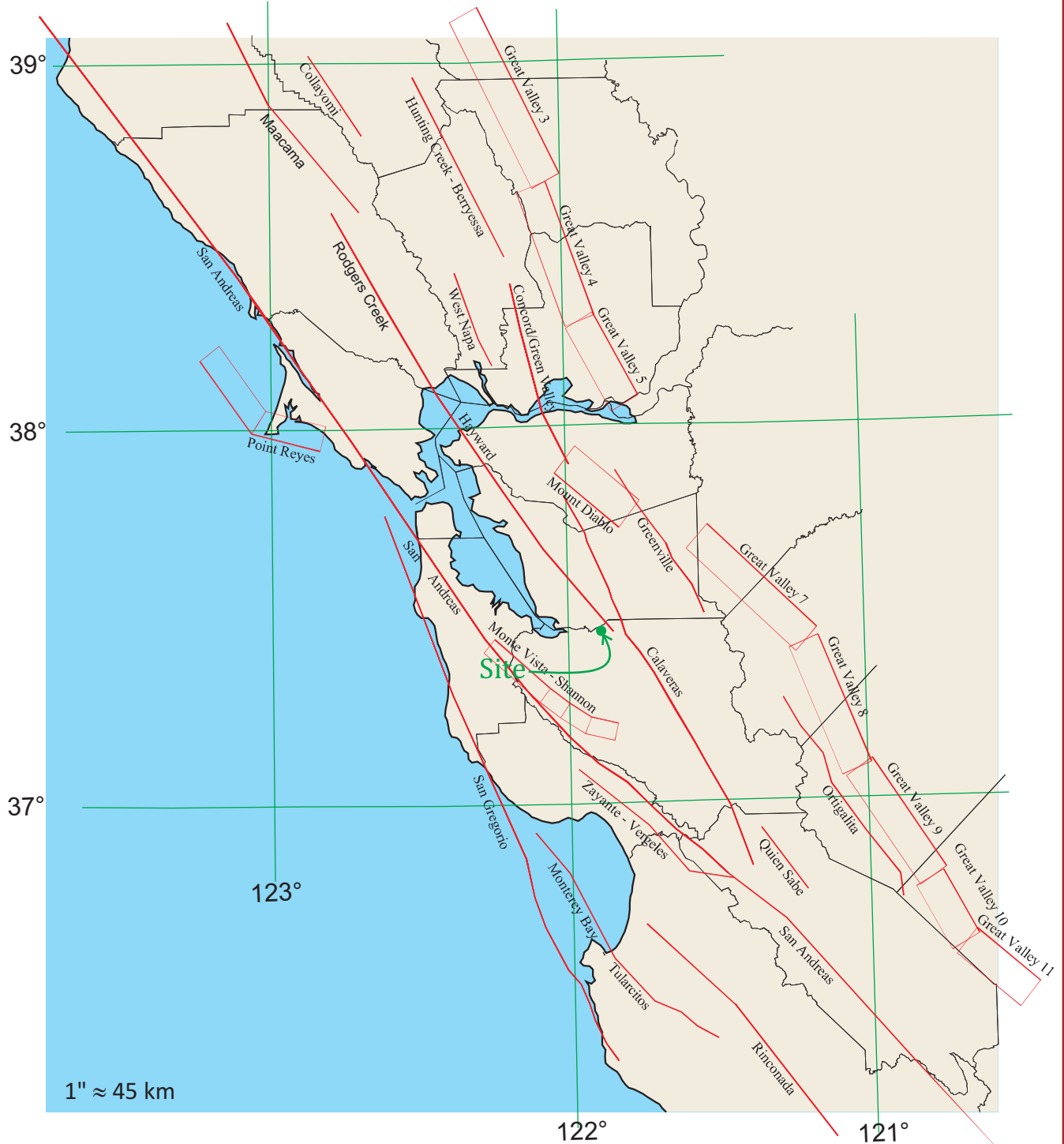
HEADWAY TECHNOLOGIES, INC.
CLEANROOM EXPANSION, PH-1
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA

VICINITY GEOLOGIC MAP

DATE:
Nov. 2010

JOB NUMBER:
ADCON-03-00

PLATE:
3



HEADWAY TECHNOLOGIES, INC.
CLEANROOM EXPANSION, PH-1
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA

REGIONAL FAULT MAP

DATE:
Nov. 2010

JOB NUMBER:
ADCON-03-00

PLATE
4

COARSE-GRAINED SOILS

LESS THAN 50% FINES*

GROUP SYMBOLS	ILLUSTRATIVE GROUP NAMES	MAJOR DIVISIONS
GW	Well graded gravel Well graded gravel with sand	GRAVELS More than half of coarse fraction is larger than No. 4 sieve size
GP	Poorly graded gravel Poorly graded gravel with sand	
GM	Silty gravel Silty gravel with sand	
GC	Clayey gravel Clayey gravel with sand	
SW	Well graded sand Well graded sand with gravel	SANDS More than half of coarse fraction is smaller than No. 4 sieve size
SP	Poorly graded sand Poorly graded sand with gravel	
SM	Silty sand Silty sand with gravel	
SC	Clayey sand Clayey sand with gravel	

NOTE: Coarse-grained soils receive dual symbols if:
 (1) their fines are CL-ML (e.g. SC-SM or GC-GM) or
 (2) they contain 5-12% fines (e.g. SW-SM, GP-GC, etc.)

FINE-GRAINED SOILS

MORE THAN 50% FINES*

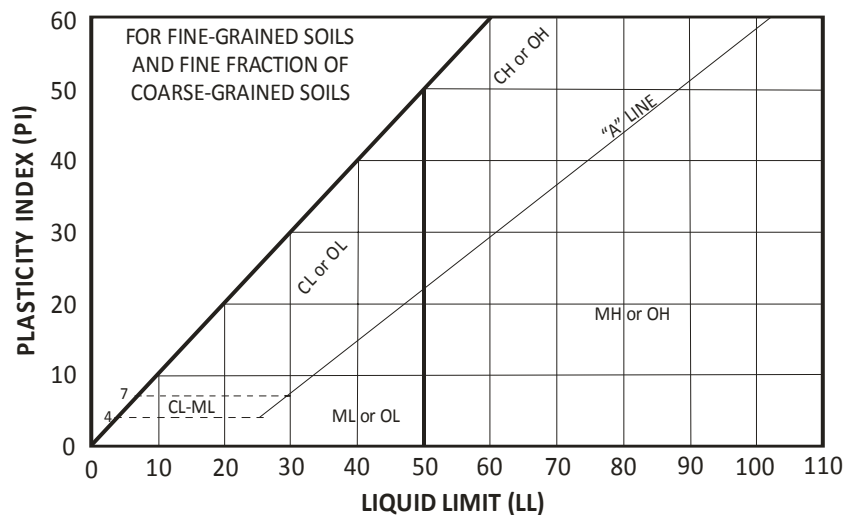
GROUP SYMBOLS	ILLUSTRATIVE GROUP NAMES	MAJOR DIVISIONS
CL	Lean clay Sandy lean clay with gravel	SILTS AND CLAYS liquid limit less than 50
ML	Silt Sandy silt with gravel	
OL	Organic clay Sandy organic clay with gravel	
CH	Fat clay Sandy fat clay with gravel	SILTS AND CLAYS liquid limit more than 50
MH	Elastic silt Sandy elastic silt with gravel	
OH	Organic clay Sandy organic clay with gravel	
PT	Peat Highly organic silt	HIGHLY ORGANIC SOIL

NOTE: Fine-grained soils receive dual symbols if their limits in the hatched zone on the Plasticity Chart(L-M)

SOIL SIZES

COMPONENT	SIZE RANGE
BOULDERS	ABOVE 12 in.
COBBLES	3 in. to 12 in.
GRAVEL	No. 4 to 3 in.
Coarse	¾ in to 3 in.
Fine	No. 4 to ¾ in.
SAND	No. 200 to No.4
Coarse	No. 10 to No. 4
Medium	No. 40 to No. 10
Fine	No. 200 to No. 40
*FINES:	BELOW No. 200

NOTE: Classification is based on the portion of a sample that passes the 3-inch sieve.

PLASTICITY CHART

Reference: ASTM D 2487-06, Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System).

GENERAL NOTES: The tables list 30 out of a possible 110 Group Names, all of which are assigned to unique proportions of constituent soils. Flow charts in ASTM D 2487-06 aid assignment of the Group Names. Some general rules for fine grained soils are: less than 15% sand or gravel is not mentioned; 15% to 25% sand or gravel is termed "with sand" or "with gravel", and 30% to 49% sand or gravel is termed "sandy" or "gravelly". Some general rules for coarse-grained soils are: uniformly-graded or gap-graded soils are "Poorly" graded (SP or GP); 15% or more sand or gravel is termed "with sand" or "with gravel", 15% to 25% clay and silt is termed clayey and silty and any cobbles or boulders are termed "with cobbles" or "with boulders".

UNIFIED SOIL CLASSIFICATION SYSTEM

SOIL TYPES (Ref 1)

Boulders:	particles of rock that will not pass a 12-inch screen.
Cobbles:	particles of rock that will pass a 12-inch screen, but not a 3-inch sieve.
Gravel:	particles of rock that will pass a 3-inch sieve, but not a #4 sieve.
Sand:	particles of rock that will pass a #4 sieve, but not a #200 sieve.
Silt:	soil that will pass a #200 sieve, that is non-plastic or very slightly plastic, and that exhibits little or no strength when dry.
Clay:	soil that will pass a #200 sieve, that can be made to exhibit plasticity (putty-like properties) within a range of water contents, and that exhibits considerable strength when dry.

MOISTURE AND DENSITY

Moisture Condition:	an observational term; dry, moist, wet, or saturated.
Moisture Content:	the weight of water in a sample divided by the weight of dry soil in the soil sample, expressed as a percentage.
Dry Density:	the pounds of dry soil in a cubic foot of soil.

DESCRIPTORS OF CONSISTENCY (Ref 3)

Liquid Limit:	the water content at which a soil that will pass a #40 sieve is on the boundary between exhibiting liquid and plastic characteristics. The consistency feels like soft butter.
Plastic Limit:	the water content at which a soil that will pass a #40 sieve is on the boundary between exhibiting plastic and semi-solid characteristics. The consistency feels like stiff putty.
Plasticity Index:	the difference between the liquid limit and the plastic limit, i.e. the range in water contents over which the soil is in a plastic state.

MEASURES OF CONSISTENCY OF COHESIVE SOILS (CLAYS) (Ref's 2 & 3)

Very Soft	N=0-1*	C=0-250 psf	Squeezes between fingers
Soft	N=2-4	C=250-500 psf	Easily molded by finger pressure
Medium Stiff	N=5-8	C=500-1000 psf	Molded by strong finger pressure
Stiff	N=9-15	C=1000-2000 psf	Dented by strong finger pressure
Very stiff	N=16-30	C=2000-4000 psf	Dented slightly by finger pressure
Hard	N>30	C>4000 psf	Dented slightly by a pencil point

*N=blows per foot in the Standard Penetration Test. In cohesive soils, with the 3-inch-diameter ring sampler, 140-pound weight, divide the blow count by 1.2 to get N (Ref 4).

MEASURES OF RELATIVE DENSITY OF GRANULAR SOILS (GRAVELS, SANDS, AND SILTS) (Ref's 2 & 3)

Very Loose	N=0-4**	RD=0-30	Easily push a ½-inch reinforcing rod by hand
Loose	N=5-10	RD=30-50	Push a ½-inch reinforcing rod by hand
Medium Dense	N=11-30	RD=50-70	Easily drive a ½-inch reinforcing rod
Dense	N=31-50	RD=70-90	Drive a ½-inch reinforcing rod 1 foot
Very Dense	N>50	RD=90-100	Drive a ½-inch reinforcing rod a few inches

**N=Blows per foot in the Standard Penetration Test. In granular soils, with the 3-inch-diameter ring sampler, 140-pound weight, divide the blow count by 2 to get N (Ref 4).

XX

- Ref 1: ASTM Designation: D 2487-06, **Standard Classification of Soils for Engineering Purposes** (Unified Soil Classification System).
- Ref 2: Terzaghi, Karl, and Peck, Ralph B., **Soil Mechanics in Engineering Practice**, John Wiley & Sons, New York, 2nd Ed., 1967, pp. 30, 341, and 347.
- Ref 3: Sowers, George F., **Introductory Soil Mechanics and Foundations: Geotechnical Engineering**, Macmillan Publishing Company, New York, 4th Ed., 1979, pp. 80, 81, and 312.
- Ref 4: Lowe, John III, and Zaccheo, Phillip F., **Subsurface Explorations and Sampling**, Chapter 1 in "Foundation Engineering Handbook," Hsai-Yang Fang, Editor, Van Nostrand Reinhold Company, New York, 2nd Ed, 1991, p. 39.

SOIL TERMINOLOGY

GENERAL NOTES FOR BORING LOGS:

The boring logs are intended for use only in conjunction with the text, and for only the purposes the text outlines for our services. The Plate "Soil Terminology" defines common terms used on the boring logs.

The plate "Unified Soil Classification System," illustrates the method used to classify the soils. The soils were visually classified in the field; the classifications were modified by visual examination of samples in the laboratory, supported, where indicated on the logs, by tests of liquid limit, plasticity index, and/or gradation. In addition to the interpretations for sample classification, there are interpretations of where stratum changes occur between samples, where gradational changes substantively occur, and where minor changes within a stratum are significant enough to log.

There may be variations in subsurface conditions between borings. Soil characteristics change with variations in moisture content, with exchange of ions, with loosening and densifying, and for other reasons. Groundwater levels change with seasons, with pumping, from leaks, and for other reasons. Thus boring logs depict interpretations of subsurface conditions only at the locations indicated, and only on the date(s) noted.

SPECIAL FIELD NOTES FOR THIS REPORT:

1. The borings were drilled on October 29, 2010, with a truck-mounted drilling rig using 8-inch diameter hollow stem augers. The borings were sealed with cement grout immediately after the last soil sample was collected.
2. The borings were approximately located by pacing from known points on the site, as shown on Plate 2, Site Plan.
3. The soils' Group Names [e.g. SANDY LEAN CLAY] and Group Symbols [e.g. (CL)] were determined or estimated per ASTM D 2487-06, Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System, see Plate 5). Other soil engineering terms used on the boring log are defined on Plate 6, Soil Terminology.
4. The "Blow Count" Column on the boring logs indicates the number of blows required to drive the sampler below the bottom of the boring, and the blow counts given are for each 6 inches of sampler penetration. The samplers and hammer are described on Plate 8.
5. Groundwater was encountered at depths shown on boring logs.



KEY TO SYMBOLS

Symbol Description

Strata symbols



Paving



Silty gravel



High plasticity (fat) clay



Lean clay



Clayey sand



Silty sand



Well graded sand

Misc. Symbols



Water first encountered during drilling



Boring continues

Soil Samplers



Modified California Sampler:
2.375" ID by 3" OD, split-barrel
sampler driven w/ 140-pound
hammer falling 30" (ASTM D 3550-01)



Standard Penetration Test:
1 3/8" ID by 2" OD, split-spoon
sampler driven with 140-pound
hammer falling 30" (ASTM D 1586-99)

Symbol Description

Line Types



Denotes a sudden, or well
identified strata change



Denotes a gradual, or poorly
identified strata change

DSX

Denotes direct shear test performed on a sample
that had been submerged in water (ASTM D2166-06)

LL

Liquid Limit or water content at which soil starts
to behave like a viscous fluid (ASTM D4318)

PI

Plasticity Index or water content at which soil
begins to deform plastically (ASTM4318)



BORING LOG

Boring No. B-1
Page 1 of 1

JOB NAME: Proposed Cleanroom Expansion, PH-1
 CLIENT: Advance Design Consultants, Inc.
 LOCATION: 497 South Hillview Drive, Milpitas, California
 DRILLER: Exploration Geoservices
 DRILL METHOD: 8-inch diameter hollow stem auger

JOB NO.: ADCON-03-00
 DATE DRILLED: 10-29-10
 ELEVATION: 50 feet
 LOGGED BY: MM
 CHECKED BY:

Type of Strength Test	Test Surcharge Pressure, psf	Test Water Content, %	Shear Strength, psf	In-Situ Water Content, %	In-Situ Dry Unit Weight, pcf	Depth, ft.	Soil Symbols, Samplers and Blow Counts	USCS	Description	Remarks
DSX	500	22.2	570	20.8	100	0		GM CH	asphaltic concrete (2½ inches) baserock (10 inches) FAT CLAY, dark gray, moist, very stiff, trace caliche	
DSX	1200	19.1	750	19.5	109	10		CL	SANDY LEAN CLAY, pale brown, saturated, very stiff, with caliche and trace oxidation stains	
DSX	2000	16.4	970	16.4	117	15				
				20.8	-	20			...increase in sand content	60% passing #200 Sieve
						25			Boring was terminated at 20 feet. Groundwater was encountered at 7½ feet. Boring was backfilled with neat cement grout.	
						30				



BORING LOG

Boring No. B-2

Page 1 of 2

JOB NAME: Proposed Cleanroom Expansion, PH-1
 CLIENT: Advance Design Consultants, Inc.
 LOCATION: 497 South Hillview Drive, Milpitas, California
 DRILLER: Exploration Geoservices
 DRILL METHOD: 8-inch diameter hollow stem auger

JOB NO.: ADCON-03-00
 DATE DRILLED: 10/29/10
 ELEVATION: 50 feet
 LOGGED BY: MM
 CHECKED BY:

Type of Strength Test	Test Surcharge Pressure, psf	Test Water Content, %	Shear Strength, psf	In-Situ Water Content, %	In-Situ Dry Unit Weight, pcf	Depth, ft.	Soil Symbols, Samplers and Blow Counts	USCS	Description	Remarks
DS	1300	NAT	700	20.9	99	0		GM CH	asphaltic concrete (2 1/2 inches) aggregate baserock (10 inches) FAT CLAY, dark gray, moist, very stiff, with caliche	LL=82 PI=58
				18.3	106	5			...color change to pale olive brown with increase in caliche content	
				17.5	111	10		SC	CLAYEY SAND, pale brown, saturated, medium dense, with caliche, moderately plastic	47% passing #200 Sieve
				17.5	113	15				
				16.8	-	20		SM	SILTY FINE SAND, pale brown, saturated, very stiff, with trace clay and caliche	30% passing #200 Sieve LL=25 Non-Plastic
						25		CL	LEAN CLAY, pale brown, saturated, very stiff, sandy with caliche	
						30				



BORING LOG

Boring No. B-2

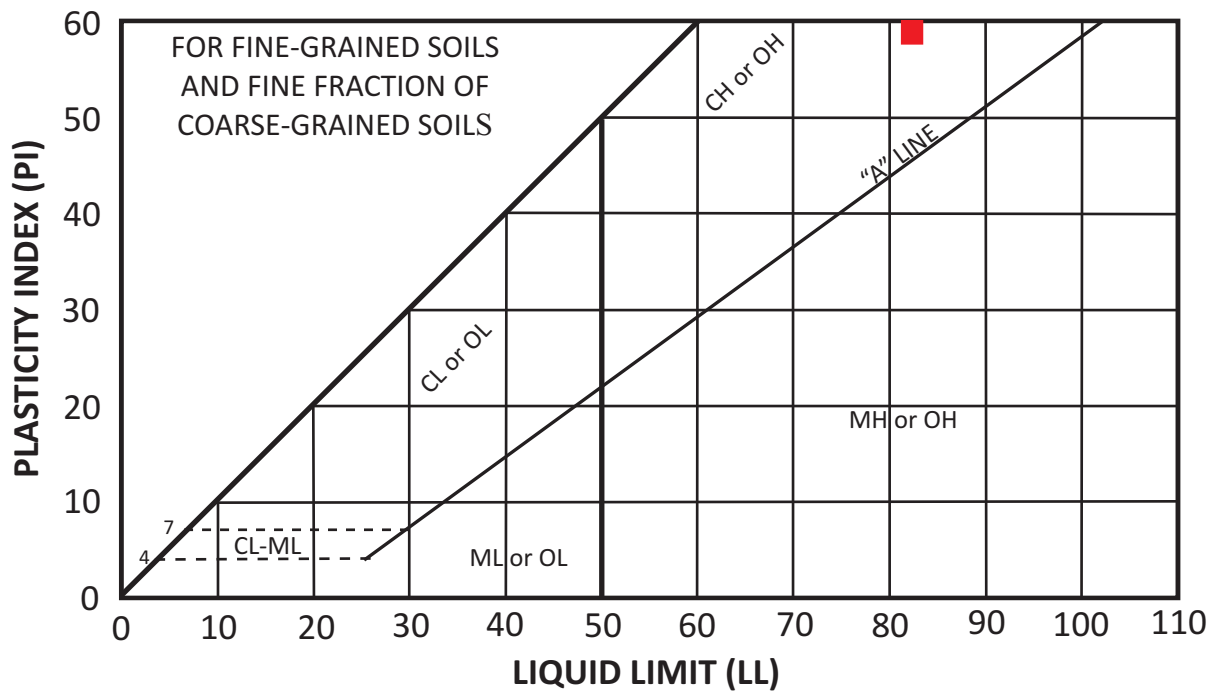
Page 2 of 2

JOB NAME: Proposed Cleanroom Expansion, PH-1

JOB NO.: ADCON-03-00

Type of Strength Test	Test Surcharge Pressure, psf	Test Water Content, %	Shear Strength, psf	In-Situ Water Content, %	In-Situ Dry Unit Weight, pcf	Depth, ft.	Soil Symbols, Samplers and Blow Counts	USCS	Description	Remarks
				16.4	-	35		SM CL	SILTY SAND, brown, saturated, dense to medium dense LEAN CLAY, pale brown, saturated	31% passing #200 Sieve LL=27 Non-Plastic
						40		SM CL	SILTY SAND, gray brown, saturated, medium dense, medium to fine sand LEAN CLAY, pale brown, very stiff, trace caliche and oxidation stains	
						45		SM CL	SILTY SAND, pale brown, saturated, medium dense, fine sand LEAN CLAY, pale brown, saturated, very stiff	
				16.2	112.4	50		SW	WELL GRADED SAND, gray brown, saturated, dense, with trace fine subrounded gravel	
						55			Boring was terminated at 50 feet. Groundwater encountered at 7½ feet. Boring was backfilled with neat cement grout.	
						60				
						65				

PLASTICITY CHART



SYMBOL	SAMPLE SOURCE	DEPTH (FEET)	NATURAL WATER CONTENT (%)	LIQUID LIMIT	PLASTIC LIMIT	PLASTICITY INDEX	SOIL DESCRIPTION
■	Boring B-1	1	20.9	82	24	58	Dark gray FAT CLAY (CH)

**PROPOSED CLEANROOM EXPANSION PH-1
HEADWAY TECHNOLOGIES, INC.
497 S. HILLVIEW DRIVE
MILPITAS, CALIFORNIA**

ATTERBERG LIMITS

DATE:
November 2010

JOB NUMBER:
ADCON-03-0

PLATE
11



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services and Related Budget Amendment
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/4/2020
Staff Contact:	Tony Ndah, Director of Public Works, 408-586-2602
Recommendations:	1. Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, decreasing the total not to exceed amount by \$248,564 from \$341,182 to \$92,618, over the five-year period, subject to annual appropriation of funds. 2. Approve a budget amendment returning FY 2020-21 contractual savings in the amount of \$31,330 to various fund balances.

Background:

The City has a fleet of thirteen (13) stationary emergency generators that are deployed at pump stations and facilities. These generators are used for back-up power for critical facilities such as water, sewer, and storm systems, as well as for City hall, Public Works, Sports Center, Police Station, and Fire Stations. In the event of a power interruption, these generators automatically turn on, which allows staff to maintain operations of these vital systems and services. Preventive maintenance services on the City's generators lessens the likelihood of equipment failure and helps control operation and maintenance costs by prolonging each generator's useful life.

On October 1, 2019, the City Council approved and authorized the City Manager to execute a 5-year maintenance service agreement with Odyssey Power Corporation to provide preventive maintenance and repair services on the City's generators. The contract scope of work included periodic inspections and preventive maintenance services such as monthly checks on fluid levels, filter changes, and maintenance of all parts of the generator. The scope of work also included generator load bank testing, which ensures that a generator will run properly when it's needed so that it can be fully depended on it during an emergency situation.

This amendment revises the scope of work to remove preventive maintenance services from the contract, to allow for the work to be performed by staff in-house, while maintaining contract services for load bank testing as part of the agreement.

Analysis:

Following Council approval in October 2019 of the maintenance service agreement, staff met with and reviewed the scope of work of the contract with leadership from the Milpitas Employees Association (MEA) union. The goal of the meeting was to revise the contract in order to allow for in-house staff to perform the majority of the required preventive maintenance on the City's generators and build on the expertise of in-house staff. After a complete review of the scope of work, it was agreed that preventive maintenance services under the contract would be removed and kept in-house, while the load bank testing would remain in the contract since this service required special equipment and expertise.

A generator load bank test involves an examination and assessment of a genset. It verifies that all primary components of the generator set are in proper working condition under loaded conditions. The equipment used to conduct a load bank test produces artificial loads on the generator by bringing the engine to an appropriate operating temperature and pressures. This is especially important for standby and emergency generator sets that do not run very often and/or may not be exposed to carrying heavy loads on a frequent basis.

Amendment No. 1 makes changes to the original scope of work for Odyssey Power Corporation to only provide annual load bank testing services, while keeping routine preventive maintenance services in-house.

Policy Alternative:

Alternative: Do not execute Amendment No. 1 with Odyssey Power Corporation.

Pros: No changes will need to be made to the existing maintenance service agreement with Odyssey Power Corporation.

Cons: Does not provide opportunity for City to develop expertise of staff in-house.

Reason not recommended: Based on additional discussions with MEA, staff believes maintaining the preventive maintenance work in-house by City staff will improve staff skills and enable the City to have more control over the work that is performed.

Fiscal Impact:

This contract in the amount of \$49,350 is budgeted in the Fiscal Year 2020-21 operations budget of the Public Works Department from various funding sources with \$29,950 budgeted in the General Fund and the remainder in the Sewer and Water funds. With the recommended action, the Public Works Department will save \$31,330 in FY 2020-21 and \$248,564 over the life of the contract.

	Original Contract	Amendment No. 1
Service Year 1	\$ 49,350	\$ 18,020
Service Year 2	\$ 49,350	\$ 18,020
Service Year 3*	\$ 136,872	\$ 18,020
Service Year 4	\$ 52,805	\$ 19,279
Service Year 5	\$ 52,805	\$ 19,279
Total Contract Price	\$ 341,182	\$ 92,618

* Under the original contract, Service Year 3 includes the additional cost for providing backup generators while performing services at Main Lift Pump Station, Ayer Pump Station, and Public Works/Police Department.

The staff report also recommends reducing the Public Works Department's budget by the FY 2020-21 savings of \$31,330 (\$20,499 in the General Fund) related to this action and returning the funds to the respective fund balances, and specifically for the General Fund to the Budget Stabilization Reserve.

California Environmental Quality Act:

By the definition provided in the 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.

Recommendations:

1. Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, decreasing the total not to exceed amount by \$248,564 from \$341,182 to \$92,618, over the five-year period, subject to annual appropriation of funds.
2. Approve a Budget Amendment returning FY 2020-21 contractual savings in the amount of \$31,330 to various fund balances.

Attachments:

- 1) Amendment No. 1 to Maintenance Services Agreement with Odyssey Power Corporation
- 2) Purchase Order and 2019 Agreement with Odyssey Power Corporation
- 3) Budget Change Form



AMENDMENT NO. 1
TO THE MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
ODYSSEY POWER CORPORATION
FOR
PREVENTATIVE GENERATOR MAINTENANCE

This Amendment No. 1 is entered into as of _____, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **Odyssey Power Corporation**, a California corporation (hereafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 1.

RECITALS

WHEREAS, on October 2, 2019, the Parties entered into a Maintenance Services Agreement for Preventative Generator Maintenance (the "Agreement") for the maximum amount of \$341,182.00, and with a term period of October 2, 2019, to October 1, 2024; and

WHEREAS, the Parties now desire to amend the Agreement by amending Section 3.3.1 Compensation, Exhibit "A" - Scope of Work, and Exhibit C, Compensation, accordingly due to a reduction in the scope of work and reduction in compensation of \$248,564.00.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. The second sentence of Section 3.3.1 Compensation, is hereby amended to read as follows:

"The total compensation shall not exceed **Ninety-Two Thousand Six Hundred Eighteen Dollars and Zero Dollars (\$92,618.00)** without written approval of City's Project Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement."

2. Exhibit A, entitled Scope of Work, is hereby deleted in its entirety and replaced with **Exhibit "A-1" - Scope of Work (Revised)**, attached hereto and incorporated herein.
3. Exhibit C, entitled Compensation, is hereby deleted in its entirety and replaced with **Exhibit "C-1" - Compensation (Revised)**, attached hereto and incorporated herein.
4. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk
Manager/Director of Finance

Approved:

Tony Ndah
Director of Public Works

ODYSSEY POWER CORPORATION

Signature

Name

Title

Date

DIR Registration Number (If
Applicable)

EXHIBIT “A-1”**SCOPE OF WORK (REVISED)****1.01 Locations and Equipment Listing**

Preventive maintenance on pump station generators shall be performed at the following locations:

Location	Address	Model	Amperage	Serial
Ayer Water Pump Station	1429 East Calaveras Boulevard	Caterpillar 3412	1,000 kW	81Z16092
Bellew Storm Pump Station	481 Murphy Ranch Road	Caterpillar C18	600 kW	G7A02261
City Hall	455 East Calaveras Boulevard	Cummins 300 DQAF/ 5006412	300 kW	A020323428
Fire Station 1	777 South Main Street	Detroit Diesel/ 100DSJ	100 kW	660956
Fire Station 2	1263 Yosemite Drive	Electro Motion	25 kW	3700079CR3A003
Fire Station 3	45 Midwick Drive	Electro Motion	25 kW	3700078CR3A003
Fire Station 4	775 Barber Lane	Caterpillar D25	25 kW	KGBE01386
Gibraltar Water Pump Station	641 Gibraltar Court	Caterpillar 3516	2,500 kW	SBK00868
Main Lift Sewage Pump Station	1425 North McCarthy Boulevard	Caterpillar 3508	1,000 kW	4GM00337
Manor Storm Pump Station	349 Marylinn Drive	Caterpillar 3306	230 kW	6YR02965
Public Works/Police Department	1265 North Milpitas Boulevard	Caterpillar 3412	600 kW	81Z10567
Sports Center	1325 E Calaveras Boulevard	Caterpillar C13 GS	350 kW	TP22939585
Wrigley Ford Storm Pump Station	75 Marylinn Drive	Caterpillar 3406B	400 kW	1JJ00574

1.2 Scope of Services**A. General**

1. Regular scheduled load bank testing shall be in accordance with the manufacturer's written prescribed maintenance.
 2. All regular scheduled service shall be performed during normal business hours between 8:00 AM and 5:00 PM. A minimum notification of 48-hours for regular scheduled service shall be given to the Public Works Maintenance Manager for Utilities or Public Works Maintenance Manager for Facilities.
 3. The Contractor shall provide all tools, equipment, and testing devices necessary to perform service on all generator sets included in this contract.
 4. Public Works Maintenance personnel will be on site at each load bank test.
- B. Service Personnel
1. All technicians dispatched by the Contractor to perform regular scheduled load bank testing shall be certified to perform the tests on various manufacturers' generator sets included in this contract.
 2. The Contractor shall not dispatch any personnel to provide load bank testing that are not fully certified to provide testing service on the various manufacturers of generator sets included in this contract.
 3. The Contractor personnel shall wear identifiable uniforms at all times on City of Milpitas property. The Contractor personnel shall provide picture identification upon request at any time while on City property.
- C. Load Bank Testing
1. The Contractors shall provide one (1) load bank testing annually at each of the locations listed under Section 1.03 – Locations and Equipment Listing.
 2. Load Bank Test
 - i. The Contractor shall provide load bank testing to ensure the proper operation of the generators. A load bank test shall include the connection of a portable resistive load bank. The load will be varied in steps for a two (2) hour duration.
 - ii. The Contractor shall start engine and load with Contractor supplied resistive load bank. The Contractor shall run under load for at least two (2) hours:
 - a. ½ hour at 25% load
 - b. ½ hour at 50% load
 - c. ½ hour at 75% load
 - d. ½ hour at 100% load
 3. The Contractor shall provide the City with a copy of load bank test results upon completion of the Annual Maintenance.

Exhibit "C-1"

Compensation (REVISED)

Load Bank Testing Only

Location	KW Size	Year 1	Year 2	Year 3	Year 4	Year 5
Ayer Pump	1000	\$ 2,182.00	\$ 2,182.00	\$ 2,182.00	\$ 2,334.00	\$ 2,334.00
Bellew Pump	600	\$ 1,297.00	\$ 1,297.00	\$ 1,297.00	\$ 1,388.00	\$ 1,388.00
City Hall	300	\$ 863.00	\$ 863.00	\$ 863.00	\$ 923.00	\$ 923.00
Fire St 1	100	\$ 748.00	\$ 748.00	\$ 748.00	\$ 800.00	\$ 800.00
Fire St 2	25	\$ 705.00	\$ 705.00	\$ 705.00	\$ 754.00	\$ 754.00
Fire St 3	25	\$ 705.00	\$ 705.00	\$ 705.00	\$ 754.00	\$ 754.00
Fire St 4	25	\$ 705.00	\$ 705.00	\$ 705.00	\$ 754.00	\$ 754.00
Gibraltar Pump	2500	\$ 4,205.00	\$ 4,205.00	\$ 4,205.00	\$ 4,499.00	\$ 4,499.00
Main Lift Pump	1000	\$ 2,182.00	\$ 2,182.00	\$ 2,182.00	\$ 2,335.00	\$ 2,335.00
Manor Pump	230	\$ 1,085.00	\$ 1,085.00	\$ 1,085.00	\$ 1,161.00	\$ 1,161.00
Public Works/PD	600	\$ 1,297.00	\$ 1,297.00	\$ 1,297.00	\$ 1,388.00	\$ 1,388.00
Sports Center	350	\$ 863.00	\$ 863.00	\$ 863.00	\$ 923.00	\$ 923.00
Wrigley Pump	400	\$ 1,183.00	\$ 1,183.00	\$ 1,183.00	\$ 1,266.00	\$ 1,266.00
Total		\$18,020.00	\$18,020.00	\$18,020.00	\$19,279.00	\$19,279.00

City of Milpitas

PURCHASE ORDER

Purchasing Division
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Telephone: (408) 586-3160
Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS
ACCOUNTS PAYABLE
455 E. CALAVERAS BLVD.
MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127

PO NUMBER: FY 20424
PAGE 1 OF 2
DATE: 10/31/19

SHIP TO: Glen Campi
City of Milpitas - Corp Yard
1265 N Milpitas Blvd
Milpitas, CA 95035-3153

VENDOR: Odyssey Power Corp
625 N Shepard St
18769 Anaheim CA 92806

CONTACT:
PHONE#:
FAX#:

FOB: NA

SHIP VIA:

PAYMENT
TERMS: Net30

DATE
REQUIRED: 10/31/19

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
This Order Supersedes the Previously Issued Order. Changes are marked with '*'.					
* 1			1.00	14,165.00	Agreement entered on October 02, 2019 through October 01, 2024. Annual Preventive Generator Maintenance. This Purchase order is valid through June 30, 2020. Certificate of Insurance to expire on October 01, 2020. For questions regarding this purchase order, please contact Glen Campi @408.586.264 7. Approved by City Council on October 01, 2019.
* 2			1.00	5,235.00	Sewer Pump Stations
* 3			1.00	9,643.00	Storm Pump Stations
* 4			1.00	20,307.00	Facilities Locations

PURCHASING AGENT:

Chris Schroeder

CITY MANAGER:

CONTINUED

ADJUSTED AMOUNT PER LINE

(Required Only On Orders Greater Than \$10,000)

1. FURNISH TWO (2) COPIES OF THE INVOICE.
2. INVOICE EACH SHIPMENT SEPARATELY.
3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS.

4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.
5. NO EXCEPTIONS UNLESS STATED ABOVE.
6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM.

City of Milpitas

PURCHASE ORDER

Purchasing Division
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Telephone: (408) 586-3160
Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS
ACCOUNTS PAYABLE
455 E. CALAVERAS BLVD.
MILPITAS, CA 95035-5411

PO NUMBER: FY 20424
INVOICE QUESTIONS : (408) 586-3127 PAGE 2 OF 2
DATE: 10/31/19

SHIP TO: Glen Campi
City of Milpitas - Corp Yard
1265 N Milpitas Blvd
Milpitas, CA 95035-3153

VENDOR: Odyssey Power Corp
625 N Shepard St
18769 Anaheim CA 92806

CONTACT:
PHONE#:
FAX#:

FOB: NA SHIP VIA: PAYMENT TERMS: Net30 DATE REQUIRED: 10/31/19

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
TOTAL:				\$49,350.00	
	400	4234237			\$10,580.00
	450	4234237			\$5,235.00
	100	4234237			\$9,643.00
	100	4274237			\$18,227.00

(Required Only On Orders Greater Than \$10,000)

1. FURNISH TWO (2) COPIES OF THE INVOICE.
2. INVOICE EACH SHIPMENT SEPARATELY.
3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS.
4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.
5. NO EXCEPTIONS UNLESS STATED ABOVE.
6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM.

From: Jessica Wutzke
Sent: Tuesday, May 12, 2020 3:45 PM
To: Cristina Benninghouse
Subject: FW: Odyssey Power i8
Attachments: printP7730011.lis[1].rtf; FY20424 - Odyssey Power Corp.pdf

Hi Cristina,

I made changes to the amounts on the lines per Stephanie's request. No additional money was added.

PO Address		Sort By Item		Supplier PO History		Toggle History		Terms	
PO Number	FY 20424	Batch	20733	Confirm	☐	Print PO	☒	Newest Data on Top	☒
		Type	EMERGENCY		Mode	CURRENT			
COMMODITY		Active	☒		PO/Inv Type				
ITEM		Status	Approved		Zero O/S	☒			
Description					Closed	☒			
Supplier	18769	Odyssey Power Corp		Canceled	☒				
BUYER	WUTZKE	Jessica Wutzke							
Date from		to		Counter	1				
Order Date	10-31-2019	Requestor			Order Amount	\$49,350.00			
Date Req'd	10-31-2019			O/S Amount	\$43,685.00				
PO Subject	FY2019-2020 Preventive Generator Maintenance								

Line	ITEM	Description	Original	Received	Invoiced	Outstanding	Status
001		Agreement entered on October 0	7592.310		3585.000	4007.310	Pt Invoiced
002		Sewer Pump Stations	3796.150			3796.150	Approved
003		Storm Pump Stations	11388.460			11388.460	Approved
004		Facilities Locations	26573.080		2080.000	24493.080	Pt Invoiced

Jessica Wutzke
 Finance Operations
 Bus - 408.586.3135
 Fax - 408.586.3134

From: Stephanie Fong <sfong@ci.milpitas.ca.gov>
Sent: Monday, May 11, 2020 9:19 PM
To: Jessica Wutzke <jwutzke@ci.milpitas.ca.gov>
Subject: Re: Odyssey Power - Invoices 101095, 101097, 101099

Great! Thanks.

From: Jessica Wutzke <jwutzke@ci.milpitas.ca.gov>
Sent: Monday, May 11, 2020 7:55 PM
To: Stephanie Fong <sfong@ci.milpitas.ca.gov>
Subject: RE: Odyssey Power - Invoices 101095, 101097, 101099

Thanks for checking in on this. I believe it got list in my emails. I will work on it tomorrow.

Thanks,

Jessica Wutzke
Finance Operations
Bus - 408.586.3135
Fax - 408.586.3134

From: Stephanie Fong <sfong@ci.milpitas.ca.gov>
Sent: Monday, May 11, 2020 4:06 PM
To: Jessica Wutzke <jwutzke@ci.milpitas.ca.gov>
Subject: RE: Odyssey Power - Invoices 101095, 101097, 101099

Hi Jessica,

Just wanted to follow-up with you on this contract. Are you able to adjust the PO line items?

Thanks,
Stephanie

From: Stephanie Fong
Sent: Wednesday, April 15, 2020 6:42 PM
To: Jessica Wutzke <jwutzke@ci.milpitas.ca.gov>
Cc: Irene Felix <ifelix@ci.milpitas.ca.gov>
Subject: RE: Odyssey Power - Invoices 101095, 101097, 101099

Hi Jessica,

I apologize for the inconvenience but we will need to adjust the amount for each of the line items. When I initially did the splits, I didn't have the pricing for service per site. Now that I do, I realize that they need to be adjusted for each of the divisions. Please see table below.

		Original Amount	Revised Amount	Invoiced Amount
Ln1	Water	\$ 7,592.31	\$ 14,165.00	\$10,457
Ln2	Sewer	\$ 3,796.15	\$ 5,235.00	
Ln3	Storm	\$ 11,388.46	\$ 9,643.00	
Ln4	Facilities	\$ 26,573.08	\$ 20,307.00	\$2,080
Total		\$ 49,350.00	\$ 49,350.00	

Let me know if you have any questions.

Thank you,
Stephanie

From: Stephanie Fong
Sent: Wednesday, April 15, 2020 4:18 PM
To: Jessica Wutzke <jwutzke@ci.milpitas.ca.gov>
Cc: Irene Felix <ifelix@ci.milpitas.ca.gov>
Subject: Re: Odyssey Power - Invoices 101095, 101097, 101099

Will do. I'll work on this tonight after I put the kids to sleep.

Thanks,
Stephanie

Sent from my iPhone

On Apr 15, 2020, at 3:27 PM, Jessica Wutzke <jwutzke@ci.milpitas.ca.gov> wrote:

Hi Stephanie,

We processed invoices 101095 & 101097 but there is not enough money on Line 1 to cover invoice 101099. Please advise which PO line to charge.

<image002.jpg>

Jessica Wutzke

Finance Operations

Bus - 408.586.3135

Fax - 408.586.3134

From: Stephanie Fong <sfong@ci.milpitas.ca.gov>

Sent: Tuesday, April 07, 2020 8:14 AM

To: Accounts Payable <AccountsPayable@ci.milpitas.ca.gov>

Cc: Glen Campi <GCampi@ci.milpitas.ca.gov>; Tony Ndah <tndah@ci.milpitas.ca.gov>; James Levers <jlevers@ci.milpitas.ca.gov>; Alison Phagan <aphagan@ci.milpitas.ca.gov>

Subject: Odyssey Power - Invoices 101095, 101097, 101099

Glen Campi has approved the invoices stated in the subject line of this email.

Invoice 101095 (Ayer) FY20424 Ln.1 (Water)

Invoice 101097 (CH) – FY20424 Ln. 4 (Facilities)

Invoice 101099 (Gibralter) FY20424 Ln. 1 (Water)

From: Glen Campi <GCampi@ci.milpitas.ca.gov>

Sent: Tuesday, April 7, 2020 7:35 AM

To: Stephanie Fong <sfong@ci.milpitas.ca.gov>; Tony Ndah <tndah@ci.milpitas.ca.gov>; James Levers <jlevers@ci.milpitas.ca.gov>

Cc: Alison Phagan <aphagan@ci.milpitas.ca.gov>

Subject: Re: City of Milpitas Invoice 101095, 101097, 101099

Approved for Ayer and Gibraltar

Thanks!

Glen A. Campi

Utilities Maintenance Manager,

Public Works Dept, City of Milpitas

Office: (408) 586-2643

FAX: (408) 586-2610

Cell: (408) 690-3617

gcampi@ci.milpitas.ca.gov

From: Stephanie Fong <sfong@ci.milpitas.ca.gov>

Sent: Monday, April 6, 2020 9:40 PM

To: Tony Ndah <tndah@ci.milpitas.ca.gov>; Glen Campi <GCampi@ci.milpitas.ca.gov>; James Levers <jlevers@ci.milpitas.ca.gov>

Cc: Alison Phagan <aphagan@ci.milpitas.ca.gov>

Subject: RE: City of Milpitas Invoice 101095, 101097, 101099

Hi Everyone,

If these invoices have not been printed and signed, I can process this via email per A/P's temporary emergency guidelines if you approve the invoices. I just need to you reply with "approve" in the body of the email.

Invoice 101095 (Ayer) FY20424 Ln.1 (Water)
Invoice 101097 (CH) – FY20424 Ln. 4 (Facilities)
Invoice 101099 (Gibralter) FY20424 Ln. 1 (Water)

Thanks,
Stephanie

From: Tony Ndah <tndah@ci.milpitas.ca.gov>
Sent: Thursday, April 2, 2020 1:38 PM
To: Glen Campi <GCampi@ci.milpitas.ca.gov>; James Levers <jlevers@ci.milpitas.ca.gov>
Cc: Stephanie Fong <sfong@ci.milpitas.ca.gov>; Alison Phagan <aphagan@ci.milpitas.ca.gov>
Subject: FW: City of Milpitas Invoice 101095, 101097, 101099

Tony Ndah, P.E. | Public Works Director

City of Milpitas | Public Works Department
1265 N. Milpitas Blvd | Milpitas, CA 95035
T: (408) 586-2602 | F: (408) 586-2608 | E: tndah@ci.milpitas.ca.gov

From: Accounts Receivable <ar@odysseypower.com>
Sent: Thursday, March 26, 2020 8:57 AM
To: Tony Ndah <tndah@ci.milpitas.ca.gov>; jlevers@ci.milpitas.ca.gov
Subject: City of Milpitas Invoice 101095, 101097, 101099

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Accounts Payable,

Please see attached invoice(s) for your review and processing. Should you have any questions regarding your invoice feel free to contact me to discuss.

Thank you,

Viri Madrigal | Accounts Receivable Specialist
Odyssey Power | HQ - 625 N Shepard St Anaheim, CA 92806 | odysseypower.com
ar@odysseypower.com | t 714.575.5010 Ext. 207 | f 714.666.2880 | 24 hr 800.675.4545
UPS | **Generators** | **DC Power** | **Batteries**

CONFIDENTIALITY NOTICE: This e-mail message and its attachments are intended solely for the addressed recipient and may contain legally privileged and confidential information. Any unauthorized use, disclosure or duplication is prohibited. If you are not the addressed recipient, or received this e-mail message in error, please notify the sender.

City of Milpitas

PURCHASE ORDER

Purchasing Division
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Telephone: (408) 586-3160
Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS
ACCOUNTS PAYABLE
455 E. CALAVERAS BLVD.
MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127

PO NUMBER: FY 20424
PAGE 1 OF 2
DATE: 10/31/19

SHIP TO: Glen Campi
City of Milpitas - Corp Yard
1265 N Milpitas Blvd
Milpitas, CA 95035-3153

VENDOR: Odyssey Power Corp
625 N Shepard St
18769 Anaheim CA 92806

CONTACT:
PHONE#:
FAX#:

FOB: NA

SHIP VIA:

PAYMENT
TERMS: Net30

DATE
REQUIRED: 10/31/19

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
1			1.00	7,592.31	Agreement entered on October 02, 2019 through October 01, 2024. Annual Preventive Generator Maintenance. This purchaseorder is valid through June 30, 2020. Certificate of Insur ance to expire on October 01, 2020. For questions regardingthis purchase order, please contact Glen Campi @408.586.264 7. Apporved by City Council on October 01, 2019.
2			1.00	3,796.15	Sewer Pump Stations
3			1.00	11,388.46	Storm Pump Stations
4			1.00	26,573.08	Facilities Locations
			TOTAL:	\$49,350.00	

PURCHASING OFFICER:

Chris Schroeder

CITY MANAGER:

Approved by City Council

CONTINUED

(Required Only On Orders Greater Than \$10,000)

1. FURNISH TWO (2) COPIES OF THE INVOICE.
2. INVOICE EACH SHIPMENT SEPARATELY.
3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS.
4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.
5. NO EXCEPTIONS UNLESS STATED ABOVE.
6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM.

City of Milpitas

PURCHASE ORDER

Purchasing Division
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Telephone: (408) 586-3160
Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS
ACCOUNTS PAYABLE
455 E. CALAVERAS BLVD.
MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127

PO NUMBER: FY 20424
PAGE 2 OF 2
DATE: 10/31/19

SHIP TO: Glen Campi
City of Milpitas - Corp Yard
1265 N Milpitas Blvd
Milpitas, CA 95035-3153

VENDOR: Odyssey Power Corp
625 N Shepard St
18769 Anaheim CA 92806

CONTACT:
PHONE#:
FAX#:

FOB: NA

SHIP VIA:

PAYMENT
TERMS: Net30

DATE
REQUIRED: 10/31/19

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
			400 4234237		\$7,592.31
			450 4234237		\$3,796.15
			100 4234237		\$11,388.46
			100 4274237		\$26,573.08

PURCHASING OFFICER:

CITY MANAGER:

(Required Only On Orders Greater Than \$10,000)

1. FURNISH TWO (2) COPIES OF THE INVOICE.
2. INVOICE EACH SHIPMENT SEPARATELY.
3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS.
4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.
5. NO EXCEPTIONS UNLESS STATED ABOVE.
6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM.

Vendor Number 18769		New Vendor - Attach W-9			
Recommended Supplier / Contact / Street Address Odyssey Power Corporation		Reason For Recommendation	Ship To	Special Instructions	Department Head Approvals <i>[Signature]</i>
625 N Shepard St.					Approval Date 10/3/19
City, State & Zip Code Anaheim, CA 92806		Telephone (714) 575-5010	Fax #		
Check box to send or e-mail PO to vendor: ☐ E-mail Address: _____		Date Requested: 10/2/19	Requested by: G. campi	Ext. x2647	Date Required: ASAP
Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project					

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	LS	Annual Preventive Generator Maintenance and Repair Services at Water Pump Stations	7,592.31	7,592.31	400-423-4237
1	1	LS	Annual Preventive Generator Maintenance and Repair Services at Sewer Pump Stations	3,796.15	3,796.15	450-423-4237
1	1	LS	Annual Preventive Generator Maintenance and Repair Services at Storm Pump Stations	11,388.46	11,388.46	100-423-4237
1	1	LS	Annual Preventive Generator Maintenance and Repair Services at Facilities Locations	26,573.08	26,573.08	100-427-4237
					0.00	
					0.00	
					0.00	
					0.00	
Justification Or Intended Use Of Goods or Services Approved by Council on 10/1/19				Sub Total	49,350.00	Account Code Number
				Tax		
				Freight		
				Total	49,350.00	

Requestor Check-off list:		Do not include option years		For Accounting Use Only	
Agreement Start Date: _____ & End Date: _____		_____ not applicable		Signature Approval <i>[Signature]</i>	
Annual Contract Amount: \$49,350.00		_____ not applicable		CIP Budget Check <i>[Signature]</i>	
Certificate of Insurance Expiration Date: _____		_____ not applicable		Acct. Code Check <i>[Signature]</i>	
City Council Approved on (for purchases over \$100,000): 10/1/19		_____ not applicable		Agreement Dated 10-07-19	
Competitive Bidding - 3 quotes received ☐ Yes** ☒ No		x not applicable		Insurance Expires 10-01-20	
Sole Source Justification form (attach)		x not applicable		City Council 10-01-17	
Emergency Procurement form (attach)		x not applicable		Depreciable? If yes, use PO# EQ _____	
(*attach Agenda & Minutes) (**attach quotes)				Multiple Account, use PO# MA <i>[Signature]</i>	
				Commodity Code: 028537	
				Ship to Code: 0000	
				PO Entered on: 10-31-19	
				PO # 422424	
				Batch # 2733	
				Entered by <i>[Signature]</i>	

Forward Original to Accounting Services, Save a copy for Your Records

Revised 01/12/16

**CITY OF MILPITAS
MAINTENANCE SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into **October 2, 2019** by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **Odyssey Power Corporation**, a California Corporation, with its principal place of business at **625 N. Shepard Street, Anaheim, CA 92806** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing preventative generator maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the Preventative Generator Maintenance project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional preventative generator maintenance services necessary for the Project ("Services"). The Services are more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term

The term of this Agreement shall be from **October 2, 2019 to October 1, 2024**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

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

3.2.5 Contractor's Representative. Contractor hereby designates **Joshua Linehan**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services,

using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Two Hundred Fifty Dollars (\$250)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided

by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the

same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental

Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under **Exhibit "D"** (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in **Exhibit "C"** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in **Exhibit "C"** attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to

the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in **Exhibit "C"** attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Forty-One Thousand One Hundred Eighty-Two Dollars (\$341,182.00)** without written approval of City's **Project Manager**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The

requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Joshua Linehan
Odyssey Power Corporation
625 North Shepard Street
Anaheim, CA 92806

City:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Glen Campi, Public Works

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's

Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

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

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void,

and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

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

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

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

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

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

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

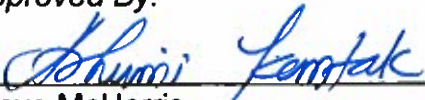
[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND ODYSSEY POWER CORPORATION**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of October 2, 2019.

CITY OF MILPITAS

Approved By:

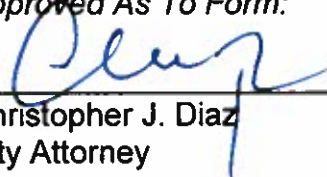


Steve McHarris
Interim City Manager

10/18/19

Date

Approved As To Form:



Christopher J. Diaz
City Attorney

Approved As To Content:



Walter C. Rossmann
Risk Manager/Finance Director

Approved As To Scope:



Tony Ndah
Public Works Director

ODYSSEY POWER CORPORATION



Signature

JOSEPH LINEHAN

Name

CFO

Title

SEPTEMBER 3, 2019

Date

EXHIBIT A

Scope of Work

A. General

1. Regular scheduled preventive maintenance shall be in accordance with the manufacturer's written prescribed maintenance.
2. All repairs required not covered in the manufacturer's prescribed maintenance must be approved by the Public Works Maintenance Manager for Utilities.
3. All parts purchased that are not covered in the manufacturer's prescribed maintenance must be approved by the Public Works Maintenance Manager for Utilities.
4. All parts required in regular scheduled maintenance for each respective generator set shall be kept in stock by the Contractor and be available on site at each scheduled maintenance inspection.
5. All regular scheduled preventive maintenance inspections shall be performed during normal business hours between 8:00 AM and 5:00 PM. A minimum notification of 48-hours for regular scheduled preventive maintenance inspections shall be given to the Public Works Maintenance Manager for Utilities.
6. A written report, including a list of all items inspected and/or serviced, recommendations of repairs, and any corrections and/or modifications not covered under the manufacturer's prescribed maintenance, shall be submitted to the Public Works Maintenance Manager for Utilities and signed by the Technician performing regular scheduled maintenance inspection.
7. During the regular scheduled maintenance inspections, all transfer switches connected to each generator set shall be inspected and/or serviced.
8. Fluids, such as engine oil and engine coolant, shall be changed according to manufacturer's prescribed regular scheduled maintenance inspection programs. Fluids changed out shall be tested according to the manufacturer's recommendations or to industry standards, if the manufacturer has no recommendations. Test results shall be presented to the Public Works Maintenance Manager for Utilities.
9. All parts used during regular scheduled maintenance inspections, unscheduled service, and/or emergency repairs shall be new in container unless otherwise approved by the Public Works Maintenance Manager for Utilities.
10. The Contractor shall provide all tools, equipment, and/or testing devices necessary to perform maintenance and/or service on all generator sets and pumps included in this contract.

11. Public Works Maintenance personnel will be on site at each and every regular scheduled maintenance inspection, emergency service situation, and/or load bank test.
12. The manufacturer's prescribed maintenance programs shall be followed accordingly, unless otherwise approved by the Public Works Maintenance Manager for Utilities. Written copies of the respective manufacturer's maintenance schedules shall be submitted to the Public Works Maintenance Manager for Utilities upon contract being awarded.

B. Service Personnel

1. All technicians dispatched by the Contractor to perform regular scheduled maintenance inspections, unscheduled service, and/or emergency repairs shall be certified to perform maintenance and/or repairs on various manufacturers' generator sets and pumps included in this contract.
2. The Contractor shall not dispatch any personnel to provide maintenance and/or service that are not fully certified to provide maintenance and/or service on the various manufacturers of generator sets included in this contract.
3. The Contractor personnel shall wear identifiable uniforms at all times on City of Milpitas property. The Contractor personnel shall provide picture identification upon request at any time while on City property.

C. Inspection Service and Preventive Maintenance

1. Provide three (3) quarterly preventive maintenance calls at the locations listed in the IFB. During each of the inspections, all systems shall be visually checked for potential problems, and shall be manually tested to assure reliability.
2. Preventive maintenance services shall include, but not be limited to, the items identified below and as recommended by the manufacturer.
 - i. The technician will verify the fluid levels (oil, coolant, and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.
 - ii. Before Starting Engine
 - a. Check engine oil and coolant levels.
 - b. Check block heater (should maintain a coolant temperature of 90 ° F in the block).
 - c. Check fuel level in storage tank.
 - d. Check battery water level and top as necessary.
 - e. Check battery terminals for corrosion and connections for tightness (lead acid).
 - iii. With Engine Running
 - a. Check oil pressure.

- b. Check fuel pressure.
 - c. Check RPM (frequency).
 - d. Check generated voltage.
 - e. Check for leaks or unusual noises.
- iv. After Stopping Engine
 - a. Check/verify all switches are in proper positions for automatic start.
 - b. Check fuel level in tank.
 - c. Record battery charger volts and check for proper operation.
 - d. Remove, clean, and reinstall all battery connections (lead acid).
 - e. Inspect generator for cleanliness.
- v. Reporting
 - a. Provide written service report with each visit.
 - b. Advise customer of any/all unusual situations or potential problems which will require further attention.
 - c. Advise when main fuel tank is below $\frac{3}{4}$ full.
- 3. The Contractor shall contact City's Department of Public Work's Maintenance Manager for Utility Services of any problems and advise as to the cost of repairs.

D. Annual Service

- 1. Provide one (1) annual servicing at the locations listed in this IFB.
- 2. The annual service shall include a full inspection of each unit and full service which includes, but is not limited to, the replacement of engine oil, oil filters, and fuel filters.
- 3. The annual preventive maintenance service shall include, but is not limited to, all inspections services and the following:
 - i. Drain crankcase oil and replace with new oil.
 - ii. Remove and replace oil and fuel filters.
 - iii. Inspect air filter(s).
 - iv. Check generator output.
 - v. Take oil, fuel, and coolant samples for analysis.
- 4. Load Test
 - i. The Contractor shall provide load testing to ensure the proper operation of the generators. A load test shall include the connection of a portable resistive load bank. The load will be varied in steps for a two (2) hour duration.
 - ii. The Contractor shall start engine and load with Contractor supplied resistive load bank. The Contractor shall run under load for at least two (2) hours:
 - a. $\frac{1}{2}$ hour at 25% load
 - b. $\frac{1}{2}$ hour at 50% load
 - c. $\frac{1}{2}$ hour at 75% load

- d. ½ hour at 100% load
- 5. The Contractor shall provide the City with a copy of all test results upon completion of the Annual Maintenance, to include, but not be limited to fuel, oil, and coolant analysis; safety shutdowns; and load tests.
- E. Three Year Service
 - 1. Every three (3) years, engine manufacturers recommend replacement of battery, cooling system belts, coolant, and hoses.
 - 2. The three (3) year services include, but are not limited to, the following: upgrading block heater hoses to high temperature silicon hoses. Block heater isolation ball valves will be installed on any engine not already so equipped. Batteries are recommended for replacement on a three (3) year cycle and will be replaced with Maintenance Free batteries.
 - 3. The Contractor shall perform, but not be limited to, the following services:
 - i. Replace battery
 - ii. Replace belts
 - iii. Replace hoses
 - a. Block heater hoses will be replaced with high temperature silicon hose.
 - b. Block heater isolation ball valves will be added when needed.
 - iv. Replace coolant
 - a. Standard antifreeze will be replaced every three (3) years.
 - b. Extended life coolants will be upgraded after the first three (3) years and replaced after six (6) years.
 - 4. Backup Generator
 - i. The Contractor shall make every effort to get the generator back up and running within one (1) hour. If the Contractor anticipates that the work will exceed one (1) hour, the Contractor will need to provide a trailer generator to provide back-up support while the generator is out of service. This requirement applies to Main Lift Pump Station (1425 North McCarthy Boulevard), Ayer Pump Station (1429 East Calaveras Boulevard) and Public Works/Police Department (1265 North Milpitas Boulevard).
- F. Additional Services
 - 1. Additional services not included in the service contract shall be offered by the Contractor at the standard rates provided on the bid sheet on a Time-&Material (T&M) basis.
- G. Warranty
 - 1. Performance Warranty
 - i. The Contractor shall guarantee all work, equipment, and materials included in the service against any defects in workmanship; and shall satisfactorily correct, at no Cost to the City, any such defect that may become apparent within a period of one (1) year after completion of work.

- ii. The warranty period shall commence upon date of acceptance, inspection, and approval by the City's Public Works Maintenance Manager for Utilities. If the Contractor is notified in writing of a deficiency in the work provided, within one (1) year from completion of the work, the Contractor shall, at the City's option, re-perform the work in question at no additional cost to the City, or refund the original charges for the work in question to the City, including the difference in cost, if any, to re-perform work if completed by another Contractor.

2. Material Warranty

- i. Parts furnished under the purchase order shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. Used, shopworn, demonstrator, prototype, reconditioned, or discontinued models or materials are not acceptable.
- ii. The warranty period for Contractor provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is later. The warranty period shall commence upon date of acceptance by the City's Public Works Maintenance Manager for Utilities.
- iii. The Contractor shall provide the City's Public Works Maintenance Manager for Utilities with all manufacturers' warranty documents.

EXHIBIT "B"

SCHEDULE OF SERVICES

All labor, material, tools, management, travel, and equipment necessary for the annual and preventative maintenance and testing of the generators for Service Years 1, 2, 3, 4, & 5 (See below Location List)

Backup generator needed for Service Year 3 at the following three locations only:
Main Lift Pump Station, 1425 North McCarthy Blvd (Caterpillar 3508, S/N 4GM00337/Mfg 1999), Ayer Pump Station, 1429 E Calaveras Blvd (Caterpillar 3412, S/N 81Z16092/Mfg 1995) and Public Works/ Police Department, 1265 N Milpitas Blvd (Caterpillar 3412, S/N 81Z10567) Service Year 3

Location List (Service Years 1, 2, 3, 4, &5)

Location	Address	Model	Amperage	Serial
Ayer Water Pump Station	1429 E Calaveras Blvd	Caterpillar 3412	1,000 kW	81Z16092
Bellew Storm Pump Station	481 Murphy Ranch Rd	Caterpillar C18	600 kW	G7A02261
City Hall	455 E Calaveras Blvd	Cummins DQAF/ 5006412	300 kW	A020323428
Fire Station 1	777 S Main Street	Detroit Diesel/ 100DSJ	100 kW	660956
Fire Station 2	1263 Yosemite Dr	Electro Motion	25 kW	3700079CR3A 003
Fire Station 3	45 Midwick Dr	Electro Motion	25 kW	3700078CR3A 003
Fire Station 4	775 Barber Lane	Caterpillar D25	25 kW	KGBE01386
Gibraltar Water Pump Station	641 Gibraltar Court	Caterpillar 3516	2,500 kW	SBK00868
Main Lift Sewage Pump Station	1425 N McCarthy Blvd	Caterpillar 3508	1,000 kW	4GM00337
Manor Storm Pump Station	349 Marylinn Dr	Caterpillar 3306	230 kW	6YR02965
Public Works/ Police Dept	1265 N Milpitas Blvd	Caterpillar 3412	600 kW	81Z10567
Sports Center	1325 E Calaveras Blvd	Caterpillar C13 GS	350 kW	TP22939585
Wrigley Ford Storm Pump Station	75 Marylinn Dr	Caterpillar 3406B	400 kW	1JJ00574

EXHIBIT "C"
COMPENSATION

Bid Schedule

Item	Description	Unit	Quantity	Annual Cost
1	Total cost for all labor, material, tools, management, travel, and equipment necessary for the annual and preventative maintenance and testing of the generators for Service Years 1, 2, 3, 4, & 5	LUMP SUM	1	\$49,350.00
Total Bid Price- Year 2				\$49,350.00
Total Bid Price- Year 3				\$136,872.00
2	Total cost for the backup generator needed for Service Year 3 at the following three locations only: Main Lift Pump Station, 1425 North McCarthy Blvd (Caterpillar 3508, S/N 4GM00337/Mfg 1999), Ayer Pump Station, 1429 E Calaveras Blvd (Caterpillar 3412, S/N 81Z16092/Mfg 1995) and Public Works/ Police Department, 1265 N Milpitas Blvd (Caterpillar 3412, S/N 81Z10567) Service Year 3	LUMP SUM	Year 3	\$15,400.00
Total Bid Price- Year 4				\$52,805.00
Total Bid Price- Year 5				\$52,805.00

TOTAL CONTRACT PRICE \$341,182.00

TOTAL AMOUNT WRITTEN IN WORDS Three Hundred Forty-One Thousand One Hundred Eighty-Two Dollars

The Contractor shall provide all labor, material, tools, management, travel, and equipment necessary for the maintenance and testing of all units as defined in the Scope of Work. Labor and material costs for preventative and annual maintenance work shall be bid as a lump sum per generator per service on the bid submission sheet.

PERFORMANCE/PAYMENT BONDS ARE NOT REQUIRED.

Repair Services

ITEM	DESCRIPTION	UNIT	QTY	UNIT COST
1	Labor Rate- Regular Hourly Rate Minimum Charge (if any) of <u>4</u> Hours	HR	1	\$145.00
2	Labor Rate- After Hours Rate Minimum Charge (if any) of <u>4</u> Hours	HR	1	\$217.50
3	Trip Charge (if any) Note: It is understood by both parties that a single trip and not mileage may be invoiced by Contractor per service trip for the life of this contract. (e.g. 1 generator serviced- 1 trip charge; 3 generator serviced- 1 trip charge)	TRIP	1	\$400.00
4	Prices for Parts Shall be on a Cost- Plus Basis. The maximum percentage (%) of markup will be <u>15%</u> (shall not exceed 15%). Invoices for work performed shall require a copy of itemized parts receipt. Failure to provide cost-plus percentage markup on an invoice may result in payment at cost.	% of MARKUP (shall not exceed 15%)		

Additional work provided above and beyond the contract allowance will be provided at the Contractor's rates on a time-and- material basis.

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this **Exhibit D**. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

☐ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☒ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☐ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00

per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

 X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

 Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

 Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

 Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

 (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

 Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

 X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

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

X 
Contractor/Consultant Signature

Builder's Risk (Course of Construction):

 Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

 Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

 Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

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

X **Additional Insured Status:**

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

X Primary Coverage:

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

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or

destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract

documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT "E"
FEDERAL REQUIREMENTS

RESERVED

Company Name: Odyssey Row/erCorp**INSURANCE REQUIREMENTS GRID**

All of the "standard" insurance requirements for the City of Milpitas are contained in the BBK contract documents "Exhibit D". Those items that are required are marked with an "X" and vary per contract. All items so marked must be met unless specifically exempted in writing by the Risk Manager. Insurance coverage required by the City varies depending on the contract; you have to read the contract to be sure you are getting all the necessary endorsements.

	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied
Endorsement Required	X General Liability	✓	X Auto Liability	✓	X Workers Comp.	✓	Pro. Liability		Other	
1.) Additional Insured*	X	✓	X	✓						
2.) Contractors Insurance shall be:										
Primary	X	✓	X	✓						
Non-Contrib.	X	✓	X	✓						
3.) Waiver of Subrogation	X	✓	X	✓	X	✓				
4.) 30 Day Notice of Cancellation	X	○	X	○						

Exceptions:

With regard to #4 GL and AL, after several tries not received yet, okay to proceed.

Note:

Most insurance companies will provide certificates and endorsement for the requirements listed above, but frequently not until specifically asked. The City always prefers "stand alone" endorsements. However, depending on the insurance company, it may be their practice to to issue a standardized "blanket" endorsement form/document(s). Alternatively, they may submit excerpts from the policy document, this is also acceptable to the City. However, be sure to ask the company to put the specific Policy # on the document and clearly mark the specific clause(s) that reflect each endorsement and to send you those pages only, or you will likely wind up with a 50 page policy and no easy way to determine which clauses apply to the certificate.

Prepared BY:

Approved By:

Chris Schorder

Date:

9.19.19

X = Most commonly required.

* All language must be stated as follows: "The City, its officers, officials, employees, and volunteers"



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/01/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Steven Tatgenhorst(9761337) 505 S Villa Real Dr. Ste. 215 714-282-8122 Anaheim Hills CA 92807		CONTACT NAME: PHONE (A/C, No, Ext): 714-282-8122 FAX (A/C, No): E-MAIL ADDRESS: statgenhorst@farmersagent.com															
INSURED ODYSSEY POWER CORPORATION 625 N SHEPARD ST ANAHEIM CA 92806		<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A : Truck Insurance Exchange</td><td>21709</td></tr><tr><td>INSURER B : Farmers Insurance Exchange</td><td>21652</td></tr><tr><td>INSURER C : Mid Century Insurance Company</td><td>21687</td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></tbody></table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Truck Insurance Exchange	21709	INSURER B : Farmers Insurance Exchange	21652	INSURER C : Mid Century Insurance Company	21687	INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #																
INSURER A : Truck Insurance Exchange	21709																
INSURER B : Farmers Insurance Exchange	21652																
INSURER C : Mid Century Insurance Company	21687																
INSURER D :																	
INSURER E :																	
INSURER F :																	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	GENERAL LIABILITY						EACH OCCURRENCE \$ 5,000,000	
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000	
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person) \$ 5,000	
	☒ Contractual Liability	X	X	604846989	10/01/2019	10/01/2020	PERSONAL & ADV INJURY \$ 5,000,000	
	☐ Professional Liability						GENERAL AGGREGATE \$ 10,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/OP AGG \$ 5,000,000	
	☐ POLICY ☒ PROJECT ☐ LOC						\$	
C	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	☒ ANY AUTO						BODILY INJURY (Per person) \$	
	☒ ALL OWNED AUTOS	☐ SCHEDULED AUTOS	X	X	604846989	10/01/2019	10/01/2020	BODILY INJURY (Per accident) \$
	☒ HIRED AUTOS	☒ NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$	
	☐ comp & coll						\$	
A	☒ UMBRELLA LIAB	☒ OCCUR	X	X	605102732	10/01/2019	10/01/2020	EACH OCCURRENCE \$ 5,000,000
	☐ EXCESS LIAB	☐ CLAIMS-MADE					AGGREGATE \$ 5,000,000	
	DED \$	RETENTION \$					\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS ☒ OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$	
B	Property coverage including theft Fidelity Bond/Commercial Crime			604846989	10/01/2019	10/01/2020	E.L. DISEASE - POLICY LIMIT \$	
							\$ 500,000	
							\$ 2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

ADDITIONAL INSURED: The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance. Insurance is primary and all others are non-contributory. Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives

CERTIFICATE HOLDER**CANCELLATION**

The City of Milpitas
Attention: Purchasing,
455 East Calaveras Boulevard,
Milpitas

CA 95035-5411

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Steven P Tatgenhorst



Mid-Century Insurance Company (A Stock Company)
Member Of The Farmers Insurance Group Of Companies®

Home Office: 6301 Owensmouth Ave., Woodland Hills, CA 91367

POLICY DECLARATIONS - ARTISAN CONTRACTOR PREMIER POLICY

Named Insured ODYSSEY POWER CORPORATION

Mailing Address 625 N SHEPARD ST
ANAHEIM, CA 92806-2835

Policy Number 60484-69-89

☒ **Auditable**

Policy Period From 10-01-2019
To 10-01-2020 12:01 A.M. Standard time at your mailing address shown above.

ADDITIONAL NAMED INSURED: CITY OF MILPITAS

The City, its elected and appointed officials, officers, attorneys, agents, and employees

Your Agent

Steven Tatgenhorst
505 S Villa Real #215
Anaheim Hills, CA 92807
(714) 282-8122

POLICY NUMBER: 604846989 - Odyssey Power Corporation

CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART C

SCHEDULE

Name of Additional Insured Person(s) Or Organization(s)	Location(s) of Covered Operations
The City of Milpitas	All California Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization or subcontractor engaged in performing operations for a principle as a part of the same project.

FARMERS INSURANCE, TRUCK INSURANCE, MID-CENTURY INSURANCE

POLICY NUMBER: 604846989

ODYSSEY POWER CORP

THE ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED –
DESIGNATED PERSON OR ORGANIZATION,
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

C. Who is an insured in the BUSINESS LIABILITY or losses covered under the BUSINESS

C. Who is an insured in the BUSINESS LIABILITY COVERAGE FORM is amended to include as an insured the person or organization shown in the Declarations but only with respect to liability arising out of the operations of the named insured. Should any of the policies be cancelled before the expiration date thereof, notice will be delivered within 30 days in accordance with the policy provisions.

For losses covered under the BUSINESS LIABILITY COVERAGE of this policy this insurance is primary to other valid and collective insurance which is available to the person or organization shown in the Declarations as an Additional Insured. Insurance is primary and all others are non-contributory.

ADDITIONAL INSURED:

The City, its elected and appointed officials, officers, attorneys, agents, and employees

Farmers Insurance Group, Mid-Century Insurance, and Truck Insurance Exchange

CG20101185

POLICY NUMBER: 604846989

COMMERCIAL GENERAL LIABILITY

THE ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
Subrogation

SCHEDULE C

NAME OF PERSON OR ORGANIZATION:

CITY OF MILPITAS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Insurance is primary and all others are non-contributory along with this endorsement

The WAIVER OF SUBROGATION Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard” This waiver applies only to the person or organization shown in the Schedule above.

Farmers Insurance Group, Mid-Century Insurance, and Truck Insurance Exchange

POLICY NUMBER: 604846989 ODYSSEY POWER CORP.

THE ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO LIABILITY COVERAGE FORM

C. Who is an insured in the COMMERCIAL AUTO LIABILITY or losses covered under the AUTO LIABILITY PACKAGE POLICY

C. Who is an insured in the COMMERCIAL AUTO LIABILITY COVERAGE FORM is amended to include as an insured the person or organization shown in the Declarations but only with respect to liability arising out of the operations of the named insured. Should any of the policies be cancelled before the expiration date thereof, notice will be delivered within 30 days in accordance with the policy provisions and will notify city as such.

For losses covered under the COMMERCIAL AUTO LIABILITY COVERAGE of this policy this insurance is primary to other valid and collective insurance which is available to the person or organization shown in the Declarations as an Additional Insured. Insurance is primary and all others are non-contributory.

ADDITIONAL INSURED:

The City, its elected and appointed officials, officers, attorneys, agents, and employees

Farmers Insurance Group, Mid-Century Insurance, and Truck Insurance Exchange

POLICY NUMBER: 604846989

COMMERCIAL AUTO LIABILITY

THE ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:
COMMERCIAL AUTO LIABILITY COVERAGE PART
Subrogation

SCHEDULE C

NAME OF PERSON OR ORGANIZATION:

City of Milpitas

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The WAIVER OF SUBROGATION Condition (Section IV – COMMERCIAL AUTO LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" This waiver applies only to the person or organization shown in the Schedule above.

Farmers Insurance Group, Mid-Century Insurance, and Truck Insurance Exchange



CERTIFICATE OF LIABILITY INSURANCE

Acct#: 2454053

DATE (MM/DD/YYYY)

9/5/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lockton Companies, LLC
5847 San Felipe, Suite 320
Houston, TX 77057

CONTACT NAME: 888-828-8365

PHONE

(A/C, No, Ext):

FAX
(A/C, No):

E-MAIL

ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Ace American Insurance Co.

22667

INSURED
Insperity, Inc. L/C/F
ODYSSEY POWER CORPORATION
19001 Crescent Springs Drive
Kingwood, TX 77339

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	☐ POLICY ☐ PRO. JECT ☐ LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS	☐ NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB	☐ OCCUR					EACH OCCURRENCE \$
	EXCESS LIAB	☐ CLAIMS-MADE					AGGREGATE \$
	☐ DED ☐ RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N					X PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐	N/A	X	C65793878	10/1/2018	10/1/2019
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L EACH ACCIDENT \$ 1,000,000
							E L DISEASE - EA EMPLOYEE \$ 1,000,000
							E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Notice to Others Endorsement Included

WAIVER OF SUBROGATION IN FAVOR OF City of Milpitas WHEN REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER**CANCELLATION**

CITY OF MILPITAS
ATTN: PURCHASING
455 EAST CALAVERAS BOULEVARD
MILPITAS, CA 95035

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Workers' Compensation and Employers' Liability Policy

Named Insured Insperity, INC. L/C/F ODYSSEY POWER CORPORATION 19001 Crescent Springs Drive Kingwood, TX 77339	Endorsement Number
	Policy Number Symbol: RWC Number: C65793878
Policy Period 10/1/2018 TO 10/1/2019	Effective Date of Endorsement 10/1/2018
Issued By (Name of Insurance Company) Ace American Insurance Co.	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

CALIFORNIA WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

Schedule**1. (X) Specific Waiver**

Name of person or organization:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

() Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:**3. Premium:**

The premium charge for this endorsement shall be INCLUDED percent of the California premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Minimum Premium : INCLUDED

Authorized Representative

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

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve a Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services for a Total Amount Not to Exceed \$341,182 for a Five-Year Period
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/1/2019
Staff Contact:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendation:	Approve an Agreement with Odyssey Power Corporation for preventive generator maintenance and repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year period, subject to annual appropriation of funds.

Background:

The City has a fleet of thirteen (13) stationary emergency generators that are deployed at pump stations and facilities. These generators are used for back-up power for critical facilities such as water and sewer systems, as well as for City Hall, Public Works, Sports Center, and the Police Station and Fire Stations. In the event of a power interruption, these generators automatically turn on, which allows staff to maintain operations of these vital systems and services at City facilities identified below.

Preventive maintenance services performed on the City's generators lessen the likelihood of equipment failure and helps control costs by prolonging each generator's useful life. The intent of this procurement is to provide the City with a dedicated and qualified contractor to augment staff efforts in the performance of preventive generator maintenance and as needed repair services. The agreement is for annual preventive maintenance and repair services for the City's generators at the following locations:

Location	Address
Ayer Water Pump Station	1429 East Calaveras Boulevard
Bellew Storm Pump Station	481 Murphy Ranch Road
City Hall	455 East Calaveras Boulevard
Fire Station 1	777 South Main Street
Fire Station 2	1263 Yosemite Drive
Fire Station 3	45 Midwick Drive
Fire Station 4	775 Barber Lane
Gibraltar Water Pump Station	641 Gibraltar Court
Main Lift Sewage Pump Station	1425 North McCarthy Boulevard
Manor Storm Pump Station	349 Marylinn Drive
Public Works/Police Department	1265 North Milpitas Boulevard
Sports Center	1325 E Calaveras Boulevard
Wrigley Ford Storm Pump Station	75 Marylinn Drive

Analysis:

On June 24, 2019, the Purchasing Division released an Invitation for Bid (IFB) 2354 after collaboration with the Public Works Department to develop a scope of work to perform preventive generator maintenance and repair services at thirteen (13) City locations. IFB 2354 was publicly noticed in accordance with the City's Municipal

Code, advertised on the City's website, and email notifications were sent to companies registered with the City via PublicPurchase.com, the City's eProcurement system. Upon release, 251 firms received the solicitation notification, and 21 firms accessed the IFB package.

The contract specification calls for yearly testing of the generators and basic preventative maintenance service such as checking fluid levels, maintaining all parts in good working condition, changing filters, and making as needed repairs. In addition, the majority of these generators are located in confined spaces requiring special procedures for air testing and monitoring during the maintenance operation.

Major services to be performed under this agreement include:

- Three (3) quarterly preventive maintenance inspections every year;
- One (1) annual preventive maintenance service;
- One (1) annual 2-hour load bank test; and
- Three-year preventive maintenance service during Year 3 of contract.

The Purchasing Division received two proposals by the August 16, 2019 deadline in response to IFB 2354. The Purchasing Agent reviewed the responses and rejected one of the bids due to it being incomplete. Odyssey Power Corporation was the lowest responsible bidder submitting a responsive bid in the amount of \$341,182 for the five-year term, which is within the City's estimate for these services. The cost for the first year of service is \$49,350.

Policy Alternative:

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

Pros: City maintains control of all the work on its generators.

Cons: City staff has limited resource and would not be able to provide the complete service needs for the generators.

Reason not recommended: The City does not have adequate resources to perform the complete preventive generator maintenance and repair services needed for the City's generators. By utilizing a contractor to augment City staff, all of the City's generators will be serviced on a regular schedule to remain compliant with OSHA standards.

Fiscal Impact:

This project will be funded from the Fiscal Year 2019-2020 operations budget of the Public Works Department for an amount not to exceed \$49,350 in the first year and a total amount not to exceed \$341,182 over the five-year term, subject to annual appropriation of funds by Council during the annual budget process.

The annual compensation over the total five-year term is as follows:

Service Year 1	\$49,350.00
Service Year 2	\$49,350.00
Service Year 3*	\$136,872.00
Service Year 4	\$52,805.00
Service Year 5	\$52,805.00
Total Contract Price	\$341,182.00

* Service Year 3 includes the additional cost for providing backup generators while performing services at Main Lift Pump Station, Ayer Pump Station, and Public Works/Police Department.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation:

Approve an Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services, for an amount not to exceed \$49,350 in the first year and a total amount not-to-exceed \$341,182 over the five-year term, subject to annual appropriation of funds.

Attachment:

Maintenance Service Agreement with Odyssey Power Corporation for Preventive Generator Maintenance and Repair Services.

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

ODYSSEY POWER CORPORATION

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC

☐ C Corporation

☒ S Corporation

☐ Partnership

☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

625 N SHEPARD STREET

6 City, state, and ZIP code

ANAHEIM, CA 92806

Requester's name and address (optional)

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

____ - ____ - ____

or

Employer identification number

3 3 - 0 9 1 0 2 4 3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ► 01/18/19

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its Instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

REQUEST FOR SIGNATURES COVER SHEET

DATE STAMP RECEIVED by CMO

Date routed to: CAO: Rec'd 10/3/19 Fin Dir: CMO: 10/10/19

Approvals:

Tony NDAH (TFM)
DH-name & initial

COO
City Attorney (initial)

WDR 10/13/19
Finance Director (initial)

City Manager Exec (initial)

From (Staff Name)/Ext/Dept: Chris Schroeder/x3161

Date returned to staff: 10/18/19

Contractor / Vendor Name: Odyssey Power Corporation

Purpose of Contract / Add'l Info: Annual Preventive Generator Maintenance and Repair Services

Project Name / Number

Terms of the Contract: Start date: 10/2/19 End date: 10/1/24 Extension date:

Is contract subject to renewal? ☒ YES

NO 5
(IF YES) # of Years

Compensation/Amount per contract term

Is RFP process required? YES

NO (IF YES) RFP Issue Date

(IF YES) RFP Award Date

(IF YES) Total # of RFPs received:

Initial Contract Amount: \$49,350.00

Contract's initially-approved total funding

Balance from initial contract:

Remaining funds from the initial/original contract before amendment contracts

(IF) Amendment - Amount?

Contract Amend amount being routed for sig.

Aggregated amount spent:

Init. Amount + all amendments amnt (if applicable) spent as of date

Total contract amt w/amends: \$49,350.00

Contract's accumulated Grand Total from initial and/or amendment contracts

New bal. amnt incl amends:

Current contract balance + amount of new amend (if applicable)

Did the Initial Contract go to Council for Approval? ☒ YES

NO

Did the Current Amendment go to Council for Approval? YES

NO

Provide Council meeting date on the line 10/1/19

Provide Council meeting date on the line

SOURCE OF FUNDING

Operating Budget 400-423-4237 - \$7,592.31 100-423-4237 - \$11,388.46
450-423-4237 - \$3,796.15 100-427-4237 - \$26,573.08 CIP

specify budget item line & dept's name

specify CIP # / Name

PJ Reimbursement

specify Developer Name / PJ #
(may still need Budget Appropriation)

Grant

specify Grant Name

Other

specify other funding source

Grant Date

Council mtg date (Grants require pre-approval from Council)

All info verified by Rachelle

CDBG

specify CDBG Fiscal Year

General Fund

Water Fund

Sewer Fund

Equipment Fund

Housing Fund

TASP

Is Budget Appropriation

needed? NO YES

NO

YES

(If Yes) Council mtg date

(If Yes) Transfer Acct From

(If Yes) Transfer Acct To

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	100-423-4237	\$6,078	100-2933	\$20,499
☒ Budget Appropriation	100-427-4237	\$14,421	400-2970	\$7,778
	400-423-4237	\$7,778	450-2970	\$3,053
☐ Budget Transfer	450-423-4237	\$3,053		

Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, decreasing the total not to exceed amount by \$248,564 from \$341,182 to \$92,618, over the five-year period, subject to annual appropriation of funds and Approve a Budget Amendment returning FY 2020-21 contractual savings in the amount of \$31,330 to various fund balances.

Background:

The City has a fleet of thirteen (13) stationary emergency generators that are deployed at pump stations and facilities. These generators are used for back-up power for critical facilities such as water, sewer, and storm systems, as well as for City hall, Public Works, Sports Center, Police Station, and Fire Stations. In the event of a power interruption, these generators automatically turn on, which allows staff to maintain operations of these vital systems and services. Preventive maintenance services on the City's generators lessens the likelihood of equipment failure and helps control operation and maintenance costs by prolonging each generator's useful life.

On October 1, 2019, Council approved and authorized the City Manager to execute a 5-year maintenance service agreement with Odyssey Power Corporation to provide preventive maintenance and repair services on the City's generators. The contract scope of work included periodic inspections and preventive maintenance services such as monthly checks on fluid levels, filter changes, and maintenance of all parts of the generator. The scope of work also included generator load bank testing, which ensures that a generator will run properly when it's needed so that it can be fully depended on it during an emergency situation.

This amendment revises the scope of work to remove preventive maintenance services from the contract, to allow for the work to be performed by staff in-house, while maintaining contract services for load bank testing as part of the agreement.

Analysis:

Following Council approval in October 2019 of the maintenance service agreement, staff met with and reviewed the scope of work of the contract with leadership from the Milpitas Employees Association Union. The goal of the meeting was to revise the contract in order to allow for in-house staff to perform the majority of the required preventive maintenance on the City's generators and build on the expertise of in-house staff. After a complete review of the scope of work, it was agreed that preventive maintenance services under the contract would be removed and kept in-house, while the load bank testing would remain in the contract since this service required special equipment and expertise.

A generator load bank test involves an examination and assessment of a genset. It verifies that all primary components of the generator set are in proper working condition under loaded conditions. The equipment used to conduct a load bank test produces artificial loads on the generator by bringing the engine to an appropriate operating temperature and pressures. This is especially important for standby and emergency generator sets that do not run very often and/or may not be exposed to carrying heavy loads on a frequent basis.

Amendment No. 1 makes changes to the original scope of work for Odyssey Power Corporation to only provide annual load bank testing services, while keeping routine preventive maintenance services in-house.

Policy Alternatives:

Alternative: Do not execute Amendment No. 1 with Odyssey Power Corporation.

Pros: No changes will need to be made to the existing maintenance service agreement with Odyssey Power Corporation.

Cons: Does not provide opportunity for City to develop expertise of staff in-house.

Reason not recommended: Maintaining the preventive maintenance work in-house by City staff will improve staff skills and enable the City to have more control over the work that is performed.

Fiscal Impact:

This contract in the amount of \$49,350 is budgeted in the Fiscal Year 2020-2021 operations budget of the Public Works Department from various funding sources with \$29,950 budgeted in the General Fund and the remainder in the Sewer and Water funds. With the recommended action, the Public Works Department will save \$31,330 in FY 2020-21 and \$248,564 over the life of the contract.

	Original Contract	Amendment No. 1
Service Year 1	\$ 49,350	\$ 18,020
Service Year 2	\$ 49,350	\$ 18,020
Service Year 3*	\$ 136,872	\$ 18,020
Service Year 4	\$ 52,805	\$ 19,279
Service Year 5	\$ 52,805	\$ 19,279
Total Contract Price	\$ 341,182	\$ 92,618

* Under the original contract, Service Year 3 includes the additional cost for providing backup generators while performing services at Main Lift Pump Station, Ayer Pump Station, and Public Works/Police Department.

The staff report also recommends reducing the Public Works Department's budget by the FY 2020-21 savings of \$31,330 (\$20,499 in the General Fund) related to this action and returning the funds to the respective fund balances.

California Environmental Quality Act: N/A

By the definition provided in the 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.

Recommendations:

1. Approve and authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement with Odyssey Power Corporation for preventive generator maintenance and repair services, decreasing the total not to exceed amount by \$248,564 from \$341,182 to \$92,618, over the five-year period, subject to annual appropriation of funds; and
2. Approve a Budget Amendment returning FY 2020-21 contractual savings in the amount of \$31,330 to various fund balances

Attachments:

- 1) Amendment No. 1 to Maintenance Services Agreement with Odyssey Power Corporation
- 2) Purchase Order and 2019 Agreement with Odyssey Power Corporation
- 3) Budget Change Form

☒ **Check if City Council Approval required.**

Meeting Date: August 04, 2020

Requested by:	Department Head: Tony Ndah	Date: August 04, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: August 04, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve the Award and Authorize the City Manager to Execute an Agreement with “Kaiser Permanente On-the-Job” for Medical Services for Milpitas Uniformed Fire Personnel for a Five-Year Term in an Amount Not to Exceed \$300,000
Category:	Consent Calendar-Public Safety
Meeting Date:	8/4/2020
Staff Contact:	Brian Stelling, Battalion Chief, 408-586-2827
Recommendation:	Approve award and authorize the City Manager to execute an Agreement with “Kaiser Permanente On-the-Job” for Medical Services for Milpitas Uniformed Fire Personnel for a five-year term in an amount not to exceed \$300,000, subject to annual appropriation of funds.

Background:

The Milpitas Fire Department is responsible for providing fire, medical, rescue, and life safety emergency services within the City of Milpitas. The Fire Department also inspects high risk facilities and completes standard program inspections in compliance with the California Fire Code and Hazardous Materials programs. This agreement provides medical services for the Milpitas Fire Department uniformed personnel, including baseline medical evaluations, consolidated medical assessment, immunizations (as needed), data record-keeping services, and including, but not limited to, electronic data reporting, in accordance with: Joint Labor Management Wellness Fitness Initiative and/or National Fire Protection Association (NFPA) 1582 Standard on Medical Programs for Fire Departments.

The baseline medical evaluation is designed to provide a cost-effective investment in the early detection, disease prevention, and health promotion of sworn fire personnel, create baseline data to monitor future effects of exposure to specific biological, physical, or chemical agents and detect changes in an individual's health that may be related to harmful working conditions. These services limit out-of-service time through preventative early intervention of potential problems and recommend types of case-management/rehabilitation for injuries to decrease re-injury rates.

Analysis:

On November 6, 2019, the Purchasing Division released RFP No. 2376 seeking proposals from qualified vendors with demonstrated experience in providing medical services for Fire Department uniformed personnel and located within fifteen miles of the City of Milpitas.

The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, emailed to companies registered with the City via ProcureNow.com (the City's eProcurement system) and a bid notice posted to PublicPurchase.com as well. Additionally, the RFP was published on the City website. Upon release, 113 firms received the solicitation notification and 6 firms downloaded the RFP documents. The Purchasing Division received three (3) proposals by 2:00 pm on the January 3, 2020 deadline in response to the RFP. All three proposals were reviewed for completeness, were accepted and continued in the evaluation process.

The three (3) companies that continued in the evaluation process were:

1. Kaiser Permanente On-the-Job
2. Occu-Med Ltd.
3. Fremont Urgent Care

The evaluation committee reviewed proposals based on the following criteria:

1. Cover Letter
2. Company Profile
3. Execution Plan
4. Personnel Assigned
5. References
6. Proposed Compensation

Evaluation was completed by three (3) City staff members, who comprised the evaluation committee. After evaluation, the evaluation committee finalized all scoring.

This table below shows the final evaluation scores with Kaiser Permanente's proposal achieving the highest score.

Proposers	Kaiser Permanente On-the-Job	Occu-Med Ltd.	Fremont Urgent Care
Final Evaluation Score	93.33	68.80	76.27

The contract will be awarded at an annual not-to-exceed amount of \$60,000 for Fire service specific medical assessments, including baseline medical evaluations, consolidated medical assessment, immunizations (as needed), data record-keeping services, and including, but not limited to, electronic data reporting, in accordance with Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments.

The services provide baseline medical evaluations, consolidated medical assessment, immunizations (as needed), and data record-keeping services including, but not limited to, electronic data reporting.

Policy Alternative:

Alternative: Do not approve the contract award for Medical Services for Milpitas Uniformed Fire Personnel to the highest-ranking vendor, Kaiser Permanente On-the-Job.

Pros: The City would save \$60,000 annually for the next five (5) years.

Cons: Early detection, disease prevention, and health promotion of uniformed fire personnel will not occur.

Reason not recommended: These medical services support the safety and health of uniformed fire personnel, limiting out-of-service time through preventative early intervention of potential problems and recommend types of case-management/rehabilitation for injuries to decrease re-injury rates.

Fiscal Impact:

There are sufficient funds in the Fiscal Year 2020-21 Fire Department budget for this contract. The funding for the contract for subsequent years will be subject to annual appropriations.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA 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 award and authorize the City Manager to execute an Agreement with “Kaiser Permanente On-the-Job” for Medical Services for Milpitas Uniformed Fire Personnel for a five-year term in an amount not to exceed \$300,000, subject to annual appropriation of funds.

Attachment:

Professional Services Agreement with “Kaiser Permanente On-the-Job”

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND KAISER PERMANENTE ON-THE-JOB**

This Agreement is made and entered into as of _____ (“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 **Kaiser Permanente On-the-Job**, a non-profit with its principal place of business at **1800 Harrison Street, Oakland, CA 94612** (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:

MEDICAL SERVICES FOR MILPITAS FIRE UNIFORMED PERSONNEL

(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 **Three Hundred Thousand Dollars and Zero Cents (\$300,000)**. 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 and upon reasonable prior notice 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 **July 1, 2020** to **June 30, 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 that 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. Notwithstanding any other provision of this Agreement, including but not limited to those contained in Exhibit D (Insurance Requirements), Consultant, in lieu of any insurance requirements contained herein, may fulfill such insurance obligations through its alternative risk management programs, including self-insurance, and City consents to such self-insurance and agrees that, in such case, Consultant cannot provide endorsements or report deductibles, or self-insured retentions, or other requirements that are inconsistent with a program of self-insurance. City also agrees that Consultant's fulfillment of the insurance requirements through alternate risk management programs shall not constitute a breach of this Agreement.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably acceptable to the City), 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, arising out of, any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in 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.

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. Notwithstanding the foregoing, this Section shall not apply to medical records, and any medical record created or modified by Consultant in connection with its provision of services hereunder shall not be considered work product prepared or developed by Consultant in the performance of this Agreement. Consultant shall retain all rights and title to such medical records.

18. Organization

Consultant shall assign **Chris Barranti** as Project Manager.

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

777 South Main Street

Milpitas, California 95035

Attn: Richard Frawley, Deputy Fire Chief

CONSULTANT:

Kaiser Permanente On-the-Job

1800 Harrison Street, 9th Floor

Oakland, California 94612

Attn: Sales Manager

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

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

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or

violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

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

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

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

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

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other

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

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND KAISER PERMANENTE ON-THE-JOB**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, 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:

Brian Sherrard, Fire Chief

KAISER PERMANENTE ON-THE-JOB

Signature

Lavanya Kailar, MD, MPH, FACOEM

Medical Director KPOJ Occupational Health
& Safety Services, NCAL

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

OVERVIEW

The Milpitas Fire Department is responsible for providing fire, medical, rescue, and life safety emergency services within the City of Milpitas. Emergency services are delivered through four (4) fire stations within the City. Milpitas Fire responds to approximately 5,500 calls for service generating 7,870 Engine and Truck Company runs. The City of Milpitas has eighty-five (85) uniformed fire personnel.

The fire department also inspects high risk facilities, and completes standard program inspections in compliance with the California Fire Code and Hazardous Materials programs.

SCOPE OF SERVICES

The Consultant shall provide medical services for the Milpitas Fire Department uniformed personnel.

The Consultant must have an in-depth knowledge of fire service specific medical assessments, including baseline medical evaluations, consolidated medical assessment, immunizations (as needed), data record-keeping services, and including, but not limited to, electronic data reporting, in accordance with:

- Joint Labor Management Wellness Fitness Initiative and/or
- NFPA 1582 Standard on Medical Programs for Fire Departments.

The services provided include:

1. baseline medical evaluations
2. consolidated medical assessment
3. immunizations (as needed)

Goals

The baseline medical evaluation is designed to accomplish the following services:

- Provide a cost-effective investment in the early detection, disease prevention, and health promotion of up to eighty-five (85) sworn fire personnel,
- Create baseline data to monitor future effects of exposure to specific biological, physical, or chemical agents.
- Detect changes in an individual's health that may be related to harmful working conditions,
- Provide the uniformed personnel with information about the individual's occupational hazards and current health,
- Compliance with federal, state, and local requirements,

- Limit out-of-service time through preventative early intervention of potential problems,

Facilities

Permanent Facilities

Permanent facilities to perform medical evaluations will not be provided by the City of Milpitas or the Milpitas Fire Department. The Consultant's facilities must be located within 15 miles of the City of Milpitas to prevent disruption of work schedules.

Medical Information System/Confidentiality

This is to insure that information from baseline examinations is not improperly released and does not subsequently become harmful to uniformed personnel and their careers while being easily accessible for pre/post comparison in case of a major disaster.

- The Consultant must retain the secured medical records for Milpitas Fire Uniformed personnel.
- At no time will an individual's medical information be released or shared, with any city department and/or any other medical provider without written authorization by the employee.

General Overview of Tasks to be Performed:

A. Routine Tasks- As identified in NFPA 1582

1. Medical and Occupational/Environmental History questionnaire to be completed by employee and reviewed by Physician.
 - a. **Individualized Health Risk Appraisal** in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments with written feedback to uniformed personnel concerning health risks and health status is required following the annual examination
 - b. **Medical History Questionnaire** – in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments for initial pre-employment history questionnaire must be completed to provide baseline information with which to compare future medial concerns
2. General Physical and Neurological Examination
 - a. **Uniformed Personnel Baseline Medical Evaluation** in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments to include exams and review of lab results for specific known Fire Service Cancer risks.

- b. **Hands-On Physical Examination** Vital Signs in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments:

- I. Head, Neck, Eyes, Ears, Nose, and Throat
- II. Cardiovascular - Inspection, auscultation, percussion and palpation.
- III. Pulmonary- Inspection, auscultation, percussion and palpation.
- IV. Gastrointestinal - Inspection, auscultation, percussion and palpation.
- V. Genitourinary - Hernia exam (Also, see cancer screening).
- VI. Lymph Nodes-The examination of organ systems must be supplemented with an evaluation of lymph nodes in the cervical, auxiliary, and inguinal regions.
- VII. Neurological-The neurologic exam for uniformed personnel must include a general mental status evaluation and general assessment of the major cranial/peripheral nerves (motor, sensory, reflexes).
- VIII. Musculoskeletal- Includes an overall assessment of range of motion (ROM) of all joints.
- IX. Additionally, observation of the personnel performing certain standard office exercises or functions is helpful in assessing joint mobility and function.

3. Complete Blood Count/Differential/Platelet Count & Complete Blood Chemistry Profile

- a. **Blood Analysis** –in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments

4. Urinalysis (Routine and Microscopic)

- a. **Urinalysis** - in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments

5. Cancer Screening

Oncology Screening Elements – as indicated in Exhibit B

B. As Needed Tasks- To be performed on an as-needed basis

1. Electrocardiogram (12 Lead Stress) as needed
2. Chest X-ray (PA) one view or two view as clinically indicated.

3. Spirometry/Pulmonary Function Test (FVC, FEV1, FEV1/FVC%)
4. Visual Acuity
5. Immunization and Infectious Disease Screening
 - a. **Immunization and Infections Disease Screening (as clinically needed)** - in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments
6. Optional Blood Screening
 - a. **Optional Blood Screening** (based on exposures, FEMA, or recommended by physician) - in accordance with the Joint Labor Management Wellness Fitness Initiative and/or NFPA 1582 Standard on Medical Programs for Fire Departments

Fire Service Specific Physician

The Consultant's Physician must be board certified in occupational medicine, internal medicine specializing in fields related to the fire service such as occupational toxicology, industrial hygiene, epidemiology, infectious disease, pulmonary, cardiology, critical care, orthopedics, and/or emergency medicine.

The Physician must have a thorough knowledge of job-related activities, physical demands of the occupation and stresses associated with firefighting. The Physician must understand the various Fire Service job analyses, remain current on medical literature pertaining to fire service related issues, and conduct ongoing research related to fire fighter's health, safety, and fitness. Additionally, the physician must have knowledge of local, state, and federal laws as well as the roles of labor and management relating to occupational medicine, health, and safety.

Follow-up or Referral to Personal Physician, Specialist(s) or other Health Care Practitioner(s):

- The Wellness-Fitness Initiative recognizes the importance of consultation and/or referral to outside health care providers and/or specialists. Only possible life threatening abnormal cardiac findings will become automatic referrals. Consultant will be provided specific instructions for those referrals.
- General follow-up care is not supported by this contract.

The decision to implement any listed items rests with agreements made between Local 1699, and the Fire Department, not the organization/individual providing these services.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

This exhibit is for cost evaluation purposes. The City currently employs **eighty-five (85)** uniformed personnel. A not-to-exceed annual amount shall be issued upon award of the contract. In order to receive payment, the Consultant shall submit monthly charges for services rendered during the previous month as proposed in this Exhibit.

FIREFIGHTER PREPLACEMENT EXAM (FFPP)		
300398	Firefighter Physical Exam	\$127.00
92552	Audiogram, screening	\$54.00
94010	Spirometry	\$60.00
85025	CBC with automated differential	\$20.00
80053	Chem Comprehensive Panel	\$41.00
36415	Venipuncture	\$15.00
71046	Chest X-Rays (2 views, PA & Lateral)	\$75.00
300422	PPD, 2 step, 2 placements and readings	\$30.00
	-OR-	
86480	QuantiFERON	\$145.00
93000	EKG, resting	\$50.00
93015	Cardiac Stress Test with Treadmill	\$230.00
86706	Titer: Hepatitis B Surface Antibody (HBsAb)	\$35.00
86704	Titer: Hepatitis B Core Antibody (HBcAb)	\$31.00
86803	Titer: Hepatitis C Antibody Screen	\$56.00
As Clinically Indicated:		
90746	Vaccine: Hepatitis B, may need series of 3 injections	\$130.00/injection
90632	Vaccine: Hepatitis A, may need series of 2 injections	\$114.00/injection
90636	Twinrix (Hep B and Hep A combo), series of 3 injections	\$191.00/injection
90707	Vaccine: Measles Mumps Rubella (MMR), may need series of 2 injections	\$103.00/injection
90716	Vaccine: Varivax (Varicella or Chickenpox), may need series of 2 injections	\$152.00/injection
90715	Vaccine: Tdap	\$63.00
	-OR-	
90714	Vaccine: Td	\$34.00
90658	Vaccine: Influenza (when seasonally available)	\$20.00
86735	Titer: Mumps Antibody Screen	\$35.00
86762	Titer: Rubella Antibody Screen (German Measles)	\$35.00

86765	Titer: Rubeola Antibody Screen (Measles)	\$35.00
86787	Titer: Varicella (Varicella or Chickenpox) Antibody Screen	\$35.00
86708	Titer: Hepatitis A IgG Antibody (HAAb)	\$40.00
81001	Urinalysis with microscopy	\$16.00
71045	Chest X-Ray, 1 view	\$55.00
71046	Chest X-Ray, 2 views	\$75.00
83036	Hemoglobin A1C	\$38.00
84443	TSH/Thyroid Stimulating Hormone	\$65.00
82482	Cholinesterase, RBC	\$31.00
82480	Cholinesterase, Plasma/Serum	\$31.00
83018	Heavy Metal, Qualitative Urine	\$63.00
300408	Physician Consultation, each 15 minutes	\$64.00/15 mins
FIREFIGHTER ANNUAL/PERIODIC EXAM (FFANN)		
300398	Firefighter Physical Exam	\$127.00
92552	Audiogram, screening	\$54.00
94010	Spirometry	\$60.00
85025	CBC with automated differential	\$20.00
80053	Chem Comprehensive Panel	\$41.00
36415	Venipuncture	\$15.00
86580	PPD, 1 step, placement and reading -OR-	\$20.00
86480	QuantiFERON	\$145.00
93000	EKG, resting	\$50.00
93015	Cardiac Stress Test with Treadmill	\$230.00
As Clinically Indicated:		
71045	Chest X-Ray, 1 view	\$55.00
71046	Chest X-Ray, 2 views	\$75.00
81001	Urinalysis with microscopy	\$16.00
86706	Titer: Hepatitis B Surface Antibody (HBsAb)	\$35.00
90746	Vaccine: Hepatitis B, may need series of 3 injections	\$130.00/injection
90632	Vaccine: Hepatitis A, may need series of 2 injections	\$114.00/injection
90636	Twinrix (Hep B and Hep A combo), series of 3 injections	\$191.00/injection
90707	Vaccine: Measles Mumps Rubella (MMR), may need series of 2 injections	\$103.00/injection
90716	Vaccine: Varivax (Varicella or Chickenpox), may need series of 2 injections	\$152.00/injection
90715	Vaccine: Tdap -OR-	\$63.00
90714	Vaccine: Td	\$34.00
90658	Vaccine: Influenza (when seasonally available)	\$20.00

86735	Titer: Mumps Antibody Screen	\$35.00
86762	Titer: Rubella Antibody Screen (German Measles)	\$35.00
86765	Titer: Rubeola Antibody Screen (Measles)	\$35.00
86787	Titer: Varicella (Varicella or Chickenpox) Antibody Screen	\$35.00
86708	Titer: Hepatitis A IgG Antibody (HAAb)	\$40.00
82274	Fecal Immunochemical Test – FIT Test	\$35.00
44388	Colonoscopy	\$636.00
84152	PSA; Prostate Specific Antigen	\$71.00
77067	Mammogram (Screening, bilateral)	\$205.00
99202	Pelvic Exam only <i>(without pathology) (must include PAP Smear)</i>	\$85.00
88141	PAP Smear <i>(must add Pelvic Exam)</i>	\$60.00
86703	HIV 1 or 2 single assay test	\$53.00
83036	Hemoglobin A1C	\$38.00
84443	TSH/Thyroid Stimulating Hormone	\$65.00
82482	Cholinesterase, RBC	\$31.00
82480	Cholinesterase, Plasma/Serum	\$31.00
83018	Heavy Metal, Qualitative Urine	\$63.00
300408	Physician Consultation, each 15 minutes	\$64.00/15 mins
ADDITIONAL REQUIRED LABS FOR COVERED EMPLOYEES (FEMA)		
82482	Cholinesterase, RBC	\$31.00
82480	Cholinesterase, Plasma/Serum	\$31.00
36415	Venipuncture	\$15.00
As Clinically Indicated:		
86706	Titer: Hepatitis B Surface Antibody (HBsAb)	\$35.00
83018	Heavy Metal, Qualitative Urine	\$63.00
VACCINATION ONLY (VAX)		
300406	History/Review of Tests/Brief Screen - No Physical Exam	\$42.00
90746	Vaccine: Hepatitis B, may need series of 3 injections	\$130.00/injection
90632	Vaccine: Hepatitis A, may need series of 2 injections	\$114.00/injection
90636	Twinrix (Hep B and Hep A combo), series of 3 injections	\$191.00/injection
90707	Vaccine: Measles Mumps Rubella (MMR), may need series of 2 injections	\$103.00/injection
90716	Vaccine: Varivax (Varicella or Chickenpox), may need series of 2 injections	\$152.00/injection
90715	Vaccine: Tdap	\$63.00
90714	-OR- Vaccine: Td	\$34.00

90658	Vaccine: Influenza (when seasonally available)	\$20.00
LABORATORY ONLY (LAB)		
300406	History/Review of Tests/Brief Screen - No Physical Exam	\$42.00
86317	Titer: Hepatitis B Surface Antibody (HBsAb)	\$35.00
86708	Titer: Hepatitis A IgG Antibody (HAAb)	\$40.00
86735	Titer: Mumps Antibody Screen	\$35.00
86762	Titer: Rubella Antibody Screen (German Measles)	\$35.00
86765	Titer: Rubeola Antibody Screen (Measles)	\$35.00
86787	Titer: Varicella (Varicella or Chickenpox) Antibody Screen	\$35.00
83036	Hemoglobin Alc	\$38.00
84443	Thyroid Stimulating Hormone TSH	\$65.00
82482	Cholinesterase, RBC	\$31.00
82480	Cholinesterase, Plasma/Serum	\$31.00
83015	Heavy Metal, Qualitative Urine	\$74.00
86703	HIV 1 or 2 single assay test	\$53.00
36415	Venipuncture	\$15.00
TB CLEARANCE PPD (PPD/TB CLEARANCE)		
86580	PPD, 1 step, 1 placement and reading -OR-	\$20.00
86480	QuantiFERON	\$145.00
As Clinically Indicated:		
300422	PPD, 2 step, 2 placements and readings	\$30.00
71045	Chest X-Ray, 1 view	\$55.00
71046	Chest X-Ray, 2 views	\$75.00
99211	Brief encounter with non-MD Provider (PPD-Review Of Symptoms Form)	\$25.00

EXHIBIT C
Activity Schedule

[RESERVED]

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.

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:

 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):

 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, unless replaced by similar coverage.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation for property insurance 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"):

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. City and Consultant agree that such insurance may include alternative risk management programs, including self-insurance or a combination of self-insurance and insurance, provided that such alternative risk management programs provide protection at least the equivalent to that specified under this Agreement.

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.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements 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.

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 and Review the FY 2019-20 Annual Report of Sole Source Contracts
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	8/4/2020
Staff Contact:	Walter C. Rossmann, Finance Director, 408-586-3111
Recommendation:	Receive and review the FY 2019-20 annual report of Sole Source Contracts.

Background:

Per Title I, Chapter 310, Section 3.70 of the Milpitas Municipal Code, staff shall provide annually to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year not later than July 15. In compliance with the Code, an Information Memorandum was released to the City Council on July 15, 2020. This staff reports transmits the same information.

Per Title I, Chapter 2, Section 3.09 of the Milpitas Municipal Code, the Purchasing Agent is authorized to make sole source determinations after conducting a good faith review of available sources and concluding that only one procurement source (vendor) for the desired product or service is available. Following past practice, the Purchasing Agent approves sole source purchases up to \$100,000 and the Council approves sole source purchases above \$100,000 based on the Purchasing Agent's recommendation. Per the Code, Sole Source purchases are approved for five years.

Analysis:

During the reporting period, 29 sole source contracts or purchase orders amounting to \$582,162.55 were entered into or renewed on behalf of five departments. The attached report groups contracts or purchase orders entered into or renewed by department and provides relevant information for items such as the contract or purchase order date, vendor name, short product description, and dollar amount.

Sole Source purchases are approved for various reasons. Some of these reasons are outlined below with some examples for these Sole Source purchases and the vendors' name in parenthesis.

1. The product is a "one of a kind," the manufacturer, distributor, or company is the only authorized source for the product or service. Notable examples:
 - a. Online investigative database (LexisNexis)
 - b. Total Liability Calculators (GovInvest)
2. There are unique performance features of the product that are not available from any other source. Notable example:
 - a. CPR/First Responder phone application (PulsePoint)
 - b. Smart covers (Hadronex)
3. The sole source justification is based on matching existing equipment for the proper operation of the equipment or City Program. Notable examples:
 - a. Electronic Plan Review Software (Superion, LLC)
 - b. Badger Water Meters (National Meter & Automation)

Fiscal Impact:

Not applicable

California Environmental Quality Act:

Not applicable

Recommendation:

Receive and review the FY 2019-20 annual report of Sole Source Contracts.

Attachment:

FY 2019-20 Sole Source Report

FY 2019-20 Annual Sole Source Report

	Department	Contract/Purchase Order Date	Vendor Name	Product/Service Description	Amount
1	Finance	3/16/2018	Kronos Inc.	Kronos Workforce Telestaff Upgrade	\$5,231.41
2	Finance	8/23/2019	HdL Companies	Business License Software	\$18,858.92
3	Finance	9/27/2019	GovInvest	Total Liability Calculators	\$40,000.00
Total					\$64,090.33
4	Fire	6/17/2019	SuperLogics	Four Microbox PCs	\$6,306.84
5	Fire	9/12/2019	Santa Clara County Fire Dept	Two 2009 Used Ford F-250 Command Vehicle	\$20,000.00
6	Fire	11/7/2019	Global Assets Integrated	Breaching Door Frame	\$7,577.55
7	Fire	1/16/2020	Ward Diesel Filter	No Smoke Diesel Filtration System	\$29,738.74
8	Fire	3/16/2020	Pulse Point	Annual license for CPR/First Responder Civilian phone app	\$8,000.00
9	Fire	4/7/2020	Knox	Knox Medical Vault	\$21,104.58
10	Fire	4/7/2020	Stryker Sales Corp	One Lifepak 1000 ECG	\$15,048.54
11	Fire	6/30/2020	Lexipol LLC	Milpitas Fire Policy Manual	\$42,732.00
Total					\$150,508.25
12	Information Technology	7/17/2019	PCD	Two 70" Sharp Commercial Displays for Council Chamber	\$19,878.20
13	Information Technology	8/1/2019	Environmental Systems Research Insitute, Inc.	ArcGIS Enterprise Software	\$18,600.00
15	Information Technology	2/20/2020	MRC Smart Technology Solutions	Drive Optical Recognition Software for Multi-Function Devices	\$13,592.86
16	Information Technology	4/7/2020	Superion, LLC	Electronic Plan Review Software	\$60,870.00
Total					\$112,941.06
17	Police	8/31/2018	SpeakWrite	Transcription Services	\$8,000.00
18	Police	11/20/2019	Midwall Corporation	Hornady Ammunition	\$5,530.00
19	Police	12/13/2019	San Diego Police Department	Federal Brand Ammunition	\$14,605.25
20	Police	1/3/2020	Lenco Armored Vehicles	Thermal Camera System	\$16,414.09
21	Police	1/29/2020	Midwall Corporation	Hornady Ammunition	\$4,893.75
22	Police	2/21/2020	San Diego Police Department	Federal Brand Ammunition	\$16,903.07
23	Police	5/18/2020	Axon Enterprises, Inc	Annual Maintenance of Body-Worn Cameras and Tasers	\$84,536.04
24	Police	6/25/2020	LexisNexis	Online Investigative Database Subscription	\$2,100.00
Total					\$152,982.20
25	Public Works	8/22/2016	Telstar Instruments, Inc.	Annual maintenance for ClorTech System for City Hall pond	\$6,000.00
26	Public Works	10/4/2019	National Meter & Automation	Water Meters and ancillary equipment/parts	\$65,534.08
27	Public Works	12/5/2019	Hadronex SmartCover Systems	Manhole Covers Smartlevel Monitoring System	\$5,866.12
28	Public Works	4/7/2020	Actelis Networks	ML230 Series Ethernet Switch	\$11,834.51
29	PublicWorks	10/31/2019	Hach Company	APA 600 Amonia Mono Chloramine Analyzer Service	\$12,406.00
Total					\$101,640.71
Grand Total					\$582,162.55



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Professional Services Agreement with Ascent Environmental, Inc. to Provide Consulting Services to Update the City's Climate Action Plan
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/4/2020
Staff Contact:	Elaine Marshall, 408-586-2603
Recommendation:	Approve and authorize the City Manager to execute a Professional Services Agreement with Ascent Environmental, Inc. to provide consulting services to update the City's Climate Action Plan for an amount not to exceed \$204,257, subject to the annual appropriation of funds.

Background:

As part of the City's Capital Improvement Program, the City Council approved Project No. 3453 – Climate Action Plan Update, which provides funding for an update of the City's Climate Action Plan.

The City's Climate Action Plan (CAP) was adopted in May 2013 and was intended to serve as a roadmap to meeting the State's 2020 greenhouse gas (GHG) emissions reduction target (15% below 2005 baseline emissions). The CAP was designed to streamline environmental review of future development projects in the City of Milpitas and its planning horizon only went as far as 2020. Since 2013, there have been changes to the City organization and priorities and implementation of the CAP was not regularly tracked or reported on.

Despite this, over time, the City has implemented more than half of the CAP identified actions along with other actions that have resulted in an overall reduction in communitywide GHG emissions. In May 2019, an Information Memorandum was provided to the City Council that included an update on the City's progress in implementing the actions identified in the CAP and an informal look at Milpitas' communitywide GHG emissions.

That review by staff shows that Milpitas' communitywide GHG emissions are on a downward trend. This is a result of State requirements and the City's implementation of the CAP and other actions. The contributing sources of GHG emissions from our community has changed over time due to the availability of carbon-free electricity from Milpitas' participation in Silicon Valley Clean Energy, installation of local solar including at several City facilities, and increased use of renewable energy on the market. Natural gas use and transportation now make up the majority of the community's GHG emissions. The community is also experiencing increased traffic and vehicle miles travelled is on the rise as the local economy continues to thrive.

Since 2013, new studies and reports are showing that climate change is happening faster than anticipated. Many communities, including some nearby, are experiencing extreme weather events such as flooding, prolonged drought, and wildfires. New state targets have been adopted that call for longer term GHG reductions including the most recent Executive Order B-55-18 (signed in September 2018) which sets a goal for the State to achieve carbon neutrality by 2045. In December 2015, hundreds of countries around the world agreed to accelerate and intensify the actions and investments needed for a sustainable low carbon future by agreeing to keep global temperature increase to no more than 1.5 degrees Celsius (Paris Climate Agreement). Additionally, there are new state requirements to increase organics diversion and ensure water is used efficiently.

The adopted CAP was designed only through 2020 and focused on actions that would have helped the City achieve the State's initial target of 15% below. It does not address the longer term 2030 and 2050 State targets. In addition to state and worldwide climate policy, broader implementation of carbon-free and renewable electricity and changes in transportation technologies, infrastructure, and patterns, warrant a reevaluation of Milpitas' community GHG emissions. A CAP update would factor in these changing conditions and map out a strategy for longer term GHG reductions through 2030 and 2050.

Staff recommends to contract for professional consultant services to lead the update to the City's CAP, including conducting GHG emission inventory and forecast, developing a recommended strategy for City Council consideration that includes near-term actions, and mid- and longer term goals and objective, identification of projects and pilots for implementation, development of a Community Action Toolkit and ongoing monitoring and evaluation and reporting tools for staff, as well as an analysis of the financial and staffing resources needed for implementation. The consultant will also develop and support new mechanisms for engaging our diverse community throughout the update process.

Analysis:

On January 16, 2020, the Purchasing Division released RFP No. 2408 seeking proposals from qualified vendors with demonstrated experience in providing climate action plan updating services to municipal clients throughout the State of California. The RFP was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, emailed to companies registered with the City via ProcureNow.com (the City's eProcurement system) and a bid notice posted to PublicPurchase.com as well. Additionally, the RFP was published on the City website.

Upon release, 145 firms received the solicitation notification and 33 firms downloaded the RFP documents. The Purchasing Division received four (4) proposals by 2:00 pm on the March 13, 2020 deadline in response to the RFP. The proposals were reviewed for completeness, were accepted and continued in the evaluation process.

The company that continued in the evaluation process were:

1. Rincon Consultants
2. MIG Inc.
3. EcoShift Consulting
4. Ascent Environmental

The evaluation committee reviewed proposals based on the following criteria:

1. Cover Letter
2. Company Profile
3. Personnel Assigned
4. Execution Plan
5. References, and
6. Proposed Compensation

After an initial evaluation by four (4) City staff members who comprised the evaluation committee, the two highest ranked firms (Ascent Environmental and Rincon Consultants) were invited to and attended an interview to gather further information regarding their proposals and offer the evaluation committee the opportunity to ask clarifying questions before forwarding a recommendation for award to the City Council. Interviews were held via Zoom video conference call on May 21, 2020. After the interviews concluded, the evaluation committee finalized all scoring.

The table below shows the final evaluation scores with the recommended firm highlighted in green:

Milpitas Climate Action Plan Update RFP No. 2408	Rincon Consultants	MIG Inc.	Ascent Environmental	EcoShift Consulting
Final Evaluation Score	84.88	67.63	87.75	67.63

Ascent Environmental, Inc. was formed in 2010 to provide climate change, planning, and environmental consultant services. Ascent is headquartered in Sacramento with offices in Oakland, San Diego, and Lake Tahoe. Ascent has provided similar services for many public sector clients throughout California including City of Elk Grove, Napa County, City of Sacramento, and County of San Diego among others. The Ascent Team also has extensive experience supporting State regulatory agencies on GHG analyses and implementation of AB 32 and SB 32 including the California Air Resources Board and the Bay Area Air Quality Management District. Additionally, Ascent will be supported by subconsultants Kearns & West and Kim Lundgren Associates who will specialize in public outreach and web-based tools for climate action plans.

Next Steps

Upon execution of the agreement, Ascent will work with City staff to begin implementation of both the technical analysis and community engagement aspects of the project. The City's Energy and Environmental Sustainability Commission will serve in an advisory capacity through this effort.

Key project milestones include:

Project Milestone	Tentative Schedule
Project Kick Off with Steering Committee and Energy and Environmental Sustainability Commission	September 2020
Complete GHG Inventories for baseline year, 2017, 2018, and business as usual forecast.	November 2020 – February 2021
Analysis of potential GHG reduction measures and actions	February 2021 – March 2021
Community Workshop and Community Engagement	November 2020 – June 2021
Meetings with Energy and Environmental Sustainability Commission (up to 6 meetings planned)	September 2020 – June 2021
City Council Study Session on Draft CAP Update	June 2021
City Council Presentation on Final CAP Update	September 2021

Policy Alternative:

Alternative: Do not approve and authorize the City Manager to execute a Professional Services Agreement with Ascent Environmental, Inc. to update the Milpitas Climate Plan Update.

Pros: The City would save \$204,257.00 in contracted services.

Cons: The City would lack a long-term climate goal and would not have a guiding strategy for addressing or developing new climate action policies and programs. The City would also miss the opportunity to develop a climate adaptation or resiliency approach.

Reason not recommended: The City Council established sustainability and climate action as a priority for the City.

Fiscal Impact:

Funding for this agreement in the amount of \$200,000 is included in the City's adopted Capital Improvement Program, Project No. 3453 – Climate Action Plan Update. Additional funding to develop a CAP Update Consistency Checklist in an amount of up to \$5,000 will be funded by the Planning Department budget.

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. Environmental review associated with the update to Climate Action Plan is included in the consultant scope of work and will be included as part of the City Council’s consideration of the Climate Action Plan Update.

Recommendation:

Approve and authorize the City Manager to execute a Professional Services Agreement with Ascent Environmental, Inc. to provide consulting services to update the City’s Climate Action Plan for an amount not to exceed \$204,257, subject to the annual appropriation of funds.

Attachment:

Professional Services Agreement with Ascent Environmental, Inc.

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____ (“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 **Ascent Environmental, Inc.**, a corporation with its principal place of business at **1111 Broadway Oakland, CA 94607** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

CITY OF MILPITAS CLIMATE PLAN 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 **Two Hundred Four Thousand Two Hundred Fifty-Seven Dollars and Zero Cents (\$204,257.00)**. 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.

The term of this Agreement shall be from **August 10, 2020** 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.

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. City Material Requirements.

[RESERVED]

16. 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.

17. 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. 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.

18 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.

19. Organization.

Consultant shall assign **Hanna Kornfeld** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

1265 N Milpitas Boulevard

Milpitas, California 95035

Attn: Tony Ndah, Director of Public Works

CONSULTANT:

Ascent Environmental Inc.

1111 Broadway

Oakland, CA 94607

Attn: Honey Walters, Principal

and shall be effective upon receipt thereof.

22. 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.

23. 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.

24. 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.

25. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. 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.

27. Non-Waiver.

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

28. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

29. 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.

30. 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.

31. 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 ASCENT ENVIRONMENTAL, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

Tony Ndah, Director of Public Works

ASCENT ENVIRONMENTAL, INC.

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

Task 1: Planning and Project Management

Kickoff Meeting and Ongoing Project Management

Ascent’s project management team (principal-in-charge, project manager, community engagement lead, community action toolkit lead) will hold a kickoff meeting with City staff. Prior to the kickoff meeting, Ascent will conduct a review of the relevant documents listed in the RFP to establish a firm understanding of the project background and progress. This includes the 2013 CAP, key General Plan Update documents, Urban Forest Management Plan, Transit Area Specific Plan, Bikeway Master Plan, Trails Master Plan, Water Master Plan, Sanitary and Storm Sewer Master Plan, Green Infrastructure Master Plan, Parks and Recreation Master Plan, and Housing Element. Ascent will also prepare a kickoff meeting agenda.

During the meeting, Ascent will work with City staff to refine project objectives, prepare a project timeline and milestone schedule, and identify dates for kickoff meetings with the steering committee and the Energy and Environmental Sustainability Commission (EESC). This meeting will also serve to establish the project management procedures, including invoicing terms and communication protocols that are intended to keep all parties appropriately involved and informed. The Ascent project team will work with the City to establish the date for the community workshop. In addition, we propose to use this meeting as a time to identify the documents and data Ascent will collect to establish the setting, GHG inventories (included in Task 2), and existing conditions analysis for the CAP Update. Ascent will prepare summary meeting notes to document key directions and action items.

This task also includes time for conference calls twice per month (up to 24 calls with attendance from Honey and Hannah) for project management or technical items that warrant discussion. These biweekly meetings can be cancelled if they are not needed to keep the project moving and on schedule.

Deliverables

- Kickoff meeting agenda and summary meeting notes (electronic)
- Kickoff meeting with primary team members
- Draft and final project timeline (electronic)

City Responsibilities

- Participate in kickoff meeting
- Provide one set of consolidated, nonconflicting comments on draft project timeline (electronic)

Steering Committee

Kearns & West will gather and lead a steering committee with City staff from Public Works, Engineering, Recreation Services, Planning, and the Office of the City Manager. Kearns & West will serve in a project management role, tracking task assignments, consolidating meeting materials from various steering committee delegates, drafting meeting agendas, and preparing summary notes for each meeting.

Deliverables

- Kickoff meeting with steering committee
- Meeting agendas and summary meeting notes (electronic)
- Twelve conference calls

Community Advisory Groups

Kearns & West will serve in a project management and coordination role, tracking assignments, coordinating communications across committees and subgroups for this task. Kearns & West will coordinate with the City's EESC because the EESC provides leadership and technical guidance for the CAP Update process. This task will include facilitating EESC involvement via touchpoint meetings every other month and through heightened planning activity clustered around key drafting milestones and community engagement efforts.

Deliverables

- Kickoff meeting with EESC
- Six EESC advisory meetings

Targeted and Leveraged Community Outreach

Input on CAP Update

Kearns & West will manage this task with the goal of soliciting and obtaining community input on long-term goals and near-term actions to be included in the CAP Update. Prior to soliciting community feedback, Kearns & West will review the demographics and community characteristics for the City to understand how best to obtain CAP Update feedback and reach out to community members. This review will utilize the City's 2017 Community Profile. Based on the needs of the CAP Update and the goals of community engagement, this task includes a two-part public meeting and a multiphase outreach effort. The ultimate characteristics of targeted and leveraged community outreach will be decided in coordination with the EESC. We will also work with regional initiatives such as Silicon Valley Energy Watch, Silicon Valley Clean Energy, Bay Area Regional Energy Network (BayREN), and others to solicit input on the CAP Update.

The first part of the public meeting will be a formal presentation where a steering committee member provides an overview of the CAP Update process and the current state of materials. Following the presentation, the second part of the meeting will be an open house where City staff will be available to discuss breakout topics with community members.

To promote community engagement across a diverse set of stakeholders, this task also includes a multiphase outreach effort. First, we will conduct an audit of stakeholders involved in previous planning efforts to create an initial list of interested parties. After assembling and verifying the initial list of potential invitees, Kearns & West will work with the steering committee and the EESC to identify any absent stakeholders or unrepresented interests. Based on these conversations, Kearns & West will research potential stakeholders or service providers whose constituencies include unrepresented stakeholders. Kearns & West will work with staff to engage with these new or underrepresented stakeholder groups. We also anticipate that workshops can be held in concert with EESC meetings or at community events in the form of a mobile workshop.

Deliverables

- Workshop planning for one traditional community workshop and one mobile workshop/event
- Meeting material development (e.g., posters, handouts)
- Stakeholder identification

City Responsibilities

- Direct noticing for workshops
- Presenting at public meeting

Ongoing Community Engagement and Education

Considering on the outcomes of the community engagements and feedback, Kearns & West will work with the steering committee and staff to develop an effective education approach for each category of stakeholders. Potential tools include FAQ sheets, webinar presentations, geographic visualizations (e.g., NationBuilder), handouts, file sharing platforms, talking points, and strategic messaging. These tools will be available on the community web-based action toolkit discussed under Task 7 to encourage individual action to reduce GHG emissions and help the City meet its identified reduction goals.

Deliverables

- Education toolkit (electronic)

City Responsibilities

- Confirmation of toolkit contents

Task 2: Inventory, Forecast, and Evaluation of 2013 CAP Implementation and Other Measures

Conduct Inventories for 2015, 2017, and 2018

Ascent will prepare GHG inventories for 2015, 2017, and 2018. We will evaluate the GHGs emitted due to activities in the city and will aggregate and report GHG emissions as carbon dioxide equivalents (CO₂e). Emissions for each sector will be quantified using locally specific emission factors such as:

- Mobile source emission factors for Santa Clara County from CARB's EMFAC2017 web database,
- Electricity-related emission factors specific to Pacific Gas & Electric Company and Silicon Valley Clean Energy,
- Energy intensity of Santa Clara Valley Water District and San Francisco Public Utilities Commission for water,
 - Off-road emissions from CARB's OFFROAD model, and
 - Solid waste emissions from CARB's Landfill Emissions Tool.

The GHG emissions inventories will account for GHG emissions resulting from residential and nonresidential energy use, vehicle miles traveled (VMT), off-road equipment, water usage, community-generated wastewater, community-generated solid waste, and City operations. Ascent will present the inventories in a technical memorandum for the City's review and prepare a final version that incorporates City comments. After Technical Memorandum #1 is finalized, Ascent will compile the inventory data into a format that can be provided to the Climate Registry for tracking and future inventory updates.

Deliverables

- Draft and final Technical Memorandum #1 (electronic)
- Excel workbook of inventories for submittal to Climate Registry (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on Technical Memorandum #1 in strikethrough/underline (electronic)

Baseline Inventory Update

Ascent will collect the data necessary to conduct an updated baseline inventory for 2005 to use current methodology. We will develop an updated GHG emissions inventory for the City that will follow methods using consistent accounting tools recommended by the State, including ICLEI's U.S. Community Protocol. We can assist the City with setting up a reporting account through the Statewide Energy Efficiency Collaborative's (SEEC) ClearPath California tool, developed by ICLEI.

The previous GHG emissions inventory presented in the 2013 CAP included emissions associated with VTA's light rail service that were included in the city's emissions baseline. Ascent is currently working with VTA on a sustainability plan that quantifies VTA's GHG emissions inventory and provides reduction targets and strategies for reducing VTA's emissions. In light of this effort, we recommend excluding VTA's light rail service emissions from the City's baseline inventory update.

The City's 2013 CAP used Global Warming Potential values from the Intergovernmental Panel on Climate Change (IPCC) 2nd Assessment. We recommend updating these values to the IPCC 4th Assessment to align with the State's GHG emissions inventory and the 2017 Scoping Plan, which is designed to meet the State's 2030 GHG reduction target pursuant to SB 32. This will also align the 2005 baseline with the City's inventories conducted for 2015, 2017, and 2018 as discussed above.

This baseline inventory update will be included in Technical Memorandum #1 with the GHG inventories.

Deliverables

- Included in Technical Memorandum #1 (electronic)

Current Baseline Data

We will develop a list of data needs to collect the most relevant and accurate data for the baseline inventory update. Ascent will work with the City to gather necessary permissions and access activity data from the utilities, including waste, water, electricity, and natural gas. We will also work with MTC to obtain VMT data consistent with the U.S. Community Protocol and SB 375 methodology.

Deliverables

- Data needs list (electronic)

Business-as-Usual Forecast

Ascent will prepare a business-as-usual (BAU) forecast of emissions for the community and City operations by emissions sector for 2030, 2045, and 2050 to tie in with SB 32, EO B-55-18, and EO B-30-15 target years, respectively. The forecast will be conservative, as it will not account for future regulatory changes but will account for anticipated population and employment growth in Milpitas. Projected activity data based on the city's anticipated growth in population and employment can be included in the City's ClearPath California account for monitoring and tracking.

Following the calculation of the BAU forecast, Ascent will calculate an adjusted forecast, which will consider foreseeable regulatory changes at the federal and state levels, including SB X7-7, SB 1425, SB

100, Low Carbon Fuel Standard, Advanced Clean Cars Program, Renewables Portfolio Standard, and California Code of Regulations Title 24, Part 6. Ascent will calculate the impact that these regulations will have on 2030, 2045, and 2050 emission levels and produce a forecast that will provide a well-supported estimation of future emissions growth. Ascent is actively tracking the National Highway Traffic Safety Administration and U.S. Environmental Protection Agency's (EPA) Safer Affordable Fuel-Efficient Vehicles Rule (SAFE Rule) regarding vehicle emission standards for model years 2021 through 2026, as well as the EPA's action to revoke California's preemption waiver that gives the State the ability to set its own vehicle emission standards. Any changes in regulations would be applied to the City's adjusted forecast. Ascent will present these findings in Technical Memorandum #2. A draft will be provided to the City for review, and Ascent will prepare a final version that incorporates City comments.

Deliverables

- Draft and final Technical Memorandum #2 (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on Technical Memorandum #2 in strikethrough/underline (electronic)

Evaluate 2013 CAP

Ascent will evaluate the GHG emission reduction measures included in the 2013 CAP. The project team will collaborate with City staff to determine the current level of implementation and effectiveness for each measure and quantify the GHG reduction achieved by each measure that has been implemented. Any measures that have not been fully implemented but are still considered feasible will be carried forward into the CAP Update, as discussed under Task 4. Ascent will discuss modifications needed to use existing measures in the update. This will include gathering necessary activity data and participation rates that have been tracked since the adoption of the 2013 CAP.

Deliverables

- Excel workbook with evaluation of 2013 CAP measures (electronic)

Inventory Tracking and Staff Training

Following adoption of the CAP update, it is essential that City staff understand how to implement and support individual GHG reduction measures to ensure the CAP Update's success. Ascent will develop written guidance and a training video on how to perform a GHG inventory update for City staff upon completion of the CAP Update. This training will ensure that the City has the capacity to continue updating GHG emissions inventories, monitoring progress, and implementing GHG reduction measures. The training will include the process for updating activity data to the City's ClearPath California account and/or other GHG tracking and accounting systems such as the Climate Registry.

Deliverables

- Training for City staff (written and video)

Task 3: Consumption-Based Inventory and Measures

Ascent will prepare a consumption-based inventory and measures to reduce carbon footprints. BAAQMD and the Cool Climate Network at UC Berkeley collaborated to develop a consumption-based inventory of

GHG emissions from each county and city in the Bay Area, including Milpitas. This inventory accounts for a full life-cycle analysis of GHG emissions generated by the production, shipping, use, and disposal of products consumed in each jurisdiction. Ascent will evaluate the methodology and data sources used for this analysis to determine whether an adjustment would be needed to create a more refined consumption-based inventory for Milpitas. The inventory prepared by BAAQMD and the Cool Climate Network used a baseline year of 2011, which does not align with the City's inventory years identified in Task 2. An adjustment can be made based on updated activity data, VMT, and population and employment estimates for 2015, 2017, and 2018.

Ascent will also review other available methodologies such as those provided by ICLEI's U.S. Community Protocol, the Stockholm Environment Institute, and C40 Cities. Based on the findings of the reviews, Ascent will recommend the most appropriate methodology for the City and develop a quantitative consumption-based inventory that aligns with inventory years identified in Task 2. We will then work with the City to develop quantitative reduction measures that can be implemented at the individual and organizational level to reduce life-cycle emissions. These measures will be included in the community action toolkit as described under Task 7. The inventory, quantitative analysis, and measures will be compiled and presented to the City in Technical Memorandum #3. A draft will be provided to the City for review, and Ascent will prepare a final version that incorporates City comments.

Deliverables

- Draft and final Technical Memorandum #3 (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on Technical Memorandum #3 in strikethrough/underline (electronic)

Task 4: 2050 Vision, 2030 Objectives, and Near-Term Actions

GHG Reduction Measures

Preliminary GHG Reduction Measures

Ascent will work with the City to develop a preliminary draft of GHG reduction measures using Microsoft Excel that includes both new GHG reduction measures, as well as any 2013 CAP measures that are appropriate to carry forward based on the analysis conducted under Task 2. The purpose of the preliminary draft of GHG reduction measures will be to obtain input and confirm the nature and scope of new measures to be included in the CAP Update. We will work with the City to gather necessary activity data and develop participation rates or performance targets and other parameters that will be required for further analysis. As identified under Task 1, Ascent will review all relevant City

planning documents. We will ensure that the CAP Update measures not only align with the goals and policies of other planning efforts, but that they also align with concurrent plans undergoing updates such as the General Plan, Bikeway Master Plan, Trails Master Plan, and Parks and Recreation Master Plan.

The GHG reduction measures developed during this process will cover the major sectors contributing to GHG emissions (i.e., building energy, on-road transportation, off-road transportation, waste, water, urban forest, and City operations) as identified in the GHG inventories prepared under Task 2. Solid waste emissions generated in the city will be quantified and reduction measures to reduce these emissions will be developed. These reduction measures will be in alignment with State-mandated waste diversion goals such as those identified under SB 1383.

Deliverables

- Preliminary draft list of GHG reduction measures (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on draft list of GHG reduction measures in ~~strikethrough~~/underline (electronic)

Revised GHG Reduction Measures

Following review of the preliminary draft GHG reduction measures, Ascent will revise the list into a set of revised GHG reduction measures that will be more fully developed to include agency implementation costs based on a scale from low to medium to high (e.g., \$, \$\$, \$\$\$). We will also identify the co-benefits of each GHG reduction measure with other City objectives such as achieving resilience, promoting active transportation, improving public health, or promoting economic development. All measures will identify which agencies and departments are responsible for implementation and stakeholders within the community where partnerships can be formed to ensure success.

As part of developing the ultimate list of reduction measures, Ascent will quantify GHG reductions that would be achieved by the proposed measures for the target years of 2030 and 2050. We will also conduct a GHG reduction gap analysis for the revised GHG reduction measures to determine whether the measures will achieve the GHG reduction targets or if more measures are needed. If the gap analysis identifies a discrepancy between GHG reductions and targets, additional measures will be determined. We will document all information, assumptions, and target indicators used to quantify potential emission reductions in a single master dataset for the GHG gap analysis. Ascent will present the gap analysis in Technical Memorandum #4. A draft will be provided to the City for review, and Ascent will prepare a final version that incorporates City comments.

Deliverables

- Revised list of GHG reduction measures (electronic)
- Draft and final Technical Memorandum #4 (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on Technical Memorandum #4 in ~~strikethrough~~/underline (electronic)

2030 Objectives and 2050 Vision

Under SB 32 and EO B-30-15, the State aims to reduce statewide emissions 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. Ascent will identify and recommend a 2030 GHG emissions reduction target consistent with guidance issued by CARB for local plan-level analysis in the 2017 Scoping Plan (e.g., 6 metric tons of carbon dioxide equivalent [MTCO₂e] per capita for 2030). As mentioned above, Ascent works closely with CARB on environmental documentation for its regulations. In this capacity, our team is intimately familiar with the data underlying CARB's inventory and targets. The Ascent team can work with the City and CARB to determine and confirm the most robust, applicable approach to a GHG reduction target that complies with the intent of the State's goals.

We are particularly familiar with the California Supreme Court’s decision regarding GHG target setting pursuant to the Newhall Ranch case and will develop a 2030 reduction target that is mindful of the Court’s guidance, ensuring that targets will be set using substantial evidence, providing the City with legal defensibility for its CAP Update.

Ascent will also develop long-term goals for the CAP Update. We will develop a GHG emissions reduction target that aims for carbon neutrality by 2045 or sooner. The target will include carbon sequestration to support carbon neutrality goals, as identified in EO B-55-18. This Executive Order states that “the achievement of carbon neutrality will require both significant reductions in carbon pollution and removal of carbon dioxide from the atmosphere, including sequestration in forests, soils, and other natural landscapes.” Because the concept of carbon neutrality is not explicitly defined in EO B-55-18 or the 2017 Scoping Plan, we will develop a functional definition of carbon neutrality using published scientific literature from the IPCC. Additionally, we will develop a 2050 GHG reduction target that aligns with EO B-30-15, which aims to reduce statewide emissions 80 percent below 1990 levels by 2050.

Ascent will present the 2030, 2050, and carbon neutrality goals in Technical Memorandum #4.

Deliverables

- Included in Technical Memorandum #4 (electronic)

Task 5: Community Resiliency and Preparedness Plan

Ascent will prepare a Community Resiliency and Preparedness Plan (Resiliency Plan) that assesses the City’s vulnerability to climate change, takes advantage of existing regional adaptation resources and community-specific studies, and provides effective and specific adaptation strategies and actions to mitigate these climate risks. This will help the City understand and address future risks to infrastructure, public health, natural systems, regional transportation networks, and other sectors as the impacts of climate change become more severe.

The California Governor’s Office of Emergency Services is currently in the process of updating the *California Adaptation Planning Guide* (APG), which has been widely used by communities throughout the state and reflects the latest best practices in adaptation planning. Ascent will develop the Resiliency Plan in accordance with the updated APG, which is anticipated to be finalized in April 2020. The four phases of the updated APG Adaptation Planning Process will outline the approach for the City’s Resiliency Plan:

- **Phase 1. Explore, Define, and Initiate:** Identify potential climate change effects as well as important physical, social, and natural assets in the community. This phase will draw upon the findings and inventory of community assets developed during the community outreach workshop as specified in Task 1.
- **Phase 2. Assess Vulnerability:** This phase will focus on the vulnerability of critical infrastructure, services, and the city’s diverse population to the effects of climate change. Key climate change exposures that will be addressed include drought, warmer temperatures, increased frequency and duration of heat waves, wildfires, reduced air quality, and sea level rise/storm surges and flooding. This phase will also include an analysis of the city’s adaptive capacity to moderate the potential damages or take advantage of the opportunities from climate change. Ascent will use the most recent version of the online Cal-Adapt tool to gather and synthesize downscaled climate change data and summarize outputs both in tabular and

graphic format. These characterizations of climate change effects and exposure will be compared to known local hazards and findings from regional adaptation resources such as:

- Santa Clara Operational Area Hazard Mitigation Plan, Volume 2: Planning Partner Annexes
- City of Milpitas General Plan Update and EIR and associated technical studies
- Silicon Valley 2.0 Climate Adaptation Guidebook and Climate Change Preparedness Decision Support Tool
- Adapting to Rising Tides Maps and Data
- The San Francisco Estuary Institute's San Francisco Bay Shoreline Adaptation Atlas

- **Phase 3. Define Adaptation Framework and Strategies:** This phase will focus on developing adaptation strategies and measures based on the results of the vulnerability assessment. Adaptation strategies and measures could include programmatic measures that seek to create new initiatives, new policies and regulations, capital improvement/infrastructure projects, educational campaigns, or evaluation measures to provide data and feedback. Ascent will use the best available data, guidance, and tools to address any gaps that have not yet been identified through previous efforts in the region. Examples of guidance and tools include the APG, *California's Fourth Climate Change Assessment*, the California Environmental Protection Agency's *Preparing California for Extreme Heat: Guidelines and Recommendations*, the California Department of Public Health's *Integrating Public Health in Climate Action Planning*, and the regional adaptation resources previously listed.
- **Phase 4. Implement, Monitor, Evaluate, and Adjust:** The final phase of the APG process focuses on implementation and is not included in this scope of work.

Ascent will submit a draft and final Resiliency Plan for City review that will be presented in Technical Memorandum #5. Technical Memorandum #5 will include the quantitative and qualitative assessment of risks and the vulnerability analysis. After it is finalized, the Resiliency Plan will be incorporated into the CAP Update as a chapter dedicated to addressing the topic of resilience and will include an introduction that explains the concept of resiliency and its relationship to adaptation and vulnerability. This chapter will summarize the major findings of the Resiliency Plan and present the adaptation strategies and measures.

Deliverables

- Draft and final Technical Memorandum #5 (electronic)

City Responsibilities

One set of consolidated, nonconflicting comments on Technical Memorandum #5 in strikethrough/underline (electronic)

Task 6: Projects and Pilots — Shovel-Ready and Fundable

Based on community input collected from Task 1 and finalized GHG reduction measures developed under Task 4, Ascent will work with the City to create a short list of near-term projects that would achieve GHG emissions reductions and could be funded through local grant programs and partnerships. The types of projects that could be determined include but are not limited to ordinance development, retrofit programs, and technology demonstrations. Each project or program would be analyzed for its GHG reduction potential, co-benefits, and potential funding sources (e.g., incentives from BAAQMD and BayREN, partnerships through Prospect Silicon Valley). Ascent will present these projects in

Technical Memorandum #6. A draft will be provided to the City for review, and Ascent will prepare a final version that incorporates City comments.

Deliverables

- Draft and final Technical Memorandum #6 (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on Technical Memorandum #6 in strikethrough/underline (electronic)

Task 7: Community Action Toolkit

A community action toolkit for the CAP Update will be developed and hosted by KLA. This firm specializes in creating intuitive, web-based tools for climate action and adaptation plans. Using high-resolution images, graphics, and a storytelling format, the toolkit is designed to translate data on GHG emissions, reduction targets, energy consumption, VMT, and other indicators to help community members better understand the data in a meaningful way. These tools will make it easier for the public to track progress toward goals, make personal connections to their role in this data, and be inspired to take action to support the City's efforts moving forward.

Additionally, KLA can develop educational videos made up of compilations of existing images or footage with text and graphics overlaid, if requested by the City. Alternatively, KLA's camera crew can come to the community and collect new footage and conduct interviews. Beyond entertainment, studies show that viewers are 95 percent more likely to remember a call to action when it comes through a video versus text format. Video has proven itself as a valuable tool to educating and engaging the public, which is a critical component for a call to action to create a more sustainable community. The toolkit sets the context for why a CAP Update is needed, clearly explains steps that will be taken to achieve goals, and tracks progress toward achieving these goals in the years following CAP Update adoption.

The scope includes setting up a customized toolkit and an additional year of hosting and technical support from KLA. Content for the toolkit will be provided by Ascent and Kearns & West, with input from City staff. KLA will work with the City's information technology staff to integrate the toolkit into a preferred page on the City's website, if desired. We will coordinate with the City to update the webpage with accurate and timely information to notify community members of important plan information and opportunities to provide input throughout the CAP Update development process.

Community members will be able to access CAP Update information and provide their contact information to receive electronic updates related to the CAP Update.

Deliverables

- Draft and final content for community action toolkit (electronic)
- Community action toolkit for integration into City's website (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on draft toolkit content in strikethrough/underline (electronic)
- Coordination with City's information technology staff to integrate toolkit into preferred webpage (if desired)

Task 8: Monitoring, Evaluation, and Reporting

Monitoring and Evaluation System

From the beginning of the CAP Update development, we will focus on a data-driven process with a product that facilitates implementation tracking. KLA will start identifying metrics and collecting data with support from Ascent during Tasks 2, 3, and 4. This will aid in the development of goals and metrics that can be used by the community to track progress on implementation of the CAP Update online through the community action toolkit (refer to Task 7). As the CAP Update development process progresses, emissions forecasts, GHG reduction measures, and their indicators will be added to the web-based toolkit to allow the community to engage with the CAP Update. This will also provide an easily understood and graphically pleasing way to view the City's progress toward the GHG reduction targets and goals identified in Task 4, as well as implementation of the various actions.

Annual Reporting Template

Monitoring and reporting are critical components of the climate action planning process. Performing monitoring on a regular basis and reporting the results in a clear manner will allow the City to evaluate progress toward achieving its reduction targets, revise and update reduction measures based on past performance, and regularly reassess emission projections. Ascent will prepare a CAP Update reporting template that will be designed to present information in a concise, graphically interesting format that is easily digested by elected officials and members of the public. The template will include a summary of the monitoring tools/metrics and key considerations in the monitoring of CAP data. These summaries will be formatted to be compatible with the City's community action toolkit developed under Task 7

Deliverables

- Reporting template (electronic)

Task 9: Staffing Analysis

Ascent will conduct an analysis of the staffing needed for each of the GHG reduction and adaptation measures. Staffing will be measured in full-time equivalents. This analysis will be presented in Technical Memorandum #4.

Deliverables

- Included in Technical Memorandum #4 (electronic)

Task 10: CEQA Compliance

The CAP Update will include the preparation of a CEQA environmental document (assumed to be a Negative Declaration [ND]) to provide future project streamlining, as specified in the RFP. Prior to preparation of the ND, Ascent will prepare an Environmental Checklist for the CAP Update to identify whether it may result in any potentially significant impacts using State CEQA Guidelines Appendix G. The Environmental Checklist will provide the substantial evidence needed to support impact determinations. It is assumed that there will not be additional emissions modeling needed to complete the Environmental Checklist. Should there be a GHG reduction measure (as part of Task 4) that requires the development of a carbon offset program, it is not assumed that a ND would provide the CEQA coverage needed and an EIR may be required, which is not assumed under this scope of work and budget. It may be possible to evaluate the CAP Update's environmental impact by tiering from the General Plan Update EIR, which is anticipated to be released this spring.

Deliverables

- Draft and final checklist and ND (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on the draft checklist and ND in strikethrough/underline (electronic)

Task 11: Draft and Final Climate Action Plan Update

Ascent will prepare an administrative draft CAP Update for review by City staff, the EESC, and other community members identified by the City. This will include integration of the technical memoranda prepared under Tasks 2 through 5 into the CAP Update document. The CAP Update will be presented to provide for CEQA streamlining. The main considerations for streamlining under State CEQA Guidelines Section 15183.5 include quantified GHG reduction measures that close the gap between the legislatively adjusted BAU forecast and GHG reduction targets, a clear schedule for implementation, criteria by which to evaluate project-level consistency with the CAP Update, and the inclusion of a plan to monitor performance and adjust as regular intervals, as necessary.

The CAP Update will be presented in a clear, concise, and easy-to-read format. It will include a straightforward writing style accompanied by charts and graphs that translate complex topics into comprehensible narratives for consumption by the general public. The goal will be to make the main part of the document accessible to all interested parties and place technical information and analyses into the appendix of the CAP Update. Ascent will prepare an administrative draft and screencheck draft of the CAP Update prior to preparing the public review draft. After public review, Ascent will incorporate comments and feedback from the public to prepare a final CAP Update document for adoption by the City Council.

Ascent will also prepare a draft staff report for the City to present to the City Council on the CAP Update. This will include talking points/facilitation guidelines to ensure City staff are consistent in their messaging, as well as overviews of the methodologies and processes used to develop the CAP Update and community engagement efforts.

Deliverables

- Administrative draft and screencheck draft CAP Update (electronic)
- Public review draft CAP Update (electronic)
- Responses to public comments as needed (electronic)
- Final CAP Update (electronic)
- Draft staff report on CAP Update (electronic)

City Responsibilities

- One set of consolidated, nonconflicting comments on the administrative and screencheck drafts CAP Update in strikethrough/underline (electronic)
- Tracking and organizing public comments to provide them to Ascent
- One set of consolidated, nonconflicting comments on the final CAP Update in strikethrough/underline (electronic)

Task 12: CAP Update Consistency Checklist

Ascent will prepare a CAP Update Consistency Review Checklist to assist project applicants in determining whether a project is consistent with the CAP Update. The purpose of the checklist will be to provide a streamlined review process for proposed development projects that are subject to discretionary review and trigger environmental review pursuant to CEQA. Projects that demonstrate consistency with the CAP Update and General Plan Update may be able to conclude no additional significant environmental effects in their CEQA review. Projects that do not demonstrate consistency may, at the City's discretion, include a more comprehensive project-specific analysis of GHG emissions consistent with CEQA requirements.

This task will be integrated with the development of the CAP Update, with the draft checklist produced once the CAP Update measures are finalized. Ascent will work with the City to identify appropriate metrics to allow projects to determine consistency with the CAP Update. The goal of this task is to allow projects that are consistent with the CAP Update to proceed without requiring separate project-level analysis. The checklist will include instructions on its application to individual projects. Ascent can train City staff on using the checklist and assist in initiating the implementation process.

Deliverables

- Draft and final CAP Update Consistency Review Checklist (electronic)
- Training for City staff (video)

City Responsibilities

- One set of consolidated, nonconflicting comments on Consistency Review Checklist in strikethrough/underline (electronic)

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.

[CONTINUES ON FOLLOWING PAGE]

MIPTAS CLIMATE ACTION PLAN UPDATE

MIPTAS CLIMATE ACTION PLAN UPDATE													
7/22/2020				Hourly rate:									
Task	PLANNING AND PROJECT MANAGEMENT	Price	Hours	PIC	PM	CEQA Lead	Sr. GHG Specialist	Transportation Specialist	Energy Specialist	GHG/Adaptation Specialist	CEQA Specialist	Graphics	WP
1:		\$ 8,080	50	\$260	\$155	\$245	\$150	\$145	\$145	\$140	\$145	\$100	\$95
	Subtotal, Task 1	\$ 8,080	50	4	40	0	0	0	0	6	0	0	0
Task 2:	INVENTORY, FORECAST, AND EVALUATION OF 2013 CAP AND OTHER MEASURES	Price	Hours										
		\$ 25,820	178	2	40	0	16	8	8	100	0	0	4
	Subtotal, Task 2	\$ 25,820	178	2	40	0	16	8	8	100	0	0	4
Task 3:	CONSUMPTION-BASED INVENTORY AND MEASURES	Price	Hours										
		\$ 14,625	101	2	25	0	16	0	10	40	0	4	4
	Subtotal, Task 3	\$ 14,625	101	2	25	0	16	0	10	40	0	4	4
Task 4:	2050 VISION, 2030 OBJECTIVES AND NEAR-TERM ACTIONS	Price	Hours										
		\$ 10,310	70	2	20	0	6	0	0	40	0	0	2
	Subtotal, Task 4	\$ 10,310	70	2	20	0	6	0	0	40	0	0	2
Task 5:	COMMUNITY RESILIENCY AND PREPAREDNESS PLAN	Price	Hours										
		\$ 30,300	214	2	40					160		8	4
	Subtotal, Task 5	\$ 30,300	214	2	40	0	0	0	0	160	0	8	4
Task 6:	PROJECTS AND PILOTS	Price	Hours										
		\$ 16,470	113	1	16	0	40		12	40		2	2
	Subtotal, Task 6	\$ 16,470	113	1	16	0	40	0	12	40	0	2	2
Task 7:	COMMUNITY ACTION TOOLKIT	Price	Hours										

25

Subconsultants	
Kearns & West (Outreach)	\$ 49,862
KLA (Community Dashboard)	\$ 32,988
Administrative Cost (5%)	\$ 14,500
	\$ 2,374
TOTAL PRICE	
	\$ 204,257

EXHIBIT C

Activity Schedule

WORK PRODUCT/MILESTONE	ESTIMATED DUE DATE
Project Initiation, Kickoff Meeting with Primary Team Members, Project Timeline	August 2020
Steering Committee Kickoff Meeting, Environmental and Energy Sustainability Commission Kickoff Meeting	September 2020
Technical Memorandum #1 (Complete Inventories for 2015, 2017, 2018; Update Baseline Inventory)	September 2020 – November 2020
Technical Memorandum #2 (Business-as-Usual Forecast)	November 2020 – January 2021
Technical Memorandum #3 (Consumption-based Inventory and Measures)	December 2020 – February 2021
Proposed List of Plan Measures	February 2021
Technical Memorandum #4 (Analysis of Plan Measures)	February 2021 – March 2021
Revised List of Plan Measures	March 2021
Technical Memorandum #5	February 2020 – March 2021
Steering Committee Meetings (12)	June 2020 – March 2021
EESC Advisory Meetings (6)	September 2020 – June 2021
Community Workshop	November 2020
Education Toolkit	November 2020 – June 2021
Community Action Toolkit	April 2021 – ongoing
Technical Memorandum #6	May 2021
Draft CAP	June 2021
CEQA Compliance and Draft Staff Report	June 2021
CAP Consistency Checklist (Optional)	June 2021
Final CAP	August 2021
Presentation to City Council	September 2021
Staff Training	October 2021

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 Contractor’s 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:	Conduct Public Hearing for 2020 Weed Abatement Assessments and Adopt a Resolution to Confirm the Assessment Report
Category:	Public Hearings-Public Safety
Meeting Date:	8/4/2020
Staff Contact:	Albert Zamora, Deputy Fire Chief / Fire Marshal, 408-586-3371
Recommendations:	1) Open the public hearing for comments, then move to close the Public Hearing. 2) Adopt a Resolution confirming the 2020 Weed Abatement Assessment Report and the Assessment List of parcels to be entered onto the Santa Clara County tax assessment roll.

Background:

On February 2, 1976, an Agreement was established and approved to abate weeds by the County of Santa Clara for the City of Milpitas. The purpose of the Agreement is to promote the efficiency and economy of operations in the abatement of weeds by the City and the County.

The major procedural functions to be performed by the County and / or City shall include but not be limited to:

1. The County shall prepare the list of parcels requiring abatement of weeds in the City and transmit the said list to the City for review and approval for processing.
2. The County shall prepare the notice of weed abatement and cause such notice to be mailed to the owners of the parcels requiring weed abatement.
3. The City Council shall conduct public hearings on the proposed removal of weeds pursuant to the provisions of the City Ordinance when the City Fire Marshal presents such appropriate resolutions for adoption. The City Council may, by adoption of a resolution, declare the weeds on the respective parcels of the land as a public nuisance, and make the determination to proceed with the abatement of weeds, and authorize the performance of the service to remove the weeds in accordance with the aforementioned Agreement.
4. Upon proper authorization by the City, the County shall remove the weeds on the designated properties.
5. The County shall render to the City an itemized assessment report for the cost of the weed abatement services performed per the respective parcels.
6. Pursuant to California Health and Safety Code 14915, a copy of the report, as confirmed, shall be turned over to the auditor of the county, on or before the tenth day of August following such confirmation, and the auditor shall enter the amounts of the assessments against the respective parcels of land as they appear on the current assessment roll, (Amended by Stats. 1939, Ch. 354).
7. The City Council, after a public hearing, shall require the County Assessor's Office to include the costs of the weed abatement services performed for the City for the current year, as a special assessment on bills for taxes levied against the affected parcels. Such special assessments shall be liens on the respective properties.

Analysis:

On March 3, 2020, the City Council adopted Resolution No. 8951 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds. If the public nuisance was not removed from the properties by the owner, the City contracted with the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program (County) to remove the weeds and abate the nuisance. In accordance with Title V, Chapter 202 of the Milpitas Municipal Code, the County filed with the City Clerk a report and assessment list on weeds abated within the City as nuisances. A notice for the public hearing was sent by the City Clerk's Office to the local newspaper for publication, as well as mailed to the affected property owners by the Fire Marshal's Office pursuant to Milpitas Municipal Code Section V-202-9.00.

The City's Municipal Code requires that the City Council hear the report together with any objections of the property owners liable to be assessed and make such modifications on the proposed assessment as it deems necessary.

Following adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution confirming the weed abatement report are included in the Council's agenda packet.

Fiscal Impact:

At the first City Council meeting in August of each year during a public hearing, the City's municipal code provides that the City Council hear the assessment report for the list of weeds abated within the City, together with any objections of the property owners liable to be assessed, and to make such modifications on the proposed assessment as it deems necessary. Following adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes.

California Environmental Quality Act:

This project is exempt from CEQA.

Recommendations:

1. Open the Public Hearing for public comments, then move to close the Public Hearing.
2. Adopt a Resolution confirming the 2020 Weed Abatement Assessment Report and the Assessment List of parcels to be entered onto the Santa Clara County tax assessment roll.

Attachment:

Resolution including Exhibit - 2020 Weed Abatement Assessment Report for the City of Milpitas

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONFIRMING A
WEED ABATEMENT ASSESSMENT REPORT AND ASSESSMENT LIST TO BE ENTERED
ON TAX ASSESSMENT ROLLS**

WHEREAS, on March 3, 2020, the City Council of the City of Milpitas adopted Resolution No. 8951 declaring noxious or dangerous weeds growing upon and/or the accumulation of rubbish, refuse or dirt upon certain described property to be a public nuisance that must be abated by removal; and

WHEREAS, if the public nuisance was not removed from the properties by the owner, the City contracted with the Office of Santa Clara County Agricultural and Environmental Management to remove the weeds, rubbish, refuse and/or dirt and abate the nuisance; and

WHEREAS, the Office of Santa Clara County Agricultural and Environmental Management filed a report and abatement assessment list with the City Clerk in conformance with Title V, Chapter 202 of the Milpitas Municipal Code; and

WHEREAS, notice of the report and abatement assessment list was posted in accordance with Milpitas Municipal Code, Section V-202-9.00; and

WHEREAS, on August 4, 2020, a public hearing was held on said report and assessment list, a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the City Council heard and overruled any objections of the property owners liable to be assessed for the abatement.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby confirms the 2020 Weed Abatement Assessment Report and Abatement List by the County of Santa Clara for the City of Milpitas, filed by the Office of Santa Clara County Agricultural and Environmental Management, without modification.
3. The City Council orders that the cost of abating such public nuisance upon the various properties respectively referred to in the 2020 Weed Abatement Assessment Report and Assessment List shall constitute special assessments against such respective parcels of land and shall constitute a lien against such parcels for the amount of such assessments.
4. The City Manager shall cause a certified copy of this Resolution confirming the 2020 Weed Abatement Assessment Report and Assessment List to be recorded in the Office of the Santa Clara County Recorder and to be filed with the County Tax Assessor and Collector's office and the County Auditor's office in order for said assessments to be entered on the tax rolls as provided by Title V, Chapter 202 of the Milpitas Municipal Code.

///

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

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
CITY OF MILPITAS**

Exhibit A

	Situs		APN	OWNER ADDRESS				TAX ROLL AMT	<u>TRA</u>
1	7280	Marylinn	022-07-007	Chao, Pei Ling Et Al	7548 Donegal Dr	CUPERTINO	95014	\$683.00	12012
2	1735	California	022-37-002	Prentiss/copley Investment Group The	1910 Pacific Ave Ste 400	DALLAS	75201	\$2,243.00	12012
3	1301	California	022-38-002	Rsvp Investments Llc	46500 Landing Py	FREMONT	94538	\$683.00	12012
4		Mc Carthy	022-56-008	Bridge Point Milpitas Llc	1600 Franklin Av E Suite D	EL SEGUNDO	90245	\$101.00	12012
5		Dixon	026-05-023	Rasheed, Irshad A And Sabiha	619 Fontes Dr	FREMONT	94539	\$2,011.99	12012
6	1878	Milpitas	026-05-024	Aim Developer Ents Inc	40 Park Victoria Dr N A	MILPITAS	95035-4600	\$683.00	12012
7	51	Dixon	026-05-053	Chang, Carol	67 Berlywood Ln	MILPITAS	95035-2543	\$1,289.59	12012
8	1750	Arizona	026-07-044	Tran, Ty And Truong, Jacy Hong	2936 Williams Rd	SAN JOSE	95128-3337	\$683.00	12012
9		Bothelo	028-23-017	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
10	land	Railroad	028-24-006	Linda Allen	1700 Space Park Dr.	SANTA CLARA	95054	\$2,243.00	12012
11	860	Evans	029-06-016	Tran, Tu And Dao, Hong	860 Evans Rd	MILPITAS	95035-3406	\$683.00	12012
12	1339	Terra Vista	029-07-009	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
13	1333	Terra Vista	029-07-010	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
14	1327	Terra Vista	029-07-011	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
15	1321	Terra Vista	029-07-012	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
16	1303	Countryside	029-07-013	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
17	1311	Countryside	029-07-014	1499 Country Club Drive Llc	475 San Antonio Rd S	LOS ALTOS	94022-3618	\$683.00	12012
18	322	Park Victoria	029-16-006	Mayo, Nessim And Guadalupe J	0 Po Box 15058	FREMONT	94539	\$101.00	12012
19	1220	Country Club	029-52-014	Hussain, Farhat Trustee	1220 Country Club Dr	MILPITAS	95035-3451	\$101.00	12012

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
CITY OF MILPITAS**

Exhibit A

	Situs			APN	OWNER ADDRESS			TAX ROLL AMT	<u>TRA</u>
20	1039	Camarillo	029-52-015	Farsi	45128 Warm Springs Blvd Unit	Fremont	94539	\$101.00	12012
21	489	Vista Ridge	042-30-008	Qlmd Property Llc	2 South Park Victoria Dr	MILPITAS	95035	\$101.00	12012
22	517	Vista Ridge	042-30-009	Gandhi, Ashish R And Varsha	1502 Bond St	MILPITAS	95035-3856	\$101.00	12012
23	519	Vista Ridge	042-30-010	Ghani, Mahmood M And Editha C	519 Vista Ridge Dr	MILPITAS	95035-7217	\$683.00	12012
24	529	Vista Ridge	042-30-015	Trivedi, Anoop K And Rao, Aarthi M	2397 Tulip Rd	SAN JOSE	95128-1141	\$683.00	12012
25	410	Vista Ridge	042-30-024	Wan, Chien Min	410 Vista Ridge Dr	MILPITAS	95035-7216	\$101.00	12012
26	531	Vista Ridge	042-30-029	Chan, Clifford J	704 Longfellow Dr	FREMONT	94539	\$683.00	12012
27		Hammond	086-25-018	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
28		Main	086-25-020	Eighty Eight Homes Llc	2186 Paseo Del Oro	SAN JOSE	95124-2046	\$2,507.00	12012
29		Main	086-25-028	Panchal, Gita N And Natwarlal M	3200 Monterey Bl	SAN JOSE	95111	\$683.00	12012
30		Hammond	086-25-030	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$2,027.00	12012
31		Sinnott	086-26-024	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
32		Bothelo	086-26-032	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
33		Milpitas	086-28-006	San Francisco City And County Of	525 Golden Gate Av 10th Fl	SAN FRANCISCO	94102	\$683.00	12012
34		Vista	086-29-005	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$7,643.00	12012
35		Wrigley	086-29-036	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$101.00	12012
36		Yosemite	086-29-047	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
37	876	Yosemite	086-30-047	T Marzetti Company-west	380 Polaris Py Ste 400	WESTERVILLE	43082-8069	\$101.00	12012
38		Yosemite	086-30-048	T Marzetti Company	380 Polaris Py Ste 400	WESTERVILLE	43082-8069	\$3,299.00	12012

**2020 WEED ABATEMENT PROGRAM
ASSESSMENT REPORT
CITY OF MILPITAS**

Exhibit A

							TAX ROLL AMT	<u>TRA</u>
Situs		APN		OWNER ADDRESS				
39	Ames	086-30-060	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$683.00	12012
40	Sinclair Frontage	086-31-003	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$5,905.40	12012
41	Yosemite	086-31-044	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$101.00	12012
42	Milpitas	086-32-084	Union Pacific Corporation	10031 Foothills Blvd	ROSEVILLE	95747	\$3,395.00	12012
43	375 Dempsey	088-01-002	Gunapu, Sridhar And Subhashini	2951 El Sobrante St	SANTA CLARA	95051-3715	\$683.00	12012
44	335 Park Victoria	088-03-019	Yao, Shaoping And Yue, Chunyan Et	335 Park Victoria Dr S	MILPITAS	95035-5722	\$101.00	12012
45	Dempsey	088-04-060	Silicon Valley Alliance Church	10 Dempsey Rd	MILPITAS	95035-5512	\$683.00	12012
46	Dempsey	088-04-062	Silicon Valley Alliance Church	10 Dempsey Rd	MILPITAS	95035-5512	\$683.00	12012
47	Dempsey	088-04-076	Silicon Valley Alliance Church	10 Dempsey Rd	MILPITAS	95035-5512	\$683.00	12012
48	Old Piedmont	092-34-008	Old Piedmont Development Inc	456 Montgomery St Ste. #180	SAN FRANCISCO	94104-1247	\$683.00	12012
49	1250 Old Piedmont	092-34-014	Old Piedmont Development Inc	456 Montgomery St Ste. #180	SAN FRANCISCO	94104-1247	\$683.00	12012
50	2235 Uridias Ranch	092-37-050	Meng, Fan Jie And Zhang, Helen	35961 Copper St	UNION CITY	94587	\$596.00	12012
TOTAL							\$53,394.98	



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report and Direct Staff on the Milpitas Microenterprise Grant Program
Category:	Community Development
Meeting Date:	8/4/2020
Contacts:	Alex Andrade, Director of Economic Development, 408-586-3046 Sharon Goei, Director of Building Safety and Housing, 408-586-3260
<u>Recommendations:</u>	1. Amend the Milpitas Small Business Loan Program and approve the Milpitas Microenterprise Grant Program in its place. 2. Direct staff to launch the Milpitas Microenterprise Grant Program. 3. Authorize the City Manager, or designee, to make any necessary changes to previously Council-approved CDBG documents to amend the Milpitas Small Business Loan Program of \$150,000 for Microenterprises and \$50,000 for Small Businesses to the \$200,000 Milpitas Microenterprise Grant Program, and to make any necessary changes to comply with CDBG submission guidelines.

Background:

On March 17, 2020, the City Council established the Small Business Assistance Subcommittee and selected Councilmember Carmen Montano (Chair) and Councilmember Karina Dominguez to serve as Subcommittee representatives. Small Business Assistance Subcommittee meetings took place on March 24, April 6, May 1, May 13 and May 28. Small Business Assistance Subcommittee topics revolved around small business financial and non-financial assistance and relief including a small business loan or grant program, business survey, tracking of business assistance requests, commercial eviction protections, assisting businesses with Americans with Disabilities Act (ADA) compliance, permit fee reductions, food delivery service fee cap, seed funding for either a Community Foundation or Economic Development Corporation, and an outdoor dining program.

Since the Shelter-in-Place Order was enacted on March 16, 2020 by the Santa Clara County Public Health Department, the Office of Economic Development, in partnership with various City departments, has either implemented some of these initiatives or is in the process of doing so. For instance, a business survey was completed, a Virtual Business Assistance Center was created to assist local businesses in multiple languages, staff has responded to over 300 business assistance requests, launched a shop local restaurant promotions campaign, hosted the Business Resiliency and Recovery Webinar, delivered twenty Constant Contact messages to the business community with vital financial and non-financial business information, and the Milpitas Temporary Outdoor Dining Program has been implemented. Staff is also currently reviewing the process of developing a food delivery service fee cap and will launch the Small Business Spotlight program designed as a shop local campaign with 90-second videos promoting businesses. Moreover, the Office of Economic Development and the Building Safety and Housing Department have been collaborating on the Council-approved small business loan program using Community Development Block Grant (CDBG) funding.

Analysis:

On June 2, 2020, the City Council approved a \$200,000 Milpitas Small Business Loan Program and authorized the City Manager to execute a contract with Enterprise Foundation and Kiva to act as fiscal agent and administrator of the loan program.

On June 16, 2020, the City Council allocated \$200,000 in CDBG funds for the Milpitas Small Business Loan Program in lieu of General Funds in order to protect General Fund resources given the economic uncertainty. Protecting General Fund resources has become even more paramount with the potential tightening of economic activity in response to acceleration of the pandemic. Additionally, the City Council directed staff to use these funds for a loan program to be distributed to Microenterprise Businesses (1-5 employees) and Small Businesses (6-50 employees).

At the June 16 meeting, based on CDBG best practices research and a long-term strategy moving forward, staff recommended that the Council approve a small business grant program rather than loan program for various reasons. Staff learned that many Bay Area cities have opted to proceed with grant programs because they require less reporting and tracking, resulting in faster dispersion of funds. Staff recommended that the Council approve a small business grant program to streamline the process and ensure that small business grant recipients do not take on additional debt. Creating and managing loan programs require burdensome underwriting requirements, administration of loan processing, repayment procedures, and additional fund disbursement through a revolving loan fund. This results in additional years of management during a time when staff is focusing on the Council's recovery priorities during the pandemic.

Below is an update on the Milpitas Small Business Loan Program, the challenges staff is experiencing and a discussion of the proposed program modifications.

Milpitas Small Business Loan Program

Since the Council's approval of the Milpitas Small Business Loan Program on June 16, staff from Economic Development, Building Safety and Housing Department, and the City Attorney's Office have been collaborating and working with Enterprise Foundation, the selected fiscal agent and administrator for the Loan Program. A considerable amount of work has been accomplished by staff to-date. Below are documents and processes that have been completed or are underway:

- Term Sheet by and between City of Milpitas and Enterprise Foundation;
- Loan Applications: Microenterprise Businesses and Small Businesses;
- Business Outreach Materials: Press Release, Program Flyer, Constant Contact Business Message, Social Media, Paid Advertisement, Digital Billboard, etc. (in draft form);
- CDBG Documents and Process:
 - Subrecipient Contracts with Enterprise Foundation; one for Microenterprises and the other for Small Businesses (drafted but not signed by parties), and associated loan documents
 - Supplemental Guidance on Low-Moderate Income (LMI) Job Creation and Retention for Small Businesses
 - LMI Quarterly Reporting for Job Creation and Retention for Small Businesses
 - Self-Certification Forms for Microenterprise and Small Business Loan Recipients
 - HUD National Objectives Requirements of Job Creation and Retention; and
- Webpage (Enterprise Foundation) to include program description, eligibility criteria, CDBG requirements, applications for Microenterprise Businesses and Small Businesses, etc.

While a tremendous amount of work has been completed, staff did not anticipate working an inordinate number of hours on this initiative because of the partnership with Enterprise Foundation. To-date, Economic Development staff have expended over 170 hours, Building Safety and Housing Department staff over 100 hours and approximately 40 hours of City Attorney's Office assistance since Council's approval date of June 16. Staff recognizes that with significant hours invested in the program, time is being diverted away from other essential Council priorities during the pandemic. The Milpitas Small Business Loan Program was expected to be launched by July 10, 2020.

While Enterprise Foundation was selected by the City Council to relieve staff from developing and administering the loan program they have to learn and be responsible for CDBG reporting, loan processing, and management of a revolving loan fund. This may necessitate significant staff support to ensure that Enterprise Foundation complies with complex CDBG loan processing revolving loan fund requirements. Preferably, staff should avoid being immersed in the day-to-day administration of the program.

Enterprise Foundation representatives recently reaffirmed their commitment to manage this program as originally conveyed to the Council. In order to assist with loan processing, which is new to the organization, Enterprise Foundation invited Kiva to assist in servicing loans and PayPal to process loan repayments. While Enterprise Foundation believes they have the capacity to proceed with the loan program, both they and staff agree that a grant program would be easier to manage given the complexity of using CDBG funds. An agreement between the City of Milpitas and Enterprise Foundation for fiscal agent and administration services has yet to be executed.

To streamline the management and disbursement of funds, staff recommends converting the program from business loans to business grants. This approach simplifies disbursing funds to eligible businesses, decreases the reporting and administrative burden for local business owners, and does not require businesses to incur additional debt. A loan program requires additional time to administer a loan portfolio and a revolving loan fund, which would likely require a long-term management commitment by staff to maintain and redistribute/replenish loan funds. Alternatively, a grant program would be considerably more efficient and less demanding for staff and Enterprise Foundation to administer.

Milpitas Microenterprise Grant Program

One of the primary Council objectives is to disburse small business relief funding as soon as possible to address the immediate need within the Milpitas business community. Staff and Enterprise Foundation believe that a CDBG-funded grant program can more expediently assist Milpitas-based businesses in need during the pandemic.

Federal CDBG regulations allow grantees to provide grants or loans to support new businesses or business expansion to create jobs, and to provide short-term working capital assistance to small businesses for retention of jobs held by low- and moderate-income persons (LMI).¹ Grantees may also provide grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises.² The current Milpitas Small Business Loan Program is structured so that microenterprise businesses with a workforce of 1-5 employees and small businesses employing 6-50 employees are eligible for CDBG loans.

A CDBG-funded program must meet a national objective of benefitting low- and moderate-income (LMI) persons. Meeting the CDBG reporting requirements are more stringent and burdensome for recipients falling within the small business category than the microenterprise business category. Microenterprise businesses qualify and meet CDBG requirements when the business owners document that they reside in LMI households. Small businesses use CDBG funds to create or retain jobs, with at least 51% (computed on a full-time equivalent basis) must be made available to or held by LMI persons. For small businesses to document that the employees whose jobs are being created or retained live in LMI households, the process can be intrusive as employers need to verify the household information and household income of employees.

Reporting and record keeping requirements include the status and actions of the business, the jobs created or retained, and the LMI persons benefitting from the activity. For example, small businesses need to document a list of job titles created or retained and whether each job was held by or made available to an LMI person; provide a list of documents explaining created jobs made available to LMI persons but not taken by LMI persons; and for retained jobs that would otherwise be lost, provide specific evidence that the jobs would have been lost without the CDBG assistance. Representatives of the U.S. Department of Housing and Urban Development indicated that documenting and reporting that small businesses meet the CDBG requirements of LMI job creation or retention can be difficult due to tracking and administrative requirements for small businesses.

Proceeding with a CDBG funded grant program specifically for microenterprise businesses only is the most expedient and effective manner to ensure that selected businesses that fit this category will benefit by receiving \$5,000 grants. The proposed Milpitas Microenterprise Grant Program would require less reporting and tracking, resulting in faster disbursement of funds. It is challenging for business owners to take on

¹ See § 105(a)(17) (42 U.S.C. 5305(a)(17)); 24 CFR 570.203(b).

² See § 105(a)(22) (42 U.S.C. 5305(a)(22)); 24 CFR 570.201(o).

additional debt when they are seeking a lifeline to stay in business. For these reasons, focusing on grant support for microenterprise businesses would better meet the City Council objectives of streamlining and expediency.

Given that the current Milpitas unemployment rate is 12.2% as of July 24, 2020, deploying CDBG funds as grants to assist microenterprise businesses during the economic devastation due to the coronavirus pandemic would provide the greatest immediate benefit. Therefore, given the recent loan program challenges, staff recommends that the Council approve the Milpitas Microenterprise Grant Program to streamline the process of disbursing funds to eligible microenterprise businesses and ensure that local business owners do not take on additional debt. As stated, there has been a significant amount of work already completed which will be able to be modified into a grant program, so it is anticipated that the Milpitas Microenterprise Grant Program will be launched by August 12, 2020.

Amendments to CDBG Action Plan and Consolidated Plan

The proposed Milpitas Microenterprise Grant Program would consist of the same \$200,000 in CDBG funds previously approved by Council. Program details include:

- Enterprise Foundation requires a 5% administration fee, which equals \$10,000;
- The result will be \$190,000 remaining for distribution to the business community;
- Grants will be disbursed at \$5,000 each to microenterprise businesses; and
- The City will assist a total of 38 eligible microenterprise businesses.

On June 16, the Council approved bifurcating CDBG funds to benefit microbusinesses at 75% (\$145,000) and small businesses at 25% (\$45,000) plus the administration fee of \$10,000. With CDBG documentation and reporting requirements being less stringent for microenterprise businesses, staff and Enterprise Foundation concur that less CDBG administrative requirements and reporting will decrease the burden for grant applicants and simplify the fund management and processing of funds so that the grant applicants receive funding immediately.

If the Council approves the recommendation to proceed with the Milpitas Microenterprise Grant Program, CDBG documents previously approved by the Council on June 23 and June 30, 2020 will necessitate amendments. Staff will prepare and submit further amendments to the Amended FY 2019-2020 Annual Action Plan and Amended Consolidated Plan to inform the U.S. Department of Housing and Urban Development of moving from a \$150,000 microenterprise and \$50,000 small business loan program to a \$200,000 microenterprise grant program. It is recommended that the Council authorize staff to make any necessary changes to prior approved CDBG documents to meet with final Council approval of the program and comply with CDBG submission guidelines.

Policy Alternative

Alternative: Do not approve the Milpitas Microenterprise Grant Program and proceed with the previously approved Milpitas Small Business Loan Program instead.

Pros: If the Council proceeds with the approved Milpitas Small Business Loan Program, a substantial amount of work has already been accomplished so launching the program can happen soon.

Cons: The Milpitas Small Business Loan Program requires lengthy administrative processes and the loan recipients would be required to take on debt that may ultimately harm the business in the long term. Staff is concerned that while Enterprise Foundation is learning and working through the complexities of CDBG requirements, loan processing and revolving loan work, staff will have to expend more hours supporting the loan program.

Reason not recommended: The Milpitas Microenterprise Grant Program will result in streamlining the process of disbursing funds to eligible microenterprise businesses, ensuring that eligible grant recipients do not

take on more debt, and the City will not have to devote more valuable staff resources at a time when vital Council priorities are trying to be met during the pandemic.

Fiscal Impact

Since the allocation of \$200,000 in CDBG Funds for the Milpitas Small Business Grant Program has been approved as part of the Fiscal Year 2019-2020 CDBG Annual Action Plan Amendment, there are no new fiscal impacts. However, if the recommended action of moving from a loan program to a grant program is approved by the Council, the revolving loan fund structure would cease to exist.

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.

Recommendations:

1. Amend the Milpitas Small Business Loan Program and approve the Milpitas Microenterprise Grant Program in its place.
2. Direct staff to launch the Milpitas Microenterprise Grant Program.
3. Authorize the City Manager, or designee, to make any necessary changes to previously Council-approved CDBG documents to amend the Milpitas Small Business Loan Program of \$150,000 for Microenterprises and \$50,000 for Small Businesses to the \$200,000 Milpitas Microenterprise Grant Program, and to make any necessary changes to comply with CDBG submission guidelines.

Attachment:

Copy of June 16, 2020 City Council Agenda Report



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve the Milpitas Small Business Grant Program Utilizing Community Development Block Grant Funds for Microenterprise Businesses and Small Businesses
Category:	Community Development
Meeting Date:	6/16/2020
Contacts:	Alex Andrade, Director of Economic Development, 408-586-3046
Recommendations:	1. Approve the Milpitas Small Business Grant Program; 2. Direct staff to include \$200,000 in Community Development Block Grant (CDBG) Funds for the Milpitas Small Business Grant Program as part of the Approval of the FY 2020-21 CDBG Annual Action Plan; and 3. Direct staff to use CDBG-CV funds for a grant program to be distributed to Microenterprise Businesses and Small Businesses.

Background:

At the March 17, 2020 meeting, the City Council adopted a Resolution to ratify the City of Milpitas Emergency Proclamation signed on March 12, 2020 by the City of Milpitas' Emergency Services Director, City Manager Steve McHarris, regarding COVID-19. At the same meeting, the City Council established the Small Business Assistance Subcommittee to explore small business loan and relief programs as well as business assistance from higher levels of government including federal, state and county. The Council selected Councilmember Carmen Montano and Councilmember Karina Dominguez to serve as Subcommittee representatives.

On April 21, 2020 the City Council directed staff to develop a small business loan program in collaboration with the Small Business Assistance Subcommittee that incorporates the eligibility criteria summarized below:

- \$200,000 in total funds – \$5,000 loans with 0% interest, 24-month repayment term; tied to performance;
- Businesses must have a long-standing presence in Milpitas (minimum of 3 years);
- Retail, restaurants, service sector and “mom and pop” businesses with physical storefronts;
- Applicants cannot exceed \$2M in revenues for the prior 2 calendar years;
- Not eligible if previously involved in wage theft or any other illegal activities;
- No history of being delinquent or default on prior loans (previous 7 years);
- Funds may be used for rent/mortgage (recommended by Subcommittee on May 1, 2020), payroll, operating expenses for products or services in Milpitas, and must show receipts to City of Milpitas or potentially be penalized; and
- Obtain and review copies of loan materials from applicants.

Chair Montano and Councilmember Dominguez have hosted five Small Business Assistance Subcommittee meetings. The Subcommittee meetings took place on March 24th, April 6th, May 1st, May 13th and May 28th. Small Business Assistance Subcommittee topics revolved around small business financial and non-financial assistance and relief including a small business loan or grant program, business survey, tracking of business assistance requests, commercial eviction protections, assisting businesses with ADA compliance, permit fee reductions, food delivery service fee cap, seed funding for either a Community Foundation or Economic Development Corporation, and outdoor dining program to assist local restaurants.

On May 28, 2020, the Small Business Assistance Subcommittee reached consensus on selecting Enterprise Foundation and Kiva as the recommended fiscal agent for a Milpitas Small Business Loan Program with a recommended funding amount of \$200,000. While the Subcommittee discussed utilizing Community Development Block Grant (CDBG) funds for the proposed Milpitas Small Business Loan Program at this meeting, the Subcommittee did not reach a consensus on utilizing either CDBG funds or funds from the City's General Fund and left the decision for City Council consideration.

Analysis:

The federal government established the Coronavirus Aid, Relief, and Economic Security Act or the CARES Act, which provides aid through direct payments, unemployment, payroll taxes, and business assistance among other types of relief. On April 2, 2020, the U.S. Department of Housing and Urban Development (HUD) announced that the City will receive \$397,911 in supplemental CDBG funding as part of the CARES Act, whereby these funds may be used to prevent, prepare for, and respond to the COVID-19 crisis. These supplemental funds are known as CDBG-CV and HUD has provided jurisdictions significant flexibility in determining eligible uses of these funds during this period. Grantees may use CDBG-CV grant funds for a range of eligible activities that prevent and respond to the coronavirus, including housing and utility assistance, food vouchers, senior nutrition programs, homeless sheltering, and small business assistance, as long as the funds are used to meet a national objective.

With respect to small business assistance, grantees may provide grants or loans to support new businesses or business expansion to create jobs, and provide short-term working capital assistance to small businesses to enable retention of jobs held by low- and moderate-income persons (LMI).¹ Grantees may also provide grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises.² Given that the current Milpitas unemployment rate is 12.7% as of May 22, 2020, deploying CDBG funds to assist microenterprise and small businesses in retaining current employees or rehiring of previously laid off or furloughed employees would provide the greatest immediate benefit. Additionally, the use of CDBG-CV funds will meet a national object as long as the employees retained or re-hired are from low and moderate-income households.

At the June 2, 2020 meeting, the City Council acknowledged that the current Shelter-in-Place Order has been devastating to the local business community, including employees that have lost their jobs, which necessitates providing immediate small businesses financial relief. The Council approved establishing a \$200,000 Milpitas Small Business Loan Program in partnership with Enterprise Foundation and Kiva as the fiscal agent. The Council was generally interested in utilizing CDBG funding rather than the City's General Fund and directed staff to return with more specific information on utilizing CDBG funding. There was also a question of whether or not the City has the ability to pre-fund the program or other ways to streamline the program. The goal being to provide the most expedient and effective way to disperse the CDBG dollars to qualifying Milpitas small businesses. Per HUD guidelines, the City can pre-fund up to 25 percent of the current year allocation prior to entering into a subrecipient service contract (approximately \$268,000 may be pre-funded).

If the Council directs staff to utilize CDBG-CV funds, the fiscal agent and the grantee will be subject to significant oversight, reporting, and the requirement to meet the objective of ensuring that at least 51 percent of hires or retainees will be LMI persons. Reporting and record keeping requirements relate to the status of the business, the jobs created or retained, and the LMI persons benefiting from the activity. Documentation includes, training for any jobs requiring special skills or education, number of employees, or documents showing total gross receipts, low-income employee address, qualifying employee paystub and a Profit-Loss Statement. A written agreement with the business is also required as a commitment to hire or retain LMI persons. For jobs created, grantees are required to provide documentation of the family size and income of the person who filled each position through a full-time equivalency status of the job(s). These reporting

¹ See § 105(a)(17) (42 U.S.C. 5305(a)(17)); 24 CFR 570.203(b).

² See § 105(a)(22) (42 U.S.C. 5305(a)(22)); 24 CFR 570.201(o).

requirements will be self-reported by the fund recipient and confirmed by Enterprise Foundation and Kiva as the City's fiscal agent.

Another Council direction from the June 2nd Council meeting included reaching out to various cities to learn more about best practices in launching a Small Business Loan Program with CDBG funds, and whether pre-funding strategies were implemented. Staff has learned from representatives of the Cities of Fremont, South San Francisco, Cupertino and Gilroy as it relates to employing CDBG-CV funds. Staff also left messages for City representatives of Riverside and Costa Mesa, but as of the writing of this Agenda Report, staff has not heard back.

In order to proceed with utilizing CDBG funds, there are subsequent actions that must be considered and approved. First, the CDBG Subcommittee will provide staff direction on CDBG funding recommendations, and to make amendments to and develop the following documents:

- CDBG Subcommittee funding recommendations for FY 2020-2021 CDBG Funds and CDBG-CV Funds;
- Amendment to the FY 2019-2020 Annual Action Plan;
- Substantial amendment to the Consolidated Plan and Citizen Participation Plan; and
- Develop a draft FY 2020-2021 Annual Action Plan.

Second, the Subcommittee will direct staff to bring these items for City Council consideration at the June 23, 2020 meeting.

Milpitas Small Business Grant Program

Cities around the Bay Area have developed grant or loan programs to assist small businesses during the economic crisis. In following staff direction to research other City programs, staff found that the City of South San Francisco has developed a small business loan program utilizing CDBG-CV funds, while the Cities of Fremont, Cupertino and Gilroy have either launched or are planning to launch a small business grant program by employing CDBG-CV funds.

One of the primary objectives is to distribute small business relief funding as soon as possible to address the immediate need within the local Milpitas business community. Staff learned that many Bay Area cities are opting to proceed with grant programs because it requires minimal reporting and tracking, resulting in faster dispersion of funds. On the other hand, and as previously mentioned, cities developing loan programs must contend with burdensome underwriting requirements, administration of loans and in some instances, revolving loan processes, and loan recipients are required to pay interest rates and ultimately take on more debt at a time when business owners are seeking a lifeline to stay in business. For these reasons, it has become clear that the grant option far better meets the City Council objectives of streamlining, expediency, and protecting the City's General Fund over a loan option.

Therefore, staff recommends that the Council approve a small business grant program to streamline the process, ensure that the small business grant recipients do not take on additional debt, and the City does not have to pre-fund Enterprise Foundation and Kiva as discussed at the June 2nd Council meeting. Added benefits include not having to rely on the City's General Fund in any manner. In addition, the City's HUD representative has confirmed that CDBG-CV funds will be available approximately 2 weeks after Council approval of the amendment to the FY 2019-2020 Annual Action Plan. It is expected that the Council will discuss and consider the aforementioned amendments and draft FY 2020-2021 Annual Action Plan at the June 23, 2020 meeting. Therefore, CDBG-CV funds may be available during the week of July 6th. Staff will collaborate with Enterprise Foundation and Kiva on development of the small business grant program, application, business outreach, administration, etc., which is expected to take a couple of weeks, so the disbursement of CDBG-CV funds during the week of July 6th aligns well with the schedule. While CDBG-CV grants will still be subject to reporting requirements, once the funds are expended, that will conclude the oversight obligations.

The Council approved the amount of \$200,000 for the Milpitas Small Business Loan Program at the June 2nd meeting. Enterprise Foundation requires a 5% administration fee, which equals \$10,000. The result will be \$190,000 remaining for distribution to the business community. If grants are disbursed at \$5,000, then the City can assist 38 eligible businesses with much needed funding. HUD defines microbusinesses as businesses employing 5 people or fewer, while small businesses are defined as those employing 6 people or more. Based on a review of the City's Business License List, approximately 77% of Milpitas businesses are microbusinesses and 23% are small businesses or larger. Therefore, staff recommends that CDBG-CV grant dollars be bifurcated to benefit microbusinesses at approximately 75% (\$145,000) and small businesses at approximately 25% (\$45,000) plus the administration fee of \$10,000.

Policy Alternative

Alternative: Do not approve the Small Business Grant Program at this time and proceed with a Small Business Loan Program instead.

Pros: If Council approves a Small Business Loan Program, it would include a revolving loan fund system which means the \$190,000 would be redistributed to multiple loan recipients in the future.

Cons: A loan program requires lengthy administrative processes and the fund recipients would be required to take on debt and pay interest rates that may ultimately harm the business in the long term.

Reason not recommended: The Small Business Grant Program will result in streamlining the process, ensuring that small business grant recipients do not take on more debt, and the City will not have to pre-fund General Fund monies to itself. The CDBG-CV funds are expected to be available during the week of July 6th. For these reasons, the Policy Alternative is not recommended.

Fiscal Impact

Staff recommends allocating \$200,000 in Community Development Block Grant (CDBG) Funds for the Milpitas Small Business Grant Program as part of the approval of the FY 2020-21 CDBG Annual Action Plan. With this recommendation, federal grant funds are utilized versus using local General Fund dollars.

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.

Recommendations:

1. Approve the Milpitas Small Business Grant Program; and
2. Direct staff to include \$200,000 in Community Development Block Grant (CDBG) Funds for the Milpitas Small Business Grant Program as part of the Approval of the FY 2020-21 CDBG Annual Action Plan.
3. Direct staff to use CDBG-CV funds for a grant program to be distributed to Microenterprise Businesses and Small Businesses.

Attachment:

Copy of June 2, 2020 City Council Agenda Report



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 14



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



Mary Lavelle

From: Warren Wettenstein <wettenstein@comcast.net>
Sent: Tuesday, August 04, 2020 2:15 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: Support for Item 14, Milpitas Microenterprise Grant Program from Milpitas Chamber of Commerce

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

We at the Milpitas Chamber of Commerce fully support the Council's Microenterprise Grant Program. Many local businesses are hurting and on the cusp of not being able to sustain their businesses in Milpitas. A Grant rather than a Loan would make a difference and also show local business-people and workers that Milpitas City cares about helping them to survive.

The Chamber has been working tirelessly to help member and non-member businesses to Pivot and Survive. Besides webinars, we have been in frequent communication with Alex Andrade, Economic Development Director and Dennis King of Silicon Valley Small Business Development Center.

Fast grants is needed now since all the businesses probably have immediate need in order to retain employees, rental space, vendors, and more.

Warren G Wettenstein
President

Milpitas Chamber of Commerce

408 824-1450

president@milpitaschamber.com

Please visit our new websites at

www.milpitaschamber.com

www.discovermilpitas.com

Warren Wettenstein, MBA (Boston University) | BBA, AA (George Washington University), Addl (UConn, Boston College, Peninsula University School of Law)

Milpitas Chamber Business Person of the Year

LinkedIn Profile at: <http://www.linkedin.com/in/warrenwettenstein>

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. This information is confidential information, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this electronic message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by contacting the Help Desk at (408) 262-2613, and destroy the original transmission and its attachments without reading them or saving them to disk or otherwise.

Mary Lavelle

From: Paul Mulder <paul@roadrunnerglass.biz>
Sent: Tuesday, August 04, 2020 2:19 PM
To: Mary Lavelle
Subject: RoadRunner Glass supports Item 14

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

I will apply for it

Paul Mulder

Sent from Mail for Windows 10

Mary Lavelle

From: Tamara Overacker <tobookkeeping@gmail.com>
Sent: Tuesday, August 04, 2020 2:25 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: [BULK] POTENTIAL GRANT AID PROGRAM MILPITAS SMALL BUSINESSES

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

I am a small business owner here in Milpitas and I support Item 14, the Microenterprise Grant Program to help local businesses that are hurting. That you plan to apply and you know other business-owners that would apply for the Grant. \$5,000 now can make a difference.

Tamara Overacker
TO Bookkeeping
Owner/Bookkeeper
(510) 757-1016

Mary Lavelle

From: Takeo Kimura <tkimura@assurantinnovations.com>
Sent: Tuesday, August 04, 2020 2:28 PM
To: Mary Lavelle; Alex Andrade
Subject: Supporting Microenterprise Grant Program

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello,

I'm emailing you to please pass and support Item 14, the Microenterprise Grant Program to help local businesses. I know of many that plan to apply and need this assistance to continue to grow and survive within Milpitas.

Regards,

Takeo Kimura

Mary Lavelle

From: Luke F. Kociuba <luke@neekacorporation.com>
Sent: Tuesday, August 04, 2020 2:35 PM
To: Mary Lavelle
Cc: Farisha Ali; Subra
Subject: Milpitas Grant Program

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Council Member Lavelle,

Our business is interested in the Milpitas small business grant. I hope you will vote tonight to enact the program.

Regards,

Luke Kociuba
CRTP
(408) 263 3311 Ext. 302



1 North Main Street, Suite 4 420 Estuillo Avenue
Milpitas, CA 95035 San Leandro, CA 94577
PH: (408) 263 - 3311 PH: (510) 483 - 0145
FX: (408) 263 - 3724 FX: (510) 483 - 0188
Visit our website at www.neekacorporation.com

[Please click here for a map to our NEW San Leandro Location.](#)

[Please click here for a map of our Milpitas Location.](#)

[You may securely pay your invoices online by visiting our website or by clicking here.](#)

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Neeka Accountancy Corporation CPAs, would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.

This communication and any accompanying documents are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon this communication is strictly prohibited. Moreover, any such disclosure shall not compromise or waive the attorney-client, accountant-client, or other privileges as to this communication or otherwise. If you have received this communication in error, please contact me at the above email address. Thank you.

Mary Lavelle

From: Ann Zeise <annzeise@gmail.com>
Sent: Tuesday, August 04, 2020 2:51 PM
To: Mary Lavelle; Alex Andrade; Rich Tran; Bob Nuñez; Karina Dominguez; Carmen Montano; Anthony Phan
Subject: [BULK] Support for Item 14 the Microenterprise Grant Program
Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Please create this microgrants program.

As the creator of the community website,
https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fGoMilpitas.com&c=E,1,q5lrf6H9VVsl2jKKNYt3m7fe8gYt_QuG4PZ6lYQxhESSbz37m9vVtCzWWcjZmWHwHBSpTp5lvqncKbwwyF-nfQCR9UVZN6Od889d2ze4mNPCeXsmPBCr&typo=1, I could sure use this grant as advertising revenue has dipped during COVID, while traffic has expanded. \$5000 would help pay for the server and the subscription widgets that I use to keep the site interesting. Would evenly for the outrageous business license fee I've been putting off for lack of funding.

Ann Zeise
<https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fGoMilpitas.com&c=E,1,Nol1Xi7ur7jGB4Qk3Rq9gyFnCzwNtdcgrupeI48FEG91p1w-oJjz-ix-HFUYB5WhY1TKCJ-g9kkDD7EV2T9vLmB73iwob0Tnwi2Yhvmzm9aetzkNQ,,&typo=1>
408-823-8247

Mary Lavelle

From: Da Fu Zheng <byoc2019@gmail.com>
Sent: Tuesday, August 04, 2020 2:55 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: [BULK] Support Item 14 - Grant Aid program for Milpitas Small businesses

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Mary,

My name is Eric Zheng, owner of BYOC Auto repair, member of the Milpitas Chamber.

I would like to cast my opinion in support of item 14, potential Grant Aid program for Milpitas Small businesses.

Thanks

Eric Zheng

--

Eric Zheng
BYOC Auto Repair
P: 408-262-0114
F: 408-262-0119

Mary Lavelle

From: manoj singh <sonamint@yahoo.com>
Sent: Tuesday, August 04, 2020 3:09 PM
To: Mary Lavelle
Subject: Small business grant

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello
Being a small business owner I support milpitas city for 5k grant.
Thanks
Sonam fashion
Manoj singh owner
Milpitas ca
408 750 7746
[Sent from Yahoo Mail on Android](#)

Mary Lavelle

From: Shirley Meirose <smeirose@arista.com>
Sent: Tuesday, August 04, 2020 3:49 PM
To: Mary Lavelle
Subject: [BULK] City grant to small businesses

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mary,

Hope all is well .

I am excited and hopeful to hear the possibility of City of Milpitas to assist small business during these difficult times with the pandemic. Any assistance will greatly help.

Our company name is Ryan Shain and Co. Inc DBA as Dixon Laundry a Laubdromat and wash and fold service . While it's essential we have limited hours limited people and very limited income and it's very slow.

I am looking forward to hear that this relief proposal passed and would be grateful to be considered and qualified for a grant.

Thank you very much,

Shirley Meirose
Business Owner

--

Thanks.

Regards,

Shirley Meirose
Payroll -Arista Networks
408-547-8364

This message and any attachments are intended only for the use of the addressee and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, notify the sender immediately by return email and delete the message and any attachments from your system.

Mary Lavelle

From: Thac Nguyen <bluedragonkick@gmail.com>
Sent: Tuesday, August 04, 2020 4:10 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: [BULK] Support Item 14, the Microenterprise Grant Program to help local businesses that are hurting

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Honorable City Council Members,

I would like to write to you in support of the potential grant aid program for Milpitas small businesses (item 14) on your City Council meeting agenda today. I am the small, family-run business owner of Blue Dragon Taekwondo Academy and also a resident of Milpitas. We have been in business in Milpitas since 1996, growing from a small studio on S. Main St., then Dixon Landing Rd., and at present, in our largest facility on N. Milpitas Blvd. We have a very prestigious program, having produced hundreds of national champions in the martial art and sport of taekwondo over the years. I myself am a Pacific and Regional Director for California and Nevada of the American Athletic Union (AAU) Taekwondo and Karate programs. Our tournaments and events draw visitors to do business in Milpitas. We produce not only champions, but also good citizens that are positive influences on the community -- Our martial arts program emphasizes and applies the Five Tenets of Taekwondo into our training and way of life: Courtesy, Integrity, Self-Control, Perseverance, and Indomitable Spirit. We have been trying to help keep our students fit both mentally and physically through their continued training over Zoom. We also, for a short time when the county/state allowed it, had in-person training for up to 12 students per session, for those that were comfortable coming. We provided face masks, distancing, and sanitizing procedures. We made sure the students kept up with their physical fitness so that they can remain healthy and strong, an added boost for their immunity.

As such, with this pandemic, we have seen a loss of about one-third of our students as they've sheltered-in-place. We have offered virtual training, but for some, it is not a feasible option for them for various reasons (too young, require personal attention, loss of income, visa issues, etc.). We have been fortunate so far that our creditors and our landlord have allow us to defer or accept partial payments since this pandemic started. But as the pandemic drags on into the latter part of the year, we anticipate that these delayed/reduced payment arrangements will not be sustained for much longer, and we will be under a crushing debt of back-pay which may threaten the school's stability and success. I imagine the situation is the same for all small businesses everywhere. Any little

bit that our city can provide for us will be of great help, whether it be in helping to promote our business, passing supportive ordinances that will to allow us to re-open with social distancing/sanitary protocols in place, or providing grants to keep us afloat and reduce the incurring debt so we can continue to be successful in this great City of Milpitas. So far we have only seen support for restaurants and stores...what about other types of businesses such as ours?

At this point, any action is better than no action at all. Even if this grant is not perfect, it is still a step forward for some. We can learn from its shortcomings to make future grants even better. But let's make the first step. Thank you for your time, consideration, and support. It is truly appreciated! Small business comprise the majority of this city. We are in this together, and hope that you can help some of the small businesses through these unprecedented times so that when we see the light at the end of the tunnel, there will be hope.

Sincerely,
Grand Master Thac Nguyen
(408) 202-6955

Grandmaster Thac H. Nguyen

9th Dan Black Belt
Blue Dragon Taekwondo Academy, INC. **President**
AAU Taekwondo National Executive Committee
AAU Taekwondo National Sport Poomsae **Director**
AAU Taekwondo National Olympic Sparring Elite **Coach**
AAU Taekwondo Regional Sport **Director**
AAU Taekwondo Pacific District Sport **Director**
Silicon Valley Taekwondo Association **President**
Kukkiwon Dan Promotion Test Examiner/Judge License #2019027
Kukkiwon Certified International Instructor License #2617007
Blue Dragon Taekwondo Academy Inc.

1485 N. Milpitas Blvd.
Milpitas, CA 95035 USA
(408) 946-1888 Office
(408) 946-2133 Fax
(408) 202-6955 Cell
<http://www.bluedragonacademy.com>

=====

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution, copying or other use of this information is strictly prohibited. Any attempts to intercept this message are in violation of Title 18 U.S.C. 2511(1) of the Electronic Communications Privacy Act (ECPA). All violators are subject to fines, imprisonment, civil damages, or both. If you have received this transmission in error, please notify the sender immediately, delete the material from any computer and/or destroy the information as soon as possible. Thank you

Mary Lavelle

From: Shirley Meirose <sgmeirose@gmail.com>
Sent: Tuesday, August 04, 2020 4:15 PM
To: Alex Andrade; Mary Lavelle
Subject: City of milpitas grant relief

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Mary ,

This is in regards to the email I inadvertently sent from my work email . I work from home and I used my personal cell phone and I tagged my work email in error Please use this my personal email
Sorry for any inconvenience.

Thanks
Shirley Meirose
Business Owner
Dixon Laundry
1802 Milmont Drive
Milpitas , Ca 95035

Thanks much
Sorry for any inconvenience

Mary Lavelle

From: Shannon Sevor <shannon.sevor@gymguyz.com>
Sent: Tuesday, August 04, 2020 4:33 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: Support for Item 14

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.
Dear Mary,

I am writing to acknowledge my support of Item 14, the Microenterprise Grant Program to help local businesses that are hurting. As a small business owner, we are hurting and this grant will help us make payroll for the 22 elite fitness coaches that serve at GYM GUYZ.

We plan to apply and we know other business-owners that would apply for the Grant. \$5,000 now can make a huge difference. In addition, we went online and let the City Council know that we support the program.

Thank you so much for your understanding during these challenging times.

If you have any questions or concerns, please feel free to contact me.

Sincerely,
Shannon

Shannon Sevor,
MBA, NASM-CPT

**OWNER of Santa Clara
Valley**

o: 1-855-GYMGUYZ

Direct: 408.740.5565



Franchises Available Worldwide



www.gymguyz.com



Click here <https://calendly.com/gymguyz> to see when I'm available and find a time that works for you as well.

This e-mail, and any attachment, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, re-transmission, copying, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. The contents of this message may contain personal views which are not the views of GYM GUYZ LLC and or its affiliates.

Mary Lavelle

From: Melba <grandm239@gmail.com>
Sent: Tuesday, August 04, 2020 4:37 PM
To: Mary Lavelle
Subject: [BULK] I support this grant program

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Yes, I support this grant program for small businesses.

Melba Holliday
Sent from my iPhone

Mary Lavelle

From: Casa Azteca <casaazteca@sbcglobal.net>
Sent: Tuesday, August 04, 2020 5:20 PM
To: Mary Lavelle
Cc: Alex Andrade
Subject: Casa Azteca firmly support Item 14 to help local business

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mary Ma'am,

As we all know that the restaurant business and other small businesses have been severely impacted by COVID-19 pandemic. At this crucial time, any help from the city is much appreciated. Casa Azteca will strongly support Item 14, the Microenterprise Grant Program that will help and support small businesses like us.

We would like to apply for the program and we will do our best to inform all the business that we know in Milpitas area so that they can qualify also. Please feel free to contact us and let us know if you need anything else on our end. We will be looking forward to hearing from you soon.

Best Regards,
Harihar Dahal
Owner
Casa Azteca



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Amendment to Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas for the Russell Middle School Fields
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	8/4/2020
Staff Contact:	Renee Lorentzen, 408-586-3409
Recommendation:	Approve and authorize the City Manager to execute an Amendment to the Russell Middle School Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas.

Background:

The City of Milpitas and Milpitas Unified School District (MUSD), in a joint effort to provide Bobbysox athletic opportunities in Milpitas, originally entered into a Joint Use Agreement (JUA) in 1997, for the development, maintenance, and management of Bobbysox Fields at Russell Middle School, a MUSD property. Improvements to the site included four softball fields and a concessions “shack” with restrooms.

Per the terms of the JUA, the shared use of the site allowed for MUSD’s explicit use of the fields during school hours until 4:00 pm, and available for City use after 4:00 pm on weekdays and all day on weekends, unless there was a planned MUSD event. The City was responsible for the maintenance of the fields for non-school use and managed the public use of the site. In 2010, the JUA was updated with an end date of 2036, shared use timing and operations language and memorializing the development roles of the site by the City and MUSD, including a City-installed concessions “shack” and restroom portable.

As part of the last MUSD Bond, the replacement of athletic fields was identified as a project, further detailing the development of a track and field at the Russell Middle School site. In early Spring 2020, MUSD staff confirmed the planned renovation of the Russell Middle School site, which would result in the renovation of the field grounds, affecting three of the four Bobbysox fields currently onsite. The project includes a track, a multiuse field, and keeps one Under 8 (U8) softball field.

Section 8 of the JUA requires MUSD to give the City at least thirty (30) days written notice prior to selling, leasing, conveying, transferring or otherwise disposing of the Russell Middle School Bobby Sox Complex. Whereas neither the current or previous versions of the JUA included language specific to the process for ending the agreement by MUSD (property owner) or the City, an amendment to the JUA citing a new end date allows MUSD to end the JUA. The MUSD has initiated an amendment to the JUA, ending the agreement as of June 30, 2020 in order to move forward with their athletic fields Bond Project. The MUSD Board of Education approved the amendment at their June 23, 2020 meeting. The Russell Middle School bond project renovation is scheduled to start, dependent on the approval of their plans, in late summer 2020. A future Joint Use Agreement for the site’s new amenities would be negotiated as a new agreement and brought to the MUSD Board and City Council, respectively, for approval.

Analysis:

Bobbysox/Softball programs have held season practices and games at the Russell Bobbysox fields since its opening and through its 2019 season. When originally executed, school-run outdoor team sports at Russell Middle School were not operating. Over the past several years, the school has instituted afterschool soccer teams, and track and field teams, placing additional demands on the field space after school and until approximately 6:00 pm on weekdays. With PAL Softball weekday practices typically beginning at 4:00 pm, there were increasing challenges for access to the fields by both the school teams and softball.

The City of Milpitas currently owns and operates several sports fields within its park system and the Milpitas Sports Center complex. Most fields are multi-use by design or by need. For example, soccer teams may practice in baseball outfields, and during rainy seasons, baseball tryouts are held on the artificial turf football/soccer fields.

At the Parks, Recreation and Cultural Resources Commission (PRCRC) June 1, 2020 meeting, staff reviewed the MUSD request to amend the Russell Fields JUA and a list of City-owned and operated available fields. The Commission provided feedback that they felt comfortable with the request as similar facilities and amenities could be available as compared to the existing arrangement.

Next Steps

Upon the approval of the Russell Fields JUA amendment, Recreation and Community Services and Public Works staff will continue to work jointly on several technical and community outreach tasks associated with allocating and accommodating PAL Softball at an alternate site(s). Unfortunately, due to COVID-19, the PAL Softball 2020 season has been cancelled. Staff will be focusing its efforts and working towards having fields available for play by February 2021.

Staff has already begun communicating with the PAL Softball leadership at both the PAL Board Representative meetings and the PAL Softball Board meetings about the change of amenities at Russell Middle School and the new uses at alternate sites. Staff will continue to engage PAL Softball throughout the process.

Fiscal Impact:

There is no cost associated with the approval of the amendment to the JUA for Russell Middle School.

The Public Works Department currently pays \$3,400 per month for the maintenance of the fields at Russell Middle School. The current monthly maintenance cost of \$3,400 will remain in the Operating Budget for the Public Works Department following approval of this Amendment to the JUA, and the funds will be used to offset potential increases to the monthly service costs for maintenance at other park(s) accommodating softball usage.

California Environmental Quality Act:

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

Recommendation:

Approve and authorize the City Manager to Execute an Amendment to the Russell Middle School Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas.

Attachments:

1. 2010 Russell Joint Use Agreement
2. Russell Joint Use Agreement Amendment

**JOINT USE AGREEMENT
CITY OF MILPITAS & MILPITAS UNIFIED SCHOOL DISTRICT
RUSSELL MIDDLE SCHOOL BOBBY SOX COMPLEX**

This Agreement by and between the Milpitas Unified School District, hereinafter referred to as "DISTRICT," and the City of Milpitas, hereinafter referred to as "CITY," is for the joint use of DISTRICT property, identified as the Russell Middle School Bobby Sox Complex, hereinafter referred to as "FACILITY," on the terms and conditions set forth hereafter.

Section 1- Purpose

CITY shall have use of FACILITY as mutually agreed upon by the parties on the terms and conditions hereinafter set for the purpose of conducting Bobby Sox League activities and recreational opportunities for the public.

DISTRICT shall have use of FACILITY as mutually agreed upon by the parties on the terms and conditions hereinafter set for the purpose connected with the provision of K-12 education.

Section 2- Description of Premises

FACILITY is located at Russell Middle School, 1500 Escuela Parkway, Milpitas, California and consists of one DISTRICT owned athletic field/ Bobby Sox Complex as represented on EXHIBIT A which is attached to this agreement, incorporated by reference and made a part herein.

Section 3- Lease Terms

DISTRICT agrees to lease FACILITY, as shown on EXHIBIT A, to CITY for the purpose of operating a Bobby Sox Softball Complex. CITY shall pay to DISTRICT the sum of \$1.00 per calendar year as rental fee for the FACILITY. No other rental or use fees shall be charged to DISTRICT by CITY for use of FACILITY.

Section 4- Authorized Representatives and Notice Provisions

Director of Maintenance, Operations and Transportation, or designee, shall serve as the authorized representative for DISTRICT. Any and all notices under this agreement shall be mailed or delivered to DISTRICT at the following address:

Milpitas Unified School District
Purchasing/Contracts Office
1331 E. Calaveras Blvd.
Milpitas, CA 95035

City Manager or designee, shall serve as the authorized representative for CITY. Any and all notices under this Agreement shall be mailed or delivered to CITY at the following address:

City Manager
Milpitas City Hall
455 E. Calaveras Blvd.
Milpitas, CA 95035

With the exception of issues involving imminent harm to persons or property, any concerns or issues, including those involving maintenance, construction, and/or use of FACILITY shall be communicated to the parties through the authorized representative.

Section 5-Use Restrictions

- a) DISTRICT shall have priority use of FACILITY between hours of 8:00 a.m. and 4:00 p.m. on days when school is in session. Generally, this will apply Monday through Friday, September through mid-June of each year, the academic year. The general public shall not be allowed to use FACILITY at any time while school is in session.
- b) CITY shall have priority use of FACILITY after 4:00 p.m. on days when school is in session and at all other times, including weekends, holidays and summer vacation. Exceptions to this schedule may be agreed upon by CITY and DISTRICT representatives. CITY and DISTRICT shall mutually agree upon a use schedule that allows DISTRICT reasonable opportunity to use FACILITY for its activities and programs.
- c) CITY shall have shared use of the on-site parking lots adjacent to FACILITY during CITY's priority use time. CITY will clean up the on-site parking lots adjacent to FACILITY, once per week. DISTRICT shall clean up the on-site parking lots the remainder of the time.
- d) CITY shall be responsible for administering reservations for use of FACILITY by the Bobby Sox League and the public. CITY shall be solely responsible for determining a priority use system as well as fees to be charged for use of FACILITY during such time that CITY has priority use of FACILITY.

Such fees shall be required to conform to all applicable rules, regulations, ordinances and/or laws governing school grounds in addition to those applicable to CITY property. Any and all fees collected during CITY's priority use time shall be property of CITY.

Section 6- Improvements

- a) FACILITY will be graded as necessary to ensure playable terrain and adequate drainage.
- b) FACILITY irrigation systems may be redesigned, renovated and/or replaced as needed.

- c) Any and all FACILITY landscaping, including trees, turf, shrubs, and mulches may be redesigned, renovated and/or replaced as needed.
- d) Four regulation Bobby Sox softball fields have been constructed on FACILITY. In addition, bleachers, lighting, a concession stand and restroom facility may be installed at some future time contingent upon funding availability, appropriation and approval by the Milpitas City Council.
- e) Cost of any future additions, modification or capital improvements to FACILITY by CITY shall be the responsibility of CITY unless otherwise mutually agreed upon by the parties.
- f) CITY shall be responsible for all activities related to the construction and installation of the above listed improvements including, but not limited to, preparation of plans and specifications, selection of and compensation paid to consultants advertising and calling for bids, awarding of contracts, supervision of construction and installation of improvements and payments of cost of construction and installation. No agreement for construction shall be awarded until DISTRICT has approved the conceptual design.
- g) DISTRICT recognizes that construction of improvements may occur during the academic year. CITY will endeavor to schedule construction activities so as to cooperate with DISTRICT and will ensure that adequate safety precautions are in place. CITY shall consult with DISTRICT as to the scheduling and timing of construction of improvements so as to minimize any adverse impact such construction may have on the instructional programs of DISTRICT

Section 7- FACILITY Maintenance

- a) CITY shall pay for and be responsible for all mowing, trimming, fertilization, irrigation, repair and other related landscape maintenance of FACILITY. CITY shall have no obligation for maintenance of landscaped areas, buildings, parking lots, fences, sidewalks, or other facilities owned by DISTRICT but not a part of FACILITY as reflected on EXHIBIT A.
- b) Except as otherwise provided herein, CITY shall pay for and be responsible for maintenance of any and all future improvements to FACILITY, including, but not limited to bleachers, lighting, concession stand and/or restroom facilities.
- c) DISTRICT shall pay for all utilities provided to FACILITY including, but not limited to, water, sewer, gas, and electricity.
- d) CITY shall pay for solid waste and recycling services provided to FACILITY as a result of CITY and DISTRICT activities.

- e) DISTRICT shall be responsible, at sole expense of DISTRICT for preparation of FACILITY areas to be used in connection with DISTRICT special events including but not limited to, graduation ceremonies, physical education programs and athletic events.
- f) Priority access to FACILITY shall be given to CITY for maintenance work two days per week while school is in session. For purposed of providing required turf and grounds maintenance, CITY may curtail all DISTRICT use of FACILITY, with two weeks advance notice, a maximum of four times during any one academic year, CITY shall attempt to schedule such maintenance in coordination with the academic calendar and, when possible, on days when school is not in session, While fulfilling its maintenance obligations under this Agreement, CITY shall minimize the impact on DISTRICT use of FACILITY while school is in session. Authorized representatives of CITY and DISTRICT shall meet on an as required basis and review scheduling of necessary maintenance at FACILITY.
- g) CITY may curtail DISTRICT use of and access to FACILITY at any time and without prior notification for the purpose of abating hazardous conditions at FACILITY. CITY shall make every effort to minimize the amount of time DISTRICT's access to FACILITY is restricted.
- h) Upon assumption of maintenance responsibility for FACILITY, CITY shall modify FACILITY signs to indicate respective responsibilities of CITY and DISTRICT as to ownership, use, maintenance and improvements. Signage to include emergency contact information for Bobby Sox Complex.

Section 8-Sale of Transfer of Facility

DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of FACILITY on or before December 31, 2036 without following the procedure set forth below.

- a) At least thirty (30) days prior to selling, leasing, conveying, transferring or otherwise disposing of FACILITY, DISTRICT shall give CITY written notice of DISTRICT's intent to sell, lease, convey, transfer, or otherwise dispose of FACILITY. Such notice shall be sent by certified mail to the authorized CITY representative.
- b) Not more than thirty (30) days after receipt of such notice of intent, CITY may give DISTRICT written notice that CITY intends to exercise its rights of acquisition under this Agreement. If CITY fails to give DISTRICT timely notice pursuant to this section, CITY shall have no further rights with respect to acquisition of FACILITY.
- c) DISTRICT shall not sell, lease, convey, transfer or otherwise dispose of FACILITY unless DISTRICT offers to CITY a right of first refusal to purchase FACILITY. An

agreement for such purchase shall be executed within sixty (60) days of receipt by CITY of DISTRICT's notice of intent.

Section 9- Hold Harmless

CITY agrees to indemnify, hold harmless and defend DISTRICT, its officers, agents and employees from and against any and all claims of liability for any injury or damage to any person or property arising from CITY's use of FACILITY.

DISTRICT agrees to indemnify, hold harmless and defend CITY, its officers, agents, and employees from and against all claims of liability for any injury or damage to any person or property arising from DISTRICT's use of FACILITY.

Section 10- Insurance

- a) CITY shall at all times during the term of this Agreement, at its own cost and expense, obtain and maintain in full force and effect throughout the entire terms of this Agreement public liability insurance in the amount of \$2,000,000. Combined single limit covering both bodily injury and property damage. DISTRICT shall be included as an additional insured as respects any other valid and collectible insurance of DISTRICT, including any self-injured retention, and any other insurance maintained by DISTRICT is excess and not to be used as contributing insurance.

The above conditions shall be set forth on a Certificate of Insurance and shall not be cancelled or reduced without thirty (30) days prior written notice to DISTRICT. Such Certificate of Insurance shall be filed with the DISTRICT within twenty (20) days after execution of this Agreement.

Notwithstanding any language of the foregoing to the contrary, CITY may satisfy the insurance obligations hereunder by providing to DISTRICT proof of self-insurance in a form reasonably acceptable to DISTRICT, to the extent such self-insurance is permitted by the laws of the State of California and in accordance therewith.

- b) DISTRICT shall at all times during the term of this Agreement, at its own cost and expense, obtain and maintain in full force and effect throughout the entire term of this Agreement public liability insurance in the amount of \$1,000,000. Combined single limit covering both bodily injury and property damage. CITY shall be included as an additional insured as respects to liability arising out of the use of FACILITY. District's policy shall be considered primary insurance as respects any other valid and collectible insurance of CITY, including any self-insured retention, and any other insurance maintained by CITY is excess and not to be used as contributing.

The above conditions shall be set forth on a Certificate of Insurance and shall not be cancelled or reduced without thirty (30) days prior written notice to CITY. Such

Certificate of Insurance shall be filed with the City Clerk within twenty (20) days after execution of this Agreement.

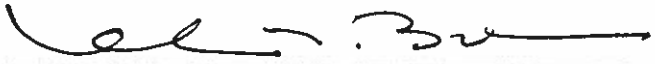
Notwithstanding any language of the foregoing to the contrary, DISTRICT may satisfy the insurance obligations hereunder by providing to CITY proof of self-insurance in a form reasonable acceptable to CITY, to the extent such self-insurance is permitted by laws of the State of California and in accordance therewith.

Section 11- Term

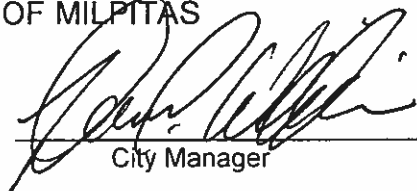
This Agreement shall supersede any and all prior agreement, written or oral, and shall take effect January 26, 2010, and continue through December 31, 2036.

IN THE WITNESS WHEREOF, the parties hereto have executed this agreement as of the 26th day of January, 2010,

MILPITAS UNIFIED SCHOOL DISTRICT (MUSD)

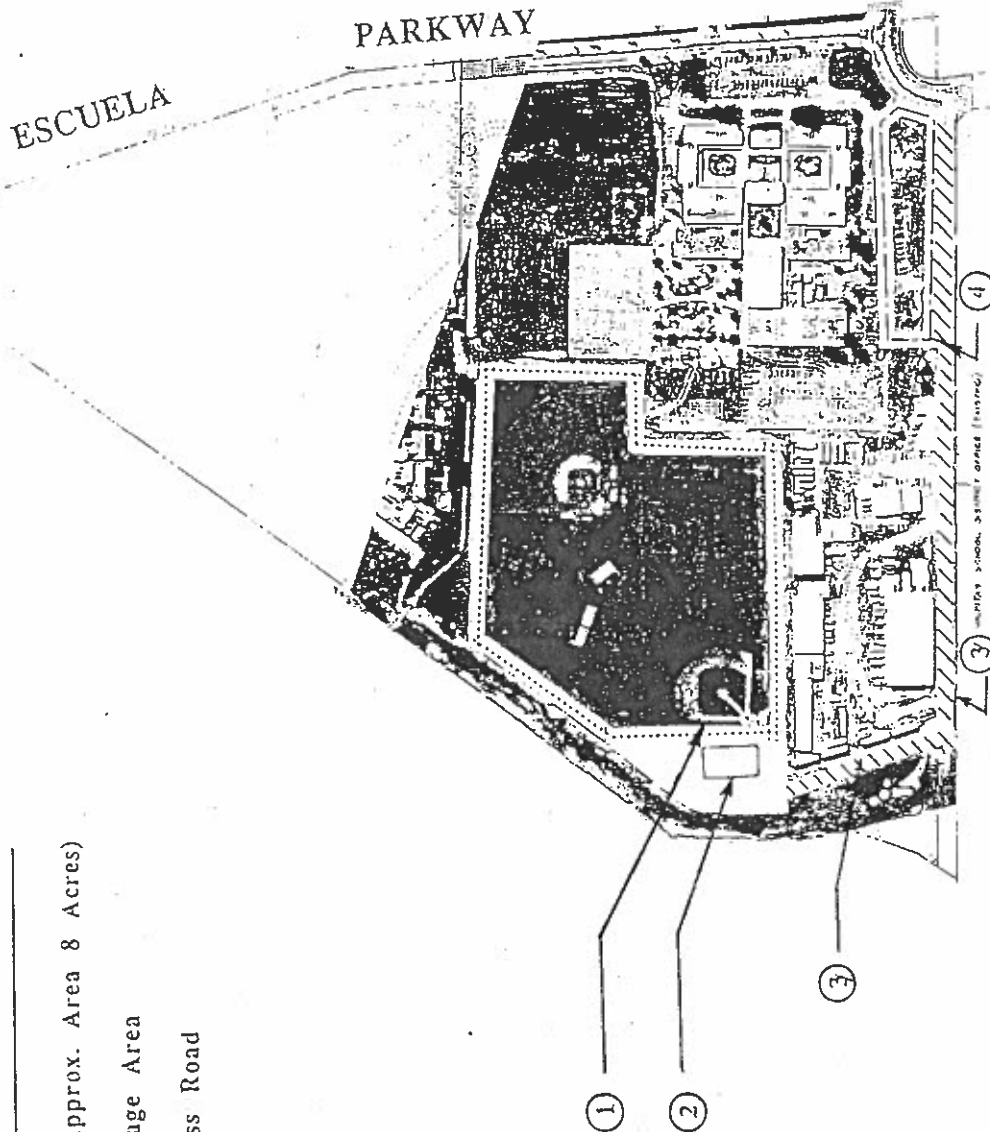
By:  Date: January 26, 2010
Superintendent

CITY OF MILPITAS

By:  Date: 3/5/10
City Manager

LEGEND

- ① Bobby Sox Complex Fields (Approx. Area 8 Acres)
- ② Bobby Sox Maintenance Storage Area
- ③ Bobby Sox Maintenance Access Road
- ④ Parking Lot (Bobby Sox Use)



JOINT USE AGREEMENT. CITY OF MILPITAS & MILPITAS UNIFIED
SCHOOL DISTRICT. RUSSELL MIDDLE SCHOOL
BOBBY SOX COMPLEX

EXHIBIT 'A'
THOMAS RUSSELL SCHOOL
MILPITAS

**FIRST AMENDMENT TO JOINT USE AGREEMENT BETWEEN THE CITY OF
MILPITAS & MILPITAS UNIFIED SCHOOL DISTRICT
FOR RUSSELL MIDDLE SCHOOL BOBBY SOX COMPLEX**

THIS FIRST AMENDMENT TO THE JOINT-USE AGREEMENT is made and entered into as of the latest date of execution set forth below, by and between the MILPITAS UNIFIED SCHOOL DISTRICT ("District") and the City of Milpitas ("City").

District and City hereby agree as follows:

1. The Joint Use Agreement ("Agreement") between the parties dated January 26, 2010, which relates to the Premises located at 1500 Escuela Parkway, Milpitas, California, 95035 is hereby amended as follows:
 - a. Section 11 of the Agreement, "Term" is hereby amended to read as follows:

"This Agreement shall supersede any and all prior agreement, written or oral, and shall take effect January 26, 2010 and continue through June 30, 2020."
 - b. Section 6 of the Agreement, "Improvements" is hereby amended by adding a new section "h" to read as follows:

"h) DISTRICT shall be responsible for removing the concession stand or snack shack."
2. Except as expressly amended above, the Agreement remains in full force and effect except as modified by this.

IN WITNESS WHEREOF, the parties have executed this First Amendment of the Joint-Use Agreement on the latest date of execution set forth below.

DISTRICT

CITY

MILPITAS UNIFIED SCHOOL DISTRICT

CITY OF MILPITAS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 15



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



JUN 30 2020

RECEIVED

 Reply all  Delete  Junk  Block ...

Special Meeting Public Comments

MC

Meeting Public Comment <machform@ci.milpitas.ca.gov>



Tue 6/30/2020 5:39 PM

To: Public Comment

Thank you for your request!

Special City Council Meeting -June 30, 2020 at 5:30 PM.**Date** Jun 30, 2020**Name** Christy Irineo**Address:** 133 N. Temple Blvd #12**Agenda Item:**

3. Approve and Authorize the City Manager to Execute an Amendment to Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas for the Russell Middle School Fields

Comment

My Daughter America is 14 and made the Milpitas High Varsity team. She grew up playing on the Russell fields since the age of three. Over the span of her years on her home field she learned the importance of community involvement to keep these type of extra curricular activities up and running. Simply turning around her life lessons from the field and giving back by volunteering countless hours and hard work to maintain the softball program at Russell going for the younger generations, including her 6 year old baby sister. There are a few good reasons to provide and keep available a field most of them are between ages 8- 14 who want a good, safe place to play ball. I am aware of the situation regarding The use of the fields if for whatever reason our children are not allowed to keep the stability of access to these fields we ask that there be an alternative field provided for the seasons to come so we may keep the softball program available to the young women on Milpitas. Thank you and best regards,
Christy Irineo

JUN 30 2020

RECEIVED

 Reply all  Delete  Junk  Block ...

Special Meeting Public Comments

MC

Meeting Public Comment <machform@ci.milpitas.ca.gov>

Tue 6/30/2020 6:51 PM

To: Public Comment



Thank you for your request!

Special City Council Meeting -June 30, 2020 at 5:30 PM.

Date Jun 30, 2020

Name Charles Schletzbaum

Address: 1775 Milmont Drive

Agenda Item: 3. Approve and Authorize the City Manager to Execute an Amendment to Joint Use Agreement between the Milpitas Unified School District and the City of Milpitas for the Russell Middle School Fields

Comment

When we were originally trying to plan for a new high school, whenever Ayer was brought up, one of the barriers was city reluctance to allow a school to use those fields. I find it ironic that expectations of cooperation seem to go one-directional.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report on the Status of COVID19 Testing in the City of Milpitas, Authorize Additional \$175,000 to Fund the City's Mobile Testing Unit and the County Fixed Testing Site through October 9 and Authorize the City Manager to Enter into Discussions with Milpitas Businesses to Provide Testing to Essential Employees Working in the City
Category:	Public Safety
Meeting Date:	8/4/2020
Staff Contact:	Geoffrey Maloon, 408-586-2818
Recommendations:	1. Receive an update regarding the status of COVID-19 testing in Milpitas. 2. Authorize \$175,000 to fund the City's mobile testing unit, the County mobile and pop-up testing sites and the fixed testing site at Milpitas Library through October 9, 2020. 3. Provide authorization for the City Manager to enter into discussions with Milpitas businesses to provide testing services utilizing the mobile testing unit.

Background:

COVID-19 has severely impacted nations and communities across the globe. There is universal agreement among public health experts, scientists, physicians and emergency managers that widespread testing is one of the keys to lifting stay-at-home/shelter-in-place orders. Santa Clara County and the United States have been lagging in the availability of widespread, accessible testing, which is hampering our ability to lift these orders.

During the May 5 special City Council meeting, Council authorized the City Manager to enter into an agreement with a Milpitas based testing lab, IGeneX, Inc., to support a City mobile testing unit targeting vulnerable populations and employees of businesses based in Milpitas. The total costs through June 30 were estimated to be \$75,0000. On May 27, the mobile testing unit began testing Milpitas residents and visitors and continues to operate Monday-Friday from 9:00 AM-5:00 PM at various sites throughout the City.

Council was given an update on the mobile and County fixed testing sites at its special meetings on June 2. Council approved an additional \$65,000 to support the City mobile testing unit and \$25,000 to support the County fixed testing operation through August 7 utilizing the Unanticipated Expenditure Reserve.

Staff has been working with the County hospital system, County Office of Emergency Services (OES), and a Milpitas-based medical testing lab named IGeneX to establish and increase testing capability in the City of Milpitas through both fixed and mobile testing options.

The Milpitas based mobile testing unit is the only testing facility in the County that is easily accessible to City residents and employees and providing test results in 24 hours.

Analysis:

While the science and recommendations vary, the generally accepted recommendations for testing range between one and twenty-one percent of the population weekly. With a population of approximately 80,000, five percent of the population equates to 4,000 weekly tests. With the County fixed testing site, combined with the City's mobile testing unit and the twice monthly County pop-up and mobile testing units we will be testing approximately 2,500-3,000 people weekly.

Fixed Testing

On April 15, 2020, the County Hospital and Clinic System opened a small fixed testing site at the Milpitas Sports Center. From its April opening until May 22 the site operated daily, Monday – Friday from 8:00 am – 12:00 pm by appointment only and was averaging approximately 6 – 8 tests per day for Santa Clara Valley Health patients only. The fixed testing site has since relocated to the Milpitas Library parking garage and is testing Monday-Friday from 8 AM-4:30 PM. The site is conducting approximately 100-120 tests per day on an appointment only basis. The County testing site has relaxed their testing criteria to include asymptomatic persons. Additionally, the site is open to people outside the County Health system, uninsured individuals and is free of charge. Staff is recommending continuing City support through October 9 in the form of three part-time personnel to assist with intake and traffic control.

The City has supported this effort with equipment such as generators, extension cords, tables, chairs and fans. Additionally, the Recreation and Community Services department have supported with effort with part-time personnel and on-duty Fire department personnel are tasked with decontaminating the site every day when operations cease. As of July 31, the estimated cost of this effort is approximately \$24,000. The additional cost to support the County fixed site through October 9 is estimated to be an additional \$31,000, with total costs to support this site estimated to be \$55,000. It is anticipated that approximately \$44,000 of that cost will be reimbursed by FEMA.

City Mobile Testing Site

The mobile testing unit has conducted over 3,000 tests to date with approximately 70-75% of all persons tested being Milpitas residents or working in the City. The mobile test unit is testing between 120 to 150 persons per day.

One of the original goals of the mobile testing unit was to provide testing to essential workers in the City to facilitate a safe return to work for people working in the City. With the movement of counties throughout the state into varying phases of reopening, one of the keys to safely restarting businesses is accurate and ongoing testing. Three large local employers have expressed an interest and/or requested initial testing of all employees returning to work as well as ongoing random sample testing on a weekly basis.

The sampling services could be provided by the City's mobile testing unit on a contractual basis with all personnel expenses being reimbursed to the City by IGenex or the company requesting the testing. With no costs to the City, the reopening of businesses utilizing the mobile testing unit will provide benefits to the local workforce while maintaining the reopening posture guiding the State and County. Business testing would be limited to two days per week with the City mobile unit. The City and IGenex will continue discussions regarding this testing model and report back to Council in late August or early September.

Continued walk-up testing sites and testing at targeted locations such as senior mobile home facilities will continue to serve the citizens of Milpitas and protect our vulnerable populations.

As of July 31, the City mobile testing unit has cost approximately \$163,000. This includes staff from various departments such as Fire, Recreation and Community Services, and City Manager's Office, and general support such as hotels for quarantines, supplies and food for testing staff (approximately \$8,500). These costs include staffing the mobile test unit as well as staff hours for administration that includes flyer creation and translation, setting site locations, notification of tested individuals, coordination with the County Emergency Operations Center Testing Unit, social media updates, appointment setting, website postings and outreach. Staff dedicated to this effort include the Fire Department EMS Battalion Chief, EMS Captain and one firefighter on light duty. Recreation and Community Services staff participating in this effort include the Director of Recreation and Community Services, the Community Engagement and Inclusion Administrator and four full-time staff members. Two additional part time staffers have been assigned to the mobile testing unit to assist with documentation and quality control. The costs for the administrative personnel are largely not reimbursed by FEMA because the staff time for these costs was budgeted prior to the declaration of the national emergency. The unanticipated non-reimbursed costs for administration to date total approximately \$47,000 including salary and benefits for administrative personnel.

Recent efforts to reduce needed administrative staff time have been implemented and some administrative functions are one-time only and will not result in additional time needed (flyer creation and translation). Moving forward, the administration costs through October 9 are estimated to be \$32,500. Approximately \$8,000 of these costs are related to overtime which are eligible for reimbursement through FEMA. Total additional costs anticipated to continue the City's mobile testing program through October 9 is \$163,000.

Despite the anticipated costs and resources required, staff recommends continued support of the mobile testing effort. The reasons for this recommendation include extremely fast test results (24 hours or less), the ability to test essential City employees on short notice, the ability to reach vulnerable populations such as the uninsured, elderly and essential workers and the continued testing recommendations of the CDC and public health experts to facilitate reopening and prevention of community spread.

County Mobile and Pop-up Testing

Staff has been in discussions with the County to set up both pop-up and mobile testing in the City in the month of August and on a rotating basis after that. The mobile site focuses on testing a target population such as essential workers or vulnerable groups and can test up to 200 people per day. The pop-up site is able to test up to 600 individuals per day by appointment only.

The City will need to provide up to three staff to assist with intake and traffic control for the mobile testing. Estimated costs for staff time through October 9 is approximately \$4,500. The mobile test unit will be deployed to Milpitas up to two times in a single month. The pop-up site requires an inside location in a large facility.

The County mobile and pop up testing sites would augment the existing testing in the City and increase our monthly testing significantly. The additional County testing sites would allow an increase of up to 1,600 additional test capacity in Milpitas on a monthly basis.

Policy Alternatives:

Alternative 1: Do not continue to provide City support for fixed and mobile testing sites in Milpitas

Pros: Savings of \$175,000. City staff resources could be used for other City priorities.

Cons: Reduced overall testing capacity in Milpitas and reduced ability to test City employees.

Reason not Recommended: Testing remains a key component of prevention, reduced community transmission and reopening. The City testing efforts have been well-received by the public.

Alternative 2: Do not provide authorization to the City Manager to enter into agreements with Milpitas based businesses to provide testing to essential and returning workers

Pros: City resources could be utilized for other priorities and the mobile testing unit could test more Milpitas residents.

Cons: Testing, combined with contact tracing and other prevention efforts will facilitate the reopening of the business community leading to revenue generation and workforce engagement.

Reason not Recommended: Widespread testing is one of the pillars to the local, County, and State plans to safely reopen the economy. Without widespread testing (and the resulting ability to track and limit the spread of the coronavirus), and without a functional vaccine, there is no way to safely lift the stay-at-home orders.

Fiscal Impact:

Additional funding for all testing efforts through October 9 is anticipated to total approximately \$175,000. FEMA reimbursement is anticipated to be at least 75% or \$131,250 plus 5% management fee (\$8,750). Staff time (regular and overtime) in the amount of \$32,500 of staff time will also be dedicated to this effort for administration. Administrative costs related to overtime in the amount of \$8,000 as well as the 5% management fee of \$8,750 is eligible for reimbursement. Total estimated costs of support for testing in Milp

through October 2 is \$385,500 of which approximately \$251,200 are anticipated to be reimbursed. \$133,800 will be funded from the General Fund.

California Environmental Quality Act:

Not applicable

Recommendations:

1. Receive an update regarding the status of COVID-19 testing in Milpitas.
2. Authorize \$175,000 to fund the Fire Department mobile testing unit, the County mobile and Pop-up testing sites and the fixed testing site at the Library through October 9, 2020.
3. Provide authorization for the City Manager to enter into discussions with Milpitas businesses to provide testing services utilizing the mobile testing unit.

Attachments:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Three Resolutions Authorizing Placement of a ¼ Cent General Transactions and Use (Sales) Tax Measure on the November 3, 2020 Ballot
Category:	Leadership and Support Services
Meeting Date:	8/4/2020
Staff Contacts:	Ashwini Katak, 408-586-3053 Walter C. Rossmann, 408-586-3111
Recommendations:	1) Adopt a Resolution calling for the placement of a General Tax Measure on the Ballot for the November 3, 2020 General Municipal Election for submission to the qualified voters of an Ordinance to Enact a General Transactions and Use Tax at the Rate of One-Quarter Cent (1/4 ¢) for a period of eight years. 2) Adopt a Resolution requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 3, 2020 with the Statewide General Election on that date, pursuant to §10403 of the California Elections Code. 3) Adopt a Resolution providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the November 3, 2020 General Municipal Election.

Background:

On May 12, staff presented the Proposed Budget and a possible scenario of an additional \$5 million revenue shortfall above and beyond the decrease in revenues related to COVID-19 assumed in the Proposed Budget. With this possible ongoing revenue shortfall scenario, staff also discussed potential ongoing budget solutions such as service and position reductions, which may result in lay-offs, engaging the City's bargaining groups to reduce salary and benefits costs, and/or placing a potential ¼ cent general purpose Transactions and Use (Sales) Tax (TUT) Measure on the November ballot for voter consideration.

At the May 15 Special City Council meeting, Council directed staff to proceed with polling for a ¼ cent general purpose TUT Measure and to bring the polling results back for Council consideration. A general-purpose tax measure requires 50%+1 voter approval. Per Government Code section 53724, placing a general tax measure on the ballot requires a minimum of four (4) affirmative votes from the Council.

Based on Council direction, staff engaged with Fairbank, Maslin, Maullin, Metz and Associates (FM3) to survey likely November 2020 voters in Milpitas regarding a potential ¼ cent general-purpose TUT Measure testing two alternative measures: 1) one with a sunset of eight years, focusing on maintaining City services given the economic downturn, and 2) one without a sunset clause, focusing on both City services and public infrastructure to facilitate the securitization of the new revenue source for issuance of debt.

The results of the polling were presented to the Council on June 23, 2020, which showed stronger voter support for a measure with a sunset clause. Although, initially three in five likely voters expressed support for both versions of the Sales Tax Measure, with 60% or more indicating they would vote "yes" for both versions of the measure. However, after survey respondents either heard/read both arguments in favor of a measure and opposed to a measure, support for both versions fell. Only 48% of likely voters continued to support the version without a sunset and 53% continued to support the measure focusing on maintaining City services with a sunset clause. Furthermore, there was consistently more intense support for the version with a sunset

clause. Based on the result, the Council directed staff to return with the final ballot measure language for the Sales Tax Measure with a sunset of eight years after voter approval.

Analysis:

In response to Council discussion, this staff report provides general information about sales tax including sales tax generation by business category and an update on sales tax revenue projections; presents the final ballot measure language for a ¼ cent general purpose TUT Measure with a sunset of eight years for Council consideration; summarizes the various prepared resolutions; and outlines the timeline and critical steps for the Measure.

Sales Tax Information

The City currently receives its share of the long-established Bradley-Burns uniform local sales and use tax. Sales tax applies to all retail sales of goods and merchandise except those sales specifically exempted by law. The complementary use tax generally applies to the storage, use, or other consumption in California of goods purchased from retailers in transactions not subject to the sales tax. Use tax may also apply to purchases shipped to California consumers from another state, including purchases made by mail order, telephone, or Internet. California law exempts all services and some goods and merchandise from the payment of sales tax, such as the purchase of food, prescription medicine, animal feed, and utility payments (Electricity, Gas, and Water).

For FY 2019-20, the City's sales tax consultant estimates that 25.0% of sales tax revenue was derived from business to business transactions followed by retail (19.9%), allocations from the County sales tax pool (19.5%) and the remainder from food product, transportation, and construction. Sales Tax generated from out-of-state transactions are allocated to the County pool based on point of delivery and distributed to each jurisdiction on a pro-rata share of taxable sales for each quarter.

The FY 2020-21 Adopted Budget projects Sales Tax revenues of \$28.4 million including the Bradley-Burns uniform local sales and use tax estimated amount of \$830,000. However, based on the latest revenue projection furnished by the City's sales tax consultant net the Bradley-Burns estimated amount, staff estimates that the City will receive approximately \$26 million sales tax revenue during FY 2020-21 - approximately \$2.4 million less than assumed in the Adopted Budget. Based on this revised estimate, if the TUT tax passed, staff estimates that a ¼ cent TUT measure would generate additional revenue of \$6.5 million.

If the Council approves placing the ¼ cent TUT measure on the November 2020 ballot, and if approved by the voters, the City's overall sales tax rate will increase from 9.0% to 9.25%. Currently, several neighboring cities in the South Bay and East Bay also have an overall sales tax percentage of 9.25% or higher. The Cities of San Jose and Campbell have a sales tax rate of 9.25% and cities in Alameda County have a sales tax rate between 9.25% and 9.75% with Fremont at 9.25% and Newark and Union City at 9.75%

Proposed Ballot Measure Language

Based on Council direction and input from the City's Attorney and consultants, below is the proposed 75 word ballot language, with the maximum number of words as allowed by law, for a ¼ cent general purpose TUT measure with a sunset of eight years :

City of Milpitas Public Services Measure

To provide funding to maintain the City's finances and services, including: police and fire protection, 9-1-1 emergency response, and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses; shall the measure, establishing a 1/4¢ sales tax, providing approximately \$6,500,000 annually for 8 years, requiring independent audits, citizens' oversight, all funds spent locally, be adopted?

Resolutions Prepared for Adoption

In order to place the recommended ballot measure on November 3, 2020 General Municipal Election, staff recommends Council adoption of three resolutions. The first one submits to the voters an Ordinance to enact a General Transactions and Use Tax at the rate of one-quarter cent (1/4 ¢) for a period of eight years. The

second resolution requests that the County Board of Supervisors consolidate the City's election with the statewide general election on November 3, 2020.

The third resolution establishes the parameters for filing primary and rebuttal arguments regarding the measure including Council's potential designation of one or two Members of the City Council to submit ballot arguments on the Council's behalf as discussed in further detail below.

Ballot Arguments

Elections Code Section 9282(b) provides that when a measure is placed on the ballot by the City Council, written arguments for and against the measure may be filed by the following: the City Council or any member or members of the Council authorized by the Council, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations.

Elections Code Section 9287(a) provides that if more than one argument for or against any city measure is submitted, the city elections official shall give preference and priority in the following order: (1) The legislative body, or member or members of the legislative body authorized by that body; (2) individual voter or bona fide association of citizens, or combination of those two; (3) bona fide associations of citizens; (4) individual voters who are eligible to vote on the measure.

If the City Council decides to authorize certain members of the Council to submit an argument on the Council's behalf, then pursuant to Election Code Section 9287(a) that argument will be given preference over any other argument submitted in favor of the ballot measure. If the Council chooses not to authorize an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the Voter Information Guide.

Therefore, the Council may also decide to designate one or two Members of the Council to author and submit arguments and rebuttal statements for the measure on the Council's behalf as part of adopting the third resolution. Alternatively, the Council may also adopt the third resolution without designating any Members of the Council to submit a written argument in favor of the measure.

Timeline of Approvals for Potential Ballot Measures

If the City Council decides to move forward with placing the ¼ cent TUT Measure on the November 3, 2020 ballot, it must adopt the three related resolutions on or before August 7, 2020 to meet California Elections Code deadlines (88 days prior to Election Day). The table below outlines a timeline of actions for the TUT Measure.

Day of Week	Date	Action
Tuesday	August 4, 2020	Last regular City Council meeting to place TUT measure on the November ballot
Friday	August 7, 2020	Last day to submit TUT measure to Registrar of Voters
Tuesday	August 11, 2020	All Arguments in Favor or Opposed to the Measure to be submitted to the City Clerk (84 days prior to Election Day)
Tuesday	August 18, 2020	Rebuttals to Arguments to be submitted to the City Clerk (77 days prior to Election Day)
Tuesday	November 3, 2020	Election Day
Thursday	December 3, 2020	County Registrar of Voters scheduled to certify final election results
Tuesday	December 15, 2020	City Council scheduled to certify the Measure's results
Thursday	April 1, 2021	¼ cent Sales Tax increase scheduled for implementation, if approved by the voters

Educational Outreach

After submission of the TUT measure to the Registrar of Voters, with the assistance of a consultant and in close coordination with the City Attorney, staff will conduct educational outreach about the November 2020 mail-in ballot election and the TUT measure in September and October consistent, with the law.

Policy Alternative:

Alternative: Do not approve placing the TUT measure on the ballot.

Pros: The City will save \$50,000 - \$60,000 in upfront one-time expenditures.

Cons: The City will potentially forgo an opportunity for the voters to decide whether to maintain the City's finances and services, including: police and fire protection, 9-1-1 emergency response, and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses.

Reason not recommended: As indicated in the City Manager's Transmittal Letter to the City Council in the FY 2020-21 Adopted Budget, a substantive second lockdown of the regional and state economies was not anticipated in the City's Adopted Budget, which may require budget re-balancing actions during FY 2020-21. Absent an additional funding source, potential rebalancing actions include service and position reductions, which may result in lay-offs, or engaging the City's bargaining groups to negotiate a reduction in salary and benefits costs and/or by placing a potential ¼ cent general purpose Transactions and Use (Sales) Tax (TUT) Measure on the November ballot for voter consideration. By placing the ballot measure for voter consideration on the November 3, 2020 ballot, voters can weigh in on maintaining or reducing City services.

Fiscal Impact:

The cost for the placing the ballot measure on the ballot for voters' consideration is estimated to be \$30,000 and the educational outreach is estimated to be between \$35,000 to \$45,000. There are sufficient funds in the unanticipated expenditure reserve to cover these costs. If the voters approve the measure, based on the current FY 2020-21 Sales Tax revenue estimate, a ¼ cent TUT measure is expected to generate approximately \$6.5 million in additional revenue per year.

California Environmental Quality Act:

Not applicable

Recommendations:

- (1) Adopt a Resolution calling for the placement of a General Tax Measure on the Ballot for the November 3, 2020 General Municipal Election for submission to the qualified voters of an Ordinance to Enact a General Transactions and Use Tax at the Rate of One-Quarter Cent (1/4 ¢) for a period of eight years.
- (2) Adopt a Resolution requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 3, 2020 with the Statewide General Election on that date, pursuant to §10403 of the California Elections Code.
- (3) Adopt a Resolution providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the November 3, 2020 General Municipal Election.

Attachments:

- a) Resolution calling for the ballot measure
- b) Resolution requesting consolidation
- c) Resolution regarding ballot arguments

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA
CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR
THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO
THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A GENERAL TRANSACTIONS
AND USE TAX AT THE RATE OF ONE-QUARTER CENT (1/4 C) FOR A PERIOD OF EIGHT (8)
YEARS**

WHEREAS, the City Council of the City of Milpitas (“City”) is authorized to levy a Transactions and Use Tax (“TUT”) for general purposes pursuant to California Revenue and Taxation Code §7285.9, subject to approval by a majority vote of the electorate pursuant to Article XIII C, §2 of the California Constitution (“Proposition 218”); and

WHEREAS, pursuant to California Elections Code §9222, the City Council has authority to place local measures on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council would like to submit to the voters at the November 3, 2020 General Municipal Election a measure enacting a general TUT at a rate of one-quarter cent (1/4 c) on the sale and/or use of all tangible personal property sold at retail in the City for a period of eight (8) years, as more specifically set forth in the attached proposed ordinance adding Chapter 4 to title IX of the City’s Municipal Code; and

WHEREAS, the 1/4% TUT is a general tax, the revenue of which will be placed in the City’s general fund and will be used to pay for important general City services; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIII C, §2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, pursuant to City Council Resolution No. 8987, the next regularly scheduled general election at which City Council members are to be elected is November 3, 2020; and

WHEREAS, pursuant to Government Code §53724 (“Proposition 62”) and Revenue and Taxation Code §7285.9, a two-thirds (2/3) vote of all members of the City Council is required to place the Measure on the November 3, 2020 ballot; and

WHEREAS, the ordinance to be considered by the qualified voters and the terms of approval, collection and use of the general TUT are described and provided for in the ordinance/measure attached hereto as **Exhibit “A”** (the “Measure”) and by this reference made an operative part hereof, in accordance with all applicable laws.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS:

Section 1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

Section 2. Submission of Ballot Measure. Pursuant to California Elections Code §9222, Government Code §53724, Revenue and Taxation Code §7285.9 and any other applicable requirements of the laws of the State of California relating to the City, the City Council, **by a two-thirds (2/3) vote of all members**, hereby orders the Measure to be submitted to the voters of the City at the General Municipal Election to be held on **Tuesday, November 3, 2020**.

Section 3. Ballot Question. The City Council, pursuant to California Elections Code §9222, hereby orders that the ballot question shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, November 3, 2020, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

“City of Milpitas Public Services Measure. To provide funding to maintain the City’s finances and services, including: police and fire protection, 9-1-1 emergency response, and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses; shall the measure, establishing a 1/4¢ sales tax, providing approximately \$6,500,000 annually for 8 years, requiring independent audits, citizens’ oversight, all funds spent locally, be adopted?”	YES
	NO

Section 4. Conduct of Election. The City Clerk is authorized, instructed, and directed to coordinate with the Santa Clara County Registrar of Voters procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 5. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure, and transmit such impartial analysis to the City Clerk not later than the deadline for submittal of primary arguments for or against the Measure.

The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the City Clerk at 408-586-3001 and a copy will be e-mailed at no cost to you.”**

Section 6. Notice. Notice of the election is hereby given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 7. Placement on the Ballot. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Elections Code §9223

advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

Section 8. **Filing with County.** The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 3, 2020, file with the Board of Supervisors and the Registrar of Voters of the County of Santa Clara, State of California, a certified copy of this Resolution.

Section 9. **Public Examination.** Pursuant to California Elections Code §9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

Section 10. **California Environmental Quality Act.** The City Council hereby finds and determines that the Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

Section 11. **Severability.** The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

Section 12. **Effective Date.** This Resolution shall become effective upon its adoption.

Section 13. **Certification and Delivery of Resolution.** The City Clerk shall certify to the adoption of this Resolution and is hereby directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.

PASSED AND ADOPTED this ____ 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

Exhibit “A”
Transactions and Use Tax Ordinance

[attached behind this page]

REGULAR

NUMBER: _____

TITLE: **AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS, CALIFORNIA, ADDING CHAPTER 4 TO TITLE IX OF THE MILPITAS MUNICIPAL CODE TO ENACT A ONE-QUARTER CENT (1/4 C) GENERAL TRANSACTIONS AND USE TAX FOR A PERIOD OF EIGHT (8) YEARS TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

HISTORY: This Ordinance was approved by the voters at the general election on November 3, 2020.

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.9 the City of Milpitas (“City”) is authorized to levy a Transactions and Use Tax for general purposes, subject to majority voter approval; and

WHEREAS, the People of the City desire to levy a Transactions and Use Tax for general purposes for a period of eight (8) years to fund important general City services, at a rate of one-quarter cent (1/4 c); and

WHEREAS, if approved by the City Council and Milpitas voters, the Transactions and Use Tax ordinance will be incorporated into Chapter 4 of Title IX of the Milpitas Municipal Code.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILPITAS DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Title and Text. This Ordinance shall be known as the Milpitas Transactions and Use Tax.

Section 2. Approval by the City Council. Pursuant to California Government Code Section 53724 and Revenue and Taxation Code Section 7285.9, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) supermajority of all members of the City Council on August 4, 2020.

Section 3. Approval by the Voters. Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Milpitas voting at the General Municipal Election of November 3, 2020. It shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

Section 4. Operative Date. “Operative Date” for the Transactions and Use Tax means the first day of the first calendar quarter commencing more than 110 days after the date this Ordinance is adopted, as set forth in Section 3 above.

Section 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. Amendment of Milpitas Municipal Code. The Milpitas Municipal Code is hereby amended to add Chapter 4, Transactions and Use Tax, to Title IX, Revenue and Finance, to read as follows:

TITLE IX – REVENUE AND FINANCE

Chapter 4 - Transactions and Use Tax

Sections:

IX-4-1.01 - Purpose.

IX-4-1.02 - Contract With State.

IX-4-1.03 - Transactions Tax Rate.

IX-4-1.04 - Place of Sale.

IX-4-1.05 - Use Tax Rate.

IX-4-1.06 - Adoption of Provisions of State Law.

IX-4-1.07 - Limitations on Adoption of State Law and Collection of Use Taxes.

IX-4-1.08 - Permit Not Required.

IX-4-1.09 - Exemptions and Exclusions.
IX-4-1.10 - Amendments.
IX-4-1.11 - Enjoining Collection Forbidden.
IX-4-1.12 – Duration of Tax

Sections:

IX-4-1.01 - Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

IX-4-1.02 - Contract With State.

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

IX-4-1.03 - Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-quarter percent (1/4 %) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

IX-4-1.04 - Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

IX-4-1.05 - Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one-quarter percent (1/4 %) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

IX-4-1.06 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

IX-4-1.07 - Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:
 - 1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;
 - 2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.
 - 3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

- b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
- 4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this State” in Section 6203 and in the definition of that phrase in Section 6203.
 - 1. “A retailer engaged in business in the City/District” shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

IX-4-1.08 - Permit not Required.

If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor’s permit shall not be required by this ordinance.

IX-4-1.09 - Exemptions and Exclusions.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
 - 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this subsection, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this subsection, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

IX-4-1.10 - Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

IX-4-1.11 - Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

IX-4-1.12 – Duration of Tax.

The tax imposed by this Chapter shall continue for a period of eight (8) years following the Operative Date and shall thereafter be of no further force and effect, unless said tax is extended or renewed by Milpitas voters at a future general or special municipal election lawfully called for that purpose.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA
REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO
CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 3,
2020 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THAT DATE
PURSUANT TO §10403 OF THE ELECTIONS CODE**

WHEREAS, on August 4, 2020, the City Council of the City of Milpitas adopted Resolution No. 8987 calling a General Municipal Election to be held on November 3, 2020; for the purpose of submitting to the voters the question relating to the Transactions and Use Tax; and

WHEREAS, it is therefore desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts and Voting Centers of the two elections be the same, and that the Registrar of Voters of the County of Santa Clara canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Request for Consolidation. Pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 3, 2020, for the purpose of submitting to the voters the following question relating to the Transactions and Use Tax.

Section 2. Measure Language. A measure is to appear on the ballot as follows:

“City of Milpitas Public Services Measure. To provide funding to maintain the City’s finances and services, including: police and fire protection, 9-1-1 emergency response, and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses; shall the measure, establishing a 1/4¢ sales tax, providing approximately \$6,500,000 annually for 8 years, requiring independent audits, citizens’ oversight, all funds spent locally, be adopted?”	Yes
	No

Section 3. Canvass of Returns. The County Registrar of Voters is authorized to canvass the returns and perform all other proceedings incidental to and connected with the General Municipal Election. The Election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

Section 4. Necessary Steps. The Board of Supervisors is requested to issue instructions to the County Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

Section 5. Costs. The City Council determines and declares that the City will pay to the County the reasonable and actual expenses incurred by the County by the consolidation of the General

Municipal Election with the Statewide General Election. The City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved bill. The City Manager of the City of Milpitas is authorized and directed to pay for the expenses incurred after receiving a statement from the County of Santa Clara.

Section 6. Filing of Resolution. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of Santa Clara.

Section 7. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA
PROVIDING FOR THE FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND
SETTING RULES FOR THE FILING OF WRITTEN ARGUMENTS REGARDING A CITY
MEASURE TO BE SUBMITTED AT THE NOVEMBER 3, 2020 GENERAL MUNICIPAL
ELECTION**

WHEREAS, a General Municipal Election is to be held in the City of Milpitas, California on November 3, 2020, at which there will be submitted to the voters the following measure:

“City of Milpitas Public Services Measure. To provide funding to maintain the City’s finances and services, including: police and fire protection, 9-1-1 emergency response, and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses; shall the measure, establishing a 1/4¢ sales tax, providing approximately \$6,500,000 annually for 8 years, requiring independent audits, citizens’ oversight, all funds spent locally, be adopted?	Yes
	No

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Primary Arguments. That the City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California, and to change the argument until and including the date fixed below by the City Clerk, after which no arguments for or against the City measure may be submitted to the City Clerk.

The deadline to submit arguments for or against the City Measure pursuant to this Resolution is declared by the City Clerk to be **Tuesday August 11, 2020, at 5:00 p.m.** Each argument shall not exceed 300 words and shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

If the City Council chooses to file an argument in favor of the ballot measure, it hereby designates the following Councilmembers to author the argument on behalf of the City Council: _____ .

Section 2. Rebuttal Arguments. Pursuant to Section 9285 of the Elections Code of the State of California, when the City Clerk has selected the primary arguments for and against the City Measure which will be printed and distributed to the voters, the Clerk shall send copies of the primary argument in favor of the Measure to the authors of the primary argument against, and copies of the primary argument against to the authors of the primary argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **Tuesday August 18, 2020, at 5:00 p.m.** Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

Section 3. Prior Resolutions. That all previous resolutions providing for the filing of primary and rebuttal arguments related to City measures are repealed.

Section 4. November 3, 2020 Election. That the provisions of Sections 1 and 2 shall apply only to the election to be held on November 3, 2020, and shall then be repealed.

Section 5. Certification and Delivery of Resolution. The City Clerk shall certify to the adoption of this resolution and is hereby directed to deliver certified copy of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.

PASSED AND ADOPTED this ____ 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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving the City of Milpitas Investment Policy for Fiscal Year 2020-21
Category:	Leadership and Support Services
Meeting Date:	8/4/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendation:	Adopt a Resolution approving the City of Milpitas Investment Policy for Fiscal Year 2020-21.

Background:

California state law requires all local agencies to develop an investment policy that must be considered annually by the legislative body of the local agency at a public meeting. This staff report submits the Investment Policy (the Policy) for the City of Milpitas for Council's annual review and approval.

At the March 3, 2020 City Council meeting, the City Council approved a contract with Chandler Asset Management (Chandler) to manage the City's cash pool. Staff transitioned the management of the City's cash pool to Chandler effective June 1, 2020.

Analysis:

Staff and Chandler collaborated in reviewing the current Investment Policy and determined that the Policy continues to be in compliance, including the recommendations for various changes highlighted below, with the provisions of the California Government Code (Code), Sections 16340, 16429.1-16429.4 and 53600-53686, the authority governing investments for municipal governments.

Based on the review, staff recommends various changes to the Policy to more closely align the Policy to Code and authorize implementation of best practices. The recommended changes also serve to provide a greater level of clarity of instructions, as well as enhanced readability. Attached, please find a red-line version of the recommended changes to the Policy. The most prominent recommended changes are:

- 1) Standards of Care** – The Policy's paragraph on prudence has been updated to include the actual standard of care language quoted from California Government Code.
- 2) Delegation of Authority** – Language included in this section has been added to account for the City's use of a professional investment advisor, including the ability to actively manage the City's funds.
- 3) Investment Guidelines** – Subsections related to Safety of Principal, Liquidity and Diversification have been deleted, as these definitions are already covered in other sections, or have been moved to other subsections.
- 4) Competitive Bidding** – The Policy's paragraph on competitive bidding has been edited to provide clarity on the requirements associated with multiple bids when purchasing securities for the City.
- 5) Performance Evaluation/Benchmark** – Recommended changes to this section require that the portfolio be designed to attain a market-average rate of return throughout budgetary and economic cycles, and must factor in risk constraints, cash flow, and other operational factors. Moreover, the City will use a readily-available market index to measure performance outcomes that serves as a meas

of risk, interest income, and fair value appreciation. As the economic and related interest environment changes, staff intends to work with Chandler to gradually align the portfolio to the changing conditions in compliance with this Policy, which may warrant transitioning to another readily-available market index to measure performance outcomes.

- 6) **Qualified Broker-Dealers** – Language detailing requirements for broker-dealers doing business with the City has been augmented with criteria that must be met per Code Section 53601.5. Moreover, if the City utilizes a professional investment advisor, the City may rely on the advisor for selection of broker-dealers.
- 7) **Authorized Investments** – Currently, the Policy is designed to meet all Code requirements. There are, however, additional restrictions recommended that make the City's Policy more restrictive to better manage credit and market risk. Examples of this include issuer concentration limits of 5%, credit requirements for negotiable certificates of deposit, and others. Recommended changes to this paragraph require that the more restrictive parameters take precedence when discrepancies are found between Code and the City's Policy. Moreover, any investments that do not meet the requirements imposed by updates to the Policy need not be immediately sold, but proceeds from the maturing non-compliant security must be reinvested in accordance to the updated Policy requirements. Lastly, percentage holding limits listed in the Policy apply at time of purchase.
- 8) **Federal Agency Obligations** – This paragraph was edited to more closely align with the language found in California Government Code. Moreover, additional limits of 30% and 20% of the portfolio have been added for individual federal agency issuers and agency callable securities, respectively.
- 9) **Bankers' Acceptances** – Currently, Code requires no minimum credit quality for Bankers' Acceptances. Staff recommends having a minimum short-term credit rating of "A-1" or be issued by organizations with long-term debt rated in the rating category of "A" or its equivalent or higher.
- 10) **Commercial Paper** – This paragraph was edited to more closely align with the language found in California Government Code.
- 11) **Negotiable Certificates of Deposit** – Currently, Code requires no minimum credit quality for Negotiable Certificates of Deposit. Staff recommends having a minimum credit requirement for Negotiable Certificates of Deposit. The minimum short-term rating shall be "A-1," or the Negotiable Certificate of Deposit shall be issued by organizations with long-term debt rated in the rating category of "A" or its equivalent or higher. Amounts less than the maximum amount insured by FDIC require no rating.
- 12) **Additional Asset Classes** – The City's Policy currently allows all asset classes permitted by Code, except for municipal obligations and passthrough securities (asset-backed, mortgage-backed, and collateralized mortgage obligations). After consulting Chandler, staff recommends including these two asset classes to better align the City's Policy with Code. The recommendation includes additional restrictions related to minimum credit quality, issuer concentration, and maturity, which are considered best practices. These recommendations, along with their associated limits, are expected to allow the City to increase diversification, continue to provide liquidity, and prudently enhance the overall return of the City's portfolio.
- 13) **Risk Management and Diversification** – Consistent with best practices, this paragraph presents newly-recommended language designed to address the management of both credit and market risk in the portfolio in order to ensure a well-diversified, prudently managed portfolio designed for safety and liquidity. It includes among other requirements, mandated amounts to be kept in short-term investments to ensure liquidity, maximum final maturities, guidelines for duration positioning, and a process to be followed in the case of a credit downgrade below the minimum credit requirement.
- 14) **Investment Pools/Mutual Funds** – Consistent with best practices, this paragraph presents newly-recommended language designed to address risks associated with the investment of City funds in investment pools and funds. The section lists a number of questions to be answered when investing in pools to better ascertain the risks the City's funds face in an investment pool setting.

Policy Alternatives:

Alternative: Do not approve the recommended changes to the Policy.

Pros: The existing Policy is in compliance with State law.

Cons: The existing Policy will not reflect the City's decision to contract with Chandler for the management of the City's investment pool.

Reason not recommended: By not updating the policy, the City would forgo alignment with the California Code related to investments and implementation of best practices.

Fiscal Impact:

Given the changing economic and interest environment, it is difficult to determine a fiscal impact as a result of the recommendations to the Policy; however, the changes will allow staff working with Chandler to diversify the City's investment pool.

California Environmental Quality Act:

Not applicable.

Recommendation:

Adopt a Resolution approving the City of Milpitas Investment Policy for Fiscal Year 2020-21.

Attachments:

Resolution

Investment Policy (red-line and recommended versions)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE
INVESTMENT POLICY FOR FISCAL YEAR 2020/2021**

WHEREAS, the Legislature of the State of California has declared that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern; and

WHEREAS, the legislative body of a local agency may invest surplus monies not required for the immediate needs of the local agency in accordance with the provisions of California Government Code Section 53601 *et seq.*; and

WHEREAS, the Treasurer of the local agency shall annually prepare and submit a statement of investment policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

WHEREAS, the Investment Policy was last reviewed and approved by the City Council pursuant to Resolution No. 8805 on August 20, 2019.

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 has reviewed and considered the Investment Policy, including any changes, attached hereto as **Exhibit A**, and the Investment Policy for Fiscal Year 2020/2021 is hereby approved.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher Diaz, City Attorney

Exhibit A

CITY OF MILPITAS INVESTMENT POLICY

POLICY OVERVIEW

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 return:

- 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) **Return** - 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 benchmarks.

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 - Pursuant to California Government Code, Section 53600.3, all persons authorized to make investment decisions on behalf of the City are trustees and therefore fiduciaries subject to the Prudent Investor Standard:

“...all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.”

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 derived from California Government Code, Sections 41006 and 53600 et seq and granted to the City Treasurer by 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. The City may engage the services of one or more external investment advisers, who are registered under the Investment Advisers Act of 1940, to assist in the management of the City's investment portfolio in a manner consistent with the City's objectives. External investment advisers may be granted discretion to purchase and sell investment securities in accordance with this investment policy. The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that in a diversified portfolio, occasional measured losses may be inevitable and must be considered within the context of the overall portfolio's return and the cash flow requirements of the City.

INVESTMENT GUIDELINES

INVESTMENT PARAMETERS

- 1) **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 trade settlement. 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. 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.
- 2) **Competitive Bidding** - It is the policy of the City to require that, where possible, all transactions with broker/dealers shall be selected on a competitive basis and their bid or offering prices shall be recorded. If there is no other readily available competitive offering, best efforts will be made

to document quotations for comparable or alternative securities. When purchasing original issue instrumentality securities, no competitive offerings will be required as all dealers in the selling group offer those securities at the same original issue price.

PERFORMANCE EVALUATION/BENCHMARK

- The investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the City's risk constraints, the cash flow characteristics of the portfolio, and state and local laws, ordinances or resolutions that restrict investments. 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 City Treasurer shall select an appropriate, readily available index to use as a market benchmark. The benchmark should be commensurate with the level of market risk of the portfolio, and should serve as a measure of risk, interest income, and fair value appreciation. Samples of readily available benchmarks include Intercity Exchange/Bank of America/Merrill Lynch 1-3 Year or 1-5 Year Treasury Indices.

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.
- A report of transactions by month.
- 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.
- In accordance with California Government Code Section 53601.5, Any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary dealer by the Federal Reserve bank.
- Selection of financial institutions and broker/dealers authorized to engage in transactions will be at the sole discretion of the City, except where the City utilizes an external investment adviser in which case the Agency may rely on the adviser for selection.

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.

The City shall require any bank or financial institution to comply with the collateralization criteria defined in California Government Code, Section 53651.

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. In the event a discrepancy is found between this policy and the

Code, the more restrictive parameters will take precedence. Percentage holding limits listed in this section apply at the time the security is purchased.

Any investment currently held at the time the policy is adopted which does not meet the new policy guidelines can be held until maturity and shall be exempt from the current policy. At the time of the investment's maturity or liquidation, such funds shall be reinvested only as provided in the current policy.

An appropriate risk level shall be maintained by primarily purchasing securities that are of high quality, liquid, and marketable. The portfolio shall be diversified by security type and institution to avoid incurring unreasonable and avoidable risks regarding specific security types or individual issuers.

- 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** or United States Government-Sponsored Enterprise (GSE) obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government sponsored enterprises. There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable. Additionally, no more than 30% of the portfolio may be invested in any single Agency/GSE issuer, and the maximum percent of agency callable securities in the portfolio will be 20%.
- 3) **Banker's Acceptances**- Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Banker's acceptances must be issued by institutions which have short-term debt obligations rated "A-1" or its equivalent or better by at least one nationally recognized statistical rating organization (NRSRO), or long-term debt obligations which are rated in a rating category of "A" or its equivalent or better by at least one NRSRO. Purchase of banker's acceptances may not exceed 180 days maturity or 40% of the value of the portfolio. Furthermore, no more than 5% of the 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 one NRSRO, either:
 - Issued by general corporations organized and operating within the United States, having assets in excess of \$500,000,000 and having a rating in the rating category of "A" or its equivalent or better rating on debt other than commercial paper as provided by at least one NRSRO, or
 - Issued by entities organized within the United States as a special purpose corporation, trust, or limited liability company. The securities must have program-wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond. The securities must be rated "A-1" or its equivalent or better by at least one NRSRO.

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 25% of the value of the portfolio. No more than 5% of the portfolio may be invested in any single issuer.

- 5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, a savings association or a federal association, a state or federal credit union, or by a federally-licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30% of the value of the portfolio. No more than 5% of the portfolio may be invested in any single issuer. A maturity limitation of five years is applicable. The amount of the NCD insured up to the FDIC limit does not require any credit ratings. Any amount above the FDIC insured limit must be issued by institutions which have short-term debt obligations rated “A-1” or its equivalent or better by at least one NRSRO; or long-term obligations rated in a rating category of “A” or its equivalent or better by at least one NRSRO.
- 6) **Repurchase Agreements** - Repurchase agreements collateralized with securities authorized under in accordance with California Government Code Section 53601(j). There are no limits on the dollar amount or percentage that the City may invest. 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 in a rating category of "A" or its equivalent better by at least one NRSRO. Purchase of medium-term notes may not exceed 30% of the value of the portfolio and no more than 5% of the value of the portfolio may be invested in notes issued by one corporation.
- 9) **Local Agency Investment Fund (LAIF)** - a State of California managed investment pool may be used up to the maximum permitted in accordance with California Government Code Section 16429.1.
- 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).
- 11) **Municipal Securities** – including obligations of the City, the State of California, and any local agency within the State of California, provided that:

- The securities are rated in a rating category of “A” or its equivalent or better by at least one nationally recognized statistical rating organization (“NRSRO”).
- No more than 5% of the portfolio may be invested in any single issuer.
- No more than 30% of the portfolio may be in Municipal Securities.
- The maximum maturity does not exceed five (5) years.

12) Municipal Securities (Registered Treasury Notes or Bonds) of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California., provided that:

- The securities are rated in a rating category of “A” or its equivalent or better by at least one nationally recognized statistical rating organization (“NRSRO”).
- No more than 5% of the portfolio may be invested in any single issuer.
- No more than 30% of the portfolio may be in Municipal Securities.
- The maximum maturity does not exceed five (5) years.

13) Asset-Backed, Mortgage-backed, Mortgage Passthrough Securities, and Collateralized Mortgage Obligations From Issuers Not Defined In Sections 1 And 2 of the Authorized Investments Section of this Policy, provided that:

- The securities are rated in a rating category of “AA” or its equivalent or better by a NRSRO.
- No more than 20% of the total portfolio may be invested in these securities.
- No more than 5% of the portfolio may be invested in any single Asset-Backed or Commercial Mortgage security issuer.
- The maximum legal final maturity does not exceed five (5) years.

14) Collateralized Bank Deposits—City’s deposits with financial institutions will be collateralized with pledged securities per California Government Code, Section 53651. There are no limits on the dollar amount or percentage that the City may invest in collateralized bank deposits.

INELIGIBLE INVESTMENTS AND INVESTMENT PRACTICES

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. Trading securities for the sole purpose of speculating on the future direction of interest rates is prohibited. Purchasing or selling securities on margin is prohibited. The use of reverse repurchase agreements, securities lending or any other form of borrowing or leverage is prohibited. The purchase of foreign currency denominated securities is prohibited.

RISK MANAGEMENT AND DIVERSIFICATION

Mitigating Credit Risk in the Portfolio: Credit risk is the risk that a security or a portfolio will lose some or all its value due to a real or perceived change in the ability of the issuer to repay its debt. The City will mitigate credit risk by adopting the following strategies:

- The diversification requirements included in the “Authorized Investments” section of this policy are designed to mitigate credit risk in the portfolio.
- No more than 5% of the total portfolio may be deposited with or invested in securities issued by any single issuer unless otherwise specified in this policy.
- The City may elect to sell a security prior to its maturity and record a capital gain or loss in order to manage the quality, liquidity or yield of the portfolio in response to market conditions or City’s risk preferences.

- If a security owned by the City is downgraded to a level below the requirements of this policy, making the security ineligible for additional purchases, the following steps will be taken:
 - Any actions taken related to the downgrade by the investment manager will be communicated to the City Treasurer in a timely manner.
 - If a decision is made to retain the security, the credit situation will be monitored and reported to the City Council as part of the Quarterly Investment Report.

Mitigating Market Risk in the Portfolio: Market risk is the risk that the portfolio value will fluctuate due to changes in the general level of interest rates. The City recognizes that, over time, longer-term portfolios have the potential to achieve higher returns. On the other hand, longer-term portfolios have higher volatility of return. The City will mitigate market risk by providing adequate liquidity for short-term cash needs, and by making longer-term investments only with funds that are not needed for current cash flow purposes.

The City further recognizes that certain types of securities, including variable rate securities, securities with principal paydowns prior to maturity, and securities with embedded options, will affect the market risk profile of the portfolio differently in different interest rate environments. The City, therefore, adopts the following strategies to control and mitigate its exposure to market risk:

- The City will maintain a minimum of six months of budgeted operating expenditures in short term investments to provide sufficient liquidity for expected disbursements.
- The maximum stated final maturity of individual securities in the portfolio will be five (5) years, except as otherwise stated in this policy.
- The duration of the portfolio will generally be approximately equal to the duration (typically, plus or minus 20%) of a Market Benchmark as described in the Performance Evaluation/Benchmark section of this policy; an index selected by the City based on the City's investment objectives, constraints and risk tolerances.

INVESTMENT POOLS/MUTUAL FUNDS

The Agency shall conduct a thorough investigation of any pool or mutual fund prior to making an investment, and on a continual basis thereafter. The Treasurer shall develop a questionnaire which will answer the following general questions:

- A description of eligible investment securities, and a written statement of investment policy and objectives.
- A description of interest calculations and how it is distributed, and how gains and losses are treated.
- A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- A schedule for receiving statements and portfolio listings.
- Are reserves, retained earnings, etc. utilized by the pool/fund?
- A fee schedule, and when and how is it assessed.
- Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

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.

Exhibit A

CITY OF MILPITAS INVESTMENT POLICY

POLICY OVERVIEW

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 return:

- 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) **Return** - 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 benchmarks.

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 - Pursuant to California Government Code, Section 53600.3, all persons authorized to make investment decisions on behalf of the City are trustees and therefore fiduciaries subject to the Prudent Investor Standard:

“...all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.”

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 derived from California Government Code, Sections 41006 and 53600 et seq and granted to the City Treasurer by 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. The City may engage the services of one or more external investment advisers, who are registered under the Investment Advisers Act of 1940, to assist in the management of the City's investment portfolio in a manner consistent with the City's objectives. External investment advisers may be granted discretion to purchase and sell investment securities in accordance with this investment policy. The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that in a diversified portfolio, occasional measured losses may be inevitable and must be considered within the context of the overall portfolio's return and the cash flow requirements of the City.

INVESTMENT GUIDELINES

INVESTMENT PARAMETERS

- 1) **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 trade settlement. 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. 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.
- 2) **Competitive Bidding** - It is the policy of the City to require that, where possible, all transactions with broker/dealers shall be selected on a competitive basis and their bid or offering prices shall be recorded. If there is no other readily available competitive offering, best efforts will be made

to document quotations for comparable or alternative securities. When purchasing original issue instrumentality securities, no competitive offerings will be required as all dealers in the selling group offer those securities at the same original issue price.

PERFORMANCE EVALUATION/BENCHMARK

- The investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the City's risk constraints, the cash flow characteristics of the portfolio, and state and local laws, ordinances or resolutions that restrict investments. 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 City Treasurer shall select an appropriate, readily available index to use as a market benchmark. The benchmark should be commensurate with the level of market risk of the portfolio, and should serve as a measure of risk, interest income, and fair value appreciation. Samples of readily available benchmarks include Intercity Exchange/Bank of America/Merrill Lynch 1-3 Year or 1-5 Year Treasury Indices.

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.
- A report of transactions by month.
- 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.
- In accordance with California Government Code Section 53601.5, Any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary dealer by the Federal Reserve bank.
- Selection of financial institutions and broker/dealers authorized to engage in transactions will be at the sole discretion of the City, except where the City utilizes an external investment adviser in which case the Agency may rely on the adviser for selection.

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.

The City shall require any bank or financial institution to comply with the collateralization criteria defined in California Government Code, Section 53651.

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. In the event a discrepancy is found between this policy and the

Code, the more restrictive parameters will take precedence. Percentage holding limits listed in this section apply at the time the security is purchased.

Any investment currently held at the time the policy is adopted which does not meet the new policy guidelines can be held until maturity and shall be exempt from the current policy. At the time of the investment's maturity or liquidation, such funds shall be reinvested only as provided in the current policy.

An appropriate risk level shall be maintained by primarily purchasing securities that are of high quality, liquid, and marketable. The portfolio shall be diversified by security type and institution to avoid incurring unreasonable and avoidable risks regarding specific security types or individual issuers.

- 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** or United States Government-Sponsored Enterprise (GSE) obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government sponsored enterprises. There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable. Additionally, no more than 30% of the portfolio may be invested in any single Agency/GSE issuer, and the maximum percent of agency callable securities in the portfolio will be 20%.
- 3) **Banker's Acceptances**- Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Banker's acceptances must be issued by institutions which have short-term debt obligations rated "A-1" or its equivalent or better by at least one nationally recognized statistical rating organization (NRSRO), or long-term debt obligations which are rated in a rating category of "A" or its equivalent or better by at least one NRSRO. Purchase of banker's acceptances may not exceed 180 days maturity or 40% of the value of the portfolio. Furthermore, no more than 5% of the 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 one NRSRO, either:
 - Issued by general corporations organized and operating within the United States, having assets in excess of \$500,000,000 and having a rating in the rating category of "A" or its equivalent or better rating on debt other than commercial paper as provided by at least one NRSRO, or
 - Issued by entities organized within the United States as a special purpose corporation, trust, or limited liability company. The securities must have program-wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond. The securities must be rated "A-1" or its equivalent or better by at least one NRSRO.

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 25% of the value of the portfolio. No more than 5% of the portfolio may be invested in any single issuer.

- 5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, a savings association or a federal association, a state or federal credit union, or by a federally-licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30% of the value of the portfolio. No more than 5% of the portfolio may be invested in any single issuer. A maturity limitation of five years is applicable. The amount of the NCD insured up to the FDIC limit does not require any credit ratings. Any amount above the FDIC insured limit must be issued by institutions which have short-term debt obligations rated “A-1” or its equivalent or better by at least one NRSRO; or long-term obligations rated in a rating category of “A” or its equivalent or better by at least one NRSRO.
- 6) **Repurchase Agreements** - Repurchase agreements collateralized with securities authorized under in accordance with California Government Code Section 53601(j). There are no limits on the dollar amount or percentage that the City may invest. 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 in a rating category of "A" or its equivalent better by at least one NRSRO. Purchase of medium-term notes may not exceed 30% of the value of the portfolio and no more than 5% of the value of the portfolio may be invested in notes issued by one corporation.
- 9) **Local Agency Investment Fund (LAIF)** - a State of California managed investment pool may be used up to the maximum permitted in accordance with California Government Code Section 16429.1.
- 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).
- 11) **Municipal Securities** – including obligations of the City, the State of California, and any local agency within the State of California, provided that:

- The securities are rated in a rating category of “A” or its equivalent or better by at least one nationally recognized statistical rating organization (“NRSRO”).
- No more than 5% of the portfolio may be invested in any single issuer.
- No more than 30% of the portfolio may be in Municipal Securities.
- The maximum maturity does not exceed five (5) years.

12) Municipal Securities (Registered Treasury Notes or Bonds) of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California., provided that:

- The securities are rated in a rating category of “A” or its equivalent or better by at least one nationally recognized statistical rating organization (“NRSRO”).
- No more than 5% of the portfolio may be invested in any single issuer.
- No more than 30% of the portfolio may be in Municipal Securities.
- The maximum maturity does not exceed five (5) years.

13) Asset-Backed, Mortgage-backed, Mortgage Passthrough Securities, and Collateralized Mortgage Obligations From Issuers Not Defined In Sections 1 And 2 of the Authorized Investments Section of this Policy, provided that:

- The securities are rated in a rating category of “AA” or its equivalent or better by a NRSRO.
- No more than 20% of the total portfolio may be invested in these securities.
- No more than 5% of the portfolio may be invested in any single Asset-Backed or Commercial Mortgage security issuer.
- The maximum legal final maturity does not exceed five (5) years.

14) Collateralized Bank Deposits—City’s deposits with financial institutions will be collateralized with pledged securities per California Government Code, Section 53651. There are no limits on the dollar amount or percentage that the City may invest in collateralized bank deposits.

INELIGIBLE INVESTMENTS AND INVESTMENT PRACTICES

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. Trading securities for the sole purpose of speculating on the future direction of interest rates is prohibited. Purchasing or selling securities on margin is prohibited. The use of reverse repurchase agreements, securities lending or any other form of borrowing or leverage is prohibited. The purchase of foreign currency denominated securities is prohibited.

RISK MANAGEMENT AND DIVERSIFICATION

Mitigating Credit Risk in the Portfolio: Credit risk is the risk that a security or a portfolio will lose some or all its value due to a real or perceived change in the ability of the issuer to repay its debt. The City will mitigate credit risk by adopting the following strategies:

- The diversification requirements included in the “Authorized Investments” section of this policy are designed to mitigate credit risk in the portfolio.
- No more than 5% of the total portfolio may be deposited with or invested in securities issued by any single issuer unless otherwise specified in this policy.
- The City may elect to sell a security prior to its maturity and record a capital gain or loss in order to manage the quality, liquidity or yield of the portfolio in response to market conditions or City’s risk preferences.

- If a security owned by the City is downgraded to a level below the requirements of this policy, making the security ineligible for additional purchases, the following steps will be taken:
 - Any actions taken related to the downgrade by the investment manager will be communicated to the City Treasurer in a timely manner.
 - If a decision is made to retain the security, the credit situation will be monitored and reported to the City Council as part of the Quarterly Investment Report.

Mitigating Market Risk in the Portfolio: Market risk is the risk that the portfolio value will fluctuate due to changes in the general level of interest rates. The City recognizes that, over time, longer-term portfolios have the potential to achieve higher returns. On the other hand, longer-term portfolios have higher volatility of return. The City will mitigate market risk by providing adequate liquidity for short-term cash needs, and by making longer-term investments only with funds that are not needed for current cash flow purposes.

The City further recognizes that certain types of securities, including variable rate securities, securities with principal paydowns prior to maturity, and securities with embedded options, will affect the market risk profile of the portfolio differently in different interest rate environments. The City, therefore, adopts the following strategies to control and mitigate its exposure to market risk:

- The City will maintain a minimum of six months of budgeted operating expenditures in short term investments to provide sufficient liquidity for expected disbursements.
- The maximum stated final maturity of individual securities in the portfolio will be five (5) years, except as otherwise stated in this policy.
- The duration of the portfolio will generally be approximately equal to the duration (typically, plus or minus 20%) of a Market Benchmark as described in the Performance Evaluation/Benchmark section of this policy; an index selected by the City based on the City's investment objectives, constraints and risk tolerances.

INVESTMENT POOLS/MUTUAL FUNDS

The Agency shall conduct a thorough investigation of any pool or mutual fund prior to making an investment, and on a continual basis thereafter. The Treasurer shall develop a questionnaire which will answer the following general questions:

- A description of eligible investment securities, and a written statement of investment policy and objectives.
- A description of interest calculations and how it is distributed, and how gains and losses are treated.
- A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- A schedule for receiving statements and portfolio listings.
- Are reserves, retained earnings, etc. utilized by the pool/fund?
- A fee schedule, and when and how is it assessed.
- Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

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.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Request No.	Topic	Submitted by:	A, F, or CM	Date requested or Rec'd Form	To CC Rules Subcomm:	on City Council meeting agenda this date (or other action):
2020						
16	Discussion/staff report on Beautify Milpitas, weed & graffiti abatement, and providing resources	Montano, Dominguez	A	6/30/2020		8/18/2020
15	Discussion of campaign finance reform and/or Open Government Ordinance	Phan	A	6/30/2020		
14	Consider adding state certification NEC for electrical work done in the City (safety)	Dominguez	A	6/30/2020		
13	List of city charges/costs that could be waived for small businesses	Dominguez	A	6/16/2020		6/30/2020 info memo
12	Emergency item for next agenda: extend tenant eviction protections	Dominguez	A	6/16/2020		
11	Establish a Day Worker Program	Montano	A	6/16/2020		
10	Discussion to consider changing term limits of all elected officials	Montano	A	6/16/2020		8/4/2020
9	Require implicit bias training for City Council and other officials	Dominguez	A	6/16/2020		
8	Celebrate Mexican Independence Day annually on September 16	Montano	A	6/2/2020		
7	Read "Code of Conduct" aloud prior to each City Council meeting	Montano	A	6/2/2020		
6	Form a Historical Commission	Montano	A	6/2/2020		
5	Consider satellite consular offices	Montano	A	6/2/2020		
4	Community Workforce Agreement	Nuñez	A	2/18/2020		8/4/2020
3	Responsible Construction Ordinance	Phan	A	2/4/2020		8/4/2020

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

2	(possible ban on vaping - no) Restrict smoking in multi-unit bldgs - yes	Montano	A	1/7/2020		Ordinance pending. Discussed 3/03/2020 Affirmed 6/02/2020
2019						
1	Establish Railroad quiet zone	Tran, Montano	F	9/17/2019	9/20/2019	

2020	COMPLETED ITEMS					
	Discussion on possible tax measures	Tran, Phan	A	4/21/2020		5/15/2020
	Support for Laura's Law	Phan	A	2/4/2020		5/19/2020
	Resolution in support of elimination of discrimination v. women	Dominguez	A	1/7/2020		5/19/2020
	Request for Dumpster Days	Tran	A	1/7/2020		5/12/2020 in FY 2020-21 budget
	Adopt Resolution similar to County's re: xenophobia, discrimination	Dominguez	A	4/21/2020		5/5/2020
	Support community distribution of masks	Dominguez	A	4/7/2020		4/21/2020
	Proclamation and support for face coverings	Montano	A	4/7/2020		4/21/2020. CC directed City Manager to issue regs
	Establish Milpitas coronavirus testing site	Phan	A	4/7/2020		done
	Consider Community Museum and Park on Main St.	Nuñez, Phan	F	8/20/2019	8/23/2019	3/24 and 6/02/2020. Pending
	Discuss having 4th of July parade	Nuñez	A	2/18/2020		not under discussion
	Parade for MHS Trojans Football	Tran, City Manager	A	1/21/2020		1/28/2020
	Report on speed cameras like Fremont (radar displays) - no enforcement	Phan	A	1/7/2020		1/28/2020, 3/24/2020, 4/14/2020
	Street/traffic calming update	Nuñez	A	1/7/2020		3/3/2020
	Report on parking in The Pines	Nuñez	A	1/7/2020		2/18/2020
	Info. on new SB 50 (housing, transit bill)	Phan	A	1/7/2020		by memo to City Council

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

2019	COMPLETED ITEMS					
	Have "Dumpster Days"	Tran, Montano	F	9/17/2019	9/20/2019	5/12/2020 in FY 2020-21 budget
	Rename portion of Dixon Landing Rd. as Barack Obama Blvd	Nuñez, Phan	F	8/20/2019	8/23/2019	deferred indefinitely
	Maintain Dagupan, P.I. as a Sister City	Tran, Montano	F	9/17/2019	9/20/2019	12/17/2019
	Add Green Bike Lanes	Tran, Montano	F	9/17/2019	9/20/2019	done - in CIP
	Rename Augustine Park to include "Sunnyhills"	Tran, Montano	F	9/17/2019	9/20/2019	2/4/2020
	Community Theater, perhaps with MUSD	Nuñez, Phan	F	8/20/2019	8/23/2019	5/14/2020 @CIP Study Session
	policy for Proclamations and Commendations	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020
	policy for Social Media	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020

A: @Announcements

F: on a Form

CM: to/from City Manager

Memorandum

To: Mayor Tran and City Council **File No.:** 38077.00100
From: City Attorney's Office
Meeting August 4, 2020
Date:
Re: Project Labor Agreements

SUMMARY

A project labor agreement ("PLA") requires that all contractors performing work typically within the jurisdiction of trade unions, whether they are normally signatories to a collective bargaining agreement or not, submit to union representation, at least for the duration of the PLA projects. This memorandum provides a summary of the legal basis for the City to enter into a PLA, and generally summarizes how PLAs are typically negotiated.

ANALYSIS

As a general matter, a PLA is an agreement entered into prior to the beginning of a project, or group of construction projects, that (1) necessitates worker representation by labor unions determined per trade on the covered projects and (2) sets forth basic terms and conditions of employment by relevant contractors. PLAs typically require worker membership in certain trade unions, at least for the time relevant to the project. Therefore, by requiring adherence to various union collective bargaining agreements, PLAs also specify wages, fringe benefits, and overtime pay, as well as working conditions and work rules for the workers employed on the relevant construction project(s). A PLA may also include no-strike and no lock out provisions and procedures for resolving disputes. These agreements also sometimes include local hiring goals and targets for hiring disadvantaged demographic groups and those traditionally underrepresented in the construction industry.

Labor organizations typically propose PLAs as a way to standardize the work rules applicable to labor relations between contractors and ensure worker rights. Opponents argue that adoption of a PLA stifles competition by discouraging non-union contractors and increases construction costs. Another critique of PLA usage is that subsequently hired contractors typically have no input on PLA requirements, as they are negotiated between the public agency and the labor unions, a process that largely excludes the actual contractors that will bid and ultimately perform the work on the projects at issue.

I. LEGAL AUTHORITY FOR PROJECT LABOR AGREEMENTS

California Public Contract Code section 2500, *et seq.*, governs a public entity's use of PLAs. A public entity may only utilize such an agreement if it includes all of the taxpayer

protection provisions set forth in Public Contract Code section 2500(a) that are further detailed in bullet point below. A public agency enters into a PLA with local labor unions before seeking bids from contractors. While both union and non-union contractors may bid on projects governed by a PLA, all workers covered by the PLA are dispatched through local union hiring halls and subject to the various requirements of the collective bargaining agreements associated with those various trade unions.

Pursuant to Public Contract Code section 2500, the PLA must include, at a minimum, all of the following:

- Prohibition on discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.
- Permission for all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements (i.e., whether they are union or non-union).
- Agreed-upon protocol concerning drug testing for workers who will be employed on the project.
- Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project
- Requirement that disputes arising from the PLA shall be resolved by a neutral arbitrator.

A PLA may cover one project, a particular classification of projects or all projects in the City's discretion. The City Council must adopt the PLA by majority vote and must also act by majority vote in each instance it wishes to allocate funding for any project covered by the PLA. (Pub. Contract Code, § 2501.)

The statutory authority for the City to implement a PLA does not provide guidance regarding the process by which a PLA is formed.

II. PROJECT LABOR AGREEMENT NEGOTIATIONS

The various national trade unions have long-established master labor agreements that contain various worker-benefit requirements, including wage requirements, retirement contributions, among others. PLAs are formed for the primary purpose of ensuring that the various contractors on the work that is covered by the national trade unions will submit to the terms of the master labor agreement relevant to the applicable trade, as least on the PLA projects for their duration. The PLA will also typically provide a template letter agreement, for use by the

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

various contractors, that affirms that contractor's agreement to be bound by the applicable master labor agreement and trust agreements. Therefore, as a preliminary matter, the PLA will (1) set forth the labor classifications covered by applicable national trade unions (the "Covered Work"); (2) set forth the applicable wages scales and fringe benefit rates for the Covered Work; and (3) require that all contractors and subcontractors performing the Covered Work either become signatories to the applicable master labor agreements or agree to be bound by the relevant master labor agreement for the Covered Work on the PLA projects.

The public agency may, of course, seek to modify the terms set forth in the typical PLA and add language to ensure agency rights in relation to the PLA projects and also to limit potential inadvertent financial exposure on the part of the affected contractors. One area of intense negotiation is the scope of "Covered Work" and limitations on that coverage. For instance, the PLA should be clear on whether delivery or support workers are covered and how very broad union jurisdictional clauses should be interpreted. Another area of negotiation is whether contractors should be allowed preference for historic crew employees over union workers from hiring halls. Another area is a provision that there will be no contractor dual liability for good faith union work.¹ In other words, since the jurisdiction clauses of the various trade unions can sometimes be broadly worded, many agencies want to ensure that contractors are not unduly burdened by required trust fund contributions to *more than one union* for a single worker's Covered Work. Finally, public agencies often negotiate express provisions ensuring that work continue efficiently and without slowdown, despite any misunderstanding, dispute, or grievance that may arise during the course of the PLA projects. Particular attention should be paid to grievance, work stoppage and lockout provisions. Finally, best practice is also to expressly set forth that nothing within the PLA shall require any contractor to remain a member of the union or having continuing obligation related to the payment of funds, benefits, or contingent liability following the completion of the PLA projects.

CONCLUSION

In summary, implementation of a PLA is not as simple as just placing the requirement into the contract specifications. The City would need to actually negotiate the PLA. Because PLAs include labor compliance related requirements, the City will also need to ensure it has sufficient administrative resources to oversee labor compliance on the project(s). This ultimately results in additional incurred costs for the City, either through its own administrative time or by retaining a third party labor compliance consultant. It is our understanding that the labor compliance oversight task is rather significant.

Ultimately, the City's consideration as to whether it should adopt a PLA involves a variety of policy considerations. The City should take into account the local construction climate

¹ It should be noted that several unions have historic disputes over which union should properly represent employees performing certain Covered Work. For instance, the Laborers and International Brotherhood of Electrical Workers ("IBEW") historically both claim the trenching work associated with the laying of conduit.



(i.e., how many of the City's public works contracts are presently awarded to non-union contractors), impacts on cost (i.e., the City of Sacramento hired a consultant to draft a report regarding the anticipated economic impacts of a PLA), labor relations (i.e., are unions and contractors in the area actually in favor of a PLA or would they rather the City just engage in prequalification for its projects – one union's desire for the City to implement a PLA may not be representative of the majority of unions or contractors in the area), the administrative burden (i.e., monitoring compliance with a PLA is a substantial undertaking for most agencies often requiring the hiring of third party consultants), and other benefits and drawbacks to entering into such an agreement.



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 20



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



Mary Lavelle

From: Neils Ash <nash@oe3.org>
Sent: Monday, August 03, 2020 2:16 PM
To: Mary Lavelle
Cc: Bob Nuñez; David Bini
Subject: Community Workforce Agreement

City Clerk's Office

AUG - 3 2020

RECEIVED

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mayor and Councilmembers of the City of Milpitas,

I emailing today in support of ITEM # 20 on Tuesday's agenda, regarding a Community Workforce Agreement. A CWA will ensure that the tax payers will not pay twice and suck the funds out of the hard working American's hands in this community. The Prevailing Wage is meant to ensure industry standards such as career training, health care, and retirement security. Unfortunately, even though prevailing wage policy mandates that employers provide the money for these essential benefits it does not ensure that employers actually provide the benefits to the workers. Instead many employers provide them as a taxable wage, which cheats the worker out of the essential services and increases their loss to payroll taxes. When this happens, we the public, pay twice for health care and other services once through the prevailing wage and a second time when some of these families who don't receive these benefits end up at the County receiving treatment and services as uninsured. In today's crazy we all know how important health coverage is and other essential services provided by the City/State. I help represent multiple Contractors who reside in the City of Milpitas and many families that are relying on keeping their jobs with these contractors who work and live in your City. We must support and pass the Community Workforce Agreement ITEM# 20 as it will befit the City with a superior finished product. CWA projects will be putting our military brothers and sisters to work. Community Workforce Agreements have been used to formalize participation in the national, nonprofit, "Helmets to Hardhats" program which will put our Community Veterans to work. Again I am emailing today to urge the support for ITEM # 20 on Tuesday agenda

NEILS ASH

Business Representative
Operating Engineers Local Union No. 3
325 Digital Dr. Morgan Hill CA
P: 408-465-8260 | C: 408-722-5589





CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 20



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION





SANTA CLARA & SAN BENITO COUNTIES
Building Trades
The outstanding workforce

Santa Clara & San Benito Counties Building & Construction Trades Council

2102 Almaden Road Suite 101 San Jose, CA 95125-2190 · Phone 408.265.7643 · info@scbtc.org

City Clerk's Office

AUG - 3 2020

RECEIVED

August 3, 2020

David Bini
Executive Director
Robert Baldini
President

Mayor and Councilmembers
City of Milpitas

Re: Item #20 Discuss and Provide Direction to Staff...Community Workforce Agreement

Dear Mayor Tran and Councilmembers:

On behalf of the Santa Clara and San Benito Building and Construction Trades Council, and the 35,000 working families we represent, I am writing to support the concept of a Community Workforce Agreement (CWA) for the city's Capital Improvement Program. We recognize that a CWA will make large strides toward the City Council's goal of providing the most value and benefit from Public Works construction for the residents of Milpitas.

At the fundamental level, a Community Workforce Agreement is a set of contracting and employment standards with built-in compliance and enforcement mechanisms, that is agreed to by the public or private entity and the Building Trades Council, and which also includes pathways for members of the community into construction careers.

A Community Workforce Agreement will protect Milpitas taxpayers by eliminating costly delays due to labor conflicts or shortages of skilled workers. By creating the working environment that fosters on-time and on-budget construction, a CWA will ensure public money is spent wisely on construction projects.

An additional benefit of CWAs is the direct pipeline created through a Targeted Hiring program, for community members to obtain placement in Building Trades Apprenticeships. These highly-prized education slots provide family-supporting careers with health-care and retirement benefits, and leave graduates with marketable skills and zero school debt.

The adoption of a Community Workforce Agreement will be a strong and positive action, ensuring that Public Works construction in Milpitas provides multiple benefits for the residents of Milpitas

Sincerely,

David Bini

David Bini
Executive Director

Boilermakers 549
Brick & Tile 3
Carpenters 405
Carpenters 2236
Carpet & Linoleum 12
Cement Masons 400
Electricians 332
Electricians 234
Elevator Constructors 8
Glaziers 1621
Heat & Frost Insulators 16
Iron Workers 377
Laborers 270
Laborers 67
Lathers 9144
Millwrights 102
Operating Engineers 3
Painters District Council 16
Painters & Tapers 507
Plasterers 300
Plumbers & Steamfitters 393
Roofers 95
Sheet Metal Workers 104
Sign, Display 510
Sprinkler Fitters 483
Teamsters 853
UA Local 355

Affiliated with:

State Building and
Construction Trades
Council of California
California Labor Federation,
AFL-CIO
California Labor C.O.P.E.
South Bay AFL-CIO
Labor Council





CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 20



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



Mary Lavelle

From: tim fuentes <timf_408@yahoo.com>
Sent: Tuesday, August 04, 2020 2:44 PM
To: Mary Lavelle
Cc: Bob Nuñez; David@scbtc.org
Subject: [BULK] Community workforce agreement

Importance: Low

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello, My name is Tim Fuentes and I am a resident of Milpitas. I am a journeyman with the Sprinkler Fitters Local 483. Local 483 has been working in Milpitas for over 75 years and has been a huge supporters of working families with good jobs and benefits. I have been in Local 483 for 6 years. I completed my 5 year apprenticeship in 2018 and have been afforded this great career through hard work and dedication.

I am writing in support of the Community Workforce Agreement (CWA) because these agreements will help the next generation of apprentices coming through the program now. I hope any other resident in Milpitas that can follow the same path I have gone down and the CWA is the power behind that hope. If the CWA is past in Milpitas it will help create these pathways for many more.

Under a CWA workers are treated with respect and are provided with benefits that are much need for me to remain a resident of Milpitas. Please support the CWA for all future work our city does and vote yes on this item.

Thank You,
Tim Fuentes, Resident Milpitas
Local 483 Member

Sent from Yahoo Mail for iPhone

Mary Lavelle

From: Nicole Goehring <nicole@abcnorcal.org>
Sent: Tuesday, August 04, 2020 4:14 PM
To: Mary Lavelle; Pam Caronongan
Subject: Submit Public Comment for Agenda Item 20 - Community Workforce Agreement

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Mary,

I would like to submit the following comments for this evening's City Council meeting. I was unable to do so under the public comment link listed on tonight's agenda. Please confirm receipt and that they will be read. Thank you.

Mayor Tran and Milpitas City Council:

I am writing on behalf of the Associated Builders and Contractors Northern California Chapter (ABC NorCal) and its nearly 500 essential construction and construction related firms representing 21,000 merit shop construction workers and over 800 apprentices who perform exceptional quality work building their and your communities every day. With California cities estimated to have a \$7B budget shortfall over the next few years and the unprecedented challenges you will face responding to the coronavirus outbreak in your community and doing what is necessary to provide work opportunities for your residents, now is not the right time to be prioritizing a community workforce agreement.

Every survey that has ever been conducted about Community Workforce Agreements (CWAs) show they decrease competition, increase costs and are a disincentive to bid. Here is one example of such increased costs: Alameda County, which has a PLA policy in place on all projects over \$1 million dollars, needed to build a replacement fire station in Cherryland. The project, estimated at \$5,900,000 went out to bid on February 10, 2015 and received four bids, all significantly above the County's cost estimate with the lowest bid coming in at \$8,500,000. That is a \$2.6 million dollar delta.

CWTAs/PLAs have been consistently found to create barriers for local, minority and women-owned construction employers and their employees from participating in building their community because they contain provisions that do not allow for the complete utilization of their skilled and trained workforces and exclude the men, women, and veterans who have graduated from state approved, unilateral apprenticeship training programs in pursuit of a construction career that provides stability for them, their family and their community.

Let's not push construction professionals away from well-paying career opportunities within their community. Let's continue to keep the work open for those essential workers who want to work, support their families and their community and keep opportunities open for those who have may have lost their jobs due to COVID and wish to enter the trades.

Please remove the community workforce agreement from your list of council priorities.

Thank you.

Nicole Goehring

V.P. Government and Community Affairs

ABC NorCal

4577 Las Positas Road, Unit C, Livermore, CA 94551

nicole@abcnorcal.org | (c) 209.482.1697 | (p) 925.960.8513 | (f) 925.474.1310

abcnorcal.org

Founded on the merit shop philosophy, ABC helps members develop people, win work and deliver that work safely, ethically, profitably and for the betterment of the communities in which ABC and its members work

#Lovewhatyoudo #Lovewhatyoubuild

Mary Lavelle

From: Steve Belong <steve.belong@dc16sj.org>
Sent: Tuesday, August 04, 2020 4:40 PM
To: Mary Lavelle
Cc: Bob Nuñez; 'David Bini'
Subject: Milpitas CWA

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Honorable elected officials,

As a Milpitas resident and registered voter I would like the Council to highly consider implementing a project labor agreement for the Milpitas Capital Improvement Program. I work in the construction industry where I represent workers who work for several Milpitas based companies. I strongly believe by establishing a PLA in the City of Milpitas you are showing that you stand behind those workers and companies choosing to call Milpitas home. It is paramount that construction work within our community be built with area standard wages and local hire to help strengthen our local economy and commerce. Also by implementing a local hire ordinance you are giving the opportunity for our local high school graduates, who choose not to go to college, to be able to join an apprenticeship program which can lead to a life-long career. Milpitan tax dollars would be wisely spent when city funded construction projects are done by the skilled and trained craftworkers and companies from within our community. Please keep Milpitas residents and the companies that choose to call Milpitas home busy by approving a project labor agreement.

Best regards,
Steve Belong

August 4, 2020

Dear Mayor and City Councilmembers of the City of Milpitas,

I am writing today in support of Item #20 on Tuesday's agenda, regarding a Community Workforce Agreement. I represent several Milpitas residents that are in the Carpenters Union.

A Community Workforce Agreement will connect the TOP program graduates with apprenticeship programs and contractors working on Milpitas projects.

At no cost to the City of Milpitas or the students, this "Targeted Hire" pathway provides family-supporting, lifetime, careers to the people of our community.

Please support the Community Workforce Agreement. This is truly a Win-Win for our community.

I believe that together, we can build a better community that will provide for all of its citizens and create opportunity for all to grow.

Thank you,

Chad Dutton

Marketing Representative

Carpenters Local 405

Mary Lavelle

From: Joseph Lubas <lubas_j@yahoo.com>
Sent: Tuesday, August 04, 2020 10:49 AM
To: Mary Lavelle; Pam Caronongan
Cc: Rich Tran; Bob Nuñez; Karina Dominguez; Carmen Montano; Anthony Phan
Subject: Reject the Community Workforce Agreement (Item 20 on Tonight's Agenda)
Attachments: Letter to Mayor and Milpitas City Council.docx

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Good Morning Mary and Pam,

Please submit these comments as public comments for Item 20 tonight.

Good Evening Mayor Tran and Members of the Milpitas City Council,

My name is Joe Lubas. I am a Bay Area resident and taxpayer.

I am very disappointed to learn that the City of Milpitas is considering a Community Workforce and Training Agreement that will naturally drive up the cost of public works projects for taxpayers. Such agreements have indeed proven disastrous.

Locally, at the Fremont Union High School District, a district with a similar agreement, the Lynbrook High School Guidance and Student Services Project, valued at \$8.5M, had a Third Amendment which increased its Guaranteed Maximum Price to \$17,965,485. Furthermore, at the Ohlone Community College District, another district with a similar agreement, had its North Parking Project, valued at \$3.8M, had its contract go out for \$5M to Ghilotti Construction. This is \$1.2M and 32% overestimate. In the same District, the Academic Core Buildings, originally contracted to Balfour Beatty Construction, LLC for \$126,078,727, has experienced a massive 34 change orders that have increased its contract to \$134,519,239.

Finally, in Alameda County, which also has a similar agreement in place on projects over \$1,000,000, has experienced problems with their replacement fire station in Cherryland. Valued at \$5.9 million dollars, the project received four bids, the lowest of which was \$8,500,000. Trying to reduce the lowest bid to \$8,115,000, the county used three deductive alternates. Nevertheless, the project still was millions of dollars overestimate and funds from other sources (including the Fire Department) were used.

On a larger scale, with the COVID pandemic still raging, a [Los Angeles Times article](#) revealed that the 482 cities in California are set to lose \$6.7 billion in the next two years due to the pandemic. Why, with this revelation, must we further strain the City of Milpitas with additional financial burdens?

These facts, both local and statewide show that Community Workforce Agreements will indeed put a strain on the residents and taxpayers of Milpitas. I urge this body to reject this horribly misguided proposal.

Thank You.

Joe Lubas

Policy Analyst

ABC NorCal

4577 Las Positas Road, Unit C, Livermore, CA 94551

joe@abcnorcal.org | (p) 510.210.2664

abcnorcal.org

Founded on the merit shop philosophy, ABC helps members develop people, win work and deliver that work safely, ethically, profitably and for the betterment of the communities in which ABC and its members work.

#Lovewhatyoudo /#Lovewhatyoubuild

Good Evening Mayor Tran and Members of the Milpitas City Council,

My name is Joe Lubas. I am a Bay Area resident and taxpayer.

I am very disappointed to learn that the City of Milpitas is considering a Community Workforce and Training Agreement that will naturally drive up the cost of public works projects for taxpayers. Such agreements have indeed proven disastrous.

Locally, at the Fremont Union High School District, a district with a similar agreement, the Lynbrook High School Guidance and Student Services Project, valued at \$8.5M, had a Third Amendment which increased its Guaranteed Maximum Price to \$17,965,485. Furthermore, at the Ohlone Community College District, another district with a similar agreement, had its North Parking Project, valued at \$3.8M, had its contract go out for \$5M to Ghilotti Construction. This is \$1.2M and 32% overestimate. In the same District, the Academic Core Buildings, originally contracted to Balfour Beatty Construction, LLC for \$126,078,727, has experienced a massive 34 change orders that have increased its contract to \$134,519,239.

Finally, in Alameda County, which also has a similar agreement in place on projects over \$1,000,000, has experienced problems with their replacement fire station in Cherryland. Valued at \$5.9 million dollars, the project received four bids, the lowest of which was \$8,500,000. Trying to reduce the lowest bid to \$8,115,000, the county used three deductive alternates. Nevertheless, the project still was millions of dollars overestimate and funds from other sources (including the Fire Department) were used.

On a larger scale, with the COVID pandemic still raging, a Los Angeles Times article¹ revealed that the 482 cities in California are set to lose \$6.7 billion in the next two years due to the pandemic. Why, with this revelation, must we further strain the City of Milpitas with additional financial burdens?

These facts, both local and statewide show that Community Workforce Agreements will indeed put a strain on the residents and taxpayers of Milpitas. I urge this body to reject this horribly misguided proposal.

Thank You.

¹ "California cities project 2-year losses of \$6.7 billion because of coronavirus"
<https://www.latimes.com/world-nation/story/2020-04-24/california-cities-project-2-year-losses-of-6-7-billion>

Mary Lavelle

From: Brett Davis <brett.davis@dc16sj.org>
Sent: Tuesday, August 04, 2020 10:07 AM
To: Mary Lavelle
Cc: Bob Nuñez; David Bini
Subject: Support Item #20

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mayor and Councilmembers of the City of Milpitas,

I write today in support of ITEM # 20 on Tuesday's agenda, regarding a Community Workforce Agreement. My name is Brett Davis with District Council 16 and I represent many Milpitas residents in our Union. I have 19 years in the Glaziers and Glassworkers Union. I live in Santa Clara County for 35 years. I entered the craft through an apprenticeship program and learned the trade for 5 years before I became a Journeyman. I Support a Community workforce agreement because Community workforce agreements can establish utilization rates for the hours to be performed by workers who are graduates from State and or County approved apprenticeship or pre – apprentice programs. They efficiently implement the purpose of the prevailing wage law. The Prevailing Wage is meant to ensure industry standards such as career training, health care, and retirement security. Unfortunately, even though prevailing wage policy mandates that employers provide the money for these essential benefits it does not mandate that employers actually provide the benefits. Instead many employers provide them as a taxable wage, which cheats the worker out of the essential services and increases their loss to payroll taxes. When this happens, we, the public, pay twice for health care and other services; once through the prevailing wage and a second time when some of these families who don't receive these benefits end up at the County receiving treatment and services as uninsured. Community Workforce Agreements provide that all workers will be treated equally and fairly regardless of union membership or employer. Please support the creation of a Community Workforce agreement that expands opportunity for those who have been underrepresented in the construction field.

Brett Davis
District Council 16 Business Representative
South Bay Regional Director
2149 Oakland Rd
San Jose, CA 95131
(408) 824-1280 ph
(408) 955-0150 fax
(408) 921-1439 cell



Architectural Glass
& Metal Technician
CERTIFIED TECHNICIAN
Cert # 7202072017

Mary Lavelle

From: Steve Espinosa <sespinosa@bac3-ca.org>
Sent: Tuesday, August 04, 2020 10:15 AM
To: Mary Lavelle
Cc: Bob Nuñez; David Bini
Subject: City- wide PLA/CWA for Milpitas

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Mayor and Councilmembers of the city of Milpitas,

I write to you today in support of ITEM # 20 on Tuesday's agenda, regarding a Community Workforce Agreement.

My name is Steve Espinosa and I represent the Bricklayers and Allied Craftworkers Union Local #3 and it's members, several whom live in the City of Milpitas. I along with all of our members I support a Community Workforce Agreement because: It will Provide a comprehensive Targeted Hire Program for community residents through a Trades Orientation Program, known as TOP.

TOP provides a pathway into construction apprenticeships for disadvantaged and under- represented community members.

A community Workforce Agreement will connect the TOP program graduates with apprentice programs and contractors working on Milpitas projects. At no cost to the City of Milpitas or the students, this "Targeted Hire" pathway provides family- supporting, lifetime, careers to the people of this community.

Please support the Community Workforce Agreement. Definitely a Win-Win for the City and Community of Milpitas (Little Corn Fields)

Thank You and stay safe,

Steve Espinosa
Field Representative
BAC # 3, CA
(510) 326-7099
sespinosa@bac3-ca.org



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 21



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



Mary Lavelle

From: Ed Nichols <pipefitter_8@yahoo.com>
Sent: Monday, August 03, 2020 1:27 PM
To: Mary Lavelle
Subject: Responsible Construction Ordinance

City Clerk's Office

AUG - 3 2020

RECEIVED

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Milpitas Mayor and City Council:

Thank you for your previous support of the Responsible Construction Ordinance. Now more than ever, construction workers need protections to ensure they are safe on the job and get paid the wages they earn. By adopting these policies, you can help ensure that construction workers in Milpitas are not exploited so the city can focus on responsible development. Please direct staff to draft an ordinance that can be adopted soon.

Sincerely,

Ed Nichols
2126 Gross St.
Milpitas, CA.95035



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

8/04/2020

Agenda Item No. 21



ATTACHMENT RELATED TO AGENDA ITEM RECEIVED AFTER AGENDA PACKET DISTRIBUTION



City of Milpitas Responsible Construction Ordinance

1. Definitions

For purposes of this ordinance:

- A. "Covered party" means a developer, building permit holder, or building permit applicant.
- B. "Developer" means an entity or person who owns or controls a major construction project. Developer does not include an owner undertaking work on the owner's residence.
- C. "Building permit holder" means a person or entity that has received a permit to undertake a major construction project. A building permit holder does not include an owner performing work on the owner's residence.
- D. "Building permit applicant" means a person or entity that has applied for a permit to undertake a major construction project. A building permit applicant does not include an owner performing work on the owner's residence.
- E. "Major construction project" means a project that will involve construction, alteration, and/or demolition work in excess of \$500,000 within the city.
- F. "Final judgment or citation" means either of the following:
 - i. a judgment, decision, determination, order, or citation that was issued by a court of law, an investigatory government agency authorized by law to enforce an applicable law, an arbitrator, or an arbitration panel and for which all appeals have been exhausted or the time period to appeal has expired.
 - ii. an admission of guilt or finding of guilt in a criminal proceeding.
- G. "Unsatisfied final judgment or citation" means a final judgment or citation that requires the payment of money, and that has not been fully satisfied, except that an unsatisfied judgment or citation shall not disqualify a contractor or subcontractor if its enforcement against the contractor or subcontractor is stayed by court order or operation of law.

2. Bidding and Contracting Requirements

A. A covered party shall require, in all solicitations or invitations for bids to perform work on a major construction project, and prior to awarding any contract to perform work on a major construction project, that every contractor and subcontractor performing work on the project in excess of \$50,000 must complete and return to the covered party the disclosure form required by this ordinance. The completed form shall be verified by a representative of the contractor or subcontractor under penalty of perjury. A covered party shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work, if the required disclosure form has not been submitted, if the disclosure form is materially false or incomplete, or if the disclosure form reports that the contractor or subcontractor has an unsatisfied final judgment or citation. Nothing in this ordinance shall preclude a covered party from disqualifying the contractor or subcontractor for additional reasons.

B. A developer or building permit holder subject to this ordinance shall file a copy of the completed disclosure forms required by this ordinance with the city prior to the contractor or subcontractor performing work on the project. The completed disclosure forms for a project shall be available from the city as public records.

C. A contractor or subcontractor performing work for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

D. Upon notification from the city to a covered party that a contractor or subcontractor performing work for which a disclosure form is required has not completed a disclosure form, or has submitted a disclosure form that is materially false or incomplete, or has submitted a disclosure form that reports an unsatisfied final judgment or citation, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

3. Access Requirements

A. A covered party shall provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

B. A covered party shall require its contractors and subcontractors to provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

C. A contractor or subcontractor performing work on a project subject to this ordinance shall provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

D. The city may contract with a non-profit organization to conduct investigations on behalf of the city for purposes of this ordinance and such investigators shall be provided with the jobsite access and right to inspect payroll records and interview workers that are provided this ordinance.

E. Upon notification from the city to a covered party that a contractor or subcontractor refuses to provide the city with the jobsite access and right to inspect payroll records and interview workers that are required by this ordinance, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

4. Prohibition on Retaliation

No covered party, contractor or subcontractor shall discriminate or retaliate against any person or entity for cooperating with an investigation under this ordinance or for making a complaint concerning an alleged violation of this ordinance.

5. Guarantee Against Wage Theft

A. A covered party shall be jointly responsible for satisfying any unpaid final judgment or citation issued against a contractor or subcontractor on its project to the extent it awards wages, benefits, penalties, interest, and attorneys fees to a worker on account of the worker's performance of work on the project.

B. Upon notice from the city of an unpaid final judgment or citation subject to subdivision A, a covered party shall provide the city within 30 days with proof that the judgment or citation, or relevant portion thereof, has been satisfied. If the covered party fails to provide such proof, the city may, in addition to pursuing any other remedies, revoke any building permits or business license issued to the covered party.

6. Enforcement

A. A covered party, contractor, or subcontractor shall be subject to a civil fine payable to the city of up to \$1,000 for each violation of this ordinance.

B. Any person injured by a violation of this ordinance may bring a civil action against a covered party, contractor, or subcontractor for damages in any court of competent jurisdiction.

C. Any person who contends that a contractor or subcontractor is performing work for which a disclosure form is required by this ordinance and that no such disclosure form was filed with the city may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

D. Any person who contends that a contractor or subcontractor performing work for which a disclosure form is required by this ordinance has provided a disclosure form that is materially false or incomplete may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

7. Disclosure form.

The disclosure form required by this ordinance shall be the form contained in Appendix A to this ordinance and shall be completed under penalty of perjury.

Appendix A

City Responsible Construction Ordinance Disclosure Form

To be completed by contractor or subcontractor. A separate form must be completed for each project.

1. Name of Contractor or Subcontractor:
2. Address:
3. Responsible managing officer:
4. State Contractor's License Number:
5. Project name:
6. Project location:
7. Project owner or developer:
8. Party who retained contractor/subcontractor to perform work on the project:
9. Approximate date work by contractor/subcontractor is scheduled to commence on project:
10. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for failing to pay wages or benefits to an employee or for violating any wage and hour provisions of the California Labor Code or the Fair Labor Standards Act? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
11. During the five years prior to completion of this form, has contractor/subcontractor been subject to any citations or penalties imposed by the U.S. Department of Labor, California Department of Industrial Relations, California Labor Commissioner or California Division of Occupational Safety and Health? If so, list all such citations and penalty assessments and attach copies to this form. Do not list or attach citations or penalty assessments that have been overturned.
12. During the five years prior to completion of this form, has contractor/subcontractor been subject to any cause findings by the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission for the laws enforced by those agencies? If so, list all

such findings and attach copies to this form. Do not list cause findings that have been overturned.

13. During the five years prior to completion of this form, has contractor/subcontractor been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance? If so, list and attach copies of all such determinations. Do not list or attach determinations that have been overturned.

14. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the Labor Commission, Department of Labor, the Department of Fair Employment and Housing, or the Equal Employment Opportunity Commission? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

15. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for failing to pay any payroll taxes? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

16. During the five years prior to completion of this form, has contractor/subcontractor been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

17. During the five years prior to completion of this form, has contractor/subcontractor been found by the Contractors State Licence Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work? If so, list all such citations and orders. Do not list citations or administrative awards that have been overturned.

18. Have any judgments, decisions, determinations, orders, or citations been issued against the contractor/subcontractor by a court of law, an investigatory government agency authorized by law to enforce an applicable law, an arbitrator, or an arbitration panel, that 1) require the payment of money by the contractor/subcontractor, *and* 2) have not been fully satisfied, *and* 3) are no longer subject to appeal? If so, list and attach copies of all such unsatisfied judgments, decisions, determinations, orders, or citations. Has enforcement of the unsatisfied judgment, decision, determination, order, or citation against the contractor/subcontractor been stayed by court order or operation of law? If so, attach proof of the stay.

Mary Lavelle

From: corey quevedo <coreyq53@outlook.com>
Sent: Tuesday, August 04, 2020 2:42 PM
To: Mary Lavelle; Anthony Phan
Subject: Support for agenda item #21

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Milpitas Mayor and City Council:

Thank you for your previous support of the Responsible Construction Ordinance. Now more than ever, construction workers need protections to ensure they are safe on the job and get paid the wages they earn. By adopting these policies, you can help ensure that construction workers in Milpitas are not exploited so the city can focus on responsible development. Please direct staff to draft an ordinance that can be adopted soon.

Sincerely,
Corey Quevedo
Plumbers UA Local Union 393
Sent from my iPhone

Mary Lavelle

From: Scott Reese <scott@local393.org>
Sent: Tuesday, August 04, 2020 3:25 PM
To: Mary Lavelle
Cc: Anthony Phan
Subject: Support for Agenda Item #21

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Milpitas Mayor and City Council,

Thank you for your previous support of the Responsible Construction Ordinance. Now more than ever, construction workers need protections to ensure they are safe on the job and get paid the wages they earn. By adopting these policies, you can help ensure that construction workers in Milpitas are not exploited so the city can focus on responsible development. Please direct staff to draft an ordinance that can be adopted soon.
Thank you for your time,

Scott Reese
Business Representative • UA Local Union 393
Plumbers • Steamfitters • Pipefitters &
HVACR Service Technicians
6150 Cottle Road • San Jose, CA • 95123
(408) 225-3030 • x21
Scott@local393.org • www.ualocal393.org



116

years and growing stronger
(Chartered in January 1904)

Disclaimer: The information contained in the communication and/or attachment is confidential, proprietary, and intended only for the use of the member of the group listed as the recipient of this message. If you are not the intended recipient, or the employee or agent, responsible for delivering this message to the intended recipient, therefore you are notified that any disclosure, dissemination, distribution copying of the communication or unauthorized use is strictly prohibited and is subject to prosecution to the fullest extent of the law. If you are not the intended recipient, please proceed to delete this message and DO NOT ACT UPON, FORWARD, COPY, AND/OR OTHERWISE DISSEMINATE IT OR ITS CONTENTS.

Mary Lavelle

From: Dominic Torreano <DominicT@smw104.org>
Sent: Tuesday, August 04, 2020 5:15 PM
To: Mary Lavelle
Cc: Anthony Phan
Subject: Responsible Construction Ordinance Agenda 21

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Dear Milpitas Mayor and City Council:

Thank you for your previous support of the Responsible Construction Ordinance. Now more than ever, construction workers need protections to ensure they are safe on the job and get paid the wages they earn. By adopting these policies, you can help ensure that construction workers in Milpitas are not exploited so the city can focus on responsible development. Please direct staff to draft an ordinance that can be adopted soon.

Sincerely,

Dominic Torreano
Business Representative, District 1
SMART, SMW Local Union No. 104
South Bay Office
2350 Lundy Place
San Jose, CA 95131
Phone (408) 263-9705
Fax (408) 904-5490
SMW104.ORG



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

REGULAR MEETING OF THE MILPITAS CITY COUNCIL

PREVIEW LIST OF AGENDA ITEMS

FOR TUESDAY, AUGUST 18, 2020

PRESENTATION

Proclaim Women's Equality Day

CONSENT CALENDAR

- 1) Receive City Council calendars for August and September 2020 (Mary Lavelle)
- 2) Approve City Council meeting minutes of August 4, 2020 (Mary Lavelle)
- 3) Adopt a Resolution granting acceptance of McCarthy/Sandisk Traffic Signal, Project No. 4292, authorize City Engineer to file a Notice of Completion, and issue Notice of Final Acceptance after 1 year (Steve Chan)
- 4) Approve Side Letter with Milpitas Police Officers Association (Francine Hunt)
- 5) Accept new grant funding awarded for housing (Sharon Goei)

COMMUNITY DEVELOPMENT

- 6) Report from Planning Director on policy for Vehicle Miles Traveled (VMT) (Ned Thomas)

REPORTS

- 7) Review list of Future Agenda Items Requested by City Councilmembers (Mayor/City Clerk)
- 8) Request for Beautification/Clean-up Day resources and support (Councilmember Montano)

PREVIEW NEXT AGENDA

- 9) Preview list of items for September 1, 2020 (Mary Lavelle)