



JOINT MEETING OF THE MILPITAS CITY COUNCIL AND MILPITAS MUNICIPAL FINANCING AUTHORITY

AGENDA

TUESDAY, OCTOBER 20, 2020
MILPITAS, CA
6:00 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

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 is held via teleconference /Zoom webinar only (no physical meeting space). .
You may watch the Council meeting without providing public comment by accessing it via links below:

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>

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting by first registering for the zoom meeting in advance by: providing email address (not disclosed) and a name.

Here is the link to register for this meeting only:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_EMYiDklGTaqQcCOPi8UN7Q

A link will be sent to you to join the City Council meeting in order to give your comments. All registered meeting attendees who wish to speak must click on the “raise hand” icon when the Mayor calls for public comments. If participating by calling in on your phone, dial *9 to use the “raise hand” feature, and when you are called upon, hit *6 to unmute your phone. Your phone number will be displayed in the live meeting. The Mayor or staff will call the speakers to begin.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items. The online written comment form previously used is no longer available for public comment.

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.
- 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.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (6:00 PM)

ADJOURN TO CLOSED SESSION

a) **CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to California Government Code Section 54957.6

City Negotiator: Jeannine Seher, Human Resources Director

Employee Groups: International Association of Fire Fighters, Milpitas Police Officers Association, Professional and Technical Group, Mid-Management and Confidential Group, Milpitas Employees Association and unrepresented employees

Under negotiation: wages, hours and benefits

b) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(4)

City as Plaintiff. One Potential Case

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

PLEDGE OF ALLEGIANCE (7:00 PM)

INVOCATION (assigned to Vice Mayor Nuñez)

PUBLIC FORUM

Those interested are invited to address City Council on any subject not on tonight's agenda, orally via Zoom webinar (see instructions on page 1). Speakers may provide their name and city of residence for the Clerk's record, and comments may 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.

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

READ ALOUD CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:45 PM)

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

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

C2. Approve City Council meeting minutes of the September 29, October 6 and 9, 2020 Meetings (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve September 29, 2020 Special City Council, October 6, 2020 Regular City Council and October 9, 2020 Special Joint meeting minutes drafted by the City Clerk.

C3. Adopt a Resolution Approving and Authorizing the City Manager to Execute Amendment No. 1 to the “Purchase of Software and Software Services Agreement” for a Two-Year Extension of NEOGOV Software Services under the Agreement with Insight Public Sector Inc. through a Cooperative Procurement Contract with OMNIA Partners, subject to the annual appropriation of funds (Staff Contact: Jeannine Seher, 408-586-3086)

Recommendation: Adopt a resolution approving and authorizing the City Manager to execute Amendment No. 1 to the “Purchase of Software and Software Services Agreement” for a two-year extension of the NEOGOV software services under the Agreement with Insight Public Sector Inc. through a cooperative procurement contract with OMNIA Partners, with additional funding in the amount of \$105,915, subject to the annual appropriation of funds, for a total agreement amount of \$178,902.

C4. Receive Status Report on Trails and Bikeway Master Plan Update, Project No. 3448; Approve and Authorize the City Manager to Execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 and Extend the Term of the Agreement to December 31, 2021 for the Project; and Approve a related Budget Amendment in the amount of \$36,219 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendations:

1. Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448.
2. Approve and authorize the City Manager to execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021 for the Trails and Bikeway Master Plan Update.
3. Approve a budget appropriation of \$36,219 from the General Government CIP Fund into Project No. 3448.

C5. Approve Change Order No. 2 in the Amount of \$268,841 for the Contract with Redwood Construction and Equipment, Inc. for the Citywide Parks and Playgrounds Rehabilitation Project, Increasing the Total Project Amount Not to Exceed from \$1,720,164 to \$1,989,005 (Staff Contacts: Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602)

Recommendation: Approve Change Order No. 2 in the amount of \$268,841 for the contract with Redwood Construction and Equipment, Inc. for the Citywide Parks and Playgrounds Rehabilitation Project, increasing the total project amount not to exceed from \$1,720,164 to \$1,989,005.

PUBLIC HEARING (7:50 PM)

6. Conduct a Public Hearing and Adopt Resolutions Authorizing the Sale and Issuance of Tax-exempt Lease Revenue Bonds (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendations:

- a) Open the public hearing, receive any comments and move to close the public hearing.
- b) Adopt resolutions of the City Council of the City of Milpitas and Governing Body of the Milpitas Municipal Financing Authority authorizing and directing the City Manager, Assistant City Manager or Deputy City Manager to execute the sale and issuance of 2020 Lease Revenue Bonds with an estimated aggregate principal amount of not-to-exceed \$25 million to finance the construction of Fire Station #2 and energy efficiency projects.

COMMUNITY DEVELOPMENT

7. Receive Staff Report and Consider Adopting Uncodified Urgency Ordinance No. 307 to Temporarily Limit Fees Charged by Third-party Food Delivery Service Providers to Help Local Restaurants During the COVID-19 Emergency (Staff Contacts: Alex Andrade, 408-586-3406 and Nicole Inamine, 408-586-3045)

Recommendations:

- a) Receive staff report on temporarily limiting fees charged by third-party food delivery service providers to help local restaurants during the COVID-19 emergency.
- b) Following the City Attorney reading the title, move to waive the reading of Ordinance No. 307 and adopt Uncodified Urgency Ordinance No. 307 by a minimum 4/5 vote of the City Council, effective October 20, 2020.

8. Discuss Milpitas Unhoused Response Plan (Staff Contact: Sharon Goei, 408-586-3260)

Recommendation: Receive staff presentation; discuss and provide direction on a Milpitas Unhoused Response Plan.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (9:00 PM)

9. Receive Presentation on the Parks and Recreation Master Plan Update, Fee Assessment and Development of Cost Recovery Policy and Provide Direction to Staff, Project No. 5115 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Receive a presentation on the Parks and Recreation Master Plan Update Fee Assessment and Development of Cost Recovery Policy; and, provide direction to staff on Project No. 5115.

LEADERSHIP AND SUPPORT SERVICES (9:20 PM)

10. Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing (Staff Contact: Walter C. Rossmann, Deputy City Manager, 408-586-3111)

Recommendations:

- a) Receive presentation from staff.
- b) Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.
- c) Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

11. Introduce Ordinance No. 65.150 Regarding Responsible Construction (Staff Contacts: Christopher Diaz, 408-586-3040 and Steve McHarris, 408-586-3059)

Recommendation: Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and Introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

12. General Fund Structural Deficit Community and Employee Engagement Discussion and Direction (Staff Contact: Walter C. Rossmann, 408-586-3111)

Recommendation: Discuss and provide direction regarding Community and Employee Engagement Strategies to address the General Fund structural deficit.

13. Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement and/or adopt a resolution committing to negotiate and execute a Project Labor Agreement per project (Staff Contacts: Christopher J. Diaz, 408-586-3040 and Steve McHarris, 408-586-3059)

Recommendation: Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement with the Building and Construction Trades Council and/or consider adopting a resolution committing to negotiate and execute a Project Labor Agreement per project.

REPORTS OF MAYOR & COUNCILMEMBERS (10:30 PM)

14. Discuss Council Sponsored Events; and, Discuss and Provide Direction on 2020 United States Census Outreach and Any Council Sponsorship (Contact: Councilmember Dominguez, 408-586-3031)

Recommendation: Discuss City Council sponsored event process; and, discuss and provide direction on the City's 2020 US Census outreach and any Council sponsorship.

15. Per Request of Vice Mayor Nuñez, Engage in Discussion on Councilmembers' Ideas to Economically Assist the Milpitas Community During the Pandemic (Contact: Vice Mayor Nuñez , 408-586-3023)

16. Per Request of Councilmember Dominguez, Discuss Establishing an Emergency Cap on Business Tenant Rents in Milpitas (Contact: Councilmember Dominguez, 408-586-3031)

17. Receive and Direct Staff on List of Agenda Items Requested by City Councilmembers (Contact: Mayor and City Councilmembers, 408-586-3000)

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 a City 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.

NEXT AGENDA PREVIEW

18. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on November 3, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

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

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

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

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection ~~at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and~~ on City website. City Council agendas and related materials can be viewed online: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

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

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.

September 2020						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
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27	28	29	30			

Milpitas City Council Calendar

October 2020

November 2020						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
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29	30					

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 5:30 PM -Milpitas Chamber of Commerce Board (CM) 5:30 PM -Santa Clara VTA Board of Directors (BN)	2	3
4	5 5:00 PM -Special Arts Commission (CM) 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	6 6:00 PM -Closed Session 7:00 PM -City Council	7 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (BN)	8 4:00 PM -Treatment Plant Advisory Committee (CM) 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM -Youth Advisory Commission (AP) 7:00 PM -Cities Assoc of SCC (CM)	9 10:00 AM -Manufacturing Day 2020 – Virtual Panel 3:00 PM -City Council Transportation Subcommittee (RT/CM)	10
11	12 4:30 PM -Economic Development and Trade Commission (KD) 7:30 PM - Special Energy and Environmental Sustainability Commission (BN)	13 4:00 PM -Suicide Prevention Task Force	14 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM) 6:00 PM -Special Planning Commission 7:00 PM -Planning Commission	15 1:00 PM -Special City Council 2:00 PM -VTA Safety, Security, & Transit Operations (BN)	16	17 Barbara Lee Senior Center Parking Lot  10 AM -3 PM Pumpkins in the Park Drive-In
18	19 7:00 PM -Science, Technology, and Innovation Commission (BN)	20 6:00 PM -Closed Session 7:00 PM -City Council	21 6:00 PM -Energy and Environmental Sustainability Commission (BN)	22 12:00 PM -Santa Clara Library Joint Powers Authority (CM)	23	24
25	26	27 1:30 PM -Senior Advisory Commission (AP)	28 12:00 PM -Santa Clara Valley Water District - Water Commission (CM) 7:00 PM -Planning Commission	29	30	31 

October 2020						
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December 2020						
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Milpitas City Council Calendar

November 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	3 7:00 PM -Closed Session 7:00 PM -City Council	4 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (BN) 7:00 PM -Community Advisory Commission (BN)	5 5:30 PM -Santa Clara VTA Board of Directors (BN) 5:30 PM -Milpitas Chamber of Commerce Board (CM)	6	7
8	9 4:30 PM -Economic Development and Trade Commission (KD)	10	11  CITY HALL CLOSED IN OBSERVANCE OF VETERANS DAY	12 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 4:00 PM -Treatment Plant Advisory Committee (CM) 7:00 PM -Cities Assoc of SCC (CM) 7:00 PM -Youth Advisory Commission (AP)	13 4:30 PM -City Council Finance Subcommittee (RT/CM)	14
15	16 7:00 PM -Science, Technology, and Innovation Commission (BN) 7:00 PM -Library and Education Commission (CM)	17 7:00 PM -Closed Session 7:00 PM -City Council	18 7:00 PM -Special Planning Commission 6:00 PM -Energy and Environmental Sustainability Commission (BN)	19 2:00 PM -VTA Safety, Security, & Transit Operations (BN) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	20	21
22	23 7:00 PM -Arts Commission (CM)	24	25	26  CITY HALL CLOSED FOR THANKSGIVING HOLIDAY		28
29	30					

**Finance Subcommittee will meet only as needed*

Draft CITY OF MILPITAS MEETING MINUTES

Minutes of: Special Joint Meeting of the Milpitas City Council and
Milpitas Planning Commission
Date: Tuesday, September 29, 2020
Time: 6:30 PM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

PRESENT: City Council: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez Montano and Phan
Planning Commission: Chair Tao, Vice Chair Alcorn, Commissioners Ablaza, Albana, Belong, Chua and Chuan

ABSENT: None

From the law firm of BB&K, Mr. Martin de los Angeles served in the role of City Attorney for this meeting.

PLEDGE Mayor Tran led all in the pledge of allegiance to the flag.

PUBLIC FORUM No comments were submitted related to the General Plan.

City Clerk reported there were three comments submitted via online form, on topics not related to the agenda.

APPROVE AGENDA Upon motion by Vice Mayor Nuñez and seconded by Councilmember Dominguez, the agenda was approved by unanimous vote.

ANNOUNCEMENT of Conflicts of Interest Mr. de los Angeles asked all City Councilmembers and Planning Commissioners if they had any anticipated conflicts of interest on the agenda item. All reported none.

STUDY SESSION Planning Director Ned Thomas introduced contracted consultant Ben Ritchie from the firm of De Novo Planning Group. Mr. Ritchie provided the history to date of the lengthy project culminating in the new City of Milpitas General Plan. He defined the elements of the plan and the status of the draft Environmental Impact Report (EIR).

Councilmembers and Commissioners commented and asked questions of Mr. Ritchie.

Regarding a renewed request to hear public comments, Mr. de los Angeles explained that per the California Brown Act, it was not required at a Special meeting to hear non-agenda item related comments.

Councilmember Dominguez requested to receive a copy of the comments submitted online for this meeting, and for those to be read aloud at the next regular meeting.

ADJOURNMENT The joint meeting was adjourned at 7:50 PM.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*

Draft CITY OF MILPITAS MEETING MINUTES

Minutes of: Regular Meeting of the Milpitas City Council
Date: Tuesday, October 6, 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 meeting to order at 6:05 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference and zoom webinar.

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

ABSENT: Councilmembers Dominguez was absent at roll call. She joined her colleagues in Closed Session and was present for the Open Session.

CLOSED SESSION

City Council convened into Closed Session (online webinar) to discuss five topics listed on the agenda, all related to existing and anticipated litigation matters.

At 7:42 PM, Mayor and Council reconvened for the Open Session.

ANNOUNCEMENT – from Closed Session

City Attorney Chris Diaz stated there was no formal action taken to announce out of Closed Session, while the City Council did provide direction to staff on items that will be on upcoming agendas.

PLEDGE

Mayor Tran led the pledge of allegiance to the flag.

INVOCATION

Vice Mayor Nuñez read a prayer authored by Abraham Lincoln.

PRESENTATION

Mayor Tran proclaimed *Fire Prevention Week* for October 4 – 10, 2020 and October 2020 as *Filipino Heritage Month*.

PUBLIC FORUM

The City Clerk read aloud four written public comments submitted to the City Council during its special joint meeting held on September 29, 2020. Comments were from Yolie Garcia, Elena Gill, Tina Ortiz, and Dennis Grilli.

The following residents provided oral comments (as attendees in the zoom webinar). Nearly all addressed the proposed Project Homekey by Santa Clara County for housing homeless at the Extended Stay Hotel location in Milpitas.

Allysson McDonald, resident
Howard Young, resident
Charles Schletzbaum, resident
Loreta Quivedo's Brigade, resident
Mirna Henriquez, from a coalition
Paul Kwan, resident
Anh Bui, resident
Jessica Yu, resident
Janice Breaux, resident
Suraj Viswanathan, resident

Diane Le, resident
Yolanda Garcia, resident
Monica Hsiang, resident
Huyen Nguyen, resident
Yang Liao, resident
Hsia Yu, resident
Yvonne Tangari, resident
Eric Dunn, resident
Rekha Pardeshi, resident
Veronica Salce, resident

Urvishkumar Mehta, resident	Lan Dong, resident
Lisa, co-founder of Hope for the Unhoused	Tina, resident
Gang Chen, resident	Zhoutong Fu, resident
Jesse Healy, resident	Raghav Karnam, resident
Joseph Weinstein (public speaking rights)	Lizza Abella, resident
Van Leong, resident	Husband of Linda Wang, resident
Christopher Martin, resident	Voltaire Montemayor, (on yard signs)
Sergey Odintsov, resident	Wendy Duong, resident
Gino Relampagos, resident	Christina, resident
Galina Odintsova, resident	

It was noted that a community meeting has been scheduled on October 22 by the developer, and written notification would be sent to residents in proximity to the project.

ANNOUNCEMENTS

City Manager Steve McHarris highlighted the change to live public comments format (on zoom webinar) at this meeting. It would occur at upcoming Commission and Subcommittee meetings. Measure F (1/4 cent sales tax) was on the November ballot, with a public meeting scheduled for October for information. He reported that City of Milpitas was currently at 77.4% participation (higher than 2010) to date in the 2020 US Census. The public can participate until October 31. Monday, October 19 was the next date for Covid19 testing at the Milpitas Sports Center by appointment.

Mayor Tran asked, regarding Project Homekey (Jamboree project for homeless), on the next City Council agenda: a vote on Project Homekey due to AB 83 (90 day period for funding), which he described as an overreach in local municipalities, stating it showed disrespect to cities like Milpitas. He wanted to explore litigation regarding CEQA and the permitting process against the State of California, Santa Clara County and other entities over an unfair process, and any appeals process that would be available. The City Attorney clarified that it would be a closed session anticipated litigation item. Mayor Tran queried his colleagues and all agreed to have the discussion.

Vice Mayor Nuñez asked for a future City Council agenda item: recommendations for budget reductions for the next fiscal year, placed onto the next appropriate agenda (for the City Manager and Deputy City Manager to determine the date). His request was to formulate groups of employees, citizens, and community members, to present to City Council with potential reductions in the next year's budget formulation. Additionally, Mayor Tran asked to have a community meeting on the topic prior to the agenda item, in the next three weeks, and the Vice Mayor agreed. The City Manager said he and the Deputy City Manager could determine a final date for a meeting and agenda item, and consider all options to meet Council direction. Council consensus reached.

Councilmember Dominguez requested the City Council explore the possibility, in regards to increase rents on small businesses, and not being able to afford rent, to have an emergency request to cap the rent on commercial spaces, for a time period. Have the item in the next two weeks. Councilmember Phan wished to explore things they could do to support small businesses as it related to paying their rents. Councilmember Montano asked to include the Chamber of Commerce for outreach to find out if these businesses would be compatible. All five were in favor of the agenda item.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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 in the last 12 months were reported.

CODE OF CONDUCT

City Attorney read aloud the City Council Code of Conduct, as printed on the agenda.

APPROVAL OF AGENDA

Motion: to approve the October 6, 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 – C13

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

- C1. Council Calendar Received calendar of upcoming meetings for October 2020.
- C2. Meeting Minutes Approved the City Council meeting minutes of the Regular City Council meeting on September 15, 2020.
- C3. Resolution Adopted Resolution No. 9004 accepting and authorizing the City Manager to execute the Agreement to accept the 2019 State Homeland Security Grant Program Funding, and approving and authorizing a sole source purchase for procurement of Mobile Crash Barriers and Portable Bollards manufactured by Delta Scientific Corp.; and approved a budget appropriation into Police Department FY 2020-21 operating budget.
- C4. Resolution
- a) Adopted Resolution No. 9005 to authorize the Chief of Police to execute the Grant Agreement with the Office of Traffic Safety accepting the FY 2021 Office of Traffic Safety Selective Traffic Enforcement Program grant.
 - b) Approved a budget appropriation in the amount of \$57,500 for overtime into the Police Department operating budget.
- C5. Resolution Adopted Resolution No. 9006 approving project plans and specifications; rejected a bid protest from Pacific Electric Contracting, Inc.; awarded a construction contract to Bear Electrical Solutions, Inc. in the amount of \$418,150 for the Enhanced Crosswalk Striping & Beacons/ Radar Speed Feedback Signage, Projects No. 3454 and No. 3458; authorize the City Manager to execute the contract with Bear; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$63,000.
- C6. Resolution Adopted Resolution No. 9007 granting acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133, authorizing the City Engineer to file a Notice of Completion, and authorized him to issue a Notice of Final Acceptance, and approved a budget appropriation of \$52,900 from Community Facilities District No. 2005 funds into the Public Works operation and maintenance budget.
- C7. Resolution Adopted Resolution No. 9008 granting acceptance of Water Bottle Refill Station Installation Project, CUP (California Uniform Public Construction Cost Accounting Act public works project) 2353 and authorizing the Director of Public Works to file a Notice of Completion and to issue a Notice of Final Acceptance after the one-year warranty period has elapsed.
- C8. Resolution Adopted Resolution No. 9009 granting acceptance of public improvements for 260 South Main Street Subdivision at 260 South Main Street, Tract 10435, Public Improvement Plan No. 2-1233; approving a reduction in the faithful performance bond to \$16,000, which shall be subject to and in effect for the duration of a one-year warranty period; and granting authorization to the City Engineer to release the

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

- C9. Amendment –Group4 Approved and authorized the City Manager to execute Amendment No. 1 to the Agreement with Group 4 Architecture, Research & Design for Space Planning and Design of Office Spaces at City Hall, resulting in a decrease of the total not to exceed amount by \$40,000 - from \$150,000 to \$110,000 - and approved a budget amendment returning the contractual savings to the General Government CIP Fund balance.
- C10. Pay Invoice Authorized the City Manager to pay the Santa Clara County Cal ID Program FY 2020-21 invoice in an amount not to exceed \$126,235.
- C11. Funds for 2 Vehicles Approved a budget appropriation in the amount of \$96,100 to the Equipment Fund Non-departmental FY 2020-21 operating budget for replacement of two Police vehicles.
- C12. Covid19 Testing
- a) Received an update regarding the status of COVID-19 testing in Milpitas.
 - b) Authorized \$155,000 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 December 31, 2020.
 - c) Directed the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes.
 - d) Directed the City Manager to explore developing an agreement with the County to establish a City-operated vaccination site when a vaccine becomes available.
- C13. Senior Advisory Commission Appointments
- a) Appointed current Alternate No. 1 Willy Wong as a voting Commissioner to a term that will expire in December of 2022.
 - b) Moved current Alternate No. 2 Nona Tolentino into the Alternate No.1 seat, into a term that will expire in December of 2020.
 - c) Newly appointed Barbara Jo Navarro as Alternate No. 2 into a term that will expire in December of 2021.

PUBLIC HEARING

- 14. Energy and Water Conservation**
- Public Works Director Tony Ndah presented alongside Deputy Public Works Director Elaine Marshall, Engie Corp. representative John Paul Jewell and senior project manager Mariana de Britto.
- Mr. Ndah cited goals for the energy and water conservation program, designed to effect significant cost savings to the City for those services, including long term maintenance. Mr. Jewell gave a detailed presentation, followed by Mr. Ndah including a list of 6 Key Takeaways of the program.
- Mayor Tran opened the public hearing. Two residents commented: Voltaire Montemayor and Urvishkumar Mehta.
- Mayor Tran and Councilmembers commented in full support of this valuable resource conservation program, and asked questions of the staff and consultant. Vice Mayor Nuñez inquired about bond financing for later “bundles” of energy conservation steps.

Motion: to close the public hearing, following two comments

Motion/Second: Mayor Tran/Councilmember Montano

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

Motion:

- 1) To approve list of energy and water conservation measures developed for the City. To find that the implementation of the proposed projects is categorically exempt under California Environmental Quality Act Guideline Section 15301. To adopt Resolution No. 9010 authorizing the City Manager to execute a contract with ENGIE Services U.S. for energy and water conservation measures identified in Bundles A, B, and C.1 in the amount of \$33,983,429, subject to the City obtaining the necessary financing and appropriation of funds.
- 2) To authorize the City Manager to execute one or more amendments to the Energy Service Agreement to increase the maximum compensation by an aggregate amount not to exceed \$3.3 million
- 3) Direct the City Manager to return to City Council for authorization to sell approximately \$11.3 million of General Fund Lease Revenue Bonds needed to finance implementation of Bundles B and C.1

Motion/Second: Councilmember Dominguez/Vice Mayor Nuñez

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

COMMUNITY DEVELOPMENT

15. Resolution – Plan on Homelessness

Director of Building Safety & Housing Sharon Goei presented facts regarding the homeless population in Milpitas. She was joined by Santa Clara County representatives, describing the work of the Santa Clara County Unhoused Task Force, on which Vice Mayor Nuñez and Councilmember Dominguez served.

The “Community Plan to End Homelessness” was described by Ray Branson, Chief Operating Officer of Destination Home, a public private partnership. Kathryn Kaminski from County Office of Supportive Housing gave the highlights of the Plan.

Consuela Hernandez, acting Director of the Office of supportive housing – was asked to address Project Homekey by Jamboree (at Extended Stay site) in Milpitas.

Public comments were received from: Voltaire Montemayor, Charles Schletzbaum, Howard Young, Loreta Quidado, Urvishkumar Mehta, Yolanda Garcia, Joseph Weinstein, and Jacqueline Romero.

Councilmembers commented extensively on an initial motion made by Councilmember Dominguez (no second was made to that motion).

Councilmember Dominguez also requested, as directed by the conversation, to bring information back from a meeting Councilmember Dominguez and Vice Mayor Nuñez would have with Santa Clara County staff Kathryn Kaminski.

Motion: to direct staff to host a community meeting hosted by the City of Milpitas and then host a community meeting to debrief on the County framework and bring back a scope of work for the specific view of City of Milpitas on how we will house our unhoused population, and at same time, bring back a framework Resolution by the County of Santa Clara that will be specific on how we will assess and house our homeless population in our community - in partnership with the School District

Motion/Second: Councilmember Dominguez/Vice Mayor Nuñez

Motion carried by a vote of: AYES: 4

NOES: 0
ABSTAIN: 1 (Montano)

Milpitas City Council did not vote on the resolution as recommended on the agenda to support the County plan.

LEADERSHIP

16. Financial Status

This item was not heard.

17. Resolution – Measure F Oversight Committee

Deputy City Manager Walter Rossmann reported details of a proposed Measure F Oversight Committee, along with the existing structure and membership, and by-laws of all current City of Milpitas Commissions. The Committee was defined, in anticipation of voter approval on November 3 of the ¼ cent sales tax proposed in Measure F.

Public comments were heard from Voltaire Montemayor, Joseph Weinstein, and Urvish-kumar Mehta.

Mr. Weinstein specifically asked to add a formal amendment into the By-laws that said if a majority of the Oversight Committee wanted to speak, that the City Council is required to allow them to speak at the next regular meeting.

Motion: to adopt Resolution No. 9011 establishing the Measure F Oversight Committee and approve the Measure F Oversight Committee structure and responsibilities, subject to voter approval of Measure F (1/4 cent sales tax) on November 3, 2020, and to include a resident request for a By-laws addition allowing for Committee members to speak at City Council meetings

Motion/Second:

Mayor Tran/Vice Mayor Nuñez

Motion carried by a vote of:

AYES: 5
NOES: 0

18. Ordinance No. 23.15

Five agenda items (18 – 22) were not heard and would be rescheduled to the next City Council meeting.

19. Ordinance No. 65.150

20. Council Sponsored Events, and US Census

21. Council Ideas to Assist

22. List of Agenda Items

NEXT AGENDA PREVIEW

23. Preview Agenda Items

Received list of anticipated agenda Items for the next regular City Council meeting on October 20, 2020.

ADJOURNMENT

Mayor Tran adjourned the meeting at 1:38 AM on Wednesday, October 7, 2020.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*

Draft CITY OF MILPITAS MEETING MINUTES

Minutes of: Special Joint Meeting of the Milpitas City Council and
Economic Development & Trade Commission –
4th Annual Milpitas Manufacturing Day
Date: Friday, October 9, 2020
Time: 10:00 AM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

PRESENT: City Council: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez and Montano
Economic Development and Trade Commission: Chair Chris Norwood, Commissioners I. Mundra, V. San Vicente, and C. McNeil, Alternate Members J. Gomez and D. Awasthi

ABSENT: Councilmember Phan, Commissioner L. Rice
Economic Development Director Alex Andrade with staff members Daniel Degu, Nicole Inamine and Margaret Tamisiea attended and coordinated the event.

WELCOME Opening the online gathering at 10:00 AM, City Manager Steve McHarris welcomed City Councilmembers, Commissioners, participants, corporate representatives, City staff and Milpitas youth to the special event online and provided opening remarks.

MANUFACTURING DAY Commission Vice Chair Chris Norwood (Board Trustee from the Milpitas Unified School District) welcomed many MUSD students and the general public to the virtual Manufacturing Day 2020 panel discussion in order to learn about local Milpitas technology and advanced manufacturing companies, and the opportunities to seek training and future careers in the industry in their hometown.

Mr. Casey McNeil, from the Flex company and a member Economic Development & Trade Commission, addressed students and displayed a video of products made by his firm. He encouraged the students to consider training and working at Flex, a major worldwide technology manufacturing firm located in Milpitas.

Mr. Billy Glass from Onanon company also addressed the youth describing his career and how manufacturing at his company offered exciting opportunities in technology.

Dr. Maniphone Dickerson from Evergreen Valley College mentioned training and coursework that Milpitas High School and Cal Hills students may experience at Evergreen's Milpitas campus, allowing for advanced education toward careers and college, while still attending high school.

The event concluded with a bit of fun, when Ms. Inamine conducted a raffle online for the students, with additional prizes offered on the spot by representatives of the Milpitas City Council, Economic Development and Trade Commission, Milpitas Unified School District, and the Chamber of Commerce.

ADJOURNMENT The joint meeting was adjourned at 11:30 AM.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving and Authorizing the City Manager to Execute Amendment No. 1 to the “Purchase of Software and Software Services Agreement” for a Two-Year Extension of NEOGOV Software Services under the Agreement with Insight Public Sector Inc. through a Cooperative Procurement Contract with OMNIA Partners, subject to the annual appropriation of funds
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contact:	Jeannine Seher, Human Resources Director, 408-586-3086
Recommendation:	Adopt a resolution approving and authorizing the City Manager to execute Amendment No. 1 to the “Purchase of Software and Software Services Agreement” for a two-year extension of the NEOGOV software services under the Agreement with Insight Public Sector Inc. through a cooperative procurement contract with OMNIA Partners, with additional funding in the amount of \$105,915, subject to the annual appropriation of funds, for a total agreement amount of \$178,902.

Background:

The City entered into a one-year agreement on July 25, 2020 with Insight Public Sector Inc. to provide software technology solutions to Human Resources via NEOGOV’s applicant tracking system, Insights, e-forms, position control, onboarding and performance evaluation software (the “Agreement”).

The City of Milpitas Municipal Code Section I-2-3.08 (“Cooperative Procurement”) specifically authorizes the Purchasing Agent to make such purchases based on an agreement or cooperative purchasing program entered into by a public agency, as defined by Government Code Section 6500, regardless of whether the City is a named party to the agreement or an actual participant in such a program. On August 16, 2017, National IPA formed OMNIA Partners, a shared services and supply chain optimization company dedicated to government. On May 23, 2018, OMNIA Partners acquired U.S. Communities, another cooperative purchasing organization. The City of Milpitas is a member of OMNIA Partners cooperative purchasing organization by virtue of its membership with National IPA, effective September 26, 2012, and is assigned participation number 1036843. On August 15, 2015, Fairfax County Virginia, acting as the lead agency on behalf of U.S. Communities, released Request for Proposal (RFP) 2000001701 entitled “Technology Products, Services, Solutions, and Related Products and Services”; and on May 1, 2016 contract #4400006644 was awarded to Insight Public Sector, all as set forth in greater detail in the resolution.

At this time staff is requesting to amend the Agreement with Insight Public Sector Inc., per the attached Insight Public Sector, Inc. quote number 222790697, to extend the subscription period to provide continued software services for an additional two years beginning July 1, 2020 and concluding on June 30, 2022. By way of the Amendment, the second year of the Agreement will be \$51,167 in new costs through June 30, 2021. The third year of the Agreement will result in new costs of \$54,748 (a 7% increase of \$3,581 from year 2) effective July 1, 2021 through June 30, 2022, for a total new cumulative Agreement amount not to exceed \$178,902.00, subject to Council appropriating funds in FY 2021-22.

Analysis:

In 2019, through Insight Public Sector Inc., the NEOGOV platform was selected to streamline the City's recruitment processes and to provide additional essential human resource tools. In addition to the applicant tracking, NEOGOV provides a suite of business solutions that the City can incorporate to enhance processes and increase efficiencies, including, but not limited to e-forms, position control, onboarding, and performance evaluations.

NEOGOV is an industry standard for hiring software. Their customer lists span the entire United States, NEOGOV also has the capability to transfer data to Cayenta, which is important for data entry accuracy. The implementation of NEOGOV will allow the City to take an applicant from application to hiring in an expediated manner. The full implementation will also be more flexible for new employees as they will have a seamless, time saving process to fill out their new hire paperwork online and will allow the onboarding process to focus on values and culture of the City.

The applicant tracking system has been successfully implemented, and the e-forms module is scheduled to be completed this quarter. The onboarding module and performance review modules are slated to be rolled out following the successful launch of e-forms. The performance review module will automatically transfer new hires into the performance review system minimizing staff time. These are efficiencies that cannot be realized using the City's current systems.

Policy Alternatives:

Alternative 1: Approve and authorize the City Manager to sign a one-year amendment with Insight Public Sector Inc., to cover costs incurred thus far and to allow work to be continued through June 30, 2021. The cost would be \$51,167.

Pros: The City will be able to maintain its current applicant tracking system module and it will provide the ability to implement the remaining modules through June 30, 2021. The two-year Amendment is still contingent upon the appropriation of funds from the Council in the second year.

Cons: The City will have to come back to the Council in a very short time frame to consider extending the Agreement beyond the current fiscal year. The rate for these services may also increase.

Reasons not recommended: The two-year amendment provides the ability for staff to implement the programs while not having to come back with an additional amendment.

Alternative 2: Do not approve and authorize the City Manager to execute the Amendment to extend the agreement with Insight Public Sector Inc. for two years.

Pros: There is no benefit to discontinuing the Agreement. The monetary savings from not having an agreement in place would set back the City's hiring processes, resulting in huge losses in efficiency.

Cons: The City would still be required to pay for the services received thus far. Without the NEOGOV applicant tracking system, the City would be required to revert back to antiquated methods for its recruitment activities.

Fiscal Impact:

The City has already established an appropriation for this request for FY 2020-21. Funds are available in the Information Technology department's operating budget. Future years are subject to appropriations in the Information Technology departmental budget.

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt a resolution approving and authorizing the City Manager to execute Amendment No. 1 to the "Purchase of Software and Software Services Agreement" for a two-year extension of the NEOGOV software services under the Agreement with Insight Public Sector Inc. through a cooperative procurement contract with OMNIA Partners, with additional funding in the amount of \$105,915, subject to the annual appropriation of funds, for a total agreement amount of \$178,902.

Attachments:

- 1) Resolution
- 2) Exhibit A to Resolution: Amendment No. 1 to the Insight Public Sector Inc. Agreement
- 3) Exhibit A-1 to Resolution: Insight Public Sector Quote #222790697
- 4) 2019 Agreement with Insight Public Sector

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AND
AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE
“PURCHASE OF SOFTWARE AND SOFTWARE SERVICES AGREEMENT” FOR A TWO-
YEAR EXTENSION OF THE NEOGOV SOFTWARE SERVICES UNDER THE AGREEMENT
WITH INSIGHT PUBLIC SECTOR INC., THROUGH A COOPERATIVE PROCUREMENT
CONTRACT WITH OMNIA PARTNERS**

WHEREAS, Section I-2-3.08 (“Cooperative Procurement”) of the Milpitas Municipal Code authorizes the City Council to award contracts without competition, when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as the City’s; and

WHEREAS, Municipal Code Section I-2-3.08 (“Cooperative Procurement”) provides that the Purchasing Agent may purchase supplies and general services without complying with the quotation or bidding requirements of the Chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any public agency, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that: (a) The underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City’s, and may include a nationally bid cooperative contract; and (b) The public agency is a “public agency” as defined in Government Code section 6500. In all such cases, the supplies or general services purchased must be the same and be offered at the same price as the supplies and general services subject to the agreement or program; and

WHEREAS, The Cooperative Purchasing Network was a cooperative purchasing organization, which was acquired on July 28, 2015, by National Intergovernmental Purchasing Alliance (National IPA), another cooperative purchasing organization. On August 16, 2017, National IPA formed OMNIA Partners, a shared services and supply chain optimization company dedicated to government. On May 23, 2018, OMNIA Partners acquired U.S. Communities, another cooperative purchasing organization. Each contract in the OMNIA Partners cooperative contract portfolio has been competitively solicited by a lead public agency. Neither OMNIA Partners nor any of the aforementioned cooperatives conduct solicitations; rather, it/they partner with various public agencies in soliciting solid cooperative contracts; and

WHEREAS, the City of Milpitas (Milpitas) is a member of OMNIA Partners cooperative purchasing organization by virtue of its membership with National IPA, effective September 26, 2012, and is assigned participation number 1036843; and

WHEREAS, on August 15, 2015, Fairfax County Virginia, acting as the lead agency on behalf of U.S. Communities Government Purchasing Alliance, released Request for Proposal (RFP) #2000001701 entitled “Technology Products, Services, Solutions, and Related Products and Services”; and

WHEREAS, on May 1, 2016, contract #4400006644 was awarded to Insight Public Sector Inc. The contract initial term was May 1, 2016 through April 30, 2019, with an option to renew for (4) additional one (1) year periods and has been renewed for two (2) years, effective May 1, 2019 through April 30, 2021; and

WHEREAS, on July 25, 2019, the City and Insight Public Sector, Inc., entered into a “Cooperative Purchase of Software and Software Services Agreement” for the purchase of NeoGov Human Resources software and software services for the not-to-exceed amount of \$72,987.00 for the period of July 25, 2019 through July 1, 2020 (the “Agreement”); and

WHEREAS, City staff now desires to amend the Agreement to extend the subscription period for an additional two years from July 1, 2020 through June 30, 2022; and

WHEREAS, pursuant to the Amendment No. 1, attached hereto as **Exhibit A**, the cost of the second year's software services is \$51,167.00. The cost of software services for year three is \$54,748.00, for a new total cumulative Agreement amount of \$178,902.00; and

WHEREAS, the Purchasing Agent has reviewed all of the documentation related to the RFP and the original contract awarded to Insight Public Sector (contract #4400006644), and has determined that the contract is current through April 30, 2021, that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas, and that the price for the software services set forth in the Amendment No. 1 to the "Cooperative Purchase of Software and Software Services Agreement" is the same as that offered in the original contract.

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

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Amendment No. 1 to the "Cooperative Purchase of Software and Software Services Agreement" with Insight Public Sector, Inc., is hereby approved and the City Manager is authorized to execute said Amendment No. 1. This is a cooperative procurement through OMNIA Partners.

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

AMENDMENT NO. 1 TO COOPERATIVE PURCHASE OF SOFTWARE AND SOFTWARE SERVICES AGREEMENT

THIS AMENDMENT NO. 1 is entered into this ___ day of _____ 2020 by and between the City of Milpitas, hereinafter referred to as "City" and Insight Public Sector, Inc., a _____ corporation, hereinafter referred to as "Contractor". City and Contractor are collectively referred to as the "Parties" in this Amendment No. 1.

RECITALS

A. WHEREAS, on July 25, 2019, the Parties entered into that certain Cooperative Purchase of Software and Software Services Agreement (the "Agreement") for the City's purchase of certain NeoGov branded software and software support services sold by Contractor as set forth in the Agreement; and

B. WHEREAS, said Agreement provided for a one-year subscription to NeoGov software services; and

C. WHEREAS, the Parties now desire to amend the Agreement in order to provide for two (2) additional years of NeoGov software services.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

Section 1. Purchase. The City desires to purchase, and Contractor agrees to provide the software services set forth in that certain Insight Public Sector Quotation Number 222790697, dated 23-Sep-2020, attached hereto as **Exhibit A-1** and incorporated herein by this reference.

Section 2. Payment Limits. Section 2 of the Agreement is amended and restated as follows:

"2. Payment Limits.

a. City's total payments under this Agreement shall not exceed **One Hundred Seventy-Eight Thousand Nine Hundred Two Dollars (\$178,902.00)**. Payments shall be made in accordance with the Software Order(s). City shall deliver payment to Contractor in consideration for Contractor's services under the Agreement."

Section 3. Exhibits. Section 4 of the Agreement is amended and restated as follows:

“4. Exhibits; Order of Precedence.

a. The following Exhibits attached hereto and listed below are hereby incorporated by reference:

- i. **Exhibit A** — Software Order(s)
- ii. **Exhibit B** — Terms and Conditions
- iii. **Exhibit C** — Insurance Requirements
- iv. **Exhibit D** — Vendor Terms
- v. **Exhibit E** — Notice of Exercise of Option to Renew or Extend Software Subscription or Software Support Term

b In the event of any conflict between this Agreement and any exhibit or attachment to the Agreement, the order of precedence shall be (1) the Agreement without exhibits, (2) Exhibit B - Terms and Conditions (3) Exhibit C - insurance Requirements, (4) Exhibit A - Software Order, (5) Exhibit D Vendor Terms.

c. Each subsequent, duly approved purchase order may be incorporated by reference into this Agreement as Exhibit “A” and shall be numbered sequentially as Exhibit A-1; A-2; A-3 and so on.”

Section 4. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

Section 5. **Signatures.** These signatures attest the Parties' agreement hereto.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR
AMENDMENT NO. 1 TO
COOPERATIVE PURCHASE OF SOFTWARE AND SOFTWARE
SERVICES AGREEMENT BETWEEN THE
CITY OF MILPITAS AND INSIGHT PUBLIC SECTOR, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS,
Approved By:

INSIGHT PUBLIC SECTOR, INC.

Steven G. McHarris,
City Manager

Signature

Date

Name

Approved As To Form:

Title

Christopher J. Diaz, City Attorney

Date

Approved:

Walter C. Rossmann, Risk Manager/
Director of Finance

DIR Registration Number (if any)

Approved As To Content:

Jeannine Seher, Director of Human
Resources

EXHIBIT A-1
SOFTWARE MAINTENANCE ORDER
[ATTACHED BEHIND THIS PAGE]

SOLD-TO PARTY 10334506
CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411
SHIP-TO PARTY
CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411
We deliver according to the following terms:

Payment Terms : Net 45 days
Ship Via : Electronic Delivery
Terms of Delivery : FOB DESTINATION
Currency : USD

In order for Insight to accept Purchase Orders against this contract and honor the prices on this quote, your agency must be registered with OMNIA Partners Public Sector (formerly U.S. Communities).
Our sales teams would be happy to assist you with your registration. Please contact them for assistance -- the registration process takes less than five minutes.

Quotation

Quotation Number : [222790697](#)
Document Date : 23-SEP-2020
PO Number :
PO Release :
Sales Rep : Chris Robertson
Email : CHRIS.ROBERTSON@INSIGHT.COM
Telephone : 4804096775

Material	Material Description	Quantity	Unit Price	Extended Price
NEO-IN-COM	NEOGOV INSIGHT ENTERPRISE SUBSCRIPTION - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	11,424.00	11,424.00
NEO-IN-COM	NEOGOV INSIGHT ENTERPRISE SUBSCRIPTION - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	12,223.00	12,223.00
NEO-GJOBS-COM	NEOGOV GOVERNMENTJOBS.COM SUBSCRIPTION - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,476.00	1,476.00
NEO-GJOBS-COM	NEOGOV GOVERNMENTJOBS.COM SUBSCRIPTION - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,579.00	1,579.00
NEO-PE-COM	NEOGOV PERFORM SUBSCRIPTION (PE) - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	16,278.00	16,278.00
NEO-PE-COM	NEOGOV PERFORM SUBSCRIPTION (PE) - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	17,417.00	17,417.00
NEO-ON-COM	NEOGOV ONBOARD SUBSCRIPTION (ON) - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	7,997.00	7,997.00

Material	Material Description	Quantity	Unit Price	Extended Price
NEO-ON-COM	NEOGOV ONBOARD SUBSCRIPTION (ON) - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	8,557.00	8,557.00
NEO-EF-COM	NEOGOV EFORMS SUBSCRIPTION (EF) - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	11,994.00	11,994.00
NEO-EF-COM	NEOGOV EFORMS SUBSCRIPTION (EF) - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	12,834.00	12,834.00
NEO-BKG-COM	NEOGOV BACKGROUND INTEGRATION SUBSCRIPTI - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,998.00	1,998.00
NEO-BKG-COM	NEOGOV BACKGROUND INTEGRATION SUBSCRIPTI - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,138.00	2,138.00
NEO-PM-COM	NEOGOV POSITION MANAGEMENT SUBSCRIPTION - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
NEO-PM-COM	NEOGOV POSITION MANAGEMENT SUBSCRIPTION - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
NEO-EII-COM	NEOGOV EMPLOYEE IMPORT INTEGRATION SUBSC - Coverage Dates: YEAR 1 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
NEO-EII-COM	NEOGOV EMPLOYEE IMPORT INTEGRATION SUBSC - Coverage Dates: YEAR 2 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
			Product Subtotal	105,915.00
			TAX	0.00
			Total	105,915.00

Thank you for considering Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Chris Robertson
4804096775
CHRIS.ROBERTSON@INSIGHT.COM
Fax 4807608532

OMNIA Partners (formerly U.S. Communities) IT Products, Services and Solutions Contract No. 4400006644

Insight Public Sector (IPS) is proud to be a contract holder for the OMNIA Partners Technology Products, Services & Solutions Contract.

This competitively solicited contract is available to participating agencies of OMNIA Partners. OMNIA Partners assists local and state government agencies, school districts (K-12), higher education, and nonprofits in reducing the cost of purchased goods by pooling the purchasing power of public agencies nationwide. This is an optional use program with no minimum volume requirements and no cost to agencies to participate.

Regarding tariff impacts on IPS contract quotes, Insight is communicating with the contracting officials on the contracts held by Insight to minimize the impact of tariffs to our clients.

Thanks for choosing Insight!

Insight Global Finance has a wide variety of flexible financing options and technology refresh solutions. Contact your Insight representative for an innovative approach to maximizing your technology and developing a strategy to manage your financial options.

This purchase is subject to Insight's online Terms of Sale unless you have a separate purchase agreement signed by you and Insight, in which case, that separate agreement will govern. Insight's online Terms of Sale can be found at the "terms-and-policies" link below.

Effective Oct. 1, 2018, the U.S. government imposed tariffs on technology-related goods. Technology manufacturers are evaluating the impact on their cost and are providing us with frequent cost updates. For this reason, quote and ecommerce product pricing is subject to change as costs are updated. If you have any questions regarding the impact of the tariff on your pricing, please reach out to your sales team.

SOFTWARE AND CLOUD SERVICES PURCHASES: If your purchase contains any software or cloud computing offerings ("Software and Cloud Offerings"), each offering will be subject to the applicable supplier's end user license and use terms ("Supplier Terms") made available by the supplier or which can be found at the "terms-and-policies" link below. By ordering, paying for, receiving or using Software and Cloud Offerings, you agree to be bound by and accept the Supplier Terms unless you and the applicable supplier have a separate agreement which governs.

<https://www.insight.com/terms-and-policies>



COOPERATIVE PURCHASE OF SOFTWARE AND SOFTWARE SERVICES AGREEMENT

This Cooperative Purchase of Software and Software Services Agreement ("Agreement") is made and entered into as of the 25th day of July, 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 Insight **Public Sector Inc**, a corporation with its principal place of business at **6820 S Harl Ave. Tempe, AZ 85283** ("Contractor") City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement

1. Background.

a This Agreement is made and entered into in reference to the competitively solicited OMNIA Partners (formerly U S Communities) IT Products, Services and Solutions Contract No 4400006644 with Contractor]

b The City desires to order and purchase hardware software and/or third party branded software services and support sold through Contractor as set forth in the Insight Public Sector Quotation No 221256309 ("Software Order") attached hereto as Exhibit A

c As the provider of third party software services and support Contractor desires to perform and assume responsibility for the provision of said software services on the terms and conditions set forth in this Agreement

d City desires to engage Contractor to render such software services as set forth in this Agreement

e The Parties agree that, as between the Parties, this Agreement shall prevail over any terms of sale established by Contractor

2. Payment Limits.

a City's total payments under this Agreement shall not exceed **Seventy-Two Thousand Nine Hundred Eighty-Seven Dollars and Zero Cents (\$72,987.00)**. Payments shall be made in accordance with the Software Order City shall deliver payment to Contractor in consideration for Contractor's services under this Agreement

3. Contractor's Obligations.

a Upon full payment of the software subscription fees (excluding annual maintenance/support fees and professional service fees) Contractor grants to City a personal, non-transferable, non-exclusive subscription to use, in accordance with the terms and conditions of this Agreement, all software described in Exhibit A (the "Software")

b Contractor agrees to the Terms and Conditions attached hereto as Exhibit B 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 C ("Insurance Requirements")

c Contractor shall deliver the Software included in Exhibit A, and provide the software configuration, support, training and other services as set forth in NeoGov Order Form And Terms And Conditions ("Vendor Terms") attached hereto as Exhibit D

4. Exhibits; Order of Precedence.

a The following Exhibits attached hereto and listed below are hereby incorporated by reference

a **Exhibit A** – Software Order

b **Exhibit B** – Terms and Conditions

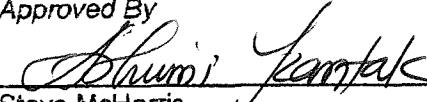
- c **Exhibit C** - Insurance Requirements
 - d **Exhibit D** – Vendor Terms
 - e **Exhibit E** – Notice of Exercise of Option to Renew or Extend Software Subscription or Software Support Term
- b In the event of any conflict between this Agreement and any exhibit or attachment to the Agreement, the order of precedence shall be (1) the Agreement without exhibits, (2) Exhibit B - Terms and Conditions (3) Exhibit C – Insurance Requirements, (4) Exhibit A – Software Order, (5) Exhibit D – Vendor Terms

5. **Signatures.** These signatures attest the Parties' agreement hereto

[SIGNATURES ON FOLLOWING PAGE]

CITY OF MILPITAS

Approved By



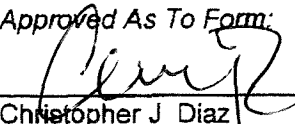
Steve McHarris

Interim City Manager

7/24/19

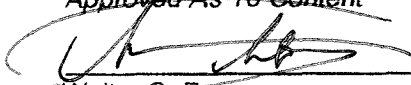
Date

Approved As To Form:



Christopher J. Diaz
City Attorney

Approved As To Content:



Walter C. Rossmann
Director of Financial Services

Approved As To Scope



Mike Luu
Director of Information Services

INSIGHT PUBLIC SECTOR



Signature

David Cristal

Name

VP-General Manager

Title

7/16/2019

Date

EXHIBIT A
SOFTWARE ORDER

Attached Behind This Page



INSIGHT PUBLIC SECTOR SLED
6820 S HARL AVE
TEMPE AZ 85283 4318
Tel 800-467-4448

SOLD TO PARTY___10334506
CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

SHIP-TO PARTY
CITY OF MILPITAS
MIKE LUU
455 E CALAVERAS BLVD
MILPITAS CA 95035 5411

Quotation
Quotation Number 221256309
Document Date 05-JUN-2019
PO Number
PO Release
Sales Rep Chns Robertson
Email CHRIS.ROBERTSON@INSIGHT.COM
Telephone 4804096775

We deliver according to the following terms.

Payment Terms Net 45 days
Ship Via Electronic Delivery
Terms of Delivery FOB DESTINATION
Currency USD

In order for Insight to accept Purchase Orders against this contract and honor the prices on this quote, your agency must be registered with OMNIA Partners Public Sector (formerly U S Communities) Our sales teams would be happy to assist you with your registration Please contact them for assistance -- the registration process takes less than five minutes

Material	Material Description	Quantity	Unit Price	Extended Price
<u>NG-IN-1YR-CM</u>	NEOGOV INSIGHT ENTERPRISE EDITION (IN) 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	11,614 00	11,614 00
<u>NG-GJC-1YR-CM</u>	NEOGOV GOVERNMENTJOBS COM JOB POSTING SUBSCRIPTION (GJC) 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,500 00	1,500 00
<u>NG-PM-1YR-CM</u>	NEOGOV POSITION MANAGEMENT (PM) 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0 00	0 00
<u>NG-PE-UL-CM</u>	NEOGOV PERFORM (PE) 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	16,549 00	16,549 00
<u>NG-ON-1YR-CM</u>	NEOGOV ONBOARD (ON) - BUNDLE LIC 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	8,130 00	8,130 00
<u>NG-EF-1YR-CM</u>	NEOGOV EFORMS (EF) - BUNDLE LIC 1YR Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	12,194 00	12,194 00
<u>NEOGOV-I-MAINT-CM</u>	NEOGOV INTEGRATION MAINTENANCE (EMPLOYEE ONGOING IMPORT) Coverage Dates 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0 00	0 00

<u>NG-IN-SI-CM</u>	NEOGOV INSIGHT (IN) SETUP AND IMPLEMENTATION Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	3,500 00	3,500 00
<u>NG-INT-CM</u>	NEOGOV INSIGHT (IN) TRAINING Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500 00	2 500 00
<u>NG-PM-SI-CM</u>	NEOGOV POSITION MANAGEMENT (PM) SETUP AND IMPLEMENTATION Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,000 00	1 000 00
<u>NG-PMT-CM</u>	NEOGOV POSITION MANAGEMENT (PM) TRAINING Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,000 00	1 000 00
<u>NG-PE-SI-CM</u>	NEOGOV PERFORM (PE) SETUP AND IMPLEMENTATION Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	3,500 00	3,500 00
<u>NG-PET-CM</u>	NEOGOV PERFORM (PE) TRAINING Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500 00	2,500 00
<u>NG-ON-SI-CM</u>	NEOGOV ONBOARD (ON) SETUP AND IMPLEMENTATION Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2 000 00	2,000 00
<u>NG-ONT-CM</u>	NEOGOV ONBOARD (ON) TRAINING Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2 000 00	2,000 00
<u>NG-EF-SI-CM</u>	NEOGOV EFORMS (EF) SETUP AND IMPLEMENTATION Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500 00	2,500 00
<u>NG-EFT-CM</u>	NEOGOV EFORMS (EF) TRAINING Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2 500 00	2,500 00
<u>NG-NGI-SC-CM</u>	NEOGOV INTEGRATIONS SETUP AND CONFIGURATION (EMPLOYEE ONGOING IMPORT) Coverage Dates 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0 00	0 00
			Product Subtotal ¹	72,987 00
			TAX	0 00
			Total	72,987 00

Thank you for considering Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Chris Robertson
4804096775
CHRIS.ROBERTSON@INSIGHT.COM
Fax 4807608532

OMNIA Partners (formerly U S Communities) IT Products, Services and Solutions Contract No 4400006644

Insight Public Sector (IPS) is proud to be a contract holder for the OMNIA Partners Technology Products, Services <(>&<)> Solutions Contract

This competitively solicited contract is available to participating agencies of OMNIA Partners. OMNIA Partners assists local and state government agencies, school districts (K-12), higher education, and nonprofits in reducing the cost of purchased goods by pooling the purchasing power of public agencies nationwide. This is an optional use program with no minimum volume requirements and no cost to agencies to participate.

Regarding tariff impacts on IPS contract quotes, Insight is communicating with the contracting officials on the contracts held by Insight to minimize the impact of tariffs to our clients

Thanks for choosing Insight!

Insight Global Finance has a wide variety of flexible financing options and technology refresh solutions. Contact your Insight representative for an innovative approach to maximizing your technology and developing a strategy to manage your financial options.

The U.S. government has imposed tariffs on technology-related goods. Many of Insight's OEM and distribution partners have notified Insight that these tariffs will result in frequent and significant price increases. Some of our major partners have already provided Insight with cost increases, in some instances multiple times per day, while other providers are still assessing their situations. Due to the situation it is possible this quote may be subject to cost changes for Insight which will necessitate changes to the quoted pricing, or withdrawal of the quote. This purchase is subject to Insight's online Terms of Sale unless you have a separate purchase agreement signed by both your company and Insight, in which case, that separate agreement will govern. Insight's online Terms of Sale can be found at http://www.insight.com/en_US/help/terms-of-sale-products-ips.html



Quotation	
Sales Doc	<u>221256309</u>
Document Date	05-JUN-2019



Exhibit B

TERMS AND CONDITIONS

- 1 Anti-Discrimination Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor
- 2 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. 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 Business License Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4 01 Requirement and Special Exemptions, it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City
- 4 Confidentiality
 - a Confidential Information "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party")
 - b Exclusions Confidential Information does not include information that (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to being disclosed or made available to the Receiving Party in connection with this Agreement, (b) was or becomes generally known by the public other than by the Receiving Party or any of its Representatives' noncompliance with this Agreement, (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was or is independently developed by the Receiving Party without reference or use of

any Confidential Information, (d) was or is subject to disclosure pursuant to public sunshine laws including the California Public Records Act

- c Protection of Confidential Information As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall
 - i not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement,
 - ii not disclose or permit access to Confidential Information other than to its representatives who (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement, (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section, and (iii) are bound by written confidentiality or restricted use obligations at least as protective of the Confidential Information as the terms in this Section,
 - iii safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care,
 - iv ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section
- d Compelled Disclosures If the either Party is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by law, that Party shall (a) promptly, and prior to such disclosure, notify the other Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, and (b) provide reasonable assistance to the Disclosing Party at the Disclosing Party's expense in opposing such disclosure or seeking a protective order or other limitations on disclosure If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose

5 Security

- a Contractor will implement commercially reasonable administrative, technical, organizational and physical safeguards designed to ensure the security and confidentiality of City data, protect against anticipated threats or hazards to the security or integrity of City data, and protect against unauthorized access or use of City data or its accidental loss, destruction or damage The Contractor will review and test such safeguards on no less than an annual basis
- b If a breach of security or confidentiality of personal data or personal information occurs, and it requires notification to the City's users/customers under any state or federal law, then the City shall have sole control over the timing, content, and method of such notification provided that Contractor is given notice as soon as commercially reasonable and prior to any Contractor notification to users in order to take any steps related to mitigation If

Contractor or its subcontractors is responsible for the breach, then Contractor shall reimburse the City for its reasonable costs in providing the notification

- 6 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 contractors in the same discipline in the State of California Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the services assigned to them 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, and that such licenses and approvals shall be maintained throughout the term of this Agreement Contractor shall perform, at its own cost and expense and without reimbursement from City, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions Any employee of Contractor or its subcontractors who is determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the services under the Agreement, 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 City, shall be promptly removed from all work under the Agreement by Contractor and shall not be re-employed to perform any of the services under this Agreement
- 7 Laws and Regulations Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Agreement, 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 hereunder If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom
- 8 Indemnification To the fullest extent permitted by law, Contractor shall defend, indemnify and hold 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the services or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, employees, agents or volunteers Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees,

agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, employees, agents or volunteers. The indemnification obligations under this Section shall survive any expiration or termination of this Agreement.

- 9 Independent Contractor It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.

10 Termination

- a 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 fully and adequately rendered to City through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.
- b Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to return all City 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.

- 11 Choice of Law and Venue. Any dispute under, or related to, this Agreement shall be decided in accordance with the laws of the State of California and any action brought relating to this Agreement shall be held in the appropriate state court of Santa Clara County, California. Such actions shall neither be commenced in nor removed to federal court.

- 12 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. 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.

13 Wage Theft Prevention

- a 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.
- b 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.
- 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 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.
- 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

- 14 Non-Appropriation Contractor acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated.
- 15 Entire Agreement & Modification This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements or representations, whether oral or written. No change to or modification of this Agreement shall be binding upon either party unless agreed to in a written instrument specifically referencing this Agreement and signed by an authorized representative of each party.
- 16 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:

City	Contractor
City of Milpitas	Insight Public Sector Inc
1265 N Milpitas Boulevard	6820 S Harl Ave
Milpitas, California 95035	Tempe, AZ 85283
Attn: Mike Luu, Information Services	Attn: Chris Robertson

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.

- 17 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.
- 18 Attorneys' Fees If either Party to this Agreement commences any legal action against the other Party arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
- 19 Assignment and Subcontracting The Parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Contractor. Assignments of any or all rights, duties or obligations of Contractor under this Agreement will be permitted only with the City's express consent. Contractor shall not subcontract any portion of the services

to be performed under this Agreement without City's written authorization. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as is otherwise required by law.

20 Third Party Rights Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.

21 Successors and Assigns This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, as and assigns of each Party to this Agreement. However, Contractor 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.

22 Time of Essence Time is of the essence for each and every provision of this Agreement.



EXHIBIT C INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this Agreement, the following definition applies City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively

Insurance Required:

No work shall be done under this Agreement unless there is in effect insurance required by the Agreement and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001)
- () Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability

Minimum Limits of Insurance:

Contractor must maintain limits no less than

- | | |
|--|--|
| 1 General Liability:
(Including operations, products and completed operations, as applicable) | \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit |
| 2 Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage |

- | | | |
|---|---|---|
| 3 | Workers' Compensation Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4 | Cyber Liability and/or Errors & Omissions Liability: | \$1,000,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1 The City of Milpitas, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor, and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
- 2 For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it**.
- 3 The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
- 4 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement.

EXHIBIT D



NEOGOV SERVICES AGREEMENT

You agree that by placing an order through a NEOGOV standard ordering document (the "Order" or "Ordering Document") you agree to follow and be bound by the terms and conditions set forth herein "Governmentjobs.com", "NEOGOV" "we" and "our" means Governmentjobs.com, Inc (dba "NEOGOV") and, where applicable its affiliates "Customer" "you" "your" means the Governmentjobs.com client, customer or subscriber identified in the Ordering Document

If you are placing such an Order on behalf of a legal entity you represent that you have the authority to bind such entity to the terms and conditions of the Ordering Document and these terms and in such event "you" and "your" as used in these agreement terms shall refer to such entity "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement (the "Services Agreement") documents incorporated herein including the applicable Ordering Document and Schedule(s) and Special Conditions (if any)

1 Provision of Services Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with, and/or access its SaaS Applications Integrations and Professional Services (each defined below) included or ordered by Customer in the applicable Ordering Document (collectively referred to as the "Services") Customer hereby acknowledges and agrees that NEOGOV's provision and performance of and Customer's access to the Services is dependent and conditioned upon Customer's full performance of its duties obligations and responsibilities hereunder This Agreement entered into as of the date of your signature on an applicable Ordering Document (the "Effective Date")

2 SaaS Subscription Grant

a) SaaS Subscription "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order and subsequently made available by NEOGOV to customer and associated components as described in the Service Specifications made available to Customer by NEOGOV in connection with the provision of SaaS Applications Subject to and conditioned on Customer's and its Authorized Users compliance with the terms and conditions of this Agreement. NEOGOV hereby grants to Customer a limited, non-exclusive non-transferable and non-sublicensable right to (a) access and use and to permit Authorized Users to access and use the SaaS Applications specified in the Order solely for Customer's internal purposes (b) generate print, and download Customer Data as may result from any access to or use of the SaaS Applications and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription") "Authorized Users" means (i) Customer employees and (ii) Customer agents, contractors consultants and their respective employees all of which are pre-approved by NEOGOV

b) Delivery and Subscription Term. NEOGOV delivers each SaaS Application by providing Customer with online access When you access NEOGOV SaaS Applications you are accepting it for use in accordance with this Agreement Unless otherwise specified in an applicable Ordering Document, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months unless terminated earlier in accordance with this Agreement (the "Initial Term") Thereafter SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively the "Term") unless a party delivers to the other party at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement NEOGOV shall provide Customer access to the SaaS Applications within a reasonable time following the Effective Date unless otherwise agreed.

c) Content License Should Customer purchase access to SaaS Applications containing audio-visual content ("Licensed Content") NEOGOV grants to Customer a non-exclusive, non-transferable and non-sublicensable license during the applicable Term for Authorized Users to access and view the Licensed Content within the SaaS Application. Customer shall not permit the Licensed Content to be or appear to be reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. Customer shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content.

d) Program Documentation Program Documentation shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services NEOGOV hereby grants to Customer a non-exclusive non-sublicensable non-transferable license to use print, and distribute internally via nonpublic platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services

e) Prohibited Access You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates In addition, you may not access the SaaS Applications for purposes of monitoring their availability performance or functionality or for any other benchmarking or competitive purposes

- 3 Professional Services "Professional Services" shall mean professional consulting services purchased by Customer in an applicable Ordering Document or NEOGOV Scope of Work (SOW) relating to assistance training, deployment, usage customizations accessory data processing, and best practices of and concerning the SaaS Applications NEOGOV shall provide the Professional Services purchased in the applicable Order Form or SOW as the case may be Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees and any applicable milestones dependencies and other technical specifications or related information Order Forms or SOWs must be signed by both parties before NEOGOV shall commence work If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control
- 4 Segmentation The purchase of any Service is separate from any other order for any other Service Customer may purchase certain Services independently of other Services Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service
- 5 Payment Terms Unless otherwise stated in an Ordering Document, Customer shall pay all Subscription fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees" collectively the "Fees") within thirty (30) days of Customer's receipt of NEOGOV's invoice Fees shall be invoiced annually in advance and in a single invoice for each Term Invoices shall be delivered to the stated "Bill To" party on the Ordering Document Unless explicitly provided otherwise once placed the Ordering Document is non-cancellable and sums paid nonrefundable Subscription Fees are based upon the Customer's employee count and the amount of Customer Data NEOGOV maintains in its systems for Customer Customer shall not exceed the employee amount its Subscription Fees are based off of unless applicable supplemental Subscription Fees are paid The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule If Customer issues a purchase order then it shall be for the full amount set forth in the applicable NEOGOV invoice or Ordering Document Failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its payment obligations Except as otherwise specifically stated in the Ordering Document, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by giving Customer at least thirty (30) day notice prior to commencement of a Renewal Term
- 6 Term and Termination
 - a) Term Unless otherwise specified in an applicable Ordering Document, this Agreement shall commence on the Effective Date This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW unless it is terminated earlier in accordance with this Agreement
 - b) Termination for Cause Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation or public policy
 - c) Effect of Termination Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property Additionally, Customer shall be obligated to pay as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice
- 7 Service Specifications "Service Specifications" means the following documents as applicable to the Services under your Order: Program Documentation, Service Schedules, Terms of Use, Security Statements, Retention, Cookie and Privacy Policies The Service Specifications describe and govern the Services Online Service Specifications may be made available at <https://www.neogov.com/service-specifications> or provided upon Customer request. All applicable Service Specifications are incorporated into this Agreement Excluding Service Schedules, NEOGOV may update the Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, Updates and Upgrades, and availability of third-party services
- 8 Maintenance, Modifications and Support Services
 - a) Maintenance NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation, software delivery, NEOGOV database security, and integrity of Customer Data stored in the NEOGOV database Preventive system maintenance is conducted by NEOGOV from time to time and is addressed in a variety of methods including scalable architecture and infrastructure, log checking, performance maintenance, and other preventative tasks
 - b) Modifications, Updates, and Upgrades NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost NEOGOV shall have no liability for or any obligations to investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services

- c) **Training Materials** Primary training of NEOGOV Services is conducted by self-review of online materials NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials") The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities
 - d) **Implementation** For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Ordering Document NEOGOV personnel will provide dedicated consultation on best practices for setting up the Services answer Customer questions during the implementation period and ensure Personnel grasp the system
 - e) **Support** Phone support for the Services is available to Customer between the hours of 6 00AM and 6 00PM Pacific Time Monday through Friday excluding NEOGOV holidays Online support for the Services is available 24 hours a day seven days a week. The length of time for a resolution of any problem is fully dependent on the type of case (i.e. High/Medium/Low priority question, enhancement request)
 - f) **Limitations** Unless otherwise specified in the Ordering Document, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein including, but not limited to data uploads, manual data entry migration services, data conversion refinement, purification reformatting, SQL dump or process consultation
- 9 **NEOGOVI Intellectual Property** NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services products systems software (including any source code or object code) or Service Specifications related thereto Updates or Upgrades trademarks service marks logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively the "NEOGOVI Intellectual Property") This Agreement does not convey or transfer title or ownership of the NEOGOVI Intellectual Property to Customer or any of its users All rights not expressly granted herein are reserved by NEOGOV Other than recommendation use or as required by law all use of NEOGOVI Trademarks must be pre-approved by NEOGOV prior to use Trademarks shall include any word, name symbol color designation or device or any combination thereof that functions as a source identifier including any trademark, trade dress service mark, trade name logo design mark, or domain name whether or not registered
- 10 **Data Processing and Privacy**
- a) **Customer Data** "Customer Data" shall mean all data that is owned or developed by Customer whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer including Personnel or Job Seeker Profile Data collected, loaded into or located in Customer data files maintained by NEOGOV NEOGOV intellectual property including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data" Customer exclusively own all right, title and interest in and to all Customer Data Customer grants NEOGOV a license to host, use process display create non-personal derivative works of and transmit Customer Data to provide the Services
 - b) **Platform Data** "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of Customer or any Authorized User including any end user visit, session, impression, clickthrough or click stream data, non-personal Usage Data, Account, Log, Device Publication, Tracking, and Transaction Data as defined in NEOGOV's Privacy Policy and any statistical or other analysis information, or data based on or derived from any of the foregoing NEOGOV shall exclusively own all right, title and interest in and to all Platform Data NEOGOV grants to Customer a limited, non-perpetual non-exclusive non-transferable and non-sublicensable license during the Term to use and access and to permit Authorized Users to use and access, Platform Data of which NEOGOV makes available through the SaaS Applications solely for Customer's internal purposes
 - c) **Privacy** NEOGOV shall process all data in accord with the NEOGOV Privacy Policy available at <https://www.neogov.com/privacy-policy> The defined terms in the NEOGOV Privacy Policy shall have the same meaning in this Agreement unless otherwise specified herein
 - d) **Data Responsibilities** NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates and (iii) the collection, use modification, alteration, extraction, retention, copying storage security disclosure transfer disposal and other processing of any Customer Data inside and outside the Services (including any personally identifiable information) and (iv) Customer database(s) NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users NEOGOV recommends Customer backup their Customer Data outside the Services if necessary Unless vital to provide the Services or otherwise mutually agreed in writing, Customer shall not maintain any health, payment card or similarly sensitive data that imposes specific data security or data protection obligations within the Services
 - e) **Service Usage** NEOGOV may set forth Fees for designated levels of usage and data storage within each SaaS Application (each a "Storage Quota") beginning with the Fees payable by Customer for the levels of usage and data storage in effect as of the Effective Date NEOGOV will use commercially reasonable efforts to notify Customer in writing if Customer has reached 80 percent of its then current Storage Quota and Customer may increase its Storage Quota and corresponding Fee obligations in accordance with NEOGOV's then current usage price tiers Customer acknowledges that exceeding its then-current Service Allocation may result in service degradation for Customer and other NEOGOV customers and agrees that (i) NEOGOV has no obligation to permit Customer to exceed its then-current Storage Quota and (ii) Customer is not entitled to any Service Level Credit for periods during which Customer exceeds its then-current Storage Quota, regardless of whether the Services fail to meet any availability requirement during such period
 - f) **External Breach** In the event of a security breach, as defined by applicable law by anyone other than your employee contractor or agent, upon discovery of such breach, NEOGOV will (a) initiate remedial actions that are in compliance with applicable law and consistent with

Customer Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all applicable laws. NEOGOV hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.

- g) **Customer Compliance.** Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, codes, and ordinances. Customer is responsible for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services, equipment and facilities required to access the Services. Customer shall be responsible for procuring all licenses of third-party software necessary for Customer's use of the Services. Customer is responsible and liable for all uses of the Services, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. All users of the Services are obligated to abide by the Terms of Use available at <https://www.neogov.com/terms-of-use>. Customer shall take reasonable efforts to make all users, whether Authorized or unauthorized, aware of this Agreement's provisions as applicable to such user's use of the Services and shall cause users to comply with such provisions.

13 Indemnification

- a) **Indemnity.** Subject to subsections (b) through (d) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV if Customer does the following:
- i. Notifies NEOGOV promptly in writing, not later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law);
 - ii. Gives NEOGOV sole control of the defense and any settlement negotiations; and
 - iii. Gives NEOGOV the information, authority, and assistance NEOGOV needs to defend against or settle the claim.
- b) **Alternative Resolution.** If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained absent such early termination following the effective date of such early termination.
- c) **No Duty to Indemnify.** NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights. NEOGOV will not indemnify Customer for any intellectual property infringement claim(s) known to Customer at the time subscription rights are obtained.
- d) **Exclusive Remedy.** This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

14 Limitations of Liability

- a) **Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, CUSTOMER'S USE OR, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- b) **Limitation.** WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY ARISING OUT OF NEOGOV'S INDEMNIFICATION OBLIGATIONS, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY

NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT

- c) Independent Allocations of Risk. Each provision of this Agreement that provides for a limitation of liability disclaimer of warranties or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by NEOGOV to Customer. Each of these provisions is severable and independent of all other provisions of this Agreement.

15 Trial and Beta Services Integrations. To the extent Customer utilizes Trial Beta, or NEOGOV Integration Services, the Schedules relevant to such Services found at <https://www.neogov.com/service-specifications> are incorporated herein and shall supplement the Services Agreement.

16 E-Signatures

- a) E-Signature Provisioning & Consent. NEOGOV E-Forms and other electronically signed services ("E-Signatures") are provided by NEOGOV for two counterparties (generally a government employer (the "sending party") subscribing to NEOGOV Services and Personnel or Job Seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.
- b) Right to Opt-Out of E-Signatures. You are not required to use E-Signatures or accept electronic documents provided thereby. Personnel and Job Seekers can choose to not use E-Signatures and may sign the document manually instead by notifying the sending party they are choosing to do so and by obtaining a non-electronic copy of the document. NEOGOV assumes no responsibility for providing non-electronic documents. In the event a non-sending party elects to sign the document manually, do not use E-Signatures to sign the document.
- c) Electronic Download. If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdraw your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.
- d) E-Signature Validity. PLEASE NOTE THAT NEOGOV'S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY. THEY SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE'S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV'S E-SIGNATURE'S.

17 Relay of Content. NEOGOV relays content including, but not limited to, resumes, cover letters, applications, messages, questionnaire answers, responses, offer letters, and other materials. You acknowledge that you are asking NEOGOV to send this content on your behalf. We process, monitor, review, store, and analyze such content for data analysis, quality control, enforcement of the Terms of Use, security, content moderation, and to improve the SaaS Applications. As a result, or due to technical malfunction, in certain circumstances such content may be delayed or may not be delivered to the intended recipient. NEOGOV may notify you in such an event.

18 Text Message Communications. NEOGOV may offer Job Seekers and Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert, or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED, AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES, (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES, AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

19 Taxes. Customer will pay all taxes, duties, and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption within ten (10) days of NEOGOV's request therefor.

- 20 Cooperative Agreement. As permitted by law it is understood and agreed by Customer and NEOGOV that any government entity other than Customer (the "New Entity") may purchase the services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV With respect to any purchases by a New Entity pursuant to this Section, Customer (i) shall not be construed as a dealer re-marketer representative partner or agent of any type of NEOGOV or such New Entity (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into or continuing a contractual relationship with any New Entity
- 21 Publicity Each party hereto may advertise disclose and publish its relationship with the other party under this Agreement
- 22 Authority Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement and (ii) to its knowledge the execution delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding oral or written to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.
- 23 Force Majeure NEOGOV shall not be liable for any damages costs expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation (a) acts of God (b) changes in or in the interpretation of any law rule regulation or ordinance (c) strikes lockouts or other labor problems (d) transportation delays (e) unavailability of supplies or materials (f) fire or explosion (g) riot, military action or usurped power or (h) actions or failures to act on the part of a governmental authority
- 24 Assignment Customer may not assign this Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void
- 25 Entire Agreement Amendment. This Services Agreement and documents incorporated herein (including all Service Specifications and Schedules) the applicable Ordering Document, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter "Special Conditions" means individually negotiated variations amendments and/or additions to this Service Agreement of which are either drafted or incorporated by reference, into the Ordering Document. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Ordering Document unless such variances are in the terms of the description quantity or price but shall be deemed a material alteration thereof and this Service Agreement and the applicable Ordering Document shall be deemed accepted by the Customer without said additional or different terms It is expressly agreed that the terms of this Agreement and any NEOGOV Ordering Document shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order 1) Special Conditions (if any) 2) NEOGOV Ordering Document, 3) the applicable NEOGOV Services Agreement, Service Specifications, Schedules, and other incorporated documents, 4) Customer terms and conditions (if any) This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound
- 26 Governing Law This Agreement shall be governed by and construed in accordance with the laws of Customer's State of residence without giving effect to conflict of law rules
- 27 Severability If any provision of this Agreement is held to be illegal or unenforceable such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect
- 28 Survival Provisions that survive termination or expiration are those relating to limitation of liability payment, and others which by their nature are intended to survive
- 29 Independent Contractor Third Party Agreements The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not
- 30 Notices All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail or three (3) business days following deposit in the U.S. mail registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Ordering Document and (ii) NEOGOV at 300 Continental Blvd Suite 565 El Segundo CA 90245
- 31 Waiver The waiver express or implied by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind

32 Counterparts This Agreement may be executed in two or more counterparts each of which will be deemed an original but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

**EXHIBIT E - NOTICE OF EXERCISE OF OPTION TO RENEW OR EXTEND SOFTWARE
SUBSCRIPTION OR SOFTWARE SUPPORT TERM**

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

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

Pursuant to the Terms and Conditions of the Agreement referenced above, the City of Milpitas hereby exercises its option to renew or extend the software subscription or software maintenance/support services under the following provisions

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date	
End date	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed \$_____ and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF MILPITAS a municipal corporation	CONTRACTOR NAME a _____ corporation
By _____ Name Chris Schroeder Title Purchasing Agent	By _____ Name Title



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448; Approve and Authorize the City Manager to Execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 and Extend the Term of the Agreement to December 31, 2021 for the Project; and Approve a related Budget Amendment in the amount of \$36,219
Category:	Consent Calendar-Community Development
Meeting Date:	10/20/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendations:	1. Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448. 2. Approve and authorize the City Manager to execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021 for the Trails and Bikeway Master Plan Update. 3. Approve a budget appropriation of \$36,219 from the General Government CIP Fund into Project No. 3448.

BACKGROUND:

Project Number 3448, Trails and Bikeway Master Plan Update is in the approved 2020-2025 Capital Improvement Program and provides an update to the City's plan. The updated master plan will include recommended improvements for connectivity to local destinations for all users including pedestrians and bicycles. The plan will identify gaps in the City's regional trail system, develop trail design guidelines, support economic development, and enhance the quality of life for residents. The updated plan will consider bikeway & pedestrian uses and will explore enhancement of existing networks and recommend opportunities for improvement and expansion.

On February 26, 2019, the City Council authorized the City Manager to execute a consultant services agreement (Attachment 1) with Alta Planning and Design in the amount of \$193,183 to complete the update of the Trails and Bikeway Master Plan Update, and Amendment No. 1 (Attachment 2) was executed on May 19, 2020 to extend the expiration of the agreement from June 30, 2020 to December 30, 2020.

ANALYSIS:

The plan is currently 75% complete, which consists of an assessment of existing conditions, initial community outreach, identification of needs and gaps, outside agency coordination, and recommendations of projects and facility improvements. The following are key project milestones that have been completed:

- Completed the assessment of existing trail, bike, and pedestrian facilities.
- Notified the public through newspaper advertisements and encouraged community participation through social media outlets, such as city website, e-mail, Facebook, Twitter, and Nextdoor.
- Completed 5 in-person pop-up events and community outreach meetings conducted to present project goals and collect public comments.
- Created an on-line web input map where the community can enter and view comments related gaps and needs of trail, bikeway, and pedestrian facilities in the city.

- Received more than 2,000 unique comments through the public engagement process.
- Completed safety, demand, and connectivity analysis of existing conditions
- Developed trail, bikeway, pedestrian network recommendations.
- Prioritizations of improvements based on need, demand, and cost.
- Developed bike and scooter share policy guidelines and best practices for recommendation to the City Council.
- Coordinated with VTA, Valley Water, School District, Open Space Authority, Public Health, Bike Coalition, City of Fremont, and City of San Jose on the feasibility of proposed improvements.
- Collaborated with City consultants completing the updates to the City's General Plan, Metro Plan, and Park Master Plan.
- Completed Draft Administrative plan for internal city staff reviews

From the public outreach and engagement process, the most common themes or comments received from the public feedback are:

- Provide safe crossings across difficult barriers, highways and railroads.
- Provide greater connectivity to BART
- Support Safe Routes to Schools
- Provide comfortable east-west connections across the City
- Provide a complete pedestrian network throughout the City as well as to regional connections

The remaining project tasks include completion of draft plan, public comment on draft plan, and plan adoption.

As a result of the COVID-19 pandemic, the consultant has not achieved the level of community input and participation as desired for the draft plan. Staff recommends extending the contract expiration date and expanding the consultant's scope of work to allow for additional public outreach tasks. Recommended additional scope of work tasks include efforts to promote community engagement by exploring unique interactive website designs and presentations that will generate interest and interactions with the public in lieu of any physical meetings.

Staff has negotiated a scope and fee for Amendment No. 2 (Attachment 3) with the consultant to provide the additional community outreach tasks for a fee not to exceed \$36,219, which is considered reasonable for the services provided. The total contract compensation would be \$229,402, and a budget appropriation (Attachment 4) of \$36,219 from the General Government CIP Fund into project number 3448 Trails and Bikeway Master Plan Update is required.

With approval of Amendment No. 2, the draft plan is targeted for November 2020. Additional public engagement would be held to present the draft plan in December 2020 and January 2021. The final plan is targeted for February 2021 where it would be adopted by the City Council.

Staff recommends that the City Council approve the requested budget appropriation and approve and authorize the City Manager to execute Amendment No. 2 to the consultant services agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021.

POLICY ALTERNATIVE:

Alternative: Do not receive a status report. Do not approve the requested budget appropriation and do not approve Amendment No. 2.

Pros: None

Cons: Due to the COVID-19 pandemic, the consultant was not able to complete the desired level of public engagement as required for the Master Plan update. The plan could move forward without amending the consultant agreement; however, there would likely be limited public input.

Reason for not recommending: The update to the City's Trails and Bikeway Master Plan will be a long-term document identifying where improvements to infrastructure is needed. Staff believes that a high level of public input is needed to effectively capture the desires of the Milpitas community.

FISCAL IMPACT:

The project has an approved budget of \$210,000 funded in FY 2020-21 with funds from the General Government CIP Fund. The approval of a budget appropriation (Attachment 4) of \$36,219 from the General Government CIP Fund is required to execute Amendment No. 2 for this project. The following is a summary of the fiscal impact:

Description	Approved Budget	Requested Additional Budget	Total Budget
Design	\$200,000	\$36,219	\$236,219
Administration	\$10,000		\$10,000
Total	\$210,000	\$36,219	\$246,219

California Environmental Quality Act

Not applicable

Recommendations:

1. Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448
2. Approve and authorize the City Manager to execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021 for the Trails and Bikeway Master Plan Update.
3. Approve a budget appropriation of \$36,219 from the General Government CIP Fund into Project No. 3448.

Attachments:

- 1 – Professional Services Agreement with Alta Planning and Design
- 2 – Amendment No. 1
- 3 – Amendment No. 2 and Exhibits A1 and B1
- 4 – Budget Change Form

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of February 20, 2019 ("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 Alta Planning + Design Inc., a corporation with its principal place of business at 100 Webster Street, Suite 300, 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:

Trails and Bikeway Pedestrian Master 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 **\$193,183**. 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 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 contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term of Performance

The term of this Agreement shall be from **February 20, 2019** to **June 30, 2020**, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon the commencement date of the term of this Agreement set forth above.

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 \$1,000 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.

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.

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 **Jeff Knowles** 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
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: Fanny Yu
Engineering

CONSULTANT:

Alta Planning + Design, Inc.
100 Webster Street, Suite 300,
Oakland, CA 94067
Attn: Hugh Louch

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.

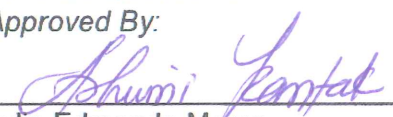
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND ALTA PLANNING + DESIGN, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

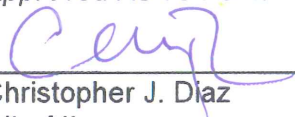


Julie Edmonds-Mares
City Manager

Date

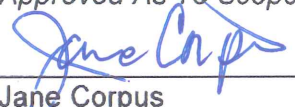
3/15/19

Approved As To Form:



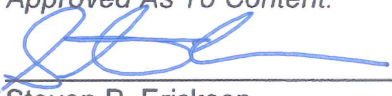
Christopher J. Diaz
City Attorney

Approved As To Scope:



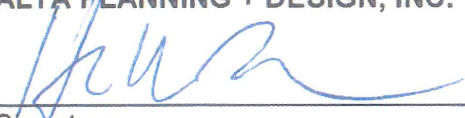
Jane Corpus
Interim Director of Finance

Approved As To Content:



Steven P. Erickson
Engineering Director/City Engineer

ALTA PLANNING + DESIGN, INC.



Signature

Hugh Louch

Name

Vice President, as duly authorized

Title

March 8, 2019

Date

DIR Registration Number (If Applicable)

EXHIBIT A

Scope of Services

Execution Plan (Scope of Services/Work)

This project will update two plans for the City of Milpitas – a citywide Trail Plan and a Bicycle and Pedestrian Master Plan. These plans for the City of Milpitas that provides a vision and action plan for the City to improve safe and convenient travel by active transportation modes in Milpitas.

Task 1. Kick-Off and Administration

Task 1.1 Kick off and Administration

Alta will plan and facilitate a project kick-off meeting and stakeholder strategy session to clarify the project scope, background, and priorities. At the conclusion of this meeting, Alta will develop a final project management plan, including a data request memo and a proposed public engagement plan.

Throughout the project, there will be ongoing coordination between Alta's project manager and the City of Milpitas project manager – including email, phone and written communication to keep the City up-to-date on Plan development. Alta will conduct monthly project management meetings to review project status, schedule, and budget and provide meeting notes at the conclusion of each meeting.

The kick-off meeting will address:

- City's goals, visions, objectives, expectations
- Key issues, opportunities, and areas of concern
- Revisions (if needed) of project scope, deliverables, and budget
- Public outreach and agency coordination
- Data or information needed to be provided by the City
- Project Milestone and Deliverable Schedule

Task 1.2 Coordination with Neighboring Jurisdictions

During the course of the project, Alta will coordinate with the cities of Fremont and San Jose, and the Valley Transportation Authority (VTA) to ensure that the proposed improvements for Milpitas are well integrated into the regional bicycle and pedestrian networks. Alta will attend up to 6 meetings with these partners, either individually or in groups as appropriate.

Deliverables

- Final project management plan
- Monthly meeting notes
- Agenda and notes for coordination meetings with neighbors and partners

Task 2. Assess Existing Conditions & Research

TASK 2.1 EXISTING CONDITIONS

Alta will submit a data request memo to the City, ensuring we have all available relevant data, plans, policies, and regulations currently available. Alta will review Milpitas's existing bicycle and pedestrian facilities and supporting infrastructure using data provided by the City. This includes:

- Pedestrian, bikeway, and trail inventory, including sidewalks, crosswalks, and bikeways.
- Roadway characteristic data provided by the City, County, or Caltrans staff (including number of travel lanes, roadway/travel lane width, speed limits/speed survey data, and traffic volume data (as available)).
- Existing and proposed land use data available from the City.

Milpitas Trails Master Plan Update and Bikeway & Pedestrian Master Plan Update

- Demographic data (population, employment, and other information) from the Census, including from the American Community Survey.
- Points of interest and key destinations, including commercial areas, schools, parks, transit stations and stops, and others.

Selective fieldwork will be conducted to verify critical elements of the City's existing facilities in person, supported by a review of available aerial photography and/or Google StreetView.

Alta will develop a set of maps, tables, and narrative that describe the existing bicycle and pedestrian network and conditions.

TASK 2.2 DOCUMENT REVIEW

Alta will also review existing plans and studies from partners of neighboring jurisdictions, including bicycle, pedestrian, and trail plans from the cities of San Jose and Fremont, studies from VTA including the Tasman Complete Streets Plan, Countywide Bicycle and Pedestrian Plan, and transit access and planning studies. Information from the Caltrans District 4 Bike Plan developed by Alta will also be integrated into this process.

TASK 2.3 PROGRAMS REVIEW

Alta will facilitate a meeting with City Parks and Recreation, City Police and other City agencies and local partners that provide existing bicycle and pedestrian programs in the City. Alta will document existing programs including Safe Routes to Schools (SRTS) programs, recreational programs and events run by the City, and any other efforts to encourage or educate residents of Milpitas on biking and walking safely.

The existing conditions, document review and programs review will be integrated into existing conditions chapters for the two plans.

TASK 2.4 BICYCLE AND PEDESTRIAN COUNTS (OPTIONAL)

Alta will contract with a data collection vendor to collect bicycle and pedestrian counts at up to 10 locations. Counts will be collected during AM and PM peak periods on 3 weekdays at each location.

Deliverables

- Data request memo (provided at kick off meeting)
- Maps, data tables, and narrative summarizing the existing network and prior plans
- Bicycle and pedestrian counts (optional)

Task 3. Community Outreach

TASK 3.1 PUBLIC OUTREACH AND ENGAGEMENT STRATEGY

As the City of Milpitas considers modifications to its physical infrastructure, it is critical to involve citizens and stakeholders in the process. Early and sustained involvement helps make a successful project, but drawn out schedules can sap the interest of all but most the serious advocates.

Alta will develop a detailed Public Outreach and Engagement Strategy that describes proposed events and identifies the schedule and key considerations for each event. This document will describe (1) the goals of the engagement effort, (2) the key audiences to reach within the City, and (3) the strategies (meetings, advertising, and other efforts), to reach these audiences.

Alta will continue to update the engagement strategy as the planning process continues, updating lists of stakeholders and other participants and identifying additional activities as needed to support the plan.

TASK 3.2 COMMUNITY INPUT MAP

Alta will provide the City with an online interactive community input map that allows the public to identify priority destinations for walking and biking, routes they would like to see improved, and similar information.

The map allows users to comment on input from other users, allowing for a dialogue among residents. Alta has developed a technology to support online map input that works well on computers, tablets and phones. The map will be up through the completion of Task 4 and can be continued through the length of the project if desired by the City.

TASK 3.3 COMMUNITY MEETINGS

Alta will facilitate four community meetings during the course of the project to highlight the two plans, focused on providing the public with tangible products that require public engagement. We propose to organize the outreach events around the following phases:

- **Needs Workshop.** We propose to conduct a set of public workshops that presents the findings of the existing conditions (Task 2) and the needs assessment (Task 4). The workshop will present the existing network and programs, gather feedback on network gaps and areas of concern, and review data on safety concerns, connectivity, and other factors. These two workshops could focus on each plan individually or cover both plans and be held in different areas of the City.
- **Recommendations/Draft Plan.** We propose to conduct a second set of workshops that presents draft recommendations for projects and programs for both the Trails Master Plan and the Bicycle and Pedestrian Plan. This second set of workshops will be conducted when all of the materials for the draft plans are ready, but with enough time to make modifications to the identified project needs and the project prioritization process (Task 5). Again, workshops can be held to focus on a single plan or can cover both plans at meetings in two different locations.

All public meeting input will be captured in a working paper and summarized in a chapter of the Plan.

TASK 3.4 POP UP EVENTS (OPTIONAL TASK)

Given the challenges of drawing interest to public meetings, we recommend considering conducting additional public outreach events that meet the public where they are. This may include farmers markets, community festivals, or other community gathering spots. We have found this approach to be very successful for engaging a broader cross-section of the community, including those who may be interested in walking and bicycling but who are not interested in attending public meetings.

For this optional task, Alta would conduct up to four pop-up meetings, which may include:

- Booths at community events
- A bicycling and walking tour of existing trails or on-street infrastructure or proposed projects

Deliverables

- Final public engagement strategy describing goals of the outreach and proposed events
- Community input map
- Public meeting materials, including input boards, presentations, comment cards, and similar opportunities
- Working paper that describes the various input methods and all of the input received
- Optional pop up meeting plan, materials, and summaries

Task 4. Identify Gaps and Needs

Alta will conduct a detailed assessment of gaps and needs for trails, on-street bicycle facilities, and pedestrian facilities. This assessment will quantify factors that impact walking and bicycling activity, locate network gaps as potential projects, and identify key pedestrian and bicycling areas based on demand and supply variables.

Our approach to this analysis includes:

- **Safety Analysis.** Alta will use data from the Statewide Integrated Traffic Records System (SWITRS) or local police data to identify where there have been collisions, injuries, and fatalities involving people walking and biking in Milpitas.
- **Demand Analysis.** Alta will use data about existing and proposed land use, trips, and others to identify where there is high demand for biking and walking in Milpitas. This will consider access to transit, schools, work, commercial destinations, and others. It will also make use of data from the VTA travel demand model to identify existing trips patterns that may be able to be served by trails, bike, and pedestrian infrastructure
- **Connectivity Analysis.** Alta will use data about existing multimodal infrastructure to develop an understanding of how well destinations and areas of demand are connected for people who want to walk and bike for both transportation and recreation. This analysis will include rating existing bikeway facilities for level of traffic stress (LTS) and pedestrian facilities for pedestrian level of service (PLOS). It will also consider how Milpitas bicycle, pedestrian and trail networks connect to the City's neighbors.
- **Design Review.** Alta will use best practices in trail, bicycle and pedestrian facility design to inform the review of existing facilities and identification of needs. Alta has helped develop many of these guides, including the NACTO Urban Bikeway Design Guide and the FHWA Small Town and Rural Multimodal Networks guide. Alta will use these, along with the dozens of design guides we have produced for local agencies to help inform this review.

Alta will use these analyses to identify:

- New Trail opportunities along creeks, other infrastructure right-of-ways, or adjacent to public street right of ways
- Gaps in existing bicycle networks, such as disconnected bike networks, intersection crossing needs and other conflict points,
- Gaps in pedestrian networks, such as sidewalk gaps, crossing needs in areas of pedestrian activities or at crossings of streets and other public right-of-ways
- Potential enhancements to trails and bicycle and pedestrian facilities to meet design standards
- Needs for bicycle facilities, such as bicycle parking, repair stations and other
- Needs for pedestrian amenities, such as benches, shelters, plantings and others

Alta will produce a series of maps, tables, and narrative that describe gaps and needs, developing chapters for the two plans that synthesize this information into critical needs and gaps that can be addressed by the City. Information from the public outreach process will also be integrated into this process.

Deliverables

- Plan chapters summarizing needs, including maps, tables, and narrative

Task 5. Recommended Projects and Facility Improvements

TASK 5.1 PROJECT RECOMMENDATIONS

The core of the plan will identify recommended projects for future implementation. This task will provide Milpitas with a list of projects, a method to prioritize projects, and identification of funding sources to support future projects. Based on the needs analysis and public and stakeholder input, Alta will develop a recommended network that includes trails, bicycle and pedestrian facilities. These networks will be developed for each plan considering the unique elements appropriate to that plan.

The Trails Master Plan will focus on trail improvements and new trails that help produce a trail system for the City. This will address trail width, materials, accommodation of bicyclists and pedestrians, access to parks and other recreational destinations, and identify needed amenities to support the overall network. The plan will also address and identify potential improvements to trail crossings, including use of physical infrastructure, striping, and signal strategies to improve safety and comfort for trail users.

The Bicycle and Pedestrian Master Plan will provide a blueprint for implementing bicycle and pedestrian infrastructure. It will integrate many elements of the Trails Master Plan as trails are a critical element in an overall bicycle and pedestrian network. It will also identify needed on-street bicycle facilities and facility improvements and will identify pedestrian improvements, including potential crossing improvements that can help improve the safety of people walking in the City.

TASK 5.2 PROJECT PRIORITIZATION

Alta will prepare a robust framework for evaluating projects using a qualitative process that is organized around the Plan's goals and objectives. Typical project evaluation criteria include:

- **Public Support.** The project provides a significant improvement to a community identified challenge area.
- **Safety.** The project addresses safety concerns such as reported collisions or areas of high risk.
- **Connectivity.** The project improves overall network connectivity or provides access to key destinations.
- **Transit Support:** The project provides an improved connection to transit.
- **Quality.** The project type is appropriate for the context, providing low stress travel for people walking and biking.
- **Feasibility.** The extent of project constraints in terms of right-of-way acquisition, impacts on traffic operations, cost, and other factors.

Alta will work with the City to finalize the criteria and evaluation method and apply these to the projects and will present the proposed process to City residents in the second set of workshops. These will be applied to the proposed projects from each plan and used to help identify priorities.

Alta will also develop an implementation strategy that identifies potential funding opportunities – including local, regional, and statewide funding – and applies those to each project. This will help the City identify both priorities and appropriate methods for implementation, including relevant funding sources.

TASK 5.3 PROGRAMS RECOMMENDATIONS

The Alta team will develop specific program recommendations in coordination with implementing agencies. Alta is the only bicycle and pedestrian planning firm with a department dedicated to planning and implementing education and encouragement components of active transportation programs including workshops, contests, and other promotional activities. The Alta team will utilize our expertise in developing and leading Transportation Demand Management (TDM) and other active transportation programs to develop a customized and achievable set of recommendations. Enforcement and safety recommendations may also include ways to improve safety along bike/pedestrian trails using guidelines and policies for neighboring vacant land development that will provide 'eyes-on' the trail and other crime prevention techniques.

TASK 5.4. DRAFT AND FINAL PLAN DOCUMENTS

Alta will develop administrative draft plans for both the Trails Master Plan and the Bikeway and based on the work conducted in prior tasks. The objective of this task is to produce a simple but useful plan that captures existing conditions, a future vision for bicycle and pedestrian accommodation in Milpitas, and the implementation steps needed to get to that vision (including priority and timing).

Alta will revise the administrative draft plans into public draft plans based on a consolidated, consistent set of comments from the City. The public draft plans will be posted for review by the public and Alta will work with the City to provide opportunities to receive feedback on the draft.

Alta will compile the comments received from the public into a matrix with a proposed disposition for each comment. Similar comments will be grouped for easier review. Alta will meet with the City to review this matrix and revise the disposition matrix. After completing that review, Alta will develop a Final Draft Plan for the City to review and will make necessary updates to the Final Plan after review by the City.

Alta will present the final plans to the City Council or other appropriate bodies and make minor modifications as needed to achieve adoption of the plans.

TASK 5.5 PROJECT CUT SHEETS (OPTIONAL TASK)

For a up to 10 priority projects identified by the City, Alta will create project cut sheets that capture:

- Summary information about the project – location, improvement characteristics
- Existing and proposed cross section
- A rendering or photosimulation that provides an easy means to understand the future project
- Information on potential tradeoffs required to implement the project (e.g., impacts to parking, vehicle lanes, etc.)

These cut sheets are often useful to support grant applications and to provide decision makers and the public with clear information about proposed priority improvements.

TASK 5.6. DESIGN GUIDELINES (OPTIONAL TASK)

Alta will develop design guidelines to reflect changes in best practices and in coordination with the City's policies. Design guidelines will include the following:

- Bikeway, trail, and sidewalk recommended widths
- Bikeway and trail intersection guidance
- Bicycle detection recommendations
- Striping and signing recommendations
- Bicycle parking recommendations by land use type
- Pedestrian improvement standards, accessibility issues, and crosswalk Prioritization Policy
- Creek Trail standards

Alta will develop a set of design guidelines tailored to the unique context of the City of Milpitas, using images and information on local infrastructure that provides the City with a resource to implement ongoing bicycle and pedestrian design solutions as part of project opportunities that arise from other projects such as new development, the new BART station, or regular street resurfacing.

Deliverables

- Long term vision for bicycle and pedestrian networks in Milpitas, including maps, tables, and narratives that capture all proposed improvements.
- Prioritized project list, including maps and tables that capture the top feasible priorities for the City
- Administrative Draft, Public Draft and Final Trails Master Plan
- Administrative Draft, Public Draft and Final Bicycle and Pedestrian Master Plan
- Presentation to City Council or committee to support adoption of the plan
- Optional cut sheets (10) for priority projects
- Optional Trail, Bicycle, and Pedestrian Design Guidelines for the City

EXHIBIT B

Fee & Schedule of Charges/Payments

The Designer shall be paid on a time and materials basis for all Services rendered up to the not-to-exceed Total Compensation. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be calculated on a time and materials basis and made based upon the percentage of task completed in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, method for computing the amount payable, percentage of task completed, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The total amount paid to Designer shall never exceed the Total Compensation without the prior written approval of City.

Fee Schedule attached to this Exhibit B.

Project Budget

Milpitas Trails Master Plan Update and Bikeway & Pedestrian Master Plan Update

TASK	Alta Planning + Design							Task Hours	Total Task Fee
	Principal-in-Charge	Project Manager	Senior Planner	Engineer	Designer/ Graphics	Planner/ Outreach	GIS		
	Hugh Louch	Jeff Knowles	Beth Martin	Joe Paull	Ryan Booth	Ben Frazier	Lisa Schroer		
2019 Hourly Rate**	\$275	\$193	\$112	\$122	\$104	\$104	\$104		
1 Kick-Off and Administration	4	28	35	0	0	0	0	67	\$10,424
1.1 Kick-Off and Administration	2	16	20					38	\$5,878
1.2 Coordination with Neighboring Jurisdictions	2	12	15					29	\$4,546
2 Assess Existing Conditions & Research	4	10	28	0	0	40	24	106	\$12,822
2.1 Existing Conditions	2	4	12			16	24	58	\$6,826
2.2 Document Review	1	2	8			12		23	\$2,805
2.3 Programs Review	1	4	8			12		25	\$3,191
3 Community Outreach	13	37	54	0	0	56	18	178	\$24,460
3.1 Public Outreach and Engagement Strategy	1	4	4			8		17	\$2,327
3.2 Community Input Map		1	2			8	2	13	\$1,457
3.3 Community Workshops	12	32	48			40	16	148	\$20,676
4. Identify Gaps and Needs	8	16	36	0	0	40	31	131	\$16,704
4.1 Identify Gaps and Needs	8	16	36			40	31	131	\$16,704
5. Recommended Projects & Facility Improvements	26	84	176	24	48	204	144	706	\$87,186
5.1 Project Recommendations	4	20	40	24		64	80	232	\$27,344
5.2 Project Prioritization	4	16	40			40	24	124	\$15,324
5.3 Programs Recommendations	2	8	16			20		46	\$5,966
5.4 Draft and Final Plan Documents	16	40	80		48	80	40	304	\$38,552
Staff Hours	55	175	329	24	48	340	217	1188	\$151,596
Web Input Map									\$2,000
Reimbursable Expenses & Travel									\$950
Project Total	\$15,125	\$33,775	\$36,848	\$2,928	\$4,992	\$35,360	\$22,568		\$154,546
Additional Servcies as Needed (25%)									\$38,637
Project Total + As-Needed Services									\$193,183
Potential Optional Tasks									
2.2 Bicycle & Pedestrian Counts***	2	4				8			\$12,154
3.4 Pop Up Events (4)		8	16			16			\$5,000
5.5 Project Cut Sheets	4	8	20	16	40				\$10,996
5.6 Design Guidelines	4	8	16		32	32			\$11,092

* Hours and staff assignments can be adjusted by the consultant as needed to implement the tasks described during the course of the project.

** Hourly rates are for calendar year 2019, and will be adjusted if work is continued into subsequent year(s).

*** Includes \$10,000 in direct costs for count collection

EXHIBIT C

Activity Schedule

Project Schedule

Milpitas Trails Master Plan Update and Bikeway & Pedestrian Master Plan Update

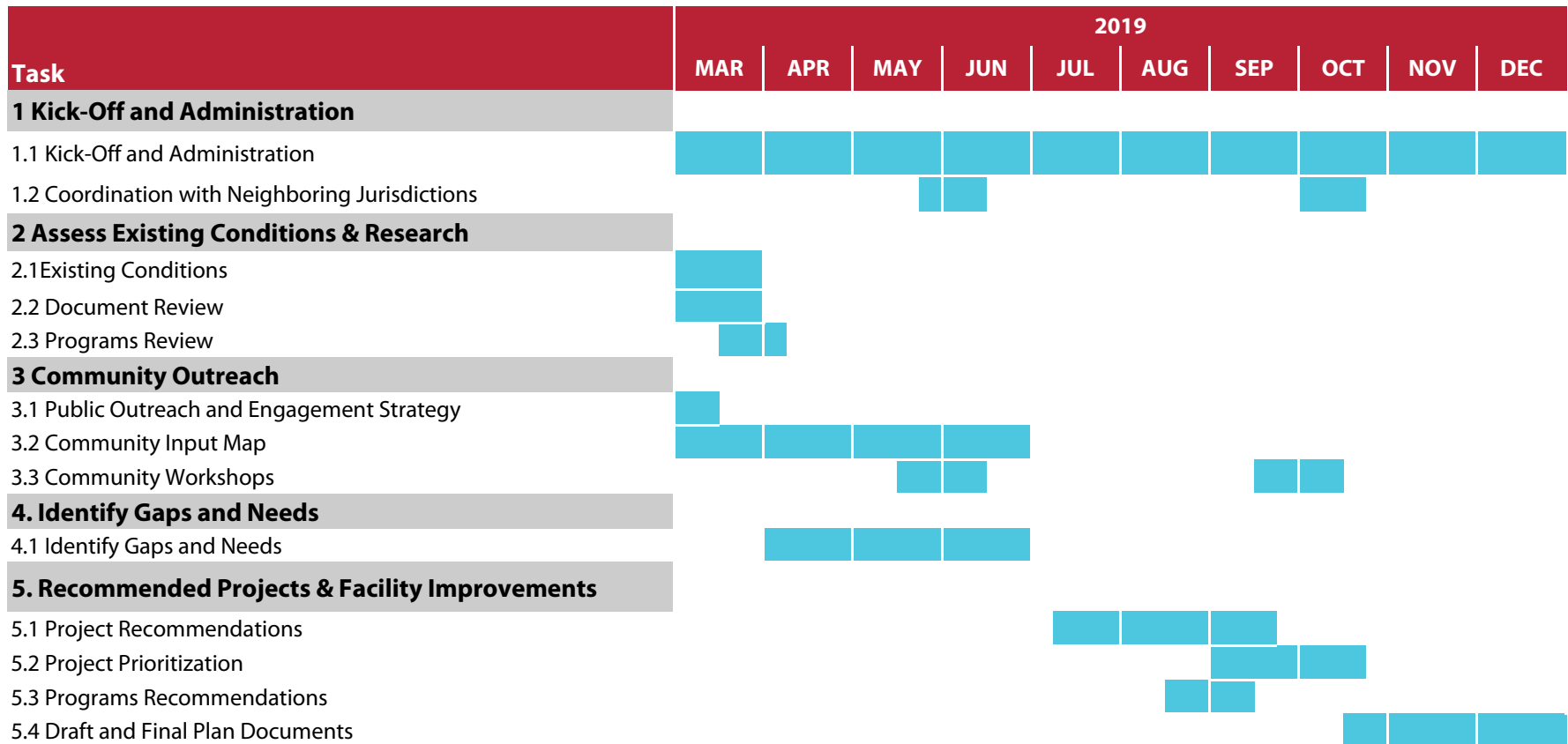


EXHIBIT D

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 C. 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** 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** 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** 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** 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** 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.

 X Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

____ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** 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** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

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

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

____ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

____ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

____ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** 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:

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.

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.

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.

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.

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.

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.

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.



AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
ALTA PLANNING + DESIGN, INC.
FOR
TRAILS AND BIKEWAY PEDESTRIAN MASTER PLAN UPDATE

This Amendment No. 1 is entered into this ____^{19th} day of May 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **Alta Planning + Design, Inc.**, a California Corporation (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 1.

RECITALS:

WHEREAS, on February 20, 2019, the Parties entered into a Professional Services Agreement for the Trails and Bikeway Pedestrian Master Plan Update (the "Agreement") for the maximum amount of \$193,183.00, and with a term period of February 20, 2019, to June 30, 2020; and

WHEREAS, the Parties now desire to amend the Agreement to extend the term period by six months.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. The first sentence of Section 5. Term is hereby amended to read as follows:

"The term of this Agreement shall be from **February 20, 2019** to **December 30, 2020**, unless earlier terminated as provided herein."

2. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

[SIGNATURES ON THE FOLLOWING PAGE]

**SIGNATURE PAGE OF AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
ALTA PLANNING + DESIGN, INC.**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

CITY OF MILPITAS

Approved By:

DocuSigned by:

Ashtwini Kantak

Steven G. McHarris, Interim City
Manager

May-19-2020

Date

Approved As To Form:

DocuSigned by:

Chris Diaz

Christopher J. Diaz, City Attorney

Approved:

DocuSigned by:

Walter C. Rossmann

Walter C. Rossmann, Risk
Manager/Director of Finance

Approved As To Content:

DocuSigned by:

Steve Erickson

Steve Erickson, Engineering
Director/City Engineer

Alta Planning + Design, Inc.

DocuSigned by:

Brett Hondorp

Signature

Brett Hondorp

Name

President

Title

May-15-2020

Date

5/15/2020

DIR Registration Number (If
Applicable)

AMENDMENT NO. 2
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
ALTA PLANNING + DESIGN INC.



FOR
TRAILS AND BIKEWAY PEDESTRIAN MASTER PLAN UPDATE

This Amendment No. 2 is entered into this ____ day of October 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and Alta Planning + Design Inc., a California corporation (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 2.

RECITALS:

WHEREAS, on February 20, 2019, the Parties entered into a Professional Services Agreement for Trails and Bikeway Pedestrian Master Plan Update (the "Agreement") for the maximum amount of \$193,183.00, and with a term period of February 20, 2019 to June 30, 2020; and

WHEREAS, on May 19, 2020, the Parties entered into Amendment No. 1 to the Agreement, which extended the end date of the term period to December 30, 2020; and

WHEREAS, the Parties now desire to further amend the Agreement to increase the compensation amount by \$36,219.00, extend the term period end date through December 31, 2021, and revise the Scope of Work and Project Budget accordingly.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 2. Compensation, subsection b. - the first line is hereby amended to read as follows: "In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of Two Hundred and Twenty-Nine Thousand Four Hundred Two Dollars and Zero Cents (\$229,402.00)."
2. Section 5. Term of Performance- the first line is hereby amended to read as follows: "The term of this agreement shall be from **February 20, 2019** to **December 31, 2021**, unless earlier terminated as provided herein."
3. **Exhibit A** (Scope of Services) to the Agreement is deleted and replaced with **Exhibit A-1** (Scope of Services), attached hereto and incorporated herein.
4. **Exhibit B** (Fee and Schedule of Charges/Payments) to the Agreement is deleted and replaced with **Exhibit B-1** (Fee and Schedule of Charges/Payments), attached hereto and incorporated herein.
5. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 as of the date first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

Alta Planning + Design

**SIGNATURE PAGE OF AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
ALTA PLANNING + DESIGN INC.**

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:

Steve Erickson, Engineering Director/City
Engineer

ALTA PLANNING + DESIGN INC.

Signature

Name

Title

Date

DIR Registration Number (If
Applicable)

Execution Plan (Scope of Services/Work)

This project will update two plans for the City of Milpitas – a citywide Trail Plan and a Bicycle and Pedestrian Master Plan. These plans for the City of Milpitas that provides a vision and action plan for the City to improve safe and convenient travel by active transportation modes in Milpitas.

Task 1. Kick-Off and Administration

Task 1.1 Kick off and Administration

Alta will plan and facilitate a project kick-off meeting and stakeholder strategy session to clarify the project scope, background, and priorities. At the conclusion of this meeting, Alta will develop a final project management plan, including a data request memo and a proposed public engagement plan.

Throughout the project, there will be ongoing coordination between Alta's project manager and the City of Milpitas project manager – including email, phone and written communication to keep the City up-to-date on Plan development. Alta will conduct monthly project management meetings to review project status, schedule, and budget and provide meeting notes at the conclusion of each meeting.

The kick-off meeting will address:

- City's goals, visions, objectives, expectations
- Key issues, opportunities, and areas of concern
- Revisions (if needed) of project scope, deliverables, and budget
- Public outreach and agency coordination
- Data or information needed to be provided by the City
- Project Milestone and Deliverable Schedule

Task 1.2 Coordination with Neighboring Jurisdictions

During the course of the project, Alta will coordinate with the cities of Fremont and San Jose, and the Valley Transportation Authority (VTA) to ensure that the proposed improvements for Milpitas are well integrated into the regional bicycle and pedestrian networks. Alta will attend up to 6 meetings with these partners, either individually or in groups as appropriate.

Deliverables

- Final project management plan
- Monthly meeting notes
- Agenda and notes for coordination meetings with neighbors and partners

Task 2. Assess Existing Conditions & Research

TASK 2.1 EXISTING CONDITIONS

Alta will submit a data request memo to the City, ensuring we have all available relevant data, plans, policies, and regulations currently available. Alta will review Milpitas's existing bicycle and pedestrian facilities and supporting infrastructure using data provided by the City. This includes:

- Pedestrian, bikeway, and trail inventory, including sidewalks, crosswalks, and bikeways.
- Roadway characteristic data provided by the City, County, or Caltrans staff (including number of travel lanes, roadway/travel lane width, speed limits/speed survey data, and traffic volume data (as available)).
- Existing and proposed land use data available from the City.

Milpitas Trails Master Plan Update and Bikeway & Pedestrian Master Plan Update

- Demographic data (population, employment, and other information) from the Census, including from the American Community Survey.
- Points of interest and key destinations, including commercial areas, schools, parks, transit stations and stops, and others.

Selective fieldwork will be conducted to verify critical elements of the City's existing facilities in person, supported by a review of available aerial photography and/or Google StreetView.

Alta will develop a set of maps, tables, and narrative that describe the existing bicycle and pedestrian network and conditions.

TASK 2.2 DOCUMENT REVIEW

Alta will also review existing plans and studies from partners of neighboring jurisdictions, including bicycle, pedestrian, and trail plans from the cities of San Jose and Fremont, studies from VTA including the Tasman Complete Streets Plan, Countywide Bicycle and Pedestrian Plan, and transit access and planning studies. Information from the Caltrans District 4 Bike Plan developed by Alta will also be integrated into this process.

TASK 2.3 PROGRAMS REVIEW

Alta will facilitate a meeting with City Parks and Recreation, City Police and other City agencies and local partners that provide existing bicycle and pedestrian programs in the City. Alta will document existing programs including Safe Routes to Schools (SRTS) programs, recreational programs and events run by the City, and any other efforts to encourage or educate residents of Milpitas on biking and walking safely.

The existing conditions, document review and programs review will be integrated into existing conditions chapters for the two plans.

TASK 2.4 BICYCLE AND PEDESTRIAN COUNTS (OPTIONAL)

Alta will contract with a data collection vendor to collect bicycle and pedestrian counts at up to 10 locations. Counts will be collected during AM and PM peak periods on 3 weekdays at each location.

Deliverables

- Data request memo (provided at kick off meeting)
- Maps, data tables, and narrative summarizing the existing network and prior plans
- Bicycle and pedestrian counts (optional)

Task 3. Community Outreach

TASK 3.1 PUBLIC OUTREACH AND ENGAGEMENT STRATEGY

As the City of Milpitas considers modifications to its physical infrastructure, it is critical to involve citizens and stakeholders in the process. Early and sustained involvement helps make a successful project, but drawn out schedules can sap the interest of all but most the serious advocates.

Alta will develop a detailed Public Outreach and Engagement Strategy that describes proposed events and identifies the schedule and key considerations for each event. This document will describe (1) the goals of the engagement effort, (2) the key audiences to reach within the City, and (3) the strategies (meetings, advertising, and other efforts), to reach these audiences.

Alta will continue to update the engagement strategy as the planning process continues, updating lists of stakeholders and other participants and identifying additional activities as needed to support the plan.

TASK 3.2 COMMUNITY INPUT MAP

Alta will provide the City with an online interactive community input map that allows the public to identify priority destinations for walking and biking, routes they would like to see improved, and similar information.

The map allows users to comment on input from other users, allowing for a dialogue among residents. Alta has developed a technology to support online map input that works well on computers, tablets and phones. The map will be up through the completion of Task 4 and can be continued through the length of the project if desired by the City.

TASK 3.3 COMMUNITY MEETINGS

Alta will facilitate four community meetings during the course of the project to highlight the two plans, focused on providing the public with tangible products that require public engagement. We propose to organize the outreach events around the following phases:

- **Needs Workshop.** We propose to conduct a set of public workshops that presents the findings of the existing conditions (Task 2) and the needs assessment (Task 4). The workshop will present the existing network and programs, gather feedback on network gaps and areas of concern, and review data on safety concerns, connectivity, and other factors. These two workshops could focus on each plan individually or cover both plans and be held in different areas of the City.
- **Recommendations/Draft Plan.** We propose to conduct a second set of workshops that presents draft recommendations for projects and programs for both the Trails Master Plan and the Bicycle and Pedestrian Plan. This second set of workshops will be conducted when all of the materials for the draft plans are ready, but with enough time to make modifications to the identified project needs and the project prioritization process (Task 5). Again, workshops can be held to focus on a single plan or can cover both plans at meetings in two different locations.

All public meeting input will be captured in a working paper and summarized in a chapter of the Plan.

TASK 3.4 POP UP EVENTS (OPTIONAL TASK)

Given the challenges of drawing interest to public meetings, we recommend considering conducting additional public outreach events that meet the public where they are. This may include farmers markets, community festivals, or other community gathering spots. We have found this approach to be very successful for engaging a broader cross-section of the community, including those who may be interested in walking and bicycling but who are not interested in attending public meetings.

For this optional task, Alta would conduct up to four pop-up meetings, which may include:

- Booths at community events
- A bicycling and walking tour of existing trails or on-street infrastructure or proposed projects

Deliverables

- Final public engagement strategy describing goals of the outreach and proposed events
- Community input map
- Public meeting materials, including input boards, presentations, comment cards, and similar opportunities
- Working paper that describes the various input methods and all of the input received
- Optional pop up meeting plan, materials, and summaries

Task 4. Identify Gaps and Needs

Alta will conduct a detailed assessment of gaps and needs for trails, on-street bicycle facilities, and pedestrian facilities. This assessment will quantify factors that impact walking and bicycling activity, locate network gaps as potential projects, and identify key pedestrian and bicycling areas based on demand and supply variables.

Our approach to this analysis includes:

- **Safety Analysis.** Alta will use data from the Statewide Integrated Traffic Records System (SWITRS) or local police data to identify where there have been collisions, injuries, and fatalities involving people walking and biking in Milpitas.
- **Demand Analysis.** Alta will use data about existing and proposed land use, trips, and others to identify where there is high demand for biking and walking in Milpitas. This will consider access to transit, schools, work, commercial destinations, and others. It will also make use of data from the VTA travel demand model to identify existing trips patterns that may be able to be served by trails, bike, and pedestrian infrastructure
- **Connectivity Analysis.** Alta will use data about existing multimodal infrastructure to develop an understanding of how well destinations and areas of demand are connected for people who want to walk and bike for both transportation and recreation. This analysis will include rating existing bikeway facilities for level of traffic stress (LTS) and pedestrian facilities for pedestrian level of service (PLOS). It will also consider how Milpitas bicycle, pedestrian and trail networks connect to the City's neighbors.
- **Design Review.** Alta will use best practices in trail, bicycle and pedestrian facility design to inform the review of existing facilities and identification of needs. Alta has helped develop many of these guides, including the NACTO Urban Bikeway Design Guide and the FHWA Small Town and Rural Multimodal Networks guide. Alta will use these, along with the dozens of design guides we have produced for local agencies to help inform this review.

Alta will use these analyses to identify:

- New Trail opportunities along creeks, other infrastructure right-of-ways, or adjacent to public street right of ways
- Gaps in existing bicycle networks, such as disconnected bike networks, intersection crossing needs and other conflict points,
- Gaps in pedestrian networks, such as sidewalk gaps, crossing needs in areas of pedestrian activities or at crossings of streets and other public right-of-ways
- Potential enhancements to trails and bicycle and pedestrian facilities to meet design standards
- Needs for bicycle facilities, such as bicycle parking, repair stations and other
- Needs for pedestrian amenities, such as benches, shelters, plantings and others

Alta will produce a series of maps, tables, and narrative that describe gaps and needs, developing chapters for the two plans that synthesize this information into critical needs and gaps that can be addressed by the City. Information from the public outreach process will also be integrated into this process.

Deliverables

- Plan chapters summarizing needs, including maps, tables, and narrative

Task 5. Recommended Projects and Facility Improvements

TASK 5.1 PROJECT RECOMMENDATIONS

The core of the plan will identify recommended projects for future implementation. This task will provide Milpitas with a list of projects, a method to prioritize projects, and identification of funding sources to support future projects. Based on the needs analysis and public and stakeholder input, Alta will develop a recommended network that includes trails, bicycle and pedestrian facilities. These networks will be developed for each plan considering the unique elements appropriate to that plan.

The Trails Master Plan will focus on trail improvements and new trails that help produce a trail system for the City. This will address trail width, materials, accommodation of bicyclists and pedestrians, access to parks and other recreational destinations, and identify needed amenities to support the overall network. The plan will also address and identify potential improvements to trail crossings, including use of physical infrastructure, striping, and signal strategies to improve safety and comfort for trail users.

The Bicycle and Pedestrian Master Plan will provide a blueprint for implementing bicycle and pedestrian infrastructure. It will integrate many elements of the Trails Master Plan as trails are a critical element in an overall bicycle and pedestrian network. It will also identify needed on-street bicycle facilities and facility improvements and will identify pedestrian improvements, including potential crossing improvements that can help improve the safety of people walking in the City.

TASK 5.2 PROJECT PRIORITIZATION

Alta will prepare a robust framework for evaluating projects using a qualitative process that is organized around the Plan's goals and objectives. Typical project evaluation criteria include:

- **Public Support.** The project provides a significant improvement to a community identified challenge area.
- **Safety.** The project addresses safety concerns such as reported collisions or areas of high risk.
- **Connectivity.** The project improves overall network connectivity or provides access to key destinations.
- **Transit Support:** The project provides an improved connection to transit.
- **Quality.** The project type is appropriate for the context, providing low stress travel for people walking and biking.
- **Feasibility.** The extent of project constraints in terms of right-of-way acquisition, impacts on traffic operations, cost, and other factors.

Alta will work with the City to finalize the criteria and evaluation method and apply these to the projects and will present the proposed process to City residents in the second set of workshops. These will be applied to the proposed projects from each plan and used to help identify priorities.

Alta will also develop an implementation strategy that identifies potential funding opportunities – including local, regional, and statewide funding – and applies those to each project. This will help the City identify both priorities and appropriate methods for implementation, including relevant funding sources.

TASK 5.3 PROGRAMS RECOMMENDATIONS

The Alta team will develop specific program recommendations in coordination with implementing agencies. Alta is the only bicycle and pedestrian planning firm with a department dedicated to planning and implementing education and encouragement components of active transportation programs including workshops, contests, and other promotional activities. The Alta team will utilize our expertise in developing and leading Transportation Demand Management (TDM) and other active transportation programs to develop a customized and achievable set of recommendations. Enforcement and safety recommendations may also include ways to improve safety along bike/pedestrian trails using guidelines and policies for neighboring vacant land development that will provide 'eyes-on' the trail and other crime prevention techniques.

TASK 5.4. DRAFT AND FINAL PLAN DOCUMENTS

Alta will develop administrative draft plans for both the Trails Master Plan and the Bikeway and based on the work conducted in prior tasks. The objective of this task is to produce a simple but useful plan that captures existing conditions, a future vision for bicycle and pedestrian accommodation in Milpitas, and the implementation steps needed to get to that vision (including priority and timing).

Alta will revise the administrative draft plans into public draft plans based on a consolidated, consistent set of comments from the City. The public draft plans will be posted for review by the public and Alta will work with the City to provide opportunities to receive feedback on the draft.

Alta will compile the comments received from the public into a matrix with a proposed disposition for each comment. Similar comments will be grouped for easier review. Alta will meet with the City to review this matrix and revise the disposition matrix. After completing that review, Alta will develop a Final Draft Plan for the City to review and will make necessary updates to the Final Plan after review by the City.

Alta will present the final plans to the City Council or other appropriate bodies and make minor modifications as needed to achieve adoption of the plans.

TASK 5.5 PROJECT CUT SHEETS (OPTIONAL TASK)

For a up to 10 priority projects identified by the City, Alta will create project cut sheets that capture:

- Summary information about the project – location, improvement characteristics
- Existing and proposed cross section
- A rendering or photosimulation that provides an easy means to understand the future project
- Information on potential tradeoffs required to implement the project (e.g., impacts to parking, vehicle lanes, etc.)

These cut sheets are often useful to support grant applications and to provide decision makers and the public with clear information about proposed priority improvements.

TASK 5.6. DESIGN GUIDELINES

Alta will develop design guidelines to reflect changes in best practices and in coordination with the City's policies. Design guidelines will include the following:

- Bikeway, trail, and sidewalk recommended widths
- Bikeway and trail intersection guidance
- Bicycle detection recommendations
- Striping and signing recommendations
- Bicycle parking recommendations by land use type
- Pedestrian improvement standards, accessibility issues, and crosswalk Prioritization Policy
- Creek Trail standards

Alta will develop a set of design guidelines tailored to the unique context of the City of Milpitas, using images and information on local infrastructure that provides the City with a resource to implement ongoing bicycle and pedestrian design solutions as part of project opportunities that arise from other projects such as new development, the new BART station, or regular street resurfacing.

Combined Plan + Second Administrative Draft Review

This document describes an additional task that will combine the separate Bicycle & Pedestrian Master Plan Update and Trail Master Plan Update into a single document. This amendment also includes a second Administrative Draft Review and associated edits.

Task 7. Planning Document Development

Incorporating comments provided on the Administrative Drafts for the Bicycle & Pedestrian Master Plan and Trail Master Plan, Alta will combine the two draft plans into a single document. The resulting document will incorporate previously-drafted content to the extent possible and eliminate redundancies. The final structure of the document will be determined in conjunction with the City prior to beginning edits.

This task includes a second round of Administrative Draft Review (for the combined plan) and associated edits prior to development of the Public Draft. For the Administrative Draft we assume one (1) round of review by City staff and no Executive Team review. Edits to the Administrative Draft will be based on one set of consolidated, consistent city comments and will be incorporated into the Public Draft plan.

Deliverables

- Administrative Draft Bicycle, Pedestrian, and Trail Master Plan Update (combined single document)
- One (1) round of edits on Administrative Draft Plan, based on consolidated city comments
- Public Draft Bicycle, Pedestrian, and Trail Master Plan Update (combined single document)

Public Draft Plan Engagement

This document describes an additional task that supports additional public engagement for the Public Plan comment period. These tasks are in addition to the remaining Task 3 Engagement activities.

Task 8. Public Draft Plan Engagement

Task 8.1 Virtual Open House

Alta will develop and host a Virtual Open House that will provide information on project activities to date and an overview of the Draft Plan. Anticipate content for the Virtual Open House includes: existing conditions, previous public engagement, and recommendations development. The purpose of the Virtual Open House will be to provide a succinct overview of the planning process and draft plan and to also gather public feedback about the plan. This task includes the following components:

- Alta will develop Virtual Open House content, including text, maps, charts, and tables. Content will rely on existing plan elements when possible. Alta will provide an outline of content for review prior to developing the website pages and layout.
- Alta will develop the Virtual Open House platform. The Virtual Open House will use the Plan look and feel, including color palette and mapping style. The platform will be interactive and include up to five interactive elements, such as voting, survey functions, or a comment form.
- The City will have the opportunity to review and share internally for the purposes of review and testing. One round of client review of the Virtual Open House platform is included, with modification based on a consolidated set of comments prior to launch.
- Alta will launch the Virtual Open House and provide operational support.

Task 8.1 Deliverables

- One Virtual Open House Draft Content, including text, maps, charts and tables
- One round of edits on the Virtual Open House Draft Content, based on consolidated city comments
- Draft Virtual Open House platform
- One round of edit on the Virtual Open House platform based on consolidated city comments

EXHIBIT B-1

Fee & Schedule of Charges/Payments

The Designer shall be paid on a time and materials basis for all Services rendered up to the not-to-exceed Total Compensation. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be calculated on a time and materials basis and made based upon the percentage of task completed in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, method for computing the amount payable, percentage of task completed, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The total amount paid to Designer shall never exceed the Total Compensation without the prior written approval of City.

Fee Schedule/Project Budget attached to this Exhibit B-1.

Project Budget

Milpitas Trails Master Plan Update and Bikeway & Pedestrian Master Plan Update

TASK	Alta Planning + Design							Task Hours	Total Task Fee
	Principal-in-Charge	Project Manager	Senior Planner	Engineer	Designer/ Graphics	Planner/ Outreach	GIS		
	Hugh Louch	Jeff Knowles	Beth Martin	Joe Paull	Ryan Booth	Ben Frazier	Lisa Schroer		
2019 Hourly Rate**	\$275	\$193	\$112	\$122	\$104	\$104	\$104		
1 Kick-Off and Administration	4	28	35	0	0	0	0	67	\$10,424
1.1 Kick-Off and Administration	2	16	20					38	\$5,878
1.2 Coordination with Neighboring Jurisdictions	2	12	15					29	\$4,546
2 Assess Existing Conditions & Research	4	10	28	0	0	40	24	106	\$12,822
2.1 Existing Conditions	2	4	12			16	24	58	\$6,826
2.2 Document Review	1	2	8			12		23	\$2,805
2.3 Programs Review	1	4	8			12		25	\$3,191
3 Community Outreach	13	37	54	0	0	56	18	178	\$24,460
3.1 Public Outreach and Engagement Strategy	1	4	4			8		17	\$2,327
3.2 Community Input Map		1	2			8	2	13	\$1,457
3.3 Community Workshops	12	32	48			40	16	148	\$20,676
4. Identify Gaps and Needs	8	16	36	0	0	40	31	131	\$16,704
4.1 Identify Gaps and Needs	8	16	36			40	31	131	\$16,704
5. Recommended Projects & Facility Improvements	26	84	176	24	48	204	144	706	\$87,186
5.1 Project Recommendations	4	20	40	24		64	80	232	\$27,344
5.2 Project Prioritization	4	16	40			40	24	124	\$15,324
5.3 Programs Recommendations	2	8	16			20		46	\$5,966
5.4 Draft and Final Plan Documents	16	40	80		48	80	40	304	\$38,552
Staff Hours	55	175	329	24	48	340	217	1188	\$151,596
Web Input Map									\$2,000
Reimbursable Expenses & Travel									\$950
Project Total	\$15,125	\$33,775	\$36,848	\$2,928	\$4,992	\$35,360	\$22,568		\$154,546
Additional Services Previously Added									\$38,637
Project Total + As-Needed Services									\$193,183
5.6. Design Guidelines									\$11,092
7.1 Planning Document Development									\$14,925
8.1 Public Draft Engagement									\$10,202
Total Additional Tasks									\$36,219
New Project Total									\$229,402

* Hours and staff assignments can be adjusted by the consultant as needed to implement the tasks described during the course of the project.

** Hourly rates are for calendar year 2019, and will be adjusted if work is continued into subsequent year(s).

*** Includes \$10,000 in direct costs for count collection

Additional Services previously added:

- Additional outreach, agency coordination, and pop-up events
- Analysis and recommended guidelines for bike/scooter share

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	330-2931	\$36,219	330-3999	\$36,219
☒ Budget Appropriation	331-9513448153899	\$36,219	331-951344824800	\$36,219
☐ Budget Transfer				

Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448; Approve and Authorize the City Manager to Execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the amount of \$36,219 and Extend the Term of the Agreement to December 31, 2021 for the Trails and Bikeway Master Plan Update, Project No. 3448; and Approve a Budget Appropriation.

Background:

Project Number 3448, Trails and Bikeway Master Plan Update is in the approved 2020-2025 Capital Improvement Program and provides an update to the City's plan. The updated master plan will include recommended improvements for connectivity to local destinations for all users including pedestrians and bicycles. The plan will identify gaps in the City's regional trail system, develop trail design guidelines, support economic development, and enhance the quality of life for residents. The updated plan will consider bikeway & pedestrian uses and will explore enhancement of existing networks and recommend opportunities for improvement and expansion.

On February 26th, 2019, the City Council authorized the City Manager to execute a consultant services agreement (Attachment 1) with Alta Planning and Design in the amount of \$193,183 to complete the update of the Trails and Bikeway Master Plan Update, and Amendment 1 (Attachment 2) was executed on May 19, 2020 to extend the expiration of the agreement from June 30, 2020 to December 30, 2020.

Analysis:

The remaining project tasks include completion of draft plan, public comment on draft plan, and plan adoption.

As a result of current COVID-19 pandemic, the consultant has not achieved the level of community input and participation as desired for the draft plan. Staff recommends extending the contract expiration date and expanding the consultant's scope of work to allow for additional public outreach tasks. Recommended additional scope of work tasks include efforts to promote community engagement by exploring unique interactive website designs and presentations that will generate interest and interactions with the public in lieu of any physical meetings.

Staff has negotiated a scope and fee for Amendment 2 (Attachment 3) with the consultant to provide the additional community outreach tasks for a fee not to exceed \$36,219 which is considered reasonable for the services provided. The total contract compensation would be \$229,402, and a budget appropriation (Attachment 4) of \$36,219 from the General Government CIP Fund into project number 3448 Trails and Bikeway Master Plan Update is required.

With approval of Amendment 2, draft plan is targeted for November 2020. Additional public engagement would be held to present the draft plan in December 2020 and January 2021. The final plan is targeted for February 2020 where it would be adopted at City Council.

Staff recommends the City Council approve the requested budget appropriation and approve and authorize the City Manager to execute Amendment No. 2 to the consultant services agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021.

Policy Alternative:

Alternative: Do not receive a status report. Do not approve the requested budget appropriation and not approve Amendment No. 2.

Pros: None

Cons: Due to the implications of COVID-19 pandemic, the consultant was not able to complete the desired level of public engagement as required for a Master Plan update. The plan could move forward without amending the consultant agreement, however there would likely be limited public input.

Reason for not recommending: The update to the City's Trails and Bikeway Master Plan will be a long-term document identifying where improvements to infrastructure is needed. Staff believes that a high level of public input is needed to effectively capture the desires of the Milpitas community.

Fiscal Impact:

The project has an approved budget of \$210,000 funded in FY 2020-21 with funds from the General Government CIP Fund. The approval of a budget appropriation (Attachment 4) of \$36,219 from the General Government CIP Fund is required to execute Amendment No. 2 for this project. The following is a summary of the fiscal impact:

Description	Approved Budget	Requested Additional Budget	Total Budget
Design	\$200,000	\$36,219	\$236,219
Administration	\$10,000		\$10,000
Total	\$210,000	\$36,219	\$246,219

California Environmental Quality Act: N/A

Not Applicable

Recommendations:

- 1) Receive a status report on Trails and Bikeway Master Plan Update, Project No. 3448
- 2) Approve and authorize the City Manager to execute Amendment No. 2 to the Consultant Services Agreement with Alta Planning and Design in the new amount of \$229,402 with a term through December 31, 2021 for the Trails and Bikeway Master Plan Update.
- 3) Approve a budget appropriation of \$36,219 from the General Government CIP Fund into Project No. 3448.

Attachments:

- 1 – Consultant Services Agreement with Alta Planning and Design
- 2 – Amendment No. 1
- 3 – Amendment No. 2
- 4 – Budget Change Form

☐ Check if City Council Approval required.

Meeting Date: October 20, 2020

Requested by:	Department Head: Steve Erickson	Date: October 20, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: October 20, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Change Order No. 2 in the Amount of \$268,841 for the Contract with Redwood Construction and Equipment, Inc. for the Citywide Parks and Playgrounds Rehabilitation Project, Increasing the Total Project Amount Not to Exceed from \$1,720,164 to \$1,989,005
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/20/2020
Staff Contacts:	Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602
Recommendation:	Approve Change Order No. 2 in the amount of \$268,841 for the contract with Redwood Construction and Equipment, Inc. for the Citywide Parks and Playgrounds Rehabilitation Project, increasing the total project amount not to exceed from \$1,720,164 to \$1,989,005.

Background:

As part of the FY 2019 – 2024 Capital Improvement Program, City Council approved Project No. 3424 – Citywide Park Rehabilitation which provided funding for the rehabilitation of City-owned parks and playgrounds throughout the City.

On February 18, 2020 Council approved a contract with Redwood Construction and Equipment, Inc. (Contractor) for the rehabilitation of parks playgrounds at fifteen City parks (Project). The Project provides equipment play structure and play surface repairs while updating the playgrounds to current CPSI safety standards. Work under the Project includes repair and/or replacement of sections of failed pour-in-place (PIP) play surfaces, replacing of sand with engineered wood fiber (EWF), and replacement of old playground structures. Work on the Project began in March 2020 and will be completed in three phases over the next three fiscal years.

On August 16, 2020, the City issued Change Order No. 1 for the Project to add additional funds for the removal of a concrete pad discovered during surface preparation at Foothill park. Change Order No. 1 added \$4,512.00 to the contract total for a new not-to-exceed amount of \$1,720,164.00 and no time extension.

In an effort to reduce long term maintenance cost of play surfaces around the fall zones of play structures, staff is bringing forward Change Order No. 2 for approval, which would reduce the amount of engineered wood fiber (EWF) used around fall zones by installing poured-in-place (PIP) rubber surfaces.

Analysis:

The original contract specifications called for the use of engineered wood fiber (EWF) as fill material in the fall attenuating surface zones at multiple play structures which were previously filled with sand. This material was selected because it offered the least expensive initial option for fill material that met American Society for Testing and Materials (ASTM) guidelines for playground safety. EWF can become compacted over time, reducing its effectiveness as a fall attenuating surface and requiring regular monitoring of fill levels, in order to prevent compaction and ensure that fill volume meets ASTM and Consumer Product Safety Commission (CPSC) standards. Fill level standards are met through raking of the material to prevent compaction and the addition of fill in order to meet depth guidelines. These actions result in additional operational and maintenance costs over the long-term use of the playgrounds.

In contrast, Poured-on-Place (PIP) rubberized surfaces has a higher initial cost, but provides greater benefit over the long-term, since the PIP material is more durable, especially in highly trafficked areas, and is less vulnerable to weathering activities like rain or sun. PIP has an average longevity of ten years or more based on use conditions. The surface is easier to maintain as it can be easily washed down or have materials removed by use of a leaf blower. The surface also provides an additional layer of safety as it is fixed to the location in which it was poured and cannot be easily displaced by normal play activities.

The proposed change order would replace portions of the engineered wood fiber specified in the bid documents with Poured-In-Place surfaces at the following parks:

- Dixon Landing
- Foothill
- Hillcrest
- Oliver Jones
- Ben Rodgers

The change order is for \$268,841, which results in a new contract not-to-exceed amount of \$1,989,005. This change order would also add 150 days to the Project to allow for the work outlined in Change Order No. 2 to be performed by the Contractor for a new contract end date of May 30, 2022.

Policy Alternative:

Alternative: Direct City Staff to reject the change order and proceed with Engineered Wood Fiber per the original scope of the Project.

Pros: Cost savings equal to the amount of \$268,841 per the proposed Change Order No. 2.

Cons: Increased operational and maintenance costs over the long-term associated with staff oversight and replenishment of EWF material.

Reason not recommended: The installation of Poured-in-Place rubber will reduce the long-term maintenance cost for these playgrounds.

Fiscal Impact:

There are sufficient funds available in Capital Improvement Project No. 3424 Citywide Park Rehabilitation.

California Environmental Quality Act:

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

Recommendation:

Approve Change Order No. 2 in the amount of \$268,841 for the contract with Redwood Construction and Equipment, Inc. for the Citywide Parks and Playgrounds Rehabilitation Project, increasing the total project not-to-exceed amount from \$1,720,164 to \$1,989,005.

Attachment

NIB 2390 Change Order No. 2



City of Milpitas
455 E. Calveras Boulevard
Milpitas, California 93035

CONTRACT CHANGE ORDER NO. 2

Date: 21 October 2020

To: Redwood Engineering Construction Inc.

416 D Street

Redwood City, CA 94063

Attn: Ben Cerney

Project: NIB 2390 Citywide Parks and Playgrounds Rehabilitation

This Change Order covers changes to the contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for the amount agreed upon between the Contractor and City of Milpitas and set forth herein.

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1	Contractor to install Poured-in-Place (PIP) rubber surfacing around all the fall zones of the equipment in lieu of the Engineer Wood Fiber (EWF) that was to be installed per the original specifications at Dixon Landing Park (Exhibit A)	\$18,837.00	30
2	Contractor to install Poured-in-Place (PIP) rubber surfacing around all the fall zones of the equipment in lieu of the Engineer Wood Fiber (EWF) that was to be installed per the original specifications at Foothill Park. Contract to also install 7.75" of fill/base rock to lower level service to correct elevation prior to PIP installation. (Exhibit B)	\$65,810.00	30
3	Contractor to install Poured-in-Place (PIP) rubber surfacing around all the fall zones of the equipment in lieu of the Engineer Wood Fiber (EWF) that was to be installed per the original specifications at Hillcrest Park. Contract to also install 7.75" of fill/base rock to lower level service to correct elevation prior to PIP installation. (Exhibit C)	\$44,159.00	30

38077.00180\29080232.9

4	Contractor to install Poured-in-Place (PIP) rubber surfacing around all the fall zones of the equipment in lieu of the Engineer Wood Fiber (EWF) that was to be installed per the original specifications at Oliver Jones Park. Contract to also install 8-10" of fill/base rock to lower level service to correct elevation prior to PIP installation. (Exhibit D)	\$67,715.00	30
5	Contractor to install Poured-in-Place (PIP) rubber surfacing around all the fall zones of the equipment in lieu of the Engineer Wood Fiber (EWF) that was to be installed per the original specifications at Ben Rodgers Park. Contract to also install 8-10" of fill/base rock to lower level service to correct elevation prior to PIP installation. (Exhibit E)	\$72,320.00	30
	Totals	\$ 268,841	150

Original Contract Amount:	\$1,715,652.00
Change by Previous Change Order(s):	4,512.00
Contract Price Prior to this Change Order:	\$1,720,164.00
Current Change Order Amount:	\$268,841.00
Revised Contract Amount including this Change Order:	\$1,989,005.00

SCHEDULE A

GENERAL CONTRACTOR COST PROPOSAL FORM

Milpitas Parks Project

Contractor Name:	Redwood EngineeringConstruction
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Date: 9/30/2020

Contract #:	01-074
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COR No.:	2 DLPark
-----------------	----------

DSA Application #:

PCO No.:	2
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Project Name:	Milpitas Parks Project
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RFI/Submittal/CCD	City request
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DESCRIPTION OF WORK	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1.000	1.000	1.000	1.000	1.000
2.000	2.000	2.000	2.000	2.000
3.000	3.000	3.000	3.000	3.000
4.000	4.000	4.000	4.000	4.000
5.000	5.000	5.000	5.000	5.000
6.000	6.000	6.000	6.000	6.000
7.000	7.000	7.000	7.000	7.000
8.000	8.000	8.000	8.000	8.000
9.000	9.000	9.000	9.000	9.000
10.000	10.000	10.000	10.000	10.000
11.000	11.000	11.000	11.000	11.000
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44.000	44.000	44.000	44.000	44.000
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46.000	46.000	46.000	46.000	46.000
47.000	47.000	47.000	47.000	47.000
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56.000	56.000	56.000	56.000	56.000
57.000	57.000	57.000	57.000	57.000
58.000	58.000	58.000	58.000	58.000
59.000	59.000	59.000	59.000	59.000
60.000	60.000	60.000	60.000	60.000
61.000	61.000	61.000	61.000	61.00

Per discussion with City's Parks Department and the Public Works Department, we were requested to provide a price for Dixon Landing Park to provide Poured-In-Place Rubber Surfacing around the fall zones of the equipment in lieu of the Engineered Wood Fiber (EWF) that was supposed to be installed. Upon review of the equipment layout, there will be an increased SF in the amount of 1,246 SF of the P-I-P Surface and a decrease of 859 SF of surface for EWF. Attached is a drawing of the park. There will be additional costs to account for the increase in P-I-P. These costs will be partially offset by the decrease in the EWF. A summary of these costs are shown below.

[illegible]

TOTAL LABOR COSTS

[illegible]

TOTAL MATERIAL COSTS (pre-tax)

	SALES TAX (9.00%)	\$	(59.61)
TOTAL MATERIAL COSTS (Attach material receipts and /or summarize above)		\$	(722)

EQUIPMENT RENTAL

Size & Type of Equipment	I.D. #	Hours	Rate	Total
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -

TOTAL EQUIPMENT RENTAL COSTS

SUBCONTRACTED / LOWER TIER TRADE

LOWER TIER Trade Contractor with Description		Lump Sum Invoice
SpectraTurf - Additional \$1,246 Sf of P-I-P @ 14.23 per SF	\$	17,730.58
Stamped Engineered Plans	\$	1,000.00
	\$	-
	\$	-

TOTAL LOWER TIER COSTS

TOTAL LOWER TIER COSTS		\$	18,731
TOTAL COST			

TOTAL COST

TOTAL LABOR COST (from Line 1 above)	\$	-	
15% Markup of Line 5	\$	-	

LABOR COSTS

TOTAL MATERIAL COST (from Line 2 above)	\$	(721.95)	
15% Markup of Line 6	\$	(108.29)	

MATERIAL COSTS

TOTAL EQUIPMENT COST (from Line 3 above)	\$	-	(830)
15% Markup of Line 7	\$	-	

EQUIPMENT COSTS

TOTAL COST OF LOWER TIER CONTRACTOR	\$	18,730.58	
5.0% Markup of Line 8	\$	936.53	

LOWER TIER CONTRACT COSTS

		\$	19,067
	SUBTOTAL	\$	18,837

TOTAL COST OF CHANGE

TOTAL COST OF CHANGE	\$	18,837
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GENERAL CONTRACTOR SIGNATURE

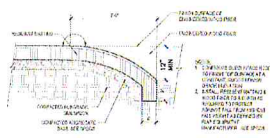
Redwood EngineeringConstruction
GENERAL CONTRACTOR NAME

Benedict Cerney
Print Name

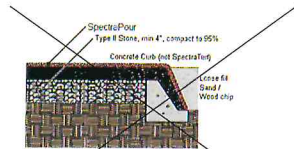
Date 9/30/2020

Project Manager
Position

Contractor Authorized Representative



1 TURN DOWN DETAIL - NO CURB
Scale: NTS



2 TURN DOWN DETAIL - WITH CURB
Scale: NTS

- NOTES:
- 1) EQUIPMENT AND FALL ZONE LAYOUT TAKEN FROM GOOGLE EARTH AND ARE NOT BASED ON INFORMATION FROM EQUIPMENT MANUFACTURER.
 - 2) TURN DOWN DETAIL 2 WITH CONCRETE CURB IS RECOMMENDED BY SPECTRAPOUR.
 - 3) A SITE SURVEY HAS NOT BEEN PERFORMED. ALL DIMENSIONS AND LAYOUTS ARE APPROXIMATE.

If this sheet is not 11x17", it is a reduced print - scale accordingly.

0 10 20 30
1" = 20' GRAPHIC SCALE

Revisions	By	Date	Page

BAY-CON INFRASTRUCTURE

PO BOX 1342
SAN MATEO CA 94401
(415) 580-1441
INFO@BAY-CON.COM

Site document is the property of the engineer and is not to be used without written permission. Software property provided by Google Earth & Esri.

Engineer Of Record:
NONE

DRAFT

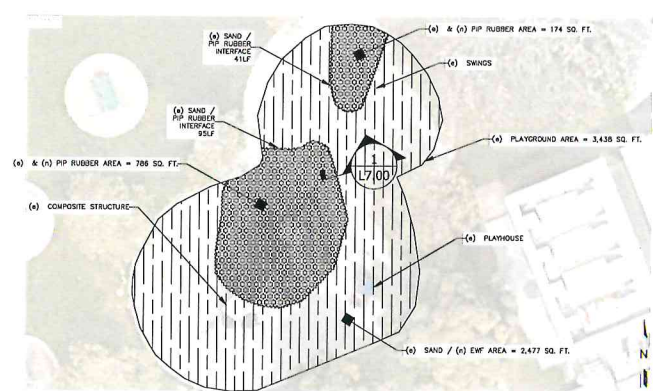
FOR DISCUSSION PURPOSES ONLY

NOT FOR CONSTRUCTION

DESIGN DOCUMENTS
PLAYGROUND SURFACING LAYOUT

Client: REDWOOD ENGINEERING CONSTRUCTION
Owner: CITY OF MILPITAS
Project: MILPITAS PLAYGROUNDS RENOVATION
Park: DYON LANDING PARK
Address: 800 AND SURRENS DR
MILPITAS, CA 95035
Drawn: ELM
PLAYGROUND SURFACING LAYOUT

NO JOB # 075	Sheet
Drawn By: PM	17.00
Check By: NONE	Of Sheets



7/8/28/2020 8:13:41 AM

GENERAL CONTRACTOR COST PROPOSAL FORM

Milpitas Parks Project

Contractor Name:	Redwood Engineering Construction	Date:	8/14/2020
Contract #:	01-074	COR No.:	2
DSA Application #:		PCO No.:	2
Project Name:	Milpitas Parks Project	RFI/Submittal/CCD	City request

DESCRIPTION OF WORK

Per discussion with City's Parks Department and the Public Works Department, we were requested to provide a price for Foothill Park to provide Poured-In-Place Rubber Surfacing around the fall zones of the equipment in lieu of the Engineered Wood Fiber (EWF) that was supposed to be installed. Upon review of the equipment layout, this results in 3,000 SF of surface that was originally intended to be EWF and is now P-I-P. This also means that we will have to install 7.75" of fill or base rock to get the lower level surface to the correct elevation for the P-I-P install. Our costs would be the cost of the additional P-I-P, the cost of the install of the base rock and a credit for the purchase and install of the EWF.

Name	Classification	Hours	Approved Rate	Total
Jorge Angel -	Operator	24	\$ 94.24	\$ 2,261.76
Jose Cortez -	Laborer	24	\$ 72.31	\$ 1,735.44
Sergio Nunez	Laborer	24	\$ 72.31	\$ 1,735.44
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -

1. TOTAL LABOR COSTS \$ 5,733

Description of Material	Quantity	Unit Price (pre-tax)	Total
Base Rock	133	\$ 10.00	\$ 1,330.00
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -

2. TOTAL MATERIAL COSTS (pre-tax) \$ 1,330
 SALES TAX (9.00%) \$ 119.70
 TOTAL MATERIAL COSTS (Attach material receipts and /or summarize above) \$ 1,450

Size & Type of Equipment	I.D. #	Hours	Rate	Total
Water Wagon		24	\$ 35.00	\$ 840.00
Compact Roller		24	\$ 30.00	\$ 720.00
Skip Loader		24	\$ 40.00	\$ 960.00
			\$ -	\$ -
			\$ -	\$ -

3. TOTAL EQUIPMENT RENTAL COSTS \$ 2,520

LOWER TIER Trade Contractor with Description	Lump Sum Invoice
Trucking	\$ 2,100.00
SpectraTurf	\$ 53,626.00
Jet Mulch Charge for Furnish and Install	\$ (4,676.16)
Stamped Engineered Plans	\$ 1,000.00
	\$ -
	\$ -
	\$ -

4. TOTAL LOWER TIER COSTS \$ 52,050

TOTAL COST
5. TOTAL LABOR COST (from Line 1 above) \$ 5,732.64
15% Markup of Line 5 \$ 859.90
LABOR COSTS \$ 6,593

6. TOTAL MATERIAL COST (from Line 2 above) \$ 1,449.70

15% Markup of Line 6 \$ 217.46
MATERIAL COSTS \$ 1,667

7. TOTAL EQUIPMENT COST (from Line 3 above) \$ 2,520.00

15% Markup of Line 7 \$ 378.00
EQUIPMENT COSTS \$ 2,898

8. TOTAL COST OF LOWER TIER CONTRACTOR \$ 52,049.84

5.0% Markup of Line 8 \$ 2,602.49
LOWER TIER CONTRACT COSTS \$ 54,652

9. SUBTOTAL \$ 65,810

TOTAL COST OF CHANGE \$ 65,810

GENERAL CONTRACTOR SIGNATURE

Redwood Engineering Construction
 GENERAL CONTRACTOR NAME

Date 8/14/2020

Benedict Cerney
 Print Name

Project Manager
 Position

Contractor Authorized Representative



SpectraTurf

an ecore company

SpectraTurf Inc
555 S Promenade Ave, Suite 103
Corona CA 92879

Phone: (800)875-5788

Fax: (951)734-3630

Quote Number: 56703

QUOTE

Quote To:

Redwood Engineering
416 D Street
Redwood City CA 94063

Phone: 925-819-2960

Date: 8/13/2020

Expires: 11/11/2020

Project: Foothill Park - Change Order #1 -
Additional Area

Sales Person: Adam Vance

Description:

CHANGE ORDER #1 - ADD AN ADDITIONAL 3000 SF OF RUBBER SURFACING

Provide & install an additional 3,000 SF of 4.25" UNIFORM thickness SpectraPour safety surfacing.

4.25" UNIFORM thickness is certified for a max. fall height of 10'-0" *

* Cut sheets of play equipment to be installed in the area have a noted fall height of 9'-4"

½" min. thickness wear layer color to be determined.

Include utilization of Aliphatic Resin.

NO GRAPHICS OR COLOR PATTERNS INCLUDED.

					United States Dollar
Line	Part	Description	Order Qty	Unit Price	Ext Price
1	SYS-001	System, SpectraPour	1.00 EA	\$53,626.00	\$53,626.00

Subtotal	\$53,626.00
Total Charges	\$0.00
Total	\$53,626.00

PROPOSAL ACCEPTANCE

ACCEPTANCE: By signing below, I agree to the above proposal as well as the terms and conditions attached to this agreement. I am duly authorized by _____ to approve and accept this proposal as stated.

SIGNATURE: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

COMPANY NAME: _____ BILLING CONTACT: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

Issue all Purchase Orders, Contracts, and payments to **SPECTRATURE**. Send ALL completed forms back to your SpectraTurf Sales Representative: **Alex Stout**

Thank you for considering SpectraTurf on this project.

SCHEDULE A

Exhibit C

GENERAL CONTRACTOR COST PROPOSAL FORM

Milpitas Parks Project

Contractor Name: Redwood Engineering Construction

Date: 8/28/2020

Contract #: 01-074

COR No.: 5

DSA Application #:

PCO No.: 5

Project Name: Milpitas Parks Project

RFI/Submittal/CCD City request

DESCRIPTION OF WORK

Per discussion with City's Parks Department and the Public Works Department, we were requested to provide a price for Hillcrest Park to provide Poured-In-Place Rubber Surfacing around the fall zones of the equipment in lieu of the Engineered Wood Fiber (EWf) that was supposed to be installed. Upon review of the equipment layout, this results in 2,375 SF of surface that was originally intended to be EWf and is now P-I-P. This also means that we will have to install 7.75" of fill or base rock to get the lower level surface to the correct elevation for the P-I-P install. Our costs would be the cost of the additional P-I-P, the cost of the install of the base rock and a credit for the purchase and install of the EWf.

Name	Classification	Hours	Approved Rate	Total
Jorge Angel -	Operator	24	\$ 94.24	\$ 2,261.76
Jose Cortez -	Laborer	24	\$ 72.31	\$ 1,735.44
Sergio Nunez	Laborer	24	\$ 72.31	\$ 1,735.44
			\$	-
			\$	-
			\$	-
			\$	-
			\$	-

1. TOTAL LABOR COSTS \$ 5,733

Description of Material	Quantity	Unit Price (pre-tax)	Total
Base Rock	110	\$ 10.00	\$ 1,100.00
		\$	-
		\$	-
		\$	-
		\$	-
		\$	-
		\$	-

2. TOTAL MATERIAL COSTS (pre-tax) \$ 1,100

SALES TAX (9.00%)	\$ 99.00
TOTAL MATERIAL COSTS (Attach material receipts and /or summarize above)	\$ 1,199

Size & Type of Equipment	I.D. #	Hours	Rate	Total
Water Wagon		24	\$ 35.00	\$ 840.00
Compact Roller		24	\$ 30.00	\$ 720.00
Skip Loader		24	\$ 40.00	\$ 960.00
			\$	-
			\$	-

3. TOTAL EQUIPMENT RENTAL COSTS \$ 2,520

SUBCONTRACTED / LOWER TIER TRADE	
LOWER TIER Trade Contractor with Description	Lump Sum Invoice
Trucking	\$ 1,900.00
SpectraTurf	\$ 32,063.00
Jet Mulch Charge for Furnish and Install	\$ (3,858.80)
Stamped Engineered Plans	\$ 1,000.00
Additional Safety Test	\$ 600.00
	\$ -
	\$ -

4. TOTAL LOWER TIER COSTS \$ 31,704

TOTAL COST

5. TOTAL LABOR COST (from Line 1 above) \$ 5,732.64

15% Markup of Line 5 \$ 859.90

6. TOTAL MATERIAL COST (from Line 2 above) \$ 1,199.00

15% Markup of Line 6 \$ 179.85

7. TOTAL EQUIPMENT COST (from Line 3 above) \$ 2,520.00

15% Markup of Line 7 \$ 378.00

8. TOTAL COST OF LOWER TIER CONTRACTOR \$ 31,704.20

5.0% Markup of Line 8 \$ 1,585.21

9. LOWER TIER CONTRACT COSTS \$ 33,289

SUBTOTAL \$ 44,159

TOTAL COST OF CHANGE \$ 44,159

GENERAL CONTRACTOR SIGNATURE

Redwood Engineering Construction
GENERAL CONTRACTOR NAME

Benedict Cerney
Print Name

Date 8/28/2020

Project Manager
Position

Contractor Authorized Representative



Quote Number: 56798

QUOTE

Quote To:

Redwood Engineering
416 D Street
Redwood City CA 94063

Phone: 925-819-2960

Date: 8/25/2020

Expires: 11/23/2020

Project: Hillcrest Park - Milpitas, CA

Sales Person: Adam Vance

Description:

INCLUDES PREVAILING WAGES.

*Provide & install 2375 SF of 3.5" UNIFORM thickness SpectraPour safety surfacing.
3.5" UNIFORM thickness is certified for a max. fall height of 8'-0"*

1/2" min. thickness wear layer to be 50% Color / 50% Black mixed with standard aromatic resin.

NOTE: There will be an upcharge in cost for the following premium colors:

Light Purple, Dark Purple, Bright Yellow, Mustard Yellow, Bright Red, Orange & Brown.

NO GRAPHICS OR COLOR PATTERNS INCLUDED.

PROJECT DURATION: 3 DAYS TO COMPLETE THIS PROJECT

ADD OPTION 1: Upgrade to 100% Color wear layer (no black)... ADD \$ 3,040.00

ADD OPTION 2: Upgrade to Aliphatic (UV-stable, non-yellowing) Resin.. ADD \$ 2,613.00

*EXCLUDES: Temporary construction fencing; Post-installation testing/inspections; Third Party Insurance
Credits (OCIP, etc); etc...*

SEE FINAL PAGE OF PROPOSAL FOR FULL TERMS & EXCLUSIONS.

United States Dollar

Line	Part	Description	Order Qty	Unit Price	Ext Price
1	SYS-001	System, SpectraPour	1.00 EA	\$32,063.00	\$32,063.00

Subtotal \$32,063.00

Total Charges \$0.00

Total \$32,063.00

PROPOSAL ACCEPTANCE



Phone: (800)875-5788
Fax: (951)734-3630

Quote Number: 56798

QUOTE

ACCEPTANCE: By signing below, I agree to the above proposal as well as the terms and conditions attached to this agreement. I am duly authorized by _____ to approve and accept this proposal as stated.

SIGNATURE: _____ **DATE:** _____

PRINTED NAME: _____ **TITLE:** _____

COMPANY NAME: _____ **BILLING CONTACT:** _____

ADDRESS: _____

PHONE: _____ **FAX:** _____ **EMAIL:** _____

Issue all Purchase Orders, Contracts, and payments to **SPECTRATURF**. Send ALL completed forms back to your SpectraTurf Sales Representative: **Alex Stout**

Thank you for considering SpectraTurf on this project.

TERMS AND CONDITIONS

Quote Number: 56798

QUOTE

See product specifications for detailed product and installation information. Product specifications are available from your Sales Representative. Material samples will be provided upon request.

1. Quote is based on the information provided here within and is subject to change based on final installation unless otherwise indicated in writing. Any changes or additions to this proposal will affect pricing.
2. The price quoted applies to any quantity equal or less to that quoted or less than the thickness noted on page 1. If the area to be surfaced is larger or requires thicker material, we will require a change order for the additional square footage or thickness. We do not proceed without a signed change order.
3. All thicknesses noted on Page 1 are to be installed at a uniform thickness throughout the entire playground area, unless otherwise noted.
4. Contractor/Owner is to provide a minimum 3 week notice for the commencement of the safety surfacing installation.
5. In the event that a change in thickness, square footage, color or color percentage is requested, a revised proposal and/or purchase order will be required before installation can begin.
6. Changes to the proposed scope not agreed to here within or separately in writing may result in additional charges in the form of a change order. Work cannot commence until the Change Order is fully executed.
7. Installation crew chief will act as out on-site representative, but is not able to bind the company to any agreements, including verbal. All decisions are to be made by authorized office personnel only.
8. Project completion time must be extended, regardless of the extension allowed by owner, due to any delays caused by unacceptable weather conditions and/or temperatures, or delays by Owner, Contractor, or any other sub-contractors not under the direct control of SpectraTurf.
9. ANY additional site work not included here within, including sub-base, is the responsibility of the owner.
10. We provide a brief visual inspection of the of the sub-base. There is no testing we can do to ensure the base was done correctly. Proceeding with installation of surfacing does not constitute acceptance of the sub-base.
11. Job site access must be at a maximum of 25' for trucks and mixer, with no stairs. Irrigation, sprinkler, and/or water systems must be shut off 24 hours before installation and remain off for 48 hours after installation is completed.
12. Additional charges for downtime/stand-by may be assessed in the event that installation is delayed due to site not being ready as scheduled or if the installation is interrupted for reasons other than those related to weather or general public emergencies.
13. Security during installation through turnover of project to owner, is the responsibility of the Owner/General Contractor
14. Any excess material at the job site upon completion is the property of SpectraTurf.
15. Installations scheduled after 90 days of proposal acceptance may be subject to price adjustments.
16. Scheduling and crew deployment is subject to weather conditions.
17. Warranties will NOT be issued until payment is received.
18. Terms of Payment are COD, unless otherwise negotiated.

INSTALLATION EXCLUSIONS, unless otherwise noted in Project Notes on page 1.

Permit/Licensing
Builders Risk Insurance
Excavation and Site Work Preparation
Third Party Insurance (OCIP, etc.)
Third Party Playground Inspection
Fees for TEXTURA or similar
Hoisting & Lowering of material & equipment to above ground level locations

Prevailing / Davis Bacon Wages
Union Fees (PLA/PSA Contracts)
Design /Engineering
Post-installation Fall Height/Attenuation Testing
Temp Fencing/Security
HOA Additionally Insured

Demolition
Play Area Drainage
Waste/Dumpsters
Rooftop Installations
Extended Warranty
Payment & Performance Bonds
(Add 1.5%, if required)

INITIALS



Quote Number: 56747

QUOTE

Quote To: Redwood Engineering 416 D Street Redwood City CA 94063 Phone: 925-819-2960	Date: 8/13/2020 Expires: 11/11/2020 Project: Oliver Jones Park - Milpitas, CA Sales Person: Adam Vance
---	---

Description:

INCLUDES PREVAILING WAGES.

Provide & install 3840 SF of SpectraPour safety surfacing.

AREA 1: 2000 SF TOTAL

1200 SF @ 2" UNIFORM thickness is certified for a max. fall height of 5'-0"

800 SF @ 3" UNIFORM thickness is certified for a max. fall height of 7'-0"

AREA 2:

1840 SF @ 3.5" UNIFORM thickness is certified for a max. fall height of 8'-0"

*½" min. thickness wear layer to be 50% GREEN / 50% BEIGE mixed with standard aromatic resin.
NO GRAPHICS OR COLOR PATTERNS INCLUDED.*

*NOTE: There will be an upcharge in cost for the following premium colors:
Light Purple, Dark Purple, Bright Yellow, Mustard Yellow, Bright Red, Orange & Brown.*

PROJECT SCHEDULE DURATION: 5 DAYS TO COMPLETE THIS PROJECT

ADD OPTION 1: Upgrade to Aliphatic (UV-stable, non-yellowing) Resin.. ADD \$ 4,378.00

EXCLUDES: Temporary construction fencing; Post-installation testing/inspections; Third Party Insurance Credits (OCIP, etc); etc...

SEE FINAL PAGE OF PROPOSAL FOR FULL TERMS & EXCLUSIONS.

United States Dollar

Line	Part	Description	Order Qty	Unit Price	Ext Price
1	SYS-001	System, SpectraPour	1.00 EA	\$51,610.00	\$51,610.00

Subtotal	\$51,610.00
Total Charges	\$0.00
Total	\$51,610.00

PROPOSAL ACCEPTANCE

SpectraPour
Type II Stone, min 4", compact to 95%

Concrete Curb (not SpectraPour)

Loose fill
Sand / Wood chip

2 TURN DOWN DETAIL - WITH CURB
Scale: NTS

- NOTES:
- 1) EQUIPMENT AND FALL ZONE LAYOUT TAKEN FROM KONKAN SUBMITTALS
 - 2) TURN DOWN DETAIL 2 WITH CONCRETE CURB IS RECOMMENDED BY SPECTRATURF.
 - 3) A SITE SURVEY HAS NOT BEEN PERFORMED. ALL DIMENSIONS AND LAYOUTS ARE APPROXIMATE.

IF THIS SHEET IS NOT 11x17", IT IS
A REDUCED PRINT - SCALE ACCORDINGLY

0 10 20 30
1" = 20' GRAPHIC SCALE

Revisions				
No.	Revision	By	Date	Appr.



PO BOX 1342
SAN MATEO CA 94401
(415) 580-1441
INFO@BAY-CON.COM

Can. 524

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Engineer Of Record:
NONI

DRAFT

FOR DISCUSSION
PURPOSES ONLY

NOT FOR
CONSTRUCTION

DESIGN DOCUMENTS
PLAYGROUND SURFACING LAYOUT

Client
REDWOOD ENGINEERING CONSTRUCTION

Owner
CITY OF MILPITAS

Project
MILITAS PLAYGROUNDS REHABILITATION

Park
OLIVER JONES PARK

807 DE ANZA CT
MILPITAS CA 95035

PLAYGROUND SURFACING LAYOUT

80 Jan 1 025	
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Drawn By	PM	
		Sheet

Checked By NONE	L4.00
Issue Date XX/XX/XXXX	

	Of Sheets
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Exhibit E

GENERAL CONTRACTOR COST PROPOSAL FORM

Milpitas Parks Project

Contractor Name:	<i>Redwood EngineeringConstruction</i>	Date:	<i>8/28/2020</i>
Contract #:	<i>01-074</i>	COR No.:	<i>4</i>
DSA Application #:		PCO No.:	<i>4</i>
Project Name:	<i>Milpitas Parks Project</i>	RFI/Submittal/CCD	<i>City request</i>

DESCRIPTION OF WORK

Per discussion with City's Parks Department and the Public Works Department, we were requested to provide a price for the following construction changes to Ben Rogers Park:

A) Remove and dispose of existing Engineered Wood Fiber (EWF) that has been installed within the fall zones of the Playground Structure and the Climbing Structure. Upon review of the equipment layout this will be 3,165 SF of surface area. See attached drawing. This EWF is currently installed at 12" depth.

B) Installation of Poured-In-Place rubber surfacing in same area where EWF was removed. Prior the P-I-P being installed, we will have to import and compact 8" of native soil and base rock to bring the base up to the proper elevation and compaction for installation of P-I-P

This work will involve labor, equipment, material purchases, trucking, dump fees and Specialty Subcontractor pricing. Enclosed is a summary of the costs to do this work:

Name	Classification	Hours	Approved Rate	Total
Jorge Angel -	Operator	32	\$ 94.24	\$ 3,015.68
Jose Cortez -	Laborer	32	\$ 72.31	\$ 2,313.92
Sergio Nunez	Laborer	32	\$ 72.31	\$ 2,313.92
Luis Nunez	Laborer	32	\$ 72.31	\$ 2,313.92
Jorge Angel -	Operator	24	\$ 94.24	\$ 2,261.76
Jose Cortez -	Laborer	24	\$ 72.31	\$ 1,735.44
Sergio Nunez	Laborer	24	\$ 72.31	\$ 1,735.44
			\$	-

1.	TOTAL LABOR COSTS	\$	15,690
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MATERIALS

[illegible]

	TOTAL MATERIAL COSTS (<i>pre-tax</i>)	\$	1,330
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		SALES TAX (9.00%)	\$	119.70
2.	TOTAL MATERIAL COSTS (Attach material receipts and /or summarize above)		\$	1,450

EQUIPMENT RENTAL				\$	1,450
Size & Type of Equipment	I.D. #	U	R		

	Hours	
--	--------------	--

Water Wagon	24	\$	35.00	\$	840.00
Compact Roller	24	\$	30.00	\$	720.00
Skip Loader	48	\$	40.00	\$	1,920.00
Wheel Barrows	24	\$	5.00	\$	120.00
		\$	-	\$	-

3.	TOTAL EQUIPMENT RENTAL COSTS	\$	3,600
	SUBCONTRACTED / LOWER TIER TRADE		

SUBCONTRACTED / LOWER TIER TRADE

LOWER TIER Trade Contractor with Description

Lump Sum Invoice

Trucking (20 Truck Loads - 2 Days for offhauling EWF/ 2 Days for importing Base Rock)	\$	6,720.00
SpectraTurf	\$	37,241.00
Stamped Engineered Plans	\$	1,000.00
Certified Safety Inspections	\$	1,200.00
	\$	-
	\$	-
	\$	-

4.	TOTAL LOWER TIER COSTS	\$	46,161
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TOTAL COST

5.	TOTAL LABOR COST (from Line 1 above)	\$	15,690.08
	15% Markup of Line 5	\$	2,353.51

		LABOR COSTS	\$	18,044
6	TOTAL MATERIAL COST (1 unit of 2 units)			

6. TOTAL MATERIAL COST (from Line 2 above)	\$	1,449.70	
15% Markup of Line 6	\$	217.46	

	\$	27,140	
MATERIAL COSTS	\$		1,667

7. TOTAL EQUIPMENT COST (from Line 3 above)	\$	3,600.00
15% Markup of Line 7	\$	540.00

15% Markup of Line 7	\$	540.00
EQUIPMENT COSTS	\$	4,140

8. TOTAL COST OF LOWER TIER CONTRACTOR	\$	46,161.00
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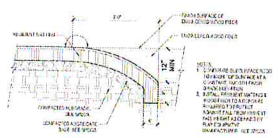
5.0% Markup of Line 8	\$	2,308.05
LOWER TIER CONTRACT COSTS	\$	48,469

		SUBTOTAL	\$	72,320
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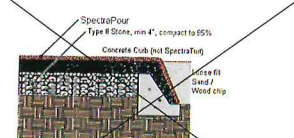
		\$	-
	TOTAL COST OF CHANGE	\$	73,330

GENERAL CONTRACTOR SIGNATURE

Redwood Engineering Construction	Benedict Cerney
<i>GENERAL CONTRACTOR NAME</i>	<i>Print Name</i>
8/28/2020	Project Manager
<i>Date</i>	<i>Position</i>
	<i>Contractor Authorized Representative</i>



1 TURN DOWN DETAIL - NO CURB
Scale: NTS



2 TURN DOWN DETAIL - WITH CURB
Scale: NTS

NOTES:
1) EQUIPMENT AND FALL ZONE LAYOUT TAKEN FROM KOMPAN SUBMITTALS AND SPECTRA TURF SITE VISIT ON 8/28/2020.
2) TURN DOWN DETAIL 2 WITH CONCRETE CURB IS RECOMMENDED BY SPECTRA/TURF.
3) A SITE SURVEY HAS NOT BEEN PERFORMED. ALL DIMENSIONS AND LAYOUTS ARE APPROXIMATE.

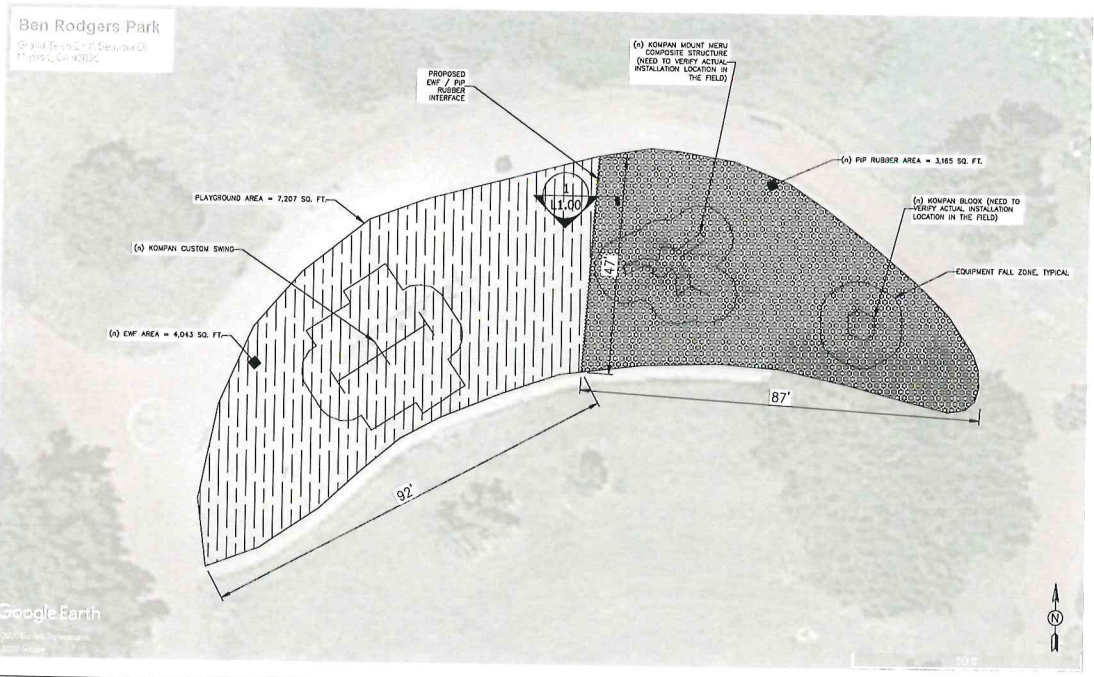
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0 10 20 30
1" = 20' GRAPHIC SCALE

Revisions	No.	Description	By	Date	Appr.

BAY-CON
INFRASTRUCTURE

PO BOX 1342
SAN MATEO CA 94401
(415) 550-1441
INFO@BAY-CON.COM



Key Plan

This document is the property of the engineer and is not to be used without engineer's written permission. Service imagery provided by Google Earth & Google Technologies.

Engineer Of Record: NONE

DRAFT

FOR DISCUSSION PURPOSES ONLY

NOT FOR CONSTRUCTION

DESIGN DOCUMENTS
PLAYGROUND SURFACING LAYOUT

Client: REDWOOD ENGINEERING CONSTRUCTION
City: CITY OF MILPITAS
Project: MILPITAS PLAYGROUNDS REHABILITATION
Park: BEN RODGERS PARK
Location: ROUND LEMON DR & SQUAW DR
Milpitas, CA 95035
Drawn: EDC
PLAYGROUND SURFACING LAYOUT

NO. in # 075	Sheet
Drawn By: PJA	11.00
Check By: NONE	07 Sheets
Issue Date: 05/05/2020	

1. 8/28/2020 12:17:16 PM

Quote Number: 56830

QUOTE

Quote To: Redwood Engineering 416 D Street Redwood City CA 94063 Phone: 925-819-2960	Date: 8/28/2020 Expires: 11/26/2020 Project: Ben Rogers Park - Milpitas, CA Sales Person: Adam Vance
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Description:

INCLUDES PREVAILING WAGES.

*Provide & install 3045 SF of 3" UNIFORM thickness SpectraPour safety surfacing.
3" UNIFORM thickness is IPEMA certified for a max. fall height of 7'-0"*

*½" min. thickness wear layer to be 50% Color / 50% Black mixed with standard aromatic resin.
NO GRAPHICS OR COLOR PATTERNS INCLUDED.*

*NOTE: There will be an upcharge in cost for the following premium colors:
Light Purple, Dark Purple, Bright Yellow, Mustard Yellow, Bright Red, Orange & Brown.*

PROJECT SCHEDULE DURATION 5 DAYS TO COMPLETE THIS PROJECT

*ADD OPTION 1: Upgrade to 100% Color wear layer (no black)... ADD \$ 3,929.00
ADD OPTION 2: Upgrade to Aliphatic (UV-stable, non-yellowing) Resin.. ADD \$ 3,350.00*

*EXCLUDES: Temporary construction fencing; Post-installation testing/inspections; Third Party Insurance
Credits (OCIP, etc); etc..*

See final page of proposal for full terms & exclusions.

United States Dollar

Line	Part	Description	Order Qty	Unit Price	Ext Price
1	SYS-001	System, SpectraPour	1.00 EA	\$37,241.00	\$37,241.00

Subtotal	\$37,241.00
Total Charges	\$0.00
Total	\$37,241.00

PROPOSAL ACCEPTANCE



CITY OF MILPITAS/MILPITAS MUNICIPAL FINANCING AUTHORITY AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Adopt Resolutions Authorizing the Sale and Issuance of tax-exempt Lease Revenue Bonds
Category:	Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendations:	1. Open the public hearing, receive any comments and move to close the public hearing. 2. Adopt resolutions of the City Council of the City of Milpitas and Governing Body of the Milpitas Municipal Financing Authority authorizing and directing the City Manager, Assistant City Manager or Deputy City Manager to execute the sale and issuance of 2020 Lease Revenue Bonds with an estimated aggregate principal amount of not-to-exceed \$25 million to finance the construction of Fire Station #2 and energy efficiency projects.

Background:

As part of the approval of the FY 2019-20 Adopted Budget and FY 2019-24 Capital Improvement Program, the City Council approved the replacement of the former Fire Station #2 building with a new fire station on the same site located at 1263 Yosemite Drive in the City, near the intersection of Highway 680 and East Calaveras Boulevard. The project was budgeted for \$19.2 million with \$6.2 million funded from the General Government CIP Fund and \$13 million through debt financing. The former fire station was constructed in 1969 and had reached the end of its service life. The new fire station is planned to be approximately 10,300 square feet on a single level and will be built on the same site. The station is designed to provide for additional fire apparatus, sustainable elements, gender equality/privacy, operational efficiencies to improve response times and to meet current building and fire codes for “essential services buildings.” At the time of budget approval, it was intended to seek Council authorization for the sale of tax-exempt lease revenue bonds in April 2020. However, due to COVID-19, the project was delayed.

On July 24, 2020 and on July 31, 2020 in accordance with the bidding requirements under the Uniform Public Construction Cost Accounting Act the construction contract for the Fire Station #2 replacement was advertised. Bid opening was held on September 10, 2020 and four sealed bid proposals were received. The Engineer’s Estimate for the project was \$10,830,000 and the apparent low bid received was \$7,638,200. One bid protest was received on September 14, 2020 and it was reviewed by the City Attorney and determined to be meritless. Written notice of staff’s intent to recommend rejection of the bid protest to the City Council was delivered to the contractor that submitted the protest on or about September 25, 2020. Demolition of the former First Station #2 building is complete. Assuming authorization for the construction of the new building is expected to begin in January 2021 and to be completed by spring of 2022. Due to the low bid of \$7.6 million vs. the Engineer’s Estimate of \$10.8 million, the need for debt financing for this project is recommended to be reduced by \$3.4 million from \$13.0 million to \$9.6 million.

On October 6, 2020, the City Council adopted a resolution authorizing the City Manager to execute a contract with ENGIE Services U.S. for energy and water conservation measures including LED lighting upgrades, and energy resiliency improvements to certain facilities to mitigate impacts from future power outages subject to the City obtaining the necessary financing in the amount of \$11.3 million and appropriation of funds. To achieve efficiencies in costs of issuance and the lowest overall borrowing cost, the financing planned for the Fire

Station #2 project will be combined with the financing for the energy efficiency projects. Once the City receives the bond proceeds, staff will return with the necessary appropriation action scheduled for the November 17 City Council meeting.

Analysis:

This staff report relates to the proposed issuance of the 2020 tax-exempt Lease Revenue Bonds (the “Bonds”) in the estimated principal amount of \$18.9 million by the Milpitas Municipal Financing Authority (the “Authority”). The City Council serving in its role as governing body of the Authority is asked to approve issuance of the Bonds and all related documents. The City Council is also asked to approve the documents on behalf of the City, as the source of repayment on the Bonds is the lease payment made by the City from the General Fund. The near-final versions of these documents are attached.

Today’s interest rate environment is very favorable for issuing long-term debt, which means historically low borrowing costs for the City. As of October 9, 2020, the 10-year treasury yield was 0.79% and the 30-year treasury yield was 1.58%. On October 9, 2019, the 10-year treasury yield was 1.58% and the 30-year treasury yield was 2.08%, which is approximately 80 basis points and 50 basis points lower than they were a year ago, respectively.

Staff, working with its consultants, has determined that, due to prevailing financial market conditions, it is in the best interests of the City at this time to issue tax-exempt Bonds since interest rates are at or near historic lows. The Bonds will generate proceeds of \$9.6 million to pay the costs billed to the City for the replacement of Fire Station #2 (\$15.8 million) and energy efficiency projects (\$11.3 million). The Bonds will mature in FY 2041 and the Authority will make semi-annual debt service payments on June 1 and December 1, commencing on June 1, 2021. The interest payments due on June 1, 2021, December 1, 2021 and a portion due on June 1, 2022 will be paid by capitalized interest that will be funded by the Bonds.

Staff has been in the process of obtaining an underlying credit rating for the Bonds from Standards & Poor’s. It is expected the credit rating from Standards & Poor’s will help the City obtain the best possible interest rates. The City does not currently have a rating on its General Fund by Standard & Poor’s as there is no outstanding General Fund debt.

The resolutions being presented for approval authorize the issuance of the Bonds and approve the form of and execution of, the related financing documents. The resolutions contain parameters that the principal amount of the Bonds cannot exceed \$25 million, the Underwriter’s discount with respect to the Bonds shall not exceed 0.70% of the principal amount of the Bonds, and the true interest cost of the bonds shall not exceed 4.0%. These numbers represent the not-to-exceed parameters and the principal amount and true interest cost will fluctuate depending on market interest rates at the time of the bond sale. The not-to-exceed parameters are set higher than current estimates to allow for flexibility in determining the Bond terms at the time of sale. The financing documents will be finalized when the exact terms of the Bonds are determined at the time the Bonds are sold to investors, anticipated to occur around October 27th with an anticipated bond closing of November 10. The forms of the documents to be approved are:

This term and resulting annual principal and interest payments area in alignment with the Council approved rate study.

- **Indenture of Trust** – The Indenture is a contract between the Authority and U.S. Bank National Association, acting as trustee for the Bondholders. The Indenture specifies the Trustee, dated date, maturity dates, interest rate or rates, interest payment dates, denominations, forms, registration privileges, manner of execution, place or places of payment, terms of redemption and other terms of the Bonds.
- **Site Lease** – The Site Lease provides for the lease of City properties to the Authority in exchange for a one-time upfront rental payment sufficient to finance the capital improvement projects. The initial Leased Property consists of (1) the Fire Station #2 site located and the new fire station to be built thereon, and (2) the Barbara Lee Senior Center. After Fire Station #2 is completed, it is anticipated that there will be sufficient value in that single leased property for the City to release the Barbara Lee Senior Center as part of the Leased Property, so that only Fire Station #2 will remain encumbered.

- **Lease Agreement** – Under the Lease Agreement, the Authority will sublease the Leased Property back to the City in exchange for semi-annual lease payment sufficient to pay debt service due on the Bonds. The lease payments made by the City under the Lease Agreement will be assigned by the Authority to the Trustee, and used by the Trustee to pay debt service on the Bonds as it becomes due.
- **Assignment Agreement** – The Assignment Agreement enables the Authority to assign and transfer certain rights under the Lease Agreement, including the right to receive the City’s semi-annual lease payments, to the Trustee for the benefit of the owners of the Bonds.
- **Bond Purchase Agreement** – The Bond Purchase Agreement is a contract between the Authority, the City and Stifel, Nicolaus & Company, as underwriter (the “Underwriter”), whereby the Authority agrees to sell the Bonds to the Underwriter and the Underwriter agrees to buy the Bonds from the Authority for resale to the public.
- **Preliminary Official Statement** – The Preliminary Official Statement is the offering statement used by the Underwriter to inform the marketplace of the terms of the Bonds and contains all relevant information for the investor to decide whether to purchase the Bonds.
- **Continuing Disclosure Certificate** - Contained in the Preliminary Official Statement is the form of the Continuing Disclosure Certificate, which requires the City to submit annual continuing disclosure reports and notice of certain listed events to the marketplace as long as the Bonds are outstanding. Willdan Financial Services, as dissemination agent, will assist the City with this responsibility.

The financing team (consisting of bond counsel/disclosure counsel, municipal advisor, underwriter, staff, and the City Attorney’s Office) reviewed and approved for transmittal the Preliminary Official Statement to the City Council, sitting as the governing body of the Authority. The distribution of the Preliminary Official Statement by the Authority is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor related to the purchase of the Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Bonds. If the members of the City Council conclude that the Preliminary Official Statement includes all facts that would be material to an investor in the Bonds, it may adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been “deemed final.”

The Securities and Exchange Commission (the “SEC”), the agency with regulatory authority over compliance with federal securities laws, has issued guidance as to the duties of the members of the City Council, sitting as the governing body of the Authority, with respect to its approval of the Preliminary Official Statement. In its “Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors” (Release No. 36761, January 24, 1996), the SEC indicated that, if a member of the governing body has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the release, the SEC indicated that the steps that a member of the governing body could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The proposed Bonds are being issued under the City’s adopted debt and disclosure policies (see attached) approved by the City Council on October 17, 2017 and the Authority’s debt policy approved by the Board on October 15, 2019 (see attached). The proposed Bonds meet all requirements outlined in the City’s adopted policies.

Pursuant to the requirements of Section 5852.1 of the California Government Code (“Code”), set forth below are good faith estimates provided by the Municipal Advisor, based on market conditions as of September 30, 2020. The following estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth on the following page.

- The true interest cost of the Bonds is estimated at 2.57% calculated as provided in Section 5852.1(a)(1)(A) of the Code.
- The finance charge of the Bonds, including all fees and charges paid to third parties, including underwriter's discount, is estimated at \$343,452.
- Proceeds of the Bonds received by the Authority for the sale of the Bonds, less the finance charge, is equal to \$21,579,013.
- The total payment amount including principal and interest calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$28,724,258.

Policy Alternative:

Alternative: Do not issue Bonds in the amount of \$18.9 million to finance the replacement of Fire Station #2 (\$9.6 million from Bonds and \$6.2 million from City) and energy efficiency projects (\$11.3 million).

Pros: Avoids interest payments over 20 years in the amount of \$9.8 million.

Cons: The Fire Station #2 needs to be rebuilt because the previous building was demolished in Spring and the temporary facility is insufficient for long-term use. Without the bond financing, the City will have to deplete its Facilities Replacement Reserve of \$7 million and the General Government CIP Fund unassigned fund balance (\$4.1 million) to rebuild the Fire Station #2 and not proceed with the energy efficiency projects.

Reason not recommended: Financing costs are at historic lows and the savings from the energy efficiency projects are projected to pay for the annual debt service with net average annual savings of over \$300,000 over 25 years.

Fiscal Impact:

The annual debt service from the sale of the Bonds related to the Fire Station #2 project is assumed in FY 2021-30 Ten-Year General Fund Financial Forecast. Due to the lower than assumed construction bid, the annual debt service assumed in the Forecast will be reduced by approximately \$250,000 from \$880,000 to \$630,000. The annual debt service related to the energy efficiency projects will be paid from energy cost savings.

California Environmental Quality Act:

Not applicable

Recommendations:

1. Open the public hearing, receive any comments and move to close the public hearing.
2. Adopt resolutions of the City Council of the City of Milpitas and the Milpitas Municipal Financing Authority authorizing and directing the City Manager, Assistant City Manager or Deputy City Manager to execute the sale and issuance of 2020 Lease Revenue Bonds with an estimated aggregate principal amount of not-to-exceed \$25 million to finance the construction of Fire Station #2 and energy efficiency projects.

Attachments:

1. City Council Resolution
2. Municipal Financing Authority Resolution
3. Site Lease
4. Lease Agreement
5. Assignment Agreement
6. Indenture of Trust
7. Bond Purchase Agreement
8. Preliminary Official Statement
9. Resolution No. 8705 - City Debt Management Policy
10. Resolution No. MFA1 - Municipal Financing Authority Debt Management Policy
11. Resolution No. 8446 Disclosure Policies and Procedures

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING, AUTHORIZING AND DIRECTING EXECUTION OF CERTAIN FINANCING DOCUMENTS AND DIRECTING CERTAIN RELATED ACTIONS IN CONNECTION WITH FINANCING CAPITAL IMPROVEMENTS, AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS

WHEREAS, the City of Milpitas (the “City”) and the City of Milpitas Housing Authority have entered into a Joint Exercise of Powers Agreement, dated as of March 1, 2016, establishing the Milpitas Municipal Financing Authority (the “Authority”) for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, the City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the “Project”); and

WHEREAS, in order to provide financing for a portion of the cost of the Project, the City has proposed to lease (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (together, the “Leased Property”) to the Authority under a Site Lease anticipated to be dated as of November 1, 2020, in consideration of the payment by the Authority of an initial rental payment (the “Site Lease Payment”) which is sufficient to provide funds for such purposes, and to lease back the Leased Property from the Authority in consideration of semi-annual lease payments pursuant to a Lease Agreement between the Authority, as lessor, and the City, as lessee; and

WHEREAS, upon the completion of Fire Station #2, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released; and

WHEREAS, the amounts required to finance the Project will be provided from the proceeds of Lease Revenue Bonds which the Authority proposes to issue and sell as its 2020 Lease Revenue Bonds (Capital Projects), in the principal amount of not to exceed \$25,000,000 (the “Bonds”) under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the “Bond Law”) secured by the lease payments; and

WHEREAS, to provide for development of the most favorable debt structure for the City and to ensure the most favorable reception in the market place for the Bonds, the City has requested the Authority to sell the Bonds through a negotiated sale pursuant to the terms of a Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Authority, the City and Stifel, Nicolaus & Company, Incorporated, as underwriter (the “Underwriter”); and

WHEREAS, for purposes of the sale of the Bonds, the City has caused to be prepared an Official Statement describing the Bonds, the preliminary form of which is on file with the City Clerk and the City Council, with the aid of their staff, and have undertaken such review of the Official Statement as hereinafter described as is necessary to assure proper disclosure of all material facts relating to the Bonds that are within the personal knowledge of City Council members and the staff; and

WHEREAS, the City Council has duly held a public hearing regarding the Project in accordance with the requirements of Section 6586.5 of the Bond Law, the notice of which has been given in accordance with the requirements of said Section; and

WHEREAS, the City Council has duly considered such transactions and wishes at this time to approve all proceedings and documents to which the City is a party relating to the issuance and sale of the Bonds.

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

Section 1. Approval of Financing Plan. The City Council hereby approves the financing plan described in the recitals of this Resolution. To that end, the City Council hereby approves of the issuance of the Bonds by the Authority under the Bond Law, in the aggregate principal amount of not to exceed \$25,000,000, for the purpose of providing financing for the Project.

Section 2. Approval of Financing Agreements. The City Council hereby approves each of the following agreements required to implement the financing plan to be accomplished by the Bonds, in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager, the Assistant City Manager or the Deputy City Manager (each, an “Authorized Officer”), and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions:

- Site Lease between the City as lessor and the Authority as lessee, under which the City leases the Leased Property to the Authority in consideration of the payment of the Site Lease Payment which will be applied by the City to finance the Project;
- Lease Agreement between the Authority as lessor and the City as lessee, under which the Authority leases the Leased Property back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide for payment of principal of and interest on the Bonds when due;
- Bond Purchase Agreement among the Authority, the City and the Underwriter, under which the Underwriter agrees to purchase the Bonds from the Authority; and
- Continuing Disclosure Certificate (attached as an appendix to the Preliminary Official Statement described below) executed by the City relating to the undertaking to make continuing disclosure filings with respect to the Bonds as required by Rule 15c2-12 of the Securities and Exchange Commission.

An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed, if necessary, to attest the final form of each of the foregoing agreements.

Section 3. Sale of Bonds. The City Council hereby approves the sale of the Bonds by the Authority in a principal amount not to exceed \$25,000,000 pursuant to the Bond Purchase Agreement; provided, that the true interest cost on the Bonds shall not exceed 4.0% and the underwriter’s discount shall not exceed 0.70% of the principal amount of the Bonds. The Bond Purchase Agreement shall be executed in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by any Authorized Officer, each of whom acting alone is hereby authorized and directed to execute and deliver said form of Bond Purchase Agreement on behalf of the City, and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions.

Section 4. Findings and Determinations. In accordance with Sections 6586 and 6586.5 of the Bond Law, the City Council hereby finds and determines that there will be “significant public benefits” to the citizens of the City by financing a portion of the costs of the Project through the issuance of the Bonds. Such benefits include the following: (a) demonstrable savings in effective interest rates, bond preparation, bond underwriting or bond issuance costs, (b) employment benefits from undertaking the Project in a timely fashion, and (c) more efficient delivery of local agency services to residential and commercial development.

Section 5. Official Statement. The City Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the City Clerk, together with such modifications thereof as may be approved by an Authorized Officer. An Authorized Officer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be final, as of its date, within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the Final Official Statement for and in the name and on behalf of the City. The City Council hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter.

Section 6. Official Actions. The Mayor, the City Manager, the Assistant City Manager, the Deputy City Manager, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of any person serving in such role in an interim capacity or by any officer or person designated by such officer to act on his or her behalf.

Section 7. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED and ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RESOLUTION NO. ____

**A RESOLUTION OF THE BOARD OF THE MILPITAS MUNICIPAL FINANCING AUTHORITY
AUTHORIZING THE ISSUANCE AND SALE OF LEASE REVENUE BONDS IN AN AMOUNT NOT TO
EXCEED \$25,000,000 TO ASSIST IN FINANCING OF CAPITAL IMPROVEMENTS, AND APPROVING
RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City of Milpitas (the “City”) and the City of Milpitas Housing Authority have entered into a Joint Exercise of Powers Agreement, dated as of March 1, 2016, establishing the Milpitas Municipal Financing Authority (the “Authority”) for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, the City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the “Project”); and

WHEREAS, in order to provide financing for a portion of the cost of the Project, the City has proposed to lease (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (together, the “Leased Property”) to the Authority under a Site Lease anticipated to be dated as of November 1, 2020, in consideration of the payment by the Authority of an initial rental payment (the “Site Lease Payment”) which is sufficient to provide funds for such purposes, and to lease back the Leased Property from the Authority in consideration of semi-annual lease payments pursuant to a Lease Agreement between the Authority, as lessor, and the City, as lessee; and

WHEREAS, upon the completion of Fire Station #2, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released; and

WHEREAS, the Authority proposes to issue and sell its 2020 Lease Revenue Bonds (Capital Projects), in the principal amount of not to exceed \$25,000,000 (the “Bonds”) under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the “Bond Law”), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease, and thereby provide financing for a portion of the cost of the Project; and

WHEREAS, to provide for development of the most favorable debt structure for the City and to ensure the most favorable reception in the market place for the Bonds, the City has requested the Authority to sell the Bonds through a negotiated sale pursuant to the terms of a Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Authority, the City and Stifel, Nicolaus & Company, Incorporated, as underwriter (the “Underwriter”); and

WHEREAS, the Board of the Authority has duly considered such transactions and wishes at this time to approve all proceedings and documents to which the Authority is a party relating to the issuance and sale of the Bonds.

NOW, THEREFORE, the Governing Board of the Milpitas Municipal Financing Authority hereby finds, determines, and resolves as follows:

Section 1. Approval of Financing Plan; Authorization of Bonds. The Board hereby approves the financing plan described in the recitals of this Resolution. To that end, the Board hereby authorizes the issuance of the Bonds under the Bond Law in the principal amount of not to exceed \$25,000,000, for the purpose of providing financing for the Project. The Bonds shall be issued under the Indenture of Trust which is approved below.

Section 2. Approval of Financing Agreements. The Board hereby approves each of the following agreements required to implement the financing plan to be accomplished by the Bonds, in substantially the respective forms on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director or the Treasurer (each, an “Authorized Officer”), and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions:

- Indenture of Trust between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), prescribing the terms and conditions upon which the Bonds will be issued;
- Site Lease between the City as lessor and the Authority as lessee, under which the City leases the Leased Property to the Authority in consideration of the payment of the Site Lease Payment which will be applied by the City to finance the Project;
- Lease Agreement between the Authority as lessor and the City as lessee, under which the Authority leases the Leased Property back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide for payment of principal of and interest on the Bonds when due;
- Assignment Agreement, between the Authority and the Trustee, whereby the Authority assigns certain of its rights under the Lease Agreement to the Trustee for the benefit of the Bond owners; and
- Bond Purchase Agreement among the Authority, the City and the Underwriter, under which the Underwriter agrees to purchase the Bonds from the Authority.

An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed, if necessary, to attest the final form of each of the foregoing agreements.

Section 3. Sale of Bonds. The Board hereby approves the sale of the Bonds by the Authority in a principal amount not to exceed \$25,000,000 pursuant to the Bond Purchase Agreement; provided, that the true interest cost on the Bonds shall not exceed 4.0% and the underwriter’s discount shall not exceed 0.70% of the principal amount of the Bonds. The Bond Purchase Agreement shall be executed in substantially the form on file with the Secretary, together with any changes therein or additions thereto deemed advisable by any Authorized Officer, each of whom acting alone is hereby authorized and directed to execute and deliver said form of Bond Purchase Agreement on behalf of the Authority, and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions.

Section 4. Official Statement. The Board hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the Secretary, together with such modifications thereof as may be approved by an Authorized Officer. An Authorized Officer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be final, as of its date, within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the Final Official Statement for and in the name and on behalf of the Authority. The Board hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter.

Section 5. Official Actions. The Chair, the Executive Director, the Treasurer, the Secretary and all other officers of the Authority are each authorized and directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of any person serving in such role in an interim capacity or by any officer or person designated by such officer to act on his or her behalf.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED and ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, Authority Secretary

Rich Tran, Chair

APPROVED AS TO FORM:

Christopher J. Diaz, Authority Counsel

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Jones Hall, A Professional Law Corporation
Attn: James A Wawrzyniak, Jr.
475 Sansome Street, Suite 1700
San Francisco, California 94111

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

This SITE LEASE (this "Site Lease"), dated for convenience as of November 1, 2020, is between the CITY OF MILPITAS, a municipal corporation duly organized and existing under the laws of the State of California, as lessor, which acquired a portion of the Leased Property as the City of Milpitas, California, a municipal corporation (a political subdivision organized and existing under the laws of the State of California) (the "City"), and the MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California, as lessee (the "Authority").

B A C K G R O U N D :

1. The City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the "Project").

2. In order to provide funds to finance a portion of the costs of the Project, the City has agreed to lease the real property more particularly described in Appendix A attached hereto and by this reference incorporated herein, consisting of (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (the "Leased Property") to the Authority under this Site Lease, pursuant to which the Authority agrees to make an initial rental payment (as described herein, the "Site Lease Payment") which is sufficient to provide funds for such purposes.

3. As provided in the Lease and subject to the conditions set forth therein, upon the completion of Fire Station #2 and the resulting increase in the value thereof, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released.

4. The Authority has authorized the issuance of its Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) in the aggregate principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of November 1, 2020 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with this Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of November 1, 2020 (the "Lease"), which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to Trustee for the security of the Bonds under an Assignment Agreement dated as of November 1, 2020, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

A G R E E M E N T :

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

SECTION 1. *Lease of Property to Authority.* The City hereby leases the Leased Property to the Authority and the Authority hereby leases the Leased Property from the City, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Site Lease commences on the Closing Date and ends on the date on which the Indenture is discharged in accordance with Section 13.01 thereof, but under any circumstances not later than June 1, 20___. The provisions of this Section 2 are subject in all respects to any other provisions of this Site Lease relating to the termination hereof.

SECTION 3. *Rental.* The Authority shall pay to the City as and for rental of the Leased Property hereunder, the sum of \$_____ (the "Site Lease Payment"). The Site Lease Payment is due and payable upon the issuance of the Bonds and the execution and delivery hereof, and will be paid from the proceeds of the Bonds. The Authority and the City hereby find and determine that the total amount of the Site Lease Payment does not exceed the fair market value of the leasehold interest in the Leased Property which is conveyed hereunder by the City to the Authority. No other amount of rental is due and payable by the Authority for the use and occupancy of the Leased Property under this Site Lease.

As provided in the Indenture, a portion of the proceeds of the Bonds will be applied to make the Site Lease Payment by depositing the full amount thereof into the Project Fund which is held and administered by the City under the Indenture. Amounts on deposit in the Project Fund shall be disbursed by the City from time to time for the purpose of paying Project Costs in accordance with the Indenture.

SECTION 4. *Leaseback to City.* The Authority shall lease the Leased Property back to the City under the Lease.

SECTION 5. *Assignments and Subleases.* Unless the City is in default under the Lease, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Assignment Agreement and in the Lease, without the prior written consent of the City.

SECTION 6. *Substitution or Release of Property.* If the City exercises its option under Section 3.3 of the Lease to substitute property for the Leased Property in whole or in part, such substitution shall also operate to substitute property for the Leased Property which is leased hereunder. If the City exercises its option under Section 3.4 of the Lease to release a portion of the Leased Property from the Lease, such substitution shall also operate to release such portion of the Leased Property hereunder. The description of the Leased Property which is leased under the Lease shall conform at all times to the description of the Leased Property which is leased hereunder.

SECTION 7. *Right of Entry.* The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 8. *Termination.* The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and title thereto shall vest thereupon in the City for no additional consideration.

SECTION 9. *Default.* If the Authority defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and no such remedy may include termination hereof; *provided, however*, that so long as the Lease remains in effect, the Lease Payments payable by the City under the Lease shall continue to be paid to the Trustee.

SECTION 10. *Quiet Enjoyment.* The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances (as that term is defined in the Lease).

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority are solely corporate liabilities of the Authority as a public entity, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority hereunder.

SECTION 12. *Taxes.* The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property or any improvements thereon is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Lease Payments payable under the Lease and the balance of the award, if any, shall be paid to the City.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority or the City: City of Milpitas
455 East Calaveras Blvd
Milpitas, California 95035
Attention: Director of Finance
Telephone: (408) 586-3111
Fax: (408) 586-3110

If to the Trustee: U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust
Telephone: (415) 677-3600
Fax: (415) 677-3769

SECTION 16. *Amendment of this Site Lease.* The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to make cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect

whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds;

- (ii) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with Section 9.01 of the Indenture; or
- (iv) for the purpose of effectuating any substitution or release of property under Section 6.

SECTION 17. *Governing Law.* This Site Lease shall be construed in accordance with and governed by the laws of the State of California.

SECTION 18. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 19. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 20. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 21. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 22. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Indenture.

IN WITNESS WHEREOF, the City and the Authority have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**MILPITAS MUNICIPAL FINANCING
AUTHORITY**

By: _____
Walter C. Rossmann
Treasurer

CITY OF MILPITAS

By: _____
Walter C. Rossmann
Deputy City Manager

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, which is more particularly described as follows:

APN:

(End of Legal Description)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Jones Hall, A Professional Law Corporation
Attn: James A Wawrzyniak, Jr.
475 Sansome Street, Suite 1700
San Francisco, California 94111

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE AGREEMENT

Dated as of November 1, 2020

between the

MILPITAS MUNICIPAL FINANCING AUTHORITY,
as lessor

and the

CITY OF MILPITAS,
as lessee

Relating to

\$ _____
Milpitas Municipal Financing Authority
2020 Lease Revenue Bonds
(Capital Projects)

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APPENDIX A	DESCRIPTION OF THE LEASED PROPERTY
APPENDIX B	SCHEDULE OF LEASE PAYMENTS

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated for convenience as of November 1, 2020, is between the MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF MILPITAS, a municipal corporation duly organized and existing under the laws of the State of California, as lessee (the "City").

BACKGROUND:

1. The City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the "Project").

2. In order to provide funds to finance a portion of the costs of the Project, the City has agreed to lease the real property more particularly described in Appendix A attached hereto and by this reference incorporated herein, consisting of (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (the "Leased Property") to the Authority under a Site Lease dated as of November 1, 2020 (the "Site Lease"), under which the Authority agrees to make an initial rental payment (the "Site Lease Payment") which is sufficient to provide funds for such purposes.

3. As provided in the Lease and subject to the conditions set forth therein, upon the completion of Fire Station #2 and the resulting increase in the value thereof, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released.

4. The Authority has authorized the issuance of its Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) in the aggregate principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of November 1, 2020 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under this Lease, under which the City agrees to pay semiannual Lease Payments as the rental for the Leased Property hereunder.

6. The lease payments made by the City under this Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment

Agreement dated as of November 1, 2020, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

7. The City and the Authority have found and determined that all acts and proceedings required by law necessary to make this Lease, when executed by the City and the Authority, the valid, binding and legal obligations of the City and the Authority, and to constitute this Lease a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Lease have been in all respects duly authorized.

A G R E E M E N T :

In consideration of the material covenants contained in this Lease, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings given them in the Indenture.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular includes the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Authority and the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into the Site Lease and this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of the Site Lease and this Lease.
- (b) Due Execution. The representatives of the City executing the Site Lease and this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. The Site Lease and this Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of the Site Lease and this Lease, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site Lease and this Lease, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental

authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease and this Lease, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial conditions, assets, properties or operations of the City.

SECTION 2.2. *Covenants, Representations and Warranties of the Authority.* The Authority makes the following covenants, representations and warranties to the City and the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The Authority is a public body corporate and politic duly organized and existing under the Bond Law and under the laws of the State of California; has power to enter into this Lease, the Site Lease, the Assignment Agreement and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.
- (b) Due Execution. The representatives of the Authority executing this Lease, the Site Lease, the Assignment Agreement and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease, the Assignment Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease, the Site Lease, the Assignment Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach,

default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement and the Indenture or the financial condition, assets, properties or operations of the Authority.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS; SUBSTITUTION AND RELEASE OF PROPERTY

SECTION 3.1. *Deposit of Moneys.* On the Closing Date, the Authority will cause the proceeds of sale of the Bonds to be deposited with the Trustee. The Trustee shall deposit those proceeds in accordance with Section 3.01 of the Indenture.

SECTION 3.2. *Acquisition and Construction of Project.* As provided in Section 3.02 of the Indenture, a portion of the proceeds of sale of the Bonds will be applied to pay the Site Lease Payment to the City in accordance with Section 3 of the Site Lease. The Site Lease Payment shall be deposited into the Project Fund, which is established under the Indenture, to be disbursed for the purpose of paying Project Costs. Upon the completion of the Project, the City shall file a Written Certificate of the City with the Trustee, which Written Certificate shall identify the amount (if any) to be retained in the Project Fund to pay remaining Project Costs.

SECTION 3.3. *Substitution of Property.* The City has the option at any time and from time to time, to substitute other real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Santa Clara County Recorder, sufficient memorialization of an amendment of this Lease, the Site Lease and the Assignment Agreement, which adds the legal description of the Substitute Property to Appendix A and deletes therefrom the legal description of the Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be important to the proper, efficient and economic operation of the City and to serve a proper governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (f) The City has filed with the Authority and the Trustee a written certificate of the City or other written evidence stating that the estimated fair rental value of the Leased Property following the substitution will be at least equal to the aggregate principal amount of the Bonds then outstanding, and that the useful life of the Substitute Property at least extends to the stated termination date of this Lease.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 3.4. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the

"Released Property") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Santa Clara County Recorder, sufficient memorialization of an amendment of this Lease, the Site Lease and the Assignment Agreement, which removes the Released Property therefrom.
- (c) The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to this Lease following such release is at least equal to the then outstanding principal amount of the Bonds, and the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

ARTICLE IV

LEASE OF LEASED PROPERTY; TERM OF THIS LEASE; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property.* The Authority hereby leases the Leased Property to the City and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this Lease commences on the Closing Date and ends on the date on which the Indenture is discharged in accordance with Section 10.01 thereof, but under any circumstances not later than June 1, 20____. The provisions of this Section are subject to the provisions of Section 6.2 relating to abatement and the taking in eminent domain of the Leased Property in whole or in part.

SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in Appendix B attached to this Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in

whole under Article IX, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder. The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Section 9.2, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.2, the principal components of the remaining Lease Payments will be reduced in integral multiples of \$5,000 among Lease Payment Dates on a basis which corresponds to the principal maturities of the Bonds which are redeemed thereby; and the interest component of each remaining Lease Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under Section 4.01 of the Indenture.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

(d) Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, under the Assignment Agreement, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees to pay to the Trustee at its Office, all payments payable by the City under this Section and all amounts payable by the City under Article IX.

SECTION 4.4. *Source of Payments; Covenant to Budget and Appropriate.* The Lease Payments are payable from any source of available funds of the City, subject to the provisions of Section 6.3. The City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of this Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. The foregoing covenant of the City contained constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in

the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

SECTION 4.5. *Additional Rental Payments.* In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority hereunder:

- (a) All fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due;
- (b) All reasonable compensation to the Trustee for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture;
- (c) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture;
- (d) Amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e); and
- (e) The reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease.

SECTION 4.6. *Quiet Enjoyment.* Throughout the Term of this Lease, the Authority shall provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.7. *Title.* Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property transfers to and vests in the City. The Authority shall take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's

intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. *Liability and Property Damage Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

SECTION 5.4. *Casualty Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds. Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such

insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* On or before the Closing Date the City shall, at its expense, (a) cause the Site Lease, the Assignment Agreement and this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Santa Clara County Recorder, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under any such title insurance policy must be deposited with the Trustee in the Bond Fund to be credited towards the prepayment of the remaining Lease Payments under Section 9.4.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required hereunder are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

SECTION 5.8. *Installation of City's Personal Property.* The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City must repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, so long as no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.9. *Liens.* The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for

such encumbrances as the City certifies in writing to the Trustee do not materially and adversely affect the leasehold estate of the City in the Leased Property hereunder. If any such mortgage, pledge, lien, charge, encumbrance or claim does materially and adversely affect the leasehold estate of the City in the Leased Property hereunder, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible; provided that the City is not required to do so prior to the time when such mortgage, pledge, lien, charge, encumbrance or claim actually causes such material adverse effect. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.10. *Advances.* If the City fails to perform any of its obligations under this Article V, the Authority may (but is not required to) take such action as it deems necessary to cure such failure, including the advancement of money, and the City shall repay all such advances as Additional Rental Payments hereunder, with interest at the rate set forth in Section 4.3(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Trustee, as assignee of the Authority under the Assignment Agreement, has the right to receive all Net Proceeds. As provided in the Indenture, the Trustee will deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.07 of the Indenture.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.*

(a) If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease thereupon ceases as of the day possession is taken.

(b) If less than all of the Leased Property is taken permanently and the remainder is useable for the City's purposes, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

- (i) this Lease continues in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary, and
- (ii) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. *Abatement Due to Damage or Destruction.* The Lease Payments are subject to abatement during any period in which by reason of damage or destruction

(other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The Lease Payments are subject to abatement in an amount determined by the City, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. The Authority has no liability for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or use of the Leased Property by the City.

SECTION 7.2. *Access to the Leased Property.* The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, any Board Representative and the Authority's successors or assigns may have such rights of access to the Leased Property or any component thereof as reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City,

- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property,
- (e) the acquisition, construction, improvement and equipping of the Leased Property, or the authorization of payment of the costs thereof, or
- (f) the acceptance and performance of the duties of the Trustee under the Indenture and under this Lease.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. *Assignment and Subleasing by the City.* This Lease may not be assigned by the City, other than to an entity which succeeds to the interests of the City as a municipal corporation. The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) This Lease and the obligation of the City to make Lease Payments hereunder must remain obligations of the City.
- (b) The City must, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease.
- (c) No such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California.
- (d) The City must furnish to the Authority and the Trustee a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become included in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. *Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or

surrender any rights or power herein reserved to or conferred upon the City;

- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Lease in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code;
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in connection with any substitution or release of property under Sections 3.3 or 3.4;
- (v) to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property, but only if (A) such additional amounts of rental are pledged or assigned for the payment of any bonds (other than the Bonds or Additional Bonds), notes, leases or other obligations the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control, (B) the City has obtained and filed with the Trustee an M.A.I. appraisal showing that the appraised value of the Leased Property is at least equal to the then outstanding principal amount of the Bonds and all such other bonds, notes or other obligations related to the Lease, and (C) the City has filed with the Trustee written evidence that the amendments made under this clause (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Bonds;
- (vi) to incorporate provisions securing the obligations of the City under any Qualified Reserve Account Credit Instrument, or to incorporate provisions for the security of the Bonds relating to a Qualified Reserve Account Credit Instrument;
- (vii) in any respect whatsoever as the Authority and the City deem necessary or desirable to facilitate the issuance of Additional Bonds as permitted under the Indenture; or
- (viii) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 7.6. *Tax Covenants.*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Rental Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

SECTION 7.7. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Lease, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitute an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee. If in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30 day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease. Notwithstanding anything herein or in the Indenture to the contrary, neither the Authority nor the Trustee may accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; except that no termination of this Lease may be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

- (a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments

and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place the Leased Property in storage or other suitable place in the County of Santa Clara for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of the Leased Property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Rental Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to

terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it is not necessary to give any notice, other than as expressly required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If the Authority or the City defaults under any of the provisions of this Lease and the nondefaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease and thereafter the other party waives the breach, such waiver is limited to the particular Breach so waived and does not operate to waive any other breach hereunder.

SECTION 8.6. *Application of Proceeds.* All net proceeds received from the release of the Leased Property under this Article VIII, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, must be paid to and applied by the Trustee in accordance with Section 7.03 of the Indenture.

SECTION 8.7. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners, to which assignment the City hereby consents. The Trustee and the Bond Owners shall exercise such rights and remedies in accordance with the Indenture.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments allocable to the Leased Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a), as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section with respect to all unpaid Lease Payments, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said Lease Payments, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of said Lease Payments from such security deposit, and (c) under Section 4.7, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. *Prepayment.* The City has the option to prepay the principal components of the Lease Payments in as described under Section 4.01(a) of the Indenture. Such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. The City shall give written notice to the Authority and the Trustee of its intention to prepay the Lease Payments under this Section at least 45 days prior to the prepayment date, or such shorter period of time as may be acceptable to the Trustee in its sole discretion, such notice being solely for the convenience of the Trustee. Additionally, this Lease is subject to extraordinary mandatory prepayment as described under Section 4.01(c) of the Indenture.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the principal components of the Lease Payments allocable to the Leased Property in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property theretofore deposited in the Redemption Fund for that purpose under Article VI hereof and Section 5.07 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, will be credited towards the City's obligations under this Section and applied to the corresponding redemption of Bonds under Section 4.01 of the Indenture on the next available redemption date.

SECTION 9.4. *Credit for Amounts on Deposit.* If the principal components of the Lease Payments are prepaid in full under this Article IX, such that the Indenture is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Bond Fund (and the accounts therein) will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City
or the Authority:

City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attention: Director of Finance
Telephone: (408) 586-3111
Fax: (408) 586-3110

If to the Trustee:

U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust
Telephone: (415) 677-3600
Fax: (415) 677-3769

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and binds the Authority, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease is deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. *Further Assurances and Corrective Instruments.* The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

SECTION 10.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. *Board and City Representatives.* Whenever under the provisions of this Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority and for the City by an Authorized Representative thereof, and any party hereto may conclusively rely upon any such approval or request.

SECTION 10.10. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**MILPITAS MUNICIPAL FINANCING
AUTHORITY**

By: _____
Walter C. Rossmann
Treasurer

CITY OF MILPITAS

By: _____
Walter C. Rossmann
Deputy City Manager

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, which is more particularly described as follows:

APN:

(End of Legal Description)

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

Lease Payment Date *	Principal Component	Interest Component	Aggregate Lease Payment	Annual Aggregate Lease Payment
-------------------------	------------------------	-----------------------	----------------------------	-----------------------------------

Totals

* Lease Payment Dates are the 5th Business Day immediately preceding each date listed in the schedule

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Jones Hall, A Professional Law Corporation
Attn: James A Wawrzyniak, Jr.
475 Sansome Street, Suite 1700
San Francisco, California 94111

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “Agreement”), dated for convenience as of November 1, 2020, is between the MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

B A C K G R O U N D :

1. The City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the “Project”).

2. In order to provide funds to finance a portion of the costs of the Project, the City has agreed to lease the real property more particularly described in Appendix A attached hereto and by this reference incorporated herein, consisting of (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (the “Leased Property”) to the Authority under a Site Lease dated as of November 1, 2020 (the “Site Lease”), under which the Authority agrees to make an initial rental payment (the “Site Lease Payment”) which is sufficient to provide funds for such purposes.

3. As provided in the Lease and subject to the conditions set forth therein, upon the completion of Fire Station #2 and the resulting increase in the value thereof, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released.

4. The Authority has authorized the issuance of its Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) in the aggregate principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of November 1, 2020 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under the Lease Agreement dated as of November 1, 2020 (the "Lease Agreement"), which has been recorded concurrently herewith, under which the City agrees to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The Authority has requested the Trustee to enter into this Agreement for the purpose of assigning certain of its rights under the Lease to the Trustee for the benefit of the Bond owners.

A G R E E M E N T :

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Indenture.

SECTION 2. *Assignment.* The Authority hereby assigns to the Trustee, for the benefit of the Owners of all Bonds which are issued and Outstanding under the Indenture, all of the Authority's rights under the Lease (excepting only the Authority's rights under Sections 4.5, 5.10, 7.3 and 8.4 of the Lease), including but not limited to:

- (a) the right to receive and collect all of the Lease Payments from the City under the Lease,
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Leased Property, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Leased Property, and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (i) to enforce payment of the Lease Payments and any amounts required to be deposited in the Insurance and Condemnation Fund established under Section 5.07 of the Indenture, or (ii) otherwise to protect the interests of the Bond Owners in the event of a default by the City under the Lease.

The Trustee shall administer all of the rights assigned to it by the Authority under this Agreement in accordance with the provisions of the Indenture, for the benefit of the Owners of Bonds. The assignment made under this Section 2 is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. *Acceptance.* The Trustee hereby accepts the assignments made herein for the purpose of securing the payments due under the Lease and Indenture to, and the rights under the Lease and Indenture of, the Owners of the Bonds, all subject to the provisions of the Indenture. The recitals contained herein are those of the Authority and not of the Trustee, and the Trustee assumes no responsibility for the correctness thereof.

SECTION 4. *Conditions.* This Agreement confers no rights and imposes no duties upon the Trustee beyond those expressly provided in the Indenture. The assignment hereunder to the Trustee is solely in its capacity as Trustee under the Indenture.

SECTION 5. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Trustee and the Authority, both with the same force and effect as though the same counterpart had been executed by the Trustee and the Authority.

SECTION 6. *Binding Effect.* This Agreement inures to the benefit of and binds the Authority and the Trustee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 7. *Governing Law.* This Agreement is governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

**MILPITAS MUNICIPAL FINANCING
AUTHORITY**

By: _____
Walter C. Rossmann
Treasurer

**U.S. BANK NATIONAL ASSOCIATION,
*as Trustee***

By: _____
Authorized Officer

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, which is more particularly described as follows:

APN:

(End of Legal Description)

INDENTURE OF TRUST

Dated as of November 1, 2020

between

MILPITAS MUNICIPAL FINANCING AUTHORITY

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Authorizing the Issuance of

\$ _____
Milpitas Municipal Financing Authority
2020 Lease Revenue Bonds
(Capital Projects)

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APPENDIX A DEFINITIONS

APPENDIX B FORM OF BOND

INDENTURE OF TRUST

This INDENTURE OF TRUST (this “Indenture”), dated for convenience as of November 1, 2020, is between the MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, being qualified to accept and administer the trusts hereby created (the “Trustee”).

B A C K G R O U N D :

1. The City is proceeding to (1) replace Fire Station #2 with a new fire station located on the same site, which includes acquisition of furnishings and equipment related to such facility, and (2) acquire and install energy efficiency improvements to various City facilities (collectively, the “Project”).

2. In order to provide funds to finance a portion of the costs of the Project, the City has agreed to lease the real property more particularly described in Appendix A attached hereto and by this reference incorporated herein, consisting of (1) the Fire Station #2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (2) the real property and facilities known as the Barbara Lee Senior Center located at 40 North Milpitas Boulevard (the “Leased Property”) to the Authority under a Site Lease dated as of November 1, 2020 (the “Site Lease”), under which the Authority agrees to make an initial rental payment (the “Site Lease Payment”) which is sufficient to provide funds for such purposes.

3. As provided in the Lease and subject to the conditions set forth therein, upon the completion of Fire Station #2 and the resulting increase in the value thereof, Fire Station #2 and its site are expected to become the sole Leased Property, and the remainder of the initial Leased Property is expected to be released.

4. The Authority has authorized the issuance of its Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) in the aggregate principal amount of \$_____ (the “Bonds”) under this Indenture and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the “Bond Law”), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of November 1, 2020 (the “Lease”), under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of November 1, 2020, between the Authority as assignor and the Trustee as assignee.

7. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

8. The Authority has found and determines, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

A G R E E M E N T :

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in that Appendix when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization of Bonds.* The Authority has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Bonds in the aggregate principal amount of \$_____ under the Bond Law for the purposes of providing funds to pay the Site Lease Payment to the City and thereby provide funds to finance the Project. The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law. The Bonds are designated as the "Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects)."

SECTION 2.02. *Terms of the Bonds.*

(a) Payment Provisions. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on June 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity Date (June 1)	Principal Amount	Interest Rate
---------------------------	---------------------	------------------

Maturity Date (<u>June 1</u>)	Principal <u>Amount</u>	Interest <u>Rate</u>
------------------------------------	----------------------------	-------------------------

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the

Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect from the transferee any tax or other governmental charge on the transfer of any Bonds under this Section 2.03. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount in authorized denominations. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall collect from the transferee any tax or other governmental charge on the exchange of any Bonds under this subsection (b). The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Bonds selected by the Trustee for redemption under Article IV, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any

Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the

Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books*. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. *Form and Execution of Bonds*. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Treasurer of the Authority or other Authorized Representative with authority to do so shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. *Bonds Mutilated, Lost, Destroyed or Stolen*. If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and

deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

SECTION 2.08. *Additional Bonds.* In addition to the Bonds authorized to be issued pursuant to Section 2.01 of this Indenture, the Authority may, by Supplemental Indenture, establish one or more other issues of Additional Bonds secured and payable on a parity with such Bonds, and may issue and deliver such Additional Bonds in such principal amount as shall be determined by the Authority, but only upon compliance by the Authority with the provisions of this Section 2.08 and Section 2.09, and subject to the following specific conditions which are hereby made conditions precedent to the issuance of such Additional Bonds:

(a) Such Additional Bonds shall have been authorized to finance additional capital improvements for the City, or to refund bonds previously issued to finance such capital improvements, and the issuance thereof shall have been determined and declared by the Authority, in a Supplemental Indenture, to be necessary for that purpose.

(b) The Authority and the City shall be in compliance with all covenants and undertakings set forth in this Indenture and in the Lease and the Site Lease.

(c) The aggregate principal amount of Bonds issued and at any time Outstanding hereunder shall not exceed any limit imposed by law, by this Indenture or by any Supplemental Indenture.

(d) Such Additional Bonds shall be equally and ratably secured by the Revenues with all other Bonds herein authorized.

(e) The Authority shall have entered into an amendment to the Lease, in and by which the City obligates itself in the manner provided in the Lease to make Lease Payments for the lease of the Leased Property at the times and in the amounts sufficient to provide for the payment of the principal of and interest on such Additional Bonds as such principal and interest become due and to make all other payments in the manner provided in the Lease, and the City shall certify in

writing, that such Lease Payments, as amended, in any year shall not exceed the then fair rental value of the Leased Property.

(f) If necessary to ensure that the Lease Payments payable after the issuance of Additional Bonds does not exceed the fair rental value of the Leased Property in any year, the Authority and the City shall have amended the Lease pursuant to Section 7.5 thereof to add additional property to the Leased Property.

(g) In the event that the Additional Bonds are being issued to finance the construction of a to-be-built project, and such project is to be part of the Leased Property prior to its completion, the Supplemental Indenture authorizing the issuance of such Additional Bonds shall require the deposit into a capitalized interest account in the Project Fund, or a subaccount therein, an amount sufficient to pay interest on such Additional Bonds through a date which is not less than six months after the anticipated completion date of the project, but only if such Additional Bonds are issued prior to the substantial completion of such project.

SECTION 2.09. Proceedings for the Issuance of Additional Bonds. Whenever the Authority shall have determined to issue Additional Bonds pursuant to Section 2.08, the Authority shall enter into a Supplemental Indenture determining that the issuance of such Additional Bonds is necessary for the purposes specified in Section 2.08, specifying the principal amount of such Additional Bonds and prescribing the terms and conditions of such Additional Bonds and the funds to be established for the security and payment thereof. Before such Additional Bonds shall be issued and delivered, the Authority shall file the following documents with the Trustee:

(a) An executed copy of the Supplemental Indenture authorizing such Additional Bonds, together with a certified copy of the resolution of the Authority authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture.

(b) An Opinion of Bond Counsel stating: (i) that the execution and delivery of the Additional Bonds have been sufficiently and duly authorized by the Authority; (ii) that the issuance of the Additional Bonds is authorized by the Bond Law and this Indenture; (iii) that the Additional Bonds when duly executed and delivered, will be valid and binding obligations of the Authority, payable from Revenues in accordance with the terms of this Indenture and the Supplemental Indenture authorizing the issuance of such Additional Bonds; (iv) that upon the delivery of the Additional Bonds the aggregate principal amount of Bonds then Outstanding will not exceed the amount at the time permitted by law or the then limits of indebtedness of the Authority, if any; and (v) if the Additional Bonds are to be tax-exempt, that the interest on the Additional Bonds will be excluded from the gross income of the Owners thereof for federal income tax purposes.

(c) A Certificate of the Authority certifying that the requirements set forth in Section 2.08 have been either met or provided for, together with a copy of the amendment to the Lease required by Section 2.08, together with a certified copy of the resolutions of the Authority and the City authorizing the execution of such amendment to the Lease.

SECTION 2.10. Applicability to Additional Bonds. Unless otherwise specified in the Supplemental Indenture pursuant to which an issue of Additional Bonds are issued, the provisions of Sections 2.04 through 2.07 shall apply to such issue of Additional Bonds.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. Issuance of the Bonds. At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Bonds to the Original Purchaser upon receipt of payment of the purchase price for the Bonds.

SECTION 3.02. Application of Proceeds of Sale of Bonds and City Contribution. Upon the receipt of payment for the Bonds on the Closing Date in the amount of \$_____ (representing the aggregate principal amount thereof, plus net original issuance premium of \$_____, less an Underwriter's discount of \$_____), the Trustee shall deposit the proceeds thereof into a temporary account, which shall be disbursed in full on the Closing Date (whereupon said temporary account shall be closed) as follows:

- (a) The Trustee shall deposit the amount of \$_____ into the Costs of Issuance Fund.
- (b) The Trustee shall deposit the amount of \$_____ into the Interest Account of the Bond Fund, representing capitalized interest to _____ 1, 20__.
- (c) The Trustee shall deposit the amount of \$_____, constituting the remainder of such proceeds and representing the full amount of the Site Lease Payment, in the Project Fund.

SECTION 3.03. Establishment and Application of Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(a). The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On 120 days following issuance of the Bonds, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Project Fund and shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. Establishment and Application of Project Fund. There is hereby established in trust a special fund designated the "Project Fund," which will be held by the Trustee and which will be kept separate and apart from all other funds and moneys held

by the Trustee into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(c). The Trustee shall disburse amounts in the Project Fund from time to time to pay the Project Costs upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon.

Upon the receipt of a Written Certificate of the City stating that the Project has been completed and that no further amounts are required to be disbursed from the Project Fund to pay Project Costs, the Trustee will close the Project Fund and transfer any remaining amounts to the Principal Account of the Bond Fund, to be applied as a credit towards the Lease Payments next coming due and payable.

SECTION 3.05. *Validity of Bonds.* The recital contained in the Bonds that the same are issued under the laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. *Terms of Redemption.*

(a) Optional Redemption. The Bonds maturing on or before June 1, _____, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after June 1, _____, are subject to redemption in whole, or in part at the election of the Authority among maturities on such basis as shall be designated by the Authority and by lot within a maturity, at the option of the Authority, on any date on or after June 1, _____, from any available source of funds, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

The Authority shall give the Trustee written notice of its intention to redeem Bonds under Section 4.01(a) and Section 4.01(c), and the manner of selecting such Bonds for redemption from among the maturities thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with Section 4.03.

(b) The Term Bonds are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on June 1 in the respective years as set forth in the following table; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to an optional redemption or special mandatory redemption from insurance or condemnation proceeds, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Term Bonds Maturing June 1, _____

Sinking Fund Redemption Date (June 1)	Principal Amount To Be Redeemed
_____	_____

(maturity)

(c) Extraordinary Mandatory Redemption. The Bonds are subject to mandatory redemption prior to maturity in whole or in part among maturities as determined by the Authority, on any date, at a redemption price equal to 100% of the principal amount thereof to be redeemed (plus accrued but unpaid interest to the redemption date), without premium, from Net Proceeds received under Section 5.6 of the Lease Agreement and from amounts deposited in the Insurance and Condemnation Fund pursuant to Section 5.06 hereof, and any other funds available for such purpose under this Indenture.

SECTION 4.02. *Selection of Bonds for Redemption*. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds, the Bonds shall be selected for redemption on a pro-rata basis among outstanding maturities. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.03. *Notice of Redemption; Rescission*. The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Information Services. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

The Authority has the right to rescind any notice of the redemption of Bonds under Section 4.01(a) by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

SECTION 4.04. *Partial Redemption of Bonds.* Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.05. *Effect of Redemption.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect.

ARTICLE V

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. *Security for the Bonds; Bond Fund.*

(a) Pledge of Revenues and Other Amounts. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) Assignment to Trustee. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under Sections 4.5, 5.10, 7.3 and 8.4 thereof). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

(c) Deposit of Revenues in Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Revenues.* On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

- (a) Deposit to Interest Account. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.
- (b) Deposit to Principal Account. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date, including the principal amount of Additional Bonds which are subject to mandatory sinking fund redemption on such Interest Payment Date under a Supplemental Indenture, if any.

SECTION 5.03. *Application of Interest Account.* All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity). Amounts representing capitalized interest deposited pursuant to Section 3.02(b) shall be applied to pay interest on the Bonds on June 1, 2021.

SECTION 5.04. *Application of Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates, and the principal amount of Additional Bonds

which are subject to mandatory sinking fund redemption on such Interest Payment Date under a Supplemental Indenture, if any.

SECTION 5.05. *Application of Redemption Fund.* The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of the Bonds to be redeemed under Section 4.01(a); *provided, however*, that at any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed under a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds. The Trustee shall be entitled to conclusively rely on any Written Request of the Authority received under this Section, and shall be fully protected in relying thereon.

SECTION 5.06. *Insurance and Condemnation Fund.*

(a) Establishment of Fund. Upon the receipt of proceeds of insurance or eminent domain with respect to the Leased Property, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 5.07.

(b) Deposit of Proceeds. Any Net Proceeds of insurance and eminent domain awards with respect to the Leased Property collected by the City or the Authority in accordance with Article VI of the Lease will be deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund.

(c) Application of Proceeds. Net Proceeds deposited in the Insurance and Condemnation Fund will be used, as directed by the City, either (i) to replace, repair, restore, modify or improve the Leased Property if the City determines that such is economically feasible or in the best interests of the City, or (ii) to the extent not so used, to prepay the Lease Payments on the next optional prepayment date, and thereby redeem outstanding Bonds pursuant to optional redemption.

Any proceeds of an insurance or eminent domain award deposited in the Insurance and Condemnation Fund to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, or to replace any Leased Property taken in eminent domain proceedings, shall be applied upon receipt of a Written Request of the City which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund and has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Any balance of the proceeds remaining after such work has been completed as certified by the City under a Written Certificate to the Trustee shall be paid to the City. The Trustee shall be entitled to conclusively rely on any Written Request or Written Certificate received under this subsection (c) of this Section 5.06 and in each case, shall be fully protected in relying thereon.

Notwithstanding the foregoing, however, in the event of condemnation, damage or destruction of the Leased Property in full, the Net Proceeds of such insurance are required to be used by the City to redeem the Bonds in full; except that, if such proceeds and other amounts available under this Indenture are not sufficient to redeem outstanding Bonds in full, the City is required to rebuild or replace the Leased Property.

SECTION 5.07. *Investments.* All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the Authority in a Written Request of the Authority filed with the Trustee at least two Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments which constitute money market funds. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments must be registered in the name of the Trustee.

All amounts in any of the funds or accounts established with the City under this Indenture shall be invested by the City solely in investments which are authorized for the investment of such funds under the applicable laws of the State of California and under the adopted investment policy of the City.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund, *provided, however*, that earnings on the investment of the amount in the Project Fund shall be retained therein. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section 5.07.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Authority a periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

Except as otherwise provided hereunder or agreed in writing among the parties hereto, the Authority shall retain the authority to institute, participate and join in any plan or reorganization, readjustment, merger or consolidation with respect to the issuer of any

securities held hereunder, and, in general, to exercise each and every other power or right with respect to each such asset or investment as individuals generally have and enjoy with respect to their own assets and investment, including power to vote upon any securities.

Unless the Authority notifies the Trustee otherwise in writing, the Trustee will provide the obligatory information to the registrant/issuer of any U.S. securities upon their request. Any objection will apply to all securities held in any trust account now and in the future unless the Authority notifies the Trustee in writing of such objection.

SECTION 5.08. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Indenture or the Tax Code) at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at cost thereof, (consisting of present value thereof within the meaning of Section 148 of the Tax Code); provided that the Authority shall inform the Trustee which funds are subject to a yield restriction.

(c) Except for any funds or accounts described in subsection (b), for the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before January 1. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it is necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 5.08, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is any commingled investment fund in which the Authority and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is

without regard to the source of the investment. To the extent required by the applicable regulations under the Tax Code, the term “investment” will include a hedge.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system.

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Revenues, and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section 6.02 limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture and under the Assignment Agreement in the manner and to the extent provided in this Indenture and the Assignment Agreement. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. *Accounting Records.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances.

SECTION 6.06. *Limitation on Additional Obligations.* The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 6.07. *Tax Covenants.*

(a) Private Business Use Limitation. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The Authority may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The Authority may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from amounts paid by the City for that purpose under Section 4.5(d) of the Lease. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

(f) Record Retention. Without limiting the requirements of subsection (e) above, the Authority will retain its records of all accounting and monitoring it carries out with respect to the Bonds for at least 3 years after the Bonds mature or are redeemed (whichever is earlier); however, if the Bonds are redeemed and refunded, the Authority will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

(g) Compliance with Tax Certificate. The Authority will comply with the provisions of the Tax Certificate and the Use of Proceeds Certificate with respect to the Bonds, which are incorporated herein as if fully set forth herein. The covenants of this Section will survive payment in full or defeasance of the Bonds.

SECTION 6.08. *Enforcement of Lease.* The Trustee shall promptly collect all amounts (to the extent any such amounts are available for collection) due from the City under the Lease. Subject to the provisions of Article VIII, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease.

SECTION 6.09. *Waiver of laws.* The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances.* The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default.* The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; provided, however, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within such 30-

day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Lease.

SECTION 7.02. *Remedies Upon Event of Default.* If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then outstanding, and upon being indemnified to its satisfaction therefor, the Trustee shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it deems most effectual to protect and enforce any such right, at law or in equity, including but not limited to enforcement of any and all rights granted to the Authority or the Trustee under the Lease.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. *Application of Revenues and Other Funds After Default.* If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal counsel including outside counsel and the allocated costs of internal attorneys and fees and expenses of its agents and advisors) incurred in and about the performance of its powers and duties under this Indenture;
- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or

otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference;

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Bond Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Board.* Nothing herein or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default.* No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. *Notice to the Bond Owners of Default.* Upon becoming aware of the occurrence of an Event of Default, but in no event later than five Business Days following becoming aware of such occurrence, the Trustee shall give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee

in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* U.S. Bank National Association is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article VIII so long as any Bonds are Outstanding.

SECTION 8.02. *Acceptance of Trusts; Removal and Resignation of Trustee.* The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee.
- (b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. Any such removal shall be made upon at least 30 days' prior written notice to the Trustee.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.
- (d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (c), respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, must signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to the Leased Property held by such predecessor Trustee under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

- (e) Any Trustee appointed under this Indenture shall be a corporation or banking association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or

examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

SECTION 8.03. *Merger or Consolidation.* Any bank, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease (including any right to receive moneys thereunder or the value of or title to the premises upon which the Leased Property is located), nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts. Permissive rights of the Trustee shall not be construed as duties.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it under the Assignment Agreement.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of the City to make Lease Payments to the Trustee when due and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee thereunder.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys) which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section 8.04 and Section 8.05, and shall be applicable to the assignment of any rights under the Lease to the Trustee under the Assignment Agreement.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in

connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Property.

(l) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification.* The Authority shall pay to the Trustee from time to time, on demand, the compensation for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on advances), charges, legal (including outside counsel and the allocated costs of internal

attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and duties under this Indenture.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Assignment Agreement or the Lease. As security for the performance of the obligations of the Authority under this Section 8.07 and the obligation of the Authority to make Additional Rental Payments to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section 8.07 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Lease.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liabilities in the performance of any of its duties hereunder, or in the exercise of its rights or powers.

ARTICLE IX

MODIFICATION OR AMENDMENT HEREOF

SECTION 9.01. *Amendments Permitted.*

(a) Amendments With Bond Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture,

which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;
- (iv) to incorporate provisions relating to the issuance of additional bonds;
or
- (v) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code.

(c) Limitation. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Bond Counsel Opinion Requirement. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture.

(e) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 9.01.

SECTION 9.02. *Effect of Supplemental Indenture.* Upon the execution of any Supplemental Indenture under this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds

Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. *Endorsement of Bonds; Preparation of New Bonds.* Bonds delivered after the execution of any Supplemental Indenture under this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same maturity.

SECTION 9.04. *Amendment of Particular Bonds.* The provisions of this Article IX do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such

Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. *Discharge of Liability on Bonds.* Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee, for cancellation by Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. *Deposit of Money or Securities with Trustee.* Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or
- (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such

redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee has been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. *Unclaimed Funds.* Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for 2 years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however*, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *Liability of Authority Limited to Revenues .* Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. *Limitation of Rights to Parties and Bond Owners.* Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice.* Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and at the written request of the Authority the Trustee shall deliver a certificate of such destruction to the Authority.

SECTION 11.06. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City
or the Authority:

City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attention: Director of Finance
Telephone: (408) 586-3111
Fax: (408) 586-3110

If to the Trustee:

U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust
Telephone: (415) 677-3600
Fax: (415) 677-3769

SECTION 11.08. *Evidence of Rights of Bond Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section 11.08.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case

of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority shall specify to the Trustee those Bonds disqualified under this Section 11.09.

SECTION 11.10. *Money Held for Particular Bonds.* The money held by the Trustee for the payment of the interest, premium, if any, or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however*, to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability.* No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.14. *Payment on Non-Business Day.* In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the MILPITAS MUNICIPAL FINANCING AUTHORITY has caused this Indenture to be signed in its name by its Treasurer and attested to by its Secretary, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

**MILPITAS MUNICIPAL FINANCING
AUTHORITY**

By: _____
Walter C. Rossmann
Treasurer

ATTEST:

By: _____
Mary Lavelle, CMC
Secretary

**U.S. BANK NATIONAL
ASSOCIATION,
*as Trustee***

By: _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Additional Bonds” means Additional Bonds issued in accordance with Section 2.08 hereof.

“Additional Rental Payments” means the amounts of additional rental which are payable by the City under Section 4.5 of the Lease or which are otherwise identified as Additional Rental Payments under the Lease.

“Assignment Agreement” means the Assignment Agreement dated as of November 1, 2020, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

“Authority” means the Milpitas Municipal Financing Authority, a joint powers authority duly organized and existing under the Joint Exercise of Powers Agreement, dated as of March 1, 2016, by and between the City and the City of Milpitas Housing Authority, creating the Authority, together with any amendments thereof and supplements thereto, and under the laws of the State of California.

“Authorized Representative” (a) with respect to the Authority, the Executive Director, Treasurer or any other person designated as an Authorized Official of the Authority by a Written Certificate of the Authority signed by its Executive Director or Treasurer and filed with the City and the Trustee; and (b) with respect to the City, the City Manager, Assistant City Manager, Deputy City Manager, Director of Finance, or any other person designated as an Authorized Official of the City by a Written Certificate of the City signed by the City Manager, Deputy City Manager or Director of Finance and filed with the Authority and the Trustee.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Bond Law” means the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, as in effect on the Closing Date or as thereafter amended in accordance with its terms.

“Bond Year” means each twelve-month period extending from June 2 in one calendar year to June 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including June 1, 2021.

“Bonds” means the \$_____ aggregate principal amount of Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) authorized by and at any time Outstanding under the Bond Law and this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the City in which the Office of the Trustee is located.

“City” means the City of Milpitas, a municipal corporation organized and existing under the laws of the State of California.

“Closing Date” means _____, 2020, being the date of delivery of the Bonds to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and their respective counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, and its successors and assigns.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Bonds at a yield in excess of the yield on the Bonds.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Information Services” means in accordance with then-current guidelines of the Securities and Exchange Commission, the Electronic Municipal Market Access System (referred to as “EMMA”), a facility of the Municipal Securities Rulemaking Board (at <http://emma.msrb.org>), or such service or services as the Authority may designate in a certificate delivered to the Trustee.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Interest Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Interest Payment Date” means each December 1 and June 1, commencing June 1, 2021 so long as any Bonds remain unpaid.

“Lease” means the Lease Agreement dated as of November 1, 2020, between the Authority as lessor and the City as lessee of the Leased Property, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

“Lease Payment Date” means, with respect to any Interest Payment Date, the 5th Business Day immediately preceding such Interest Payment Date.

“Lease Payments” means the amounts payable by the City under Section 4.3(a) of the Lease, including any prepayment thereof and including any amounts payable upon a delinquency in the payment thereof.

“Leased Property” means the real property described in Appendix A to the Lease, together with all improvements and facilities at any time situated thereon.

“Moody’s” means Moody’s Investors Service, its successors and assigns.

“Net Proceeds” means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

"Nominee" means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

"Office" means the corporate trust office of the Trustee in San Francisco, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency and operations business is conducted initially in St. Paul, Minnesota.

"Original Purchaser" means Stifel, Nicolaus & Company, Incorporated, as original purchaser of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding", when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

"Owner", whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"Permitted Encumbrances" means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article V of the Lease; (b) the Site Lease, the Lease and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, material man, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Lawyer's Title Company; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

"Permitted Investments" means any of the following:

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged.
- (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

- (c) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P at the time of purchase.
- (d) Interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks (including the Trustee), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P at the time of purchase; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation.
- (e) Commercial paper rated "A-1+" or better by S&P at the time of purchase.
- (f) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "A-1+" or better by S&P at the time of purchase.
- (g) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAM-G, AAAM or AAM at the time of purchase, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services.
- (h) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by S&P at the time of purchase, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (i) Obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by S&P at the time of purchase.
- (j) Bonds or notes issued by any state or municipality which are rated A or better by S&P at the time of purchase.
- (k) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment, by the terms of which all amounts invested thereunder are required to be withdrawn and paid to the Trustee in the event either of such ratings at any time falls below A.
- (l) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to

the extent the Trustee is authorized to register such investment in its name.

“Principal Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Project” means (a) the replacement of Fire Station #2 with a new fire station located on the same site, including the acquisition of furnishings and equipment related to such facility, (b) energy efficiency improvements to various City facilities, and (c) incidental expenses related to the foregoing, as such project may be modified by the City Council from time-to-time.

“Project Costs” means, with respect to the Project, all costs of the acquisition, construction and installation thereof which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for the purchase of the Project or otherwise relating to the acquisition, construction and installation of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;
- (d) preliminary costs of the Project, including but not limited to design, environmental, engineering and architectural services, costs for testing, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and costs for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;
- (e) costs of equipping and furnishing the Project, and costs of taking occupancy of the Project including costs incurred in connection with the relocation of City functions and personnel into the Project;
- (f) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;
- (g) all financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (h) the Lease Payments coming due during the period of construction of the Project.

“Project Fund” means the fund by that name established and held by the Trustee under Section 3.04.

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.05.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

“Revenues” means:

(a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding (i) any amounts described in Section 7.5(b)(v) of the Lease, and (ii) any Additional Rental Payments; and

(b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority designates in written notice filed with the Trustee.

“Site Lease” means the Site Lease dated as of November 1, 2020, between the City as lessor and the Authority as lessee, as amended from time to time in accordance with its terms.

“Site Lease Payment” means the amount of \$_____, which is payable by the Authority to the City on the Closing Date under Section 3 of the Site Lease.

“S&P” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Term” means, with reference to the Lease, the time during which the Lease is in effect, as provided in Section 4.2 thereof.

“Term Bonds” means the Bonds maturing on June 1, ____.

“Trustee” means U.S. Bank National Association, a national banking association organized and existing under the laws of United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

“Written Certificate,” “Written Request” and “Written Requisition” of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

APPENDIX B

BOND FORM

No. R-_____

\$_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

MILPITAS MUNICIPAL FINANCING AUTHORITY

2020 LEASE REVENUE BONDS (Capital Projects)

INTEREST RATE: _____% MATURITY DATE: June 1, _____ ORIGINAL ISSUE DATE: _____, 2020 CUSIP: _____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: *** _____ DOLLARS***

The MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before May 15, 2021, in which event it shall bear interest from the Original Issue Date specified above; *provided, however*, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on June 1 and December 1 in each year, commencing June 1, 2021 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of U.S. Bank National Association, in St. Paul, Minnesota (the "Trust Office"), as trustee (the "Trustee"). Interest

hereon is payable by check of the Trustee mailed on the Interest Payment Date to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Milpitas (the "City"), the County of Santa Clara, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects)" (the "Bonds"), in an aggregate principal amount of \$_____, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"), and under an Indenture of Trust dated as of November 1, 2020, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on October 20, 2020, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to finance the acquisition and construction of capital improvements of the City. This Bond and the interest and premium, if any, hereon are special obligations of the Authority, payable from the Revenues, and secured by a charge and lien on the Revenues as defined in the Indenture, consisting principally of lease payments made by the City under a Lease Agreement dated as of November 1, 2020, between the Authority as lessor and the City as lessee (the "Lease"). As and to the extent set forth in the Indenture, all of the Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing on or before June 1, _____ are not subject to optional redemption prior to maturity. The Bonds maturing on or after June 1, _____ are subject to redemption prior to maturity at the option of the Authority, as a whole or in part, on any Business Day on or after June 1, _____, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued and unpaid interest thereon, without premium.

The Bonds maturing on June 1, _____ are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on June 1 in the respective years as set forth in the following table; provided, however, that if some but not all of such Bonds have been redeemed pursuant to an optional redemption or special mandatory redemption from insurance or condemnation proceeds, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Term Bonds Maturing June 1, _____

Sinking Fund Redemption Date (June 1)	Principal Amount To Be Redeemed
_____	_____

(maturity)

The Bonds are subject to mandatory redemption prior to maturity in whole or in part among maturities as determined by the Authority on any date, at a redemption price equal to 100% of the principal amount thereof to be redeemed (plus accrued but unpaid interest to the redemption date), without premium, from Net Proceeds of title insurance received under the Lease and from Net Proceeds of certain damage and condemnation awards deposited in the Insurance and Condemnation Fund, and any other funds available for such purpose under this Indenture.

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 20 or more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption. Notice of any optional redemption of the Bonds may be rescinded under the circumstances set forth in the Indenture, upon notice to the owners of such Bonds.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Authority or the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Bond Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Bond Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Milpitas Municipal Financing Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its

Treasurer and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

**MILPITAS MUNICIPAL FINANCING
AUTHORITY**

By: _____
Treasurer

Attest:

Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

\$ _____
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

BOND PURCHASE AGREEMENT

October 26, 2020

Milpitas Municipal Financing Authority
455 East Calaveras Boulevard
Milpitas, CA 95035

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) hereby offers to enter into this bond purchase agreement (the “Bond Purchase Agreement”) with the Milpitas Municipal Financing Authority (the “Authority”) and the City of Milpitas (the “City”). Upon the acceptance hereof by the Authority and the City, this offer will be binding upon the Authority, the City and the Underwriter. This offer is made subject to (a) the written acceptance hereof by the Authority and the City and (b) withdrawal by the Underwriter upon written notice (by telecopy or otherwise) delivered to the Authority and the City at any time prior to each of their acceptance hereof by the Authority and the City.

1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase on the Closing Date (as defined herein), and the Authority and the City hereby agree to sell and deliver to the Underwriter on the Closing Date, \$_____ principal amount of Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) (the “Bonds”). The Bonds are being issued pursuant to Article 4, Chapter 5, Division 7, Title 1 of the California Government Code, a resolution of the Authority authorizing the issuance of the Bonds, adopted on October 20, 2020 (the “Authority Resolution”), and an Indenture of Trust, dated as of November 1, 2020 (the “Indenture”), by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”). The City will lease certain real property to the Authority, consisting of the New Fire Station (hereinafter defined) and the Barbara Lee Senior Center located at 40 North Milpitas Boulevard in the City (collectively, the “Leased Property”) to the Authority pursuant to a Site Lease, dated as of November 1, 2020 (the “Site Lease”). The Leased Property will be leased by the Authority to the City pursuant to the Lease Agreement, dated as of November 1, 2020 (the “Lease Agreement”), by and between the Authority and the City. Pursuant to an Assignment Agreement, dated as of November 1, 2020 (the “Assignment

Agreement”), by and between the Authority and the Trustee, the Authority will assign, for the benefit of the owners of the Bonds, its right to receive lease payments (the “Lease Payments”) made by the City under the Lease Agreement and its right to exercise rights and remedies of the Authority under the Lease Agreement. All capitalized terms not defined herein shall have the respective meaning specified in Section 1.01 and Exhibit A of the Indenture.

Under the Lease Agreement, the City is required to make Lease Payments and Additional Rental Payments from legally available funds in amounts calculated to be sufficient to pay principal of and interest on the Bonds when due. All of the Authority’s right, title and interest in and to the Lease Agreement (except for the right to receive Additional Rental Payments to the extent payable to the Authority and certain rights to indemnification), including the right to receive Lease Payments under the Lease Agreement, are assigned to the Trustee for the benefit of the Owners of the Bonds.

The Bonds are being issued to (a) finance (i) the replacement of Fire Station No. 2 with a new fire station in the City, including the acquisition of furnishings and equipment related to such facility and incidental expenses related thereto (the “New Fire Station”), and (ii) energy efficiency improvements generally consisting of utility modernization, LED lighting upgrades, and energy resiliency improvements to certain facilities to mitigate impacts from future power outages (the “Energy Project” and, with the New Fire Station, the “Project”), (b) fund a portion of interest on the Bonds through June 1, 2022, and (c) pay costs of issuance of the Bonds.

The purchase price to be paid by the Underwriter for the Bonds is hereby agreed to be \$_____, which amount represents the principal amount of the Bonds of \$_____, less \$_____, representing the Underwriter’s discount, plus \$_____, representing an original issue premium (such payment and delivery of the Bonds and the other actions contemplated hereby to take place at the time of such payment and delivery being herein sometimes called the “Closing”).

The Authority and the City acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction between the Authority and the City and the Underwriter; (ii) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the Authority or the City; (iii) the Underwriter has not assumed a fiduciary responsibility in favor of the Authority or the City with respect to the offering of the Bonds or the process leading thereto (whether or not the Underwriter, or any affiliates of the Underwriter, has advised or is currently advising the Authority or the City on other matters) nor has it assumed any other obligation to the Authority or the City except the obligations expressly set forth in this Bond Purchase Agreement, (iv) the Underwriter has financial and other interests that differ from those of the Authority and the City; and (v) the Authority and the City have consulted with their own legal and financial advisors to the extent they deemed appropriate in connection with the offering of the Bonds.

The Authority and the City hereby acknowledge receipt from the Underwriter of disclosures required by the Municipal Securities Rulemaking Board (“MSRB”) Rule G-17 (as set forth in MSRB Notice 2012-25 (May 7, 2012), relating to disclosures concerning the Underwriter’s role in the transaction, disclosures concerning the Underwriter’s compensation, conflict disclosures, if any, and disclosures concerning complex municipal securities financing, if any.

A Preliminary Official Statement of the City and the Authority, dated October 21, 2020 (together with the Appendices thereto, any documents incorporated therein by reference and any supplements or amendments thereto and as disseminated in its printed physical form or in

electronic form in all respects materially consistent with such physical form, the "Preliminary Official Statement"), has been prepared for use in marketing the Bonds, and a final Official Statement relating to the Bonds, to be dated the date hereof, as amended to conform to the terms of this Purchase Contract, and with such changes and amendments as are mutually agreed to by the Authority, the City and the Underwriter, including the cover page, inside cover page, the appendices and all information incorporated therein by reference, is herein collectively referred to as the "Official Statement," which shall be in substantially the form of the Preliminary Official Statement, with such changes and amendments thereto as may be mutually agreed upon by the Underwriter, the Authority and the City.

The Bonds shall be dated their date of delivery, and shall have the maturities, bear interest at the rates, have reoffering yields, and be subject to redemption as shown on Exhibit A hereto.

It shall be a condition to the Authority's obligation to sell and to deliver the Bonds to the Underwriter and to the obligation of the Underwriter to purchase, to accept delivery of and to pay for the Bonds that the entire \$_____ principal amount of the Bonds as authorized by the Indenture shall be sold and delivered by the Authority and accepted and paid for by the Underwriter at the Closing. The Underwriter may change the offering prices (or yields) of the Bonds from time to time at any time. The Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices. The obligation of the Authority to sell and deliver the Bonds to the Underwriter shall also be conditioned upon the delivery by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel ("Bond Counsel"), of its approving legal opinion with respect to the Bonds.

The Authority and the City hereby authorize the Underwriter to use and distribute the Site Lease, the Lease Agreement, the Assignment Agreement, the Indenture and the Preliminary Official Statement, and the information contained in such documents in connection with the public offering and sale of the Bonds. The Authority and the City have authorized the use of the Preliminary Official Statement in connection with the public offering of the Bonds by the Underwriter prior to the date hereof.

The obligation of the City to make Lease Payments under the Lease Agreement does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. Neither the Bonds nor the obligation of the City to make Lease Payments under the Lease Agreement constitutes a debt of the Authority, the City, the State of California or any of its political subdivisions in contravention of any constitutional or statutory debt limitation or restriction. The obligation of the City to make Lease Payments, as set forth in the Lease Agreement, shall be deemed to be and shall be construed to be a ministerial duty imposed by law and it shall be the ministerial duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of such duty, subject to abatement in the event of damage or destruction to, or condemnation of, the Leased Property or a portion thereof.

2. Bona Fide Public Offering. The Underwriter agrees to make a bona fide public offering of all of the Bonds, at prices not in excess of the initial public offering yields or prices set forth on the cover page of the Official Statement. Subject to Section 3(c), the Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices; provided, however, that the Underwriter may offer a portion of the Bonds for sale to selected dealers who are members of the Financial Industry Regulatory Authority, and the Underwriter reserves the right to change such offering prices or yields as the Underwriter shall deem necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) and others at prices lower than

the initial offering prices or at yields higher than the initial yields set forth on Exhibit A attached hereto. The Underwriter also reserves the right to over-allot or effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market and to discontinue such stabilizing, if commenced, at any time. None of such activities shall affect the principal amounts, maturity dates, interest rates, redemption or other provision of the Bonds or the amount to be paid by the Underwriter to the Authority for the Bonds.

3. Establishment of Issue Price.

(a) The Underwriter agrees to assist the Authority and the City in establishing the issue price of the Bonds and shall execute and deliver to the Authority and the City at Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Authority, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the Authority and the City under this Section 3 to establish the issue price of the Bonds may be taken on behalf of the Authority and the City by the City's municipal advisor identified herein and any notice or report to be provided to the Authority and the City may be provided to the City's municipal advisor.

(b) The Authority and the City will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the Authority and the City the price or prices at which it has sold to the public each maturity of Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the Authority and the City the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public.

(c) The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The Authority and the City acknowledge that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The Authority and the City further acknowledge that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail

distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

(d) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this Section 3. Further, for purposes of this Section 3:

(i) “public” means any person other than an underwriter or a related party,

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Authority and the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) “sale date” means the date of execution of this Bond Purchase Agreement by all parties.

4. The Bonds. The Bonds will be issued, executed and delivered pursuant to the Indenture. The City Council of the City has adopted a resolution on October 20, 2020, relating to the Bonds (the “City Resolution”). This Bond Purchase Agreement, the Site Lease, the Lease Agreement and the Continuing Disclosure Certificate (hereinafter defined) are collectively referred to as the “City Documents.” This Bond Purchase Agreement, the Indenture, the Site Lease, the Lease Agreement and the Assignment Agreement are collectively referred to as the “Authority Documents.”

5. Official Statement, Continuing Disclosure.

(a) The Authority and the City represent that they have deemed the Preliminary Official Statement to be final as of its date, except for either revisions or additions to the offering price(s), interest rate(s), yield(s) to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery date, rating(s) and other terms of the Bonds which depend upon the foregoing as provided in and pursuant to Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”).

(b) The Underwriter agrees that, prior to the time the final Official Statement is available, the Underwriter will send to any potential purchaser of the Bonds, upon the request of such potential purchaser, a copy of the most recent Preliminary Official Statement. Such Preliminary Official Statement shall be sent by first class mail (or other equally prompt means) not later than the second business day following the date upon which each such request is received.

(c) The Authority agrees to deliver to the Underwriter, at such addresses as the Underwriter shall specify, as many copies of the final Official Statement relating to the Bonds as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of the Rule and with Rule G-32, Rule G-36 and all other applicable rules of the Municipal Securities Rulemaking Board. The Authority agrees to deliver such copies of the Official Statement within seven business days after the execution hereof. The Underwriter agrees to give notice to the Authority on the date after which the Underwriter shall no longer be obligated to deliver copies of the Official Statement pursuant to paragraph (b)(4) of the Rule, which date shall be no earlier than 25 days after the "end of the underwriting period," as determined in accordance with Section 14 herein.

(d) Prior to the earlier of (i) receipt of notice from the Underwriter that no participating underwriter, as such term is defined in the Rule, remains obligated to deliver Official Statements pursuant to paragraph (b)(4) of the Rule or (ii) 25 days after the date of the Closing (as defined below), the Authority and the City shall provide the Underwriter with such information regarding the Authority and the City, each of their current financial conditions and ongoing operations as the Underwriter may reasonably request.

(e) The City hereby covenants and agrees that it will, on or prior to the Closing Date, execute a certificate for the benefit of the owners of the Bonds in which the City will undertake to provide financial information, operating data and notices of material events as required by paragraph (d)(2)(ii) of the Rule substantially in the form of Appendix D to the Official Statement (the "Continuing Disclosure Certificate").

6. Representations, Warranties and Agreements of the City. The City represents, warrants and agrees as follows:

(a) The City is a municipal corporation and general law city duly organized and validly existing under the Constitution and laws of the State of California.

(b) The City has full legal right, power and authority (i) to enter into, execute and deliver the City Documents; and (ii) to carry out and consummate the transactions on its part contemplated by the City Documents and the Official Statement.

(c) By all necessary official action, the City has duly authorized and approved the City Documents, has duly authorized and approved the Preliminary Official Statement and the Official Statement and approved the distribution thereof (including in electronic form), has duly authorized and approved the execution and delivery of, and the performance by the City of the obligations in connection with the execution and delivery of the Bonds on its part contained in the City Documents, and the consummation by it of all other transactions contemplated by the City Documents in connection with the execution and delivery of the Bonds, all pursuant to the City Resolution adopted at a meeting duly called and held in accordance with the requirements of all applicable laws and at which a quorum of the members of the City Council was continuously present. The City Resolution has not been modified, amended or rescinded since the date of its adoption.

(d) The City is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or any loan agreement, indenture, bond, note, resolution, agreement (including, without limitation, the City Documents) or other instrument to which the City is a party which breach or default has or may have an adverse effect on the ability of the City to perform its obligations

under the City Documents, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the execution and delivery of the Bonds and the City Documents, and compliance with the provisions on the City's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the Leased Property or assets of the City or under the terms of any such law, regulation or instrument, except as provided by the Bonds and the City Documents.

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the City of its obligations in connection with the execution and delivery of the Bonds under the City Documents or the consummation by it of all other transactions contemplated by the City Documents have been duly obtained, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Bonds; except as described in or contemplated by the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the City of its obligations under the City Documents have been duly obtained.

(f) There is no action, suit, proceeding, inquiry or investigation, notice of which has been duly served on the City, at law or in equity before or by any court, government agency, public board or body, pending or to the best knowledge of the officer of the City executing this Bond Purchase Agreement, threatened against the City, affecting the existence of the City or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Bonds pursuant to the Indenture, or contesting or affecting as to the City the validity or enforceability of the City Documents, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or contesting the powers of the City to cause the execution and delivery or adoption by the City of the City Documents, or in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the City, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity of the Bonds or the authorization, execution, delivery or performance by the City of the City Documents.

(g) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the City shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction, and the Underwriter shall bear all costs in connection with the foregoing.

(h) As of the date thereof, the Preliminary Official Statement (other than information therein regarding DTC or its book-entry system or any information provided by the Underwriter) did not, except for the omission of certain information permitted to be omitted in accordance with the Rule, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) At the time of the City's acceptance hereof, and (unless an event occurs of the nature described in paragraph (k) of this Section 6) at all times subsequent thereto up to and including the Closing Date, the Official Statement (other than information therein regarding DTC or its book-entry system or any information provided by the Underwriter) did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) If the Official Statement is supplemented or amended pursuant to paragraph (k) of this Section 6, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto up to and including the Closing Date, the Official Statement (other than information therein provided by the Underwriter) as so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) If between the date of this Bond Purchase Agreement and that date which is 25 days after the end of the underwriting period (as determined in accordance with Section 15 hereof) any event of which the officer of the City executing this Bond Purchase Agreement has knowledge shall occur affecting the City which might adversely affect the marketability of the Bonds or the market prices thereof, or which might cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Underwriter thereof, and if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will at its expense prepare and furnish to the Underwriter a reasonable number of copies of such supplement to, or amendment of, the Official Statement in a form and in a manner approved by the City, Bond Counsel, Disclosure Counsel and the Underwriter.

(l) Any certificate signed by any officer of the City and delivered to the Underwriter pursuant to the City Documents or any document contemplated thereby or required for the valid execution and delivery of the Bonds shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein.

(m) The City will cause the proceeds from the sale of the Bonds to be paid to the Trustee for the purposes specified in the Indenture and the Official Statement. So long as any of the Bonds are outstanding and except as may be authorized by the Indenture, the City will not issue or sell, or cause to be issued or sold, any bonds or other obligations, other than the Bonds delivered thereunder, the interest on and premium, if any, or principal of which will be payable from Lease Payments.

7. Representations, Warranties and Agreements of the Authority. The Authority represents, warrants and agrees as follows:

(a) The Authority is a joint exercise of powers entity duly organized and validly existing under the laws of the State of California pursuant to a Joint Exercise of Powers Agreement between the City and the City of Milpitas Housing Authority, dated as of March 1, 2016 (the "JPA Agreement").

(b) The Authority has full legal right, power and authority (i) to enter into, execute and deliver the Authority Documents and to sell and deliver the Bonds to the Underwriter as provided herein; and (ii) to carry out and consummate the transactions on its part contemplated by the Authority Documents and the Official Statement.

(c) By all necessary official action, the Authority has duly authorized and approved the issuance of the Bonds and the Authority Documents, has duly authorized and approved the Preliminary Official Statement and the Official Statement and approved the distribution thereof (including in electronic form), has duly authorized and approved the execution and delivery of, and the performance by the Authority of the obligations in connection with the execution and delivery of the Bonds on its part contained in the Bonds and the Authority Documents, and the consummation by it of all other transactions contemplated by the Authority Documents in connection with the execution and delivery of the Bonds, all pursuant to the Authority Resolution adopted at a meeting duly called and held in accordance with the requirements of all applicable laws and at which a quorum of the board members of the Authority was continuously present. The Authority Resolution has not been modified, amended or rescinded since the date of its adoption and each Authority Document is or will be, when delivered, as applicable, the valid and binding obligation of the Authority.

(d) The Authority is not in any material respect in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or of the United States, or any agency or instrumentality of either, or any applicable judgment or decree, or the JPA Agreement, or any loan agreement, indenture, bond, note, resolution, agreement (including, without limitation, the Authority Documents) or other instrument to which the Authority is a party which breach or default has or may have an adverse effect on the ability of the Authority to perform its obligations under the Bonds or the Authority Documents, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the execution and delivery of the Bonds and the Authority Documents, and compliance with the provisions on the Authority's part contained therein, will not conflict in any material way with or constitute a material breach of or a material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, Bond, note, resolution, agreement or other instrument to which the Authority is a party nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the Leased Property or assets of the Authority or under the terms of any such law, regulation or instrument, except as provided by the Bonds and the Authority Documents.

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the Authority of its obligations in connection with the issuance of the Bonds under the Authority Documents or the consummation by it of all other transactions contemplated by the Authority Documents, including all filings with the California Secretary of

State, have been duly obtained, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Bonds; except as described in or contemplated by the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the Authority of its obligations under the Bonds and the Authority Documents have been duly obtained.

(f) The Bonds, when executed, issued, authenticated and delivered in accordance with the Indenture, and sold to the Underwriter as provided herein, will be validly executed and outstanding obligations, entitled to the benefits of the Indenture, and upon such execution and delivery, the Indenture will provide, for the benefit of the Owners from time to time of the Bonds, the legally valid and binding security interest it purports to create.

(g) There is no action, suit, proceeding, inquiry or investigation, notice of which has been duly served on the Authority, at law or in equity before or by any court, government agency, public board or body, pending or to the best knowledge of the officer of the Authority executing this Bond Purchase Agreement, threatened against the Authority, affecting the existence of the Authority or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance, execution or delivery of the Bonds pursuant to the Indenture, or contesting or affecting as to the Authority the validity or enforceability of the Bonds or the Authority Documents, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or contesting the powers of the Authority to cause the issuance of the Bonds, or the execution and delivery or adoption by the Authority of the Authority Documents, or in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Authority, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity of the Bonds or the authorization, execution, delivery or performance by the Authority of the Bonds or the Authority Documents.

(h) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Authority shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction, and the Underwriter shall bear all costs in connection with the foregoing.

(i) As of the date thereof, the Preliminary Official Statement did not, except for the omission of certain information permitted to be omitted in accordance with the Rule, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) At the time of the Authority's acceptance hereof, and (unless an event occurs of the nature described in paragraph (l) of this Section 5) at all times subsequent thereto up to and including the Closing Date, the information under the caption "THE AUTHORITY" in the Official Statement (other than information therein provided by the Underwriter) did not and

will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) If the Official Statement is supplemented or amended pursuant to paragraph (l) of this Section 7, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto up to and including the Closing Date, the Official Statement (other than information therein provided by the Underwriter) as so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) If between the date of this Bond Purchase Agreement and that date which is 25 days after the end of the underwriting period (as determined in accordance with Section 15 hereof) any event of which the officer of the Authority executing this Bond Purchase Agreement has knowledge shall occur affecting the Authority which might adversely affect the marketability of the Bonds or the market prices thereof, or which might cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Underwriter thereof, and if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will at its expense prepare and furnish to the Underwriter a reasonable number of copies of such supplement to, or amendment of, the Official Statement in a form and in a manner approved by the City, Bond Counsel, Disclosure Counsel and the Underwriter.

(m) Any certificate signed by any officer of the Authority and delivered to the Underwriter pursuant to the Authority Documents or any document contemplated thereby or required for the valid execution and delivery of the Bonds shall be deemed a representation and warranty by the Authority to the Underwriter as to the statements made therein.

(n) The Authority will cause the proceeds from the sale of the Bonds to be paid to the Trustee for the purposes specified in the Indenture and the Official Statement. So long as any of the Bonds are outstanding and except as may be authorized by the Indenture, the Authority will not issue or sell any bonds or other obligations, other than the Bonds delivered thereunder, the interest on and premium, if any, or principal of which will be payable from the Revenues.

(o) The Authority shall honor all other covenants on its part contained in the Indenture and the Lease Agreement which are incorporated herein and made a part of this Bond Purchase Agreement.

8. Closing. At 8:00 A.M., Pacific Daylight time, on November 10, 2020, or on such other date time, as may be mutually agreed upon by the Authority, the City and the Underwriter (the "Closing Date"), the Authority will, subject to the terms and conditions hereof, deliver to the Underwriter, through the facilities of The Depository Trust Company ("DTC"), or at such other place as the Authority, the City and the Underwriter may mutually agree, the Bonds in definitive, fully registered form (one Bond for each maturity), duly executed and registered in the name of Cede & Co. as nominee of DTC; and, subject to the terms and conditions hereof, the Underwriter shall wire to the Trustee Federal Reserve Bank Funds in the amount of the purchase price of the Bonds.

9. Closing Conditions. The Underwriter has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the Authority and the City contained

herein, and in reliance upon the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Authority and the City of its obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter's obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be conditioned upon the performance by the Authority and the City of their respective obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the statements the officers and other officials of the Authority and of the City, as the Underwriter, authorized representatives of Bond Counsel, the Trustee, and the City Attorney made in any certification or other documents furnished pursuant to the provisions hereof, and shall also be subject to the following additional conditions:

(a) The respective representations and warranties of the Authority and the City contained herein shall be true, complete and correct on the date hereof and on and as of the Closing Date, as if made on the Closing Date;

(b) At the time of Closing, the City Documents and the Authority Documents shall be in full force and effect in accordance with their terms and shall not have been amended, modified or supplemented and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriter;

(c) All necessary official action of the Authority, the City and of the other parties thereto relating to the City Documents and the Authority Documents shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect;

(d) Subsequent to the date hereof, there shall not have occurred any change in or affecting particularly the Authority, the City or the Bonds, as the foregoing is described in the Official Statement, which in the reasonable opinion of the Underwriter materially impairs the investment quality of the Bonds; and

(e) At or prior to the Closing Date, the Underwriter shall have received copies of each of the following documents:

(i) The Official Statement and each supplement or amendment, if any, thereto, executed by authorized officers of the Authority and the City;

(ii) A copy of the Indenture, executed by the parties thereto;

(iii) A copy of the Lease Agreement, executed by the parties thereto;

(iv) A copy of the Site Lease, executed by the parties thereto;

(vi) A copy of the Continuing Disclosure Certificate, executed by the City;

(vii) A certified copy of the JPA Agreement;

(viii) A certificate or certificates of the City, dated the Closing Date, to the effect that:

(A) the representations and warranties of the City contained herein are true and correct in all material respects on and as of the Closing Date as if made

on the Closing Date and the City has complied with all of the terms and conditions of this Purchase Agreement required to be complied with by the City at or prior to the Closing Date;

(B) none of the proceedings or authority for (i) the authorization, sale, execution and delivery of the Bonds, (ii) the adoption of the City Resolution, or (iii) the execution and delivery of the City Documents and performance of its obligations thereunder, has been repealed, modified, amended, revoked or rescinded;

(C) subsequent to June 30, 2019, and prior to Closing, there have been no material adverse changes in the financial position of the City;

(D) no event affecting the City has occurred since the date of the Official Statement that should be disclosed in the Official Statement for the purposes for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; and

(E) No consent is required for the inclusion of the City's 2018-19 audited financial statements in the Official Statement.

(ix) A certificate or certificates of the Authority, dated the Closing Date, to the effect that:

(A) the representations and warranties of the Authority contained herein are true and correct in all material respects on and as of the Closing Date as if made on the Closing Date and the Authority has complied with all of the terms and conditions of this Purchase Agreement required to be complied with by the Authority at or prior to Closing Date;

(B) none of the proceedings or authority for (i) the authorization, sale, execution and delivery of the Bonds, (ii) the adoption of the Authority Resolution, or (iii) the execution and delivery of the Authority Documents, has been repealed, modified, amended, revoked or rescinded; and

(C) no event affecting the Authority has occurred since the date of the Official Statement that should be disclosed in the Official Statement for the purposes for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect.

(x) An opinion or opinions, dated the Closing Date and addressed to the Underwriter and the Trustee, of Best Best & Krieger LLP, the City Attorney, to the effect that:

(A) The City is a municipal corporation and general law city duly organized and validly existing under the Constitution and laws of the State of California;

(B) The City Documents have been duly approved by a resolution of the City adopted at a meeting duly called and held in accordance with the requirements of all applicable laws, with all public notice required by law, and at

which a quorum of the members of the City Council was continuously present and such resolution has not been modified, amended or rescinded since the date of its adoption;

(C) Except as described in the Official Statement, there is no litigation, inquiry, or investigation pending or to the best of such counsel's knowledge after due inquiry, threatened, which: (1) challenges the right or title of any member or officer of the City to hold his or her office or exercise or perform the powers and duties pertaining thereto; (2) challenges the validity or enforceability of the Bonds or the City Documents; (3) seeks to restrain or enjoin the sale of the Bonds or the execution and delivery by the City of, or the performance by the City of its legal obligations under, the City Documents or in which a final adverse decision could materially adversely affect the operations of the City with respect to the Leased Property; or (4) contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, nor, to the best of such counsel's knowledge, is there any basis therefor;

(D) The execution and delivery by the City of, and the performance by the City of its obligations under, the City Documents, do not conflict with, violate or constitute a default under any provision of any law, court order or decree or any contract, instrument or agreement to which the City is a party or by which it is bound and of which such counsel has knowledge;

(E) The City Documents have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery of the City Documents by the parties thereto other than the City, the City Documents constitute legal, valid and binding agreements of the City, enforceable against the City in accordance with their respective terms except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights and remedies in general, or by the application of equitable principles if equitable remedies are sought.

(F) Except as may be required under the "blue sky" or securities laws of the United States or any state, there is no authorization, approval, consent or other order of, or filing with, or certification by, the State or any other governmental authority or agency within the State having jurisdiction over the City required for the issuance of the Bonds or the consummation by the City of the other financial transactions contemplated by the Official Statement and the City Documents.

(xi) An opinion or opinions, dated the Closing Date and addressed to the Underwriter and the Trustee, of the City Attorney, as counsel for the Authority, to the effect that:

(A) The Authority is a joint exercise of powers authority duly organized and validly existing under the laws of the State of California pursuant to the JPA Agreement;

(B) The Authority Documents have been duly approved by the Authority Resolution adopted at a meeting duly called and held in accordance with the requirements of all applicable laws, with all public notice required by law, and at which a quorum of the members of the Board of the Authority was continuously

present and such resolution has not been modified, amended or rescinded since the date of its adoption;

(C) Except as described in the Official Statement, there is no litigation, inquiry, or investigation pending to the best of such counsel's knowledge after due inquiry, or threatened, which: (1) challenges the right or title of any Board member or officer of the Authority to hold his or her office or exercise or perform the powers and duties pertaining thereto; (2) challenges the validity or enforceability of the Bonds or the Authority Documents; (3) seeks to restrain or enjoin the sale of the Bonds or the execution and delivery by the Authority of, or the performance by the Authority of its legal obligations under, the Authority Documents or in which a final adverse decision could materially adversely affect the operations of the Authority with respect to the Leased Property; or (4) contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, nor, to the best of such counsel's knowledge, is there any basis therefor;

(D) The execution and delivery by the Authority of, and the performance by the Authority of its obligations under, the Authority Documents, do not conflict with, violate or constitute a default under any provision of any law, court order or decree or any contract, instrument or agreement to which the Authority is a party or by which it is bound and of which such counsel has knowledge; and

(E) The Authority Documents have been duly authorized, executed and delivered by the Authority and, assuming due authorization, execution and delivery of the Authority Documents by the parties thereto other than the Authority, the Authority Documents constitute legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights and remedies in general, or by the application of equitable principles if equitable remedies are sought.

(F) Except as may be required under the "blue sky" or securities laws of the United States or any state, there is no authorization, approval, consent or other order of, or filing with, or certification by, the State or any other governmental authority or agency having jurisdiction over the Authority required for the issuance of the Bonds or the consummation by the Authority of the other financial transactions contemplated by the Official Statement and the Authority Documents.

(G) Based on the information made available to such City Attorney in its role as counsel to the Authority, and without having undertaken to determine independently or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement under the captions entitled "THE AUTHORITY," and "NO LITIGATION", nothing has come to such City Attorney's attention that would lead it to believe that the statements contained in the above-referenced captions as of the date of the Official Statement and as of the date of Closing (excluding therefrom the financial and statistical data and forecasts included therein, as to which no opinion is expressed) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xii) An opinion, dated the Closing Date and addressed to the Authority, of Bond Counsel, substantially in the form set forth in Appendix E to the Official Statement, together with a letter or letters from such counsel, dated the Closing Date and addressed to the Underwriter and the Trustee, to the effect that the foregoing opinion may be relied upon by the Underwriter and the Trustee to the same extent as if such opinion was addressed to them;

(xiii) A supplemental opinion, dated the Closing Date and addressed to the Underwriter, of Bond Counsel, to the effect that:

(A) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(B) the Bond Purchase Agreement has been duly executed and delivered by the Authority and the City and is a valid and binding agreement of the Authority and the City; and

(C) the statements contained in the Official Statement under the captions "THE BONDS," "SECURITY FOR THE BONDS" and "TAX MATTERS" and in APPENDIX C—"SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" and APPENDIX E—FORM OF OPINION OF BOND COUNSEL," insofar as such statements expressly summarize certain provisions of the Indenture, the Lease Agreement, the Site Lease and the final opinion of Bond Counsel concerning certain tax matters relating to the Bonds, are accurate in all material respects;

(xiv) A letter, dated the Closing Date and addressed to the Authority, the City and the Underwriter of Jones Hall, A Professional Law Corporation, a Professional Corporation, as disclosure counsel ("Disclosure Counsel"), to the effect that, based on among other things, (i) inquiries and discussions of various legal matters, (ii) review of and reliance on certain documents, certificates, instructions, records and opinions of counsel, and (iii) participation in meetings and telephone conferences with representatives of the Authority and the City, Fieldman, Rolapp & Associates, Inc., as municipal advisor to the City, and others including the City Attorney and Underwriter's counsel, during which the content of the Preliminary Official Statement and the Official Statement and related matters were discussed, no information has come to the attention of Disclosure Counsel with respect to the issuance of the Bonds which caused Disclosure Counsel to believe that (a) the Preliminary Official Statement as of its date or as of October 21, 2020 (excluding therefrom financial, demographic and statistical data; forecasts, projections, estimates, assumptions and expressions of opinions; information relating to DTC and its book-entry only system; information under the captions "TAX MATTERS" and "UNDERWRITING;" and the Appendices to the Preliminary Official Statement (other than Appendices A and E) as to which we express no view) contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, ratings, debt service requirements, Underwriter's discount and CUSIP numbers; or (b) the Official Statement as of its date and as of the Closing Date (excluding therefrom financial, demographic, statistical or economic or demographic data; forecasts, numbers, charts, tables, graphs, projections, estimates, assumptions and

expressions of opinions; information relating to DTC and its book-entry only system or CUSIP numbers; information under the captions "TAX MATTERS" and "UNDERWRITING"; and the Appendices to the Official Statement (other than Appendices A and E) as to which we express no view) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading. However, in providing advice and assistance as Disclosure Counsel, Disclosure Counsel provided no independent diligence on the MSRB's Electronic Municipal Market Access website, and we express no view regarding the City's or the City's related entities' compliance with any obligation to file annual reports or provide notice of events, each as described in Rule 15c2-12;

(xv) the opinion of Quint & Thimmig LLP, as counsel to the Underwriter, dated the Closing Date and addressed to the Underwriter, in form and substance acceptable to the Underwriter.

(xvi) A certificate of an authorized officer of the Trustee satisfactory to the Underwriter, certifying substantially as follows:

(A) The Trustee is a national banking association duly organized and in good standing under the laws of the United States of America and has all necessary power and authority to enter into the Indenture and to perform its duties under the Indenture;

(B) The Trustee is duly authorized to enter into the Indenture and to authenticate and deliver the Bonds to the Underwriter pursuant to the terms of the Indenture and, when executed by the other parties thereto, the Indenture will constitute a legal, valid and binding obligation of the Trustee enforceable in accordance with its terms;

(C) The Bonds have been duly authenticated and delivered to the Underwriter pursuant to direction from the Authority;

(D) The Trustee is not in breach of or default under any law or administrative rule or regulation of the State of California or of any department, division, agency or instrumentality thereof, of any applicable court or administrative decree or order, or any other material instrument to which the Trustee is a party or is otherwise subject or bound and which would materially impair the ability of the Trustee to perform its obligations under the Indenture;

(E) To its knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, is pending or threatened in any way against the Trustee affecting the existence of the Trustee or the titles of its directors or officers to their respective offices, or seeking to restrain or enjoin the execution, sale or delivery of the Bonds, the application of the proceeds thereof in accordance with the Indenture, or in any way contesting or affecting the validity or enforceability of the Bonds or the Indenture;

(F) The execution and delivery of the Indenture will not conflict with or constitute a breach of or default under the Trustee's duties under such documents, or any law, administrative regulation, court decree, resolution,

articles of association, bylaws or other material agreement to which the Trustee is subject or by which it is bound; and

(G) No consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the authentication and delivery of the Bonds, the execution and delivery of the Indenture, the performance of the Trustee's duties under the Indenture or the consummation by the Trustee of the other transactions contemplated by the Indenture, except as such may be required under the state securities or blue sky laws in connection with the distribution of the Bonds by the Underwriter.

(xvii) An opinion of counsel to the Trustee in form and substance acceptable to the Underwriter;

(xviii) Evidence, satisfactory to Bond Counsel and the Underwriter, of insurance, including a CLTA title insurance policy, in compliance with the Lease Agreement;

(xix) 15c2-12 certificates of City and the Authority;

(xx) Certified copies of the City Resolution and the Authority Resolution;

(xxi) Evidence, satisfactory to the Underwriter, that the Bonds have been assigned the rating of "___" by S&P Global Ratings, a Standard & Poor's Financial Services LLC business;

(xxii) Transcripts of all proceedings relating to the authorization, issuance, execution and delivery of the Bonds certified by the City and the Authority as applicable; and

(xxiii) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the City's representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City and the Authority on or prior to the date of the Closing of all the agreements then to be performed and conditions then to be satisfied by each of them.

All the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to Bond Counsel, Disclosure Counsel and the Underwriter.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds contained in this Bond Purchase Agreement, or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and none of the Underwriter, the Authority or the City shall be under any further obligation hereunder.

10. Termination. The Underwriter shall have the right to terminate the Underwriter's obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay

for the Bonds by notifying the Authority and the City in writing, of its election to do so, if, after the execution hereof and prior to the Closing:

(a) the United States has become engaged in, or there has been an escalation of, hostilities which, in the reasonable opinion of the Underwriter, materially adversely affects the marketability or market price of the Bonds;

(b) there shall have occurred the declaration of a general banking moratorium by any authority of the United States or the State of New York or the State of California;

(c) an event shall have occurred, or been discovered as described in paragraph (k) of Section 6 or paragraph (l) of Section 7 hereof, which in the opinion of the Underwriter requires the preparation and publication of disclosure material or a supplement or amendment to the Official Statement;

(d) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or agency in the State of California, or a decision by any court of competent jurisdiction within the State of California shall be rendered which, in the Underwriter's reasonable opinion, materially adversely affects the market price of the Bonds;

(e) there shall have occurred or any notice shall have been given of any intended downgrading, suspension, withdrawal or negative change in credit watch status by any national rating service to any of the Authority's or the City's obligations;

(f) legislation shall be introduced, by amendment or otherwise, or be enacted by the House of Representatives or the Senate of the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the execution, issuance, delivery, offering or sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of any provision of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect, or with the purpose or effect of otherwise prohibiting the issuance, offering or sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby or by the Official Statement;

(g) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(h) the New York Stock Exchange, or other national securities exchange or association or any governmental authority, shall impose as to the Bonds, or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by or the charge to the net capital requirements of broker-dealers;

(i) trading in securities on the New York Stock Exchange or other national securities exchange or association shall have been suspended or limited or minimum prices have been established on either such exchange;

(j) any action shall have been taken by any government in respect of its monetary affairs which, in the reasonable opinion of the Underwriter, has a material adverse effect on the United

States municipal securities market; or as of the date hereof that in the Underwriter's reasonable opinion materially adversely affects the marketability or market price of the Bonds; or

(k) the marketability of the Bonds or the market price thereof, in the reasonable opinion of the Underwriter, has been materially and adversely affected by disruptive events, occurrences or conditions in the securities or debt markets.

If this Bond Purchase Agreement shall be terminated pursuant to this Section 10, or if the purchase provided for herein is not consummated because any condition to the Underwriter's obligations hereunder is not satisfied or because of any refusal, inability or failure on the part of the City or the Authority to comply with any of the terms or to fulfill any of the conditions of this Bond Purchase Agreement, or if for any reason the City or the Authority shall be unable to perform all of its respective obligations under this Bond Purchase Agreement, neither the City nor the Authority shall be liable to the Underwriter for damages on account of loss of anticipated profits arising out of the transactions covered by this Bond Purchase Agreement. The Underwriter may, in its sole discretion, waive any of the conditions set forth in Section 9 or this Section 10.

11. Changes in Official Statement. After the Closing, neither the Authority nor the City will adopt any amendment of or supplement to the Official Statement to which the Underwriter shall reasonably object in writing.

12. Payment of Costs and Expenses.

(a) All costs and expenses incident to the sale and delivery of the Bonds to the Underwriter shall be payable by the Authority from the proceeds of the Bonds, including, but not limited to: (i) the fees and expenses of the City, its counsel and consultants; (ii) the fees and expenses of the Authority, its counsel and consultants; (iii) the fees and expenses of Bond Counsel; (iv) the fees and expenses of Disclosure Counsel; (v) the fees and expenses of Sperry Capital Inc., the City's municipal advisor; (vi) all expenses in connection with the preparation and printing of the Bonds; (vii) all expenses in connection with the preparation, printing, distribution and delivery of the Preliminary Official Statement, the Official Statement and any amendment or supplement thereto; (viii) the initial fees and expenses of the Trustee, including the reasonable fees and expenses of its counsel; (ix) the fees and expenses of any rating agency rating the Bonds; and (x) any credit enhancement costs for the Bonds.

(b) The Underwriter shall pay all expenses incurred by it in connection with the public offering and distribution of the Bonds including, but not limited to: (i) all advertising expenses in connection with the offering of the Bonds; (ii) the fees and disbursements of Underwriter's counsel, if any, and (iii) all out-of-pocket disbursements and expenses incurred by the Underwriter in connection with the offering and distribution of the Bonds, including, air travel and hotel accommodations in connection with the pricing of the Bonds; investor meetings, rating agency trips and meetings; the Closing; meals and transportation for the City, the Underwriter and other working group personnel during rating agency, investor meetings; pricing and Closing trips; expenses related to attending working group meetings, such as parking, meals and transportation and any other miscellaneous costs associated with the Closing; (iv) all other expenses incurred by the Underwriter in connection with the public offering and distribution of Bonds, except as provided in (a) above or as otherwise agreed to by the Underwriter and the City, and (v) the fees of the California Debt and Investment Advisory Commission.

13. Notices. Any notice or other communication to be given under this Bond Purchase Agreement may be given by delivering the same in writing:

To the Authority: Milpitas Municipal Financing Authority
c/o City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Assistant City Manager

To the City: City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Assistant City Manager

To the Underwriter: Stifel, Nicolaus & Company, Incorporated
One Montgomery Street, 35th Floor
San Francisco, CA 94014
Attention: Ms. Eileen Gallagher, Managing Director

14. Parties in Interest. This Bond Purchase Agreement is made solely for the benefit of the Authority, the City and the Underwriter (including the successors or assigns of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. All of the Authority's and the City's representations, warranties and agreements contained in this Bond Purchase Agreement shall remain operative and in full force and effect, regardless of: (a) any investigations made by or on behalf of the Underwriter; (b) delivery of and payment for the Bonds pursuant to this Bond Purchase Agreement; and (c) any termination of this Bond Purchase Agreement.

15. Determination of End of the Underwriting Period. For purposes of this Bond Purchase Agreement, the end of the underwriting period for the Bonds shall mean the earlier of (a) the Closing Date unless the City and the Authority have been notified in writing by the Underwriter, on or prior to the Closing Date, that the "end of the underwriting period" for the Bonds for all purposes of the Rule will not occur on the Closing Date, or (b) the date on which notice is given to the City and the Authority by the Underwriter in accordance with the following sentence. In the event that the Underwriter has given notice to the City and the Authority pursuant to clause (a) above that the "end of the underwriting period" for the Bonds will not occur on the Closing Date, the Underwriter agrees to notify the City and the Authority in writing as soon as practicable following the "end of the underwriting period" for the Bonds for all purposes of the Rule. The Underwriter agrees to file a copy of the Official Statement with each of the nationally recognized municipal securities information repositories.

16. No Assignment. This Bond Purchase Agreement is entered into between the City, the Authority and the Underwriter, and is solely for the benefit of the City, the Authority, the Underwriter and their respective successors or assigns, and no person other than the foregoing shall acquire or have any right under or by virtue of this Bond Purchase Agreement. All of the representations, warranties and agreements contained in this Bond Purchase Agreement shall survive the delivery of and payment for the Bonds and any termination thereof.

17. Effectiveness. This Bond Purchase Agreement shall become effective upon the execution of the acceptance by an authorized representative of the City and an authorized representative of the Authority and shall be valid and enforceable at the time of such acceptance.

18. Headings. The headings of the sections of this Bond Purchase Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

19. Governing Law. This Bond Purchase Agreement shall be interpreted, governed and enforced in accordance with the laws of the State of California.

20. Counterparts. This Bond Purchase Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

If the foregoing is in accordance with your understanding of this Bond Purchase Agreement please sign and return to us the enclosed duplicate copies hereof, whereupon it will become a binding agreement among the City, the Authority and the Underwriter in accordance with its terms.

Very truly yours,

STIFEL, NICOLAUS & COMPANY,
INCORPORATED, as Underwriter

By _____
Managing Director

MILPITAS MUNICIPAL FINANCING
AUTHORITY

By _____
Title _____

CITY OF MILPITAS

By _____
Title _____

Time of Execution: _____

EXHIBIT A

MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, PRICES AND YIELDS

\$ _____
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

Maturity (June 1)	Principal Amount	Interest Rate	Yield	Price
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Redemption Provisions

Optional Redemption. The Bonds maturing on or before June 1, __, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after June 1, __, are subject to redemption in whole, or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on any date on or after June 1, __, from any available source of funds, [at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.]

Mandatory Sinking Fund Redemption. The Bonds maturing June 1, __ (the "Term Bonds") are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on June 1 in the respective years as set forth in the following table; *provided, however*, that if some but not all of the Term Bonds have been optionally redeemed, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Authority (as set forth in a schedule provided by the Authority to the Trustee).

Sinking Fund
Redemption Date
(June 1)

Principal Amount
to be Redeemed

Extraordinary Mandatory Redemption. The Bonds are subject to mandatory redemption prior to maturity in whole or in part, among maturities as determined by the Authority, on any date, at a redemption price equal to 100% of the principal amount thereof to be redeemed (plus accrued but unpaid interest to the redemption date), without premium, from Net Proceeds received under from amounts deposited in the Insurance and Condemnation Fund under the Indenture, and any other funds available under the Indenture for purposes of that fund.

EXHIBIT B

ISSUE PRICE CERTIFICATE

\$ _____
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

The undersigned, on behalf of Stifel, Nicolaus & Company, Incorporated, as underwriter (“Stifel”), based on the information available to it, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

I. General

1. Stifel and the Milpitas Municipal Financing Authority and City of Milpitas (collectively, the “Issuer”) have executed a bond purchase agreement in connection with the Bonds on the Sale Date. Stifel has not modified the bond purchase agreement since its execution on the Sale Date.

II. Price

1. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.

III. Defined Terms

1. Maturity means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

2. Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an underwriter or a Related Party to an underwriter.

3. A person is a “Related Party” to an underwriter if the underwriter and the person are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

4. Sale Date means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is October 26, 2020.

5. Underwriter means (i) any person that agrees pursuant to a written contract with the Issuer (or with Stifel to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

All terms not defined herein shall have the same meanings as in the Tax Certificate with respect to the Bonds, to which this Certificate is attached.

The Issuer may rely on the statements made herein in connection with its efforts to comply with the conditions imposed by the Internal Revenue Code of 1986, as amended (the “Code”). Bond Counsel

may also rely on this Certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes. However, notwithstanding the foregoing, we remind you that Stifel is not an accountant or actuary, nor is Stifel engaged in the practice of law. Accordingly, while Stifel believes the calculations described above to be correct, it does not warrant their validity for purposes of Sections 103 and 141 through 150 of the Code or make any representation as to the legal sufficiency of the factual matters set forth herein. Except as expressly set forth above, the certifications set forth herein may not be relied upon or used by any third party or for any other purpose.

Dated: November 10, 2020

STIFEL, NICOLAUS & COMPANY,
INCORPORATED, as Underwriter

By _____
Managing Director

SCHEDULE A TO ISSUE PRICE CERTIFICATE

\$ _____
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

<u>Maturity</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
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PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER __, 2020

Jones Hall Draft 10.13.20

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "____"
See "RATING"

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "TAX MATTERS."

\$ _____ *
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

Dated: Date of Delivery

Due: June 1, as shown on inside cover

Authority for Issuance. The bonds captioned above (the "Bonds") are being issued by the Milpitas Municipal Financing Authority (the "Authority") under a resolution adopted by the Board of Directors of the Authority on October [20], 2020, and an Indenture of Trust dated as of November 1, 2020 (the "Indenture") by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"). See "THE BONDS – Authority for Issuance."

Use of Proceeds. The Bonds are being issued to (i) to finance the replacement of Fire Station No. 2 with a new fire station in the City of Milpitas, California (the "City"), and certain energy efficiency projects for the City, (ii) fund a portion of capitalized interest on the Bonds through June 1, 2022, and (iii) pay the costs of issuing the Bonds. See "FINANCING PLAN."

Security for the Bonds. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on "Revenues" (as defined in this Official Statement) received by the Authority under the Lease Agreement dated as of November 1, 2020, by and between the Authority, as lessor, and the City, as lessee (the "Lease"), consisting primarily of semi-annual lease payments (the "Lease Payments") made by the City under the Lease with respect to the lease of certain real property, as further described in this Official Statement. The Bonds are also secured by certain funds on deposit under the Indenture. See "SECURITY FOR THE BONDS."

No Reserve Fund. Neither the Authority nor the City will fund a reserve fund for the Bonds.

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on June 1 and December 1 of each year, commencing on June 1, 2021, and will be issued in fully registered form without coupons in the denomination of \$5,000 or any integral multiple of \$5,000. The Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Payments of the principal of, premium, if any, and interest on the Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the Bonds. See "THE BONDS – General Provisions."

Redemption. The Bonds are subject to redemption prior to maturity. See "THE BONDS – Redemption."

NEITHER THE BONDS, NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

MATURITY SCHEDULE
(see inside cover)

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE BONDS.

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the Authority and the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney. Certain legal matters will be passed upon for the Underwriter by its counsel, Quint & Thimmig LLP. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about November __, 2020.

[Stifel logo]

The date of this Official Statement is: ____, 2020.

* Preliminary; subject to change.

MATURITY SCHEDULE*

\$ _____ * Serial Bonds
(Base CUSIP†: _____)

Maturity (June 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP†
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\$ _____ % Term Bonds due June 1, 20____; Price: _____%; Yield: _____;
CUSIP†: _____

† Copyright 2020, American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City, the Authority nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

* Preliminary; subject to change.

**MILPITAS MUNICIPAL FINANCING AUTHORITY
CITY OF MILPITAS
SANTA CLARA COUNTY, CALIFORNIA**

**BOARD OF DIRECTORS OF THE AUTHORITY
AND MEMBERS OF THE CITY COUNCIL**

Richard Tran, *Chair/Mayor*
Bob Nuñez, *Vice-Chair/Vice-Mayor*
Karina R. Dominguez, *Boardmember/Councilmember*
Carmen Montano, *Boardmember/Councilmember*
Anthony Phan, *Boardmember/Councilmember*

AUTHORITY/CITY OFFICIALS

Steven G. McHarris, *City Manager*
Ashwini Kantak, *Assistant City Manager*
Walter C. Rossmann, *Deputy City Manager*
Steven P. Erickson, *Engineering Director/City Engineer*
Tony Ndah, *Public Works Director*
Brian Sherrard, *Fire Chief*
Christopher J. Diaz, *City Attorney*
Mary Lavelle, CMC, *City Clerk*

SPECIAL SERVICES

BOND COUNSEL AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation
San Francisco, California

MUNICIPAL ADVISOR

Fieldman, Rolapp & Associates, Inc.
Irvine, California

TRUSTEE

U.S. Bank National Association
San Francisco, California

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not to be construed as a contract with the purchasers of the Bonds.

Estimates and Forecasts. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project," "forecast," "expect," "intend" and similar expressions identify "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, give rise to any implication that there has been no change in the affairs of the City since the date hereof.

Limit of Offering. No dealer, broker, salesperson or other person has been authorized by the City or the Underwriter to give any information or to make any representations other than those contained herein and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Limited Scope of Information. The City has obtained certain information set forth herein from sources which are believed to be reliable, but such information is neither guaranteed as to accuracy or completeness, nor to be construed as a representation of such by the City. The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date hereof. All summaries of or references to the documents referred to in this Official Statement are made subject to the provisions of such documents and do not purport to be complete statements of any or all of such provisions. All capitalized terms used herein, unless noted otherwise, have the meanings given in the Indenture.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Stabilization of Prices. In connection with this offering, the Underwriter may overallocate or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriter may offer and sell the Bonds to certain dealers and others at prices lower than the public offering prices set forth on the cover page hereof and said public offering prices may be changed from time to time by the Underwriter.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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[Insert Regional Location Map]

OFFICIAL STATEMENT

\$ _____ *

MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

Capitalized terms used but not defined in this Official Statement have the meanings set forth in the Indenture (as defined below). See “APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

Authority for Issuance. The Milpitas Municipal Financing Authority (the “**Authority**”) is issuing the bonds captioned above (the “**Bonds**”) under the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the “**Law**”), resolutions adopted by the Board of Directors (the “**Board**”) of the Authority on October [20], 2020 (the “**Authority Resolution**”), and by the City Council (the “**City Council**”) of the City of Milpitas (the “**City**”) on October [20], 2020 (the “**City Resolution**”), and an Indenture of Trust (the “**Indenture**”) dated as of November 1, 2020, by and between the Authority and U.S. Bank National Association, as trustee (the “**Trustee**”).

The Authority and the City. The Milpitas Municipal Financing Authority (the “**Authority**”) is a joint exercise of powers authority established by the City and the City of Milpitas Housing Authority pursuant to a Joint Exercise of Powers Agreement, dated as of March 1, 2016 for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements. The City was incorporated in 1954 as a general law city located in the County of Santa Clara (the “**County**”), and had an estimated population according to the State Department of Finance as of January 1, 2020 of 77,961. For additional background, and certain demographic and economic information regarding the City and the County, see APPENDIX B.

* Preliminary; subject to change.

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on June 1 and December 1 of each year, commencing on June 1, 2021. The Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company (“**DTC**”), or its nominee, which will act as securities depository for the Bonds. Purchasers of the Bonds will not receive certificates representing the Bonds that are purchased. See “THE BONDS – Book-Entry Only System” and “APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Purpose of the Bonds. The Bonds are being issued to (i) finance the replacement of Fire Station No. 2 with a new fire station on the same site in the City and certain energy saving improvements to various City facilities (collectively, the “**Project**”), (ii) fund a portion of capitalized interest on the Bonds through June 1, 2022, and (iii) pay the costs of issuing the Bonds. See “FINANCING PLAN.”

Security for the Bonds and Pledge of Revenues. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on “**Revenues**” (as defined in this Official Statement) received by the Authority under the Lease Agreement dated as of November 1, 2020, between the Authority, as lessor, and the City, as lessee (the “**Lease**”), consisting primarily of semi-annual lease payments (the “**Lease Payments**”) made by the City under the Lease. The Bonds are also secured by certain funds on deposit under the Indenture. See “SECURITY FOR THE BONDS.”

The City and the Authority will enter into a Site Lease dated as of November 1, 2020 (the “**Site Lease**”), under which the City will lease certain real property to the Authority, consisting of (i) the Fire Station No. 2 site located at 1263 Yosemite Drive in the City and the new fire station to be built thereon, and (ii) the Barbara Lee Senior Center located at 40 N. Milpitas Boulevard in the City (together, the “**Leased Property**”), as further described herein under the caption “THE LEASED PROPERTY,” in return for a single initial Site Lease Payment. Concurrently, the City and the Authority will enter into the Lease, under which the Authority will lease the Leased Property back to the City in return for semi-annual Lease Payments. See “SECURITY FOR THE BONDS” and “THE LEASED PROPERTY” below.

No Reserve Fund. Neither the Authority nor the City will fund a reserve fund for the Bonds.

Redemption. The Bonds are subject to redemption prior to their stated maturity dates. See “THE BONDS – Redemption.”

Abatement. The Lease Payments are subject to complete or partial abatement in the event and to the extent that there is substantial interference with the City’s use and possession of the Leased Property or any portion thereof. If the Lease Payments are abated under the Lease, the Bond Owners would receive less than the full amount of principal of and interest on the Bonds. To the extent proceeds of rental interruption insurance are available, Lease Payments (or a portion thereof) may be made from those proceeds during periods of abatement. See “SECURITY FOR THE BONDS – Abatement” and “BOND OWNERS’ RISKS.”

Risks of Investment. Debt service on the Bonds is payable only from Lease Payments and other amounts payable by the City to the Authority under the Lease. The Lease Payments are payable from revenues available in the City’s general fund, which revenues may be materially adversely affected by numerous factors outside the City’s control, including the ongoing COVID-19 pandemic and the governmental responses to the pandemic. For a

discussion of some of the risks associated with the purchase of the Bonds, see “BOND OWNERS’ RISKS.”

NEITHER THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

FINANCING PLAN

The Bonds are being issued to (i) finance the Project, (ii) fund a portion of capitalized interest on the Bonds through June 1, 2022, and (iii) pay the costs of issuing the Bonds.

The Project

Fire Station Two. The fire station component of the Project consists of the replacement of the former Fire Station No. 2 building with a new fire station on the same site located at 1263 Yosemite Drive in the City, near the intersection of Highway 680 and East Calaveras Boulevard. The former fire station was constructed in 1969 and had reached the end of its service life. The new fire station is planned to be approximately 10,300 square feet on a single level and will be built on the same site. The station is designed to provide for additional fire apparatus, sustainable elements, gender equality/privacy, operational efficiencies to improve response times and to meet current building and fire codes for “essential services buildings.” Project costs also include leasing and tenant improvements for a temporary fire station, building demolition, furnishings, fixtures, and equipment, and site improvements. Demolition of the former First Station No. 2 building is complete. Construction is expected to begin in January 2021 and to be completed by spring of 2022.

Energy Efficiency Improvements. The energy efficiency improvements are planned pursuant to an Energy Services Agreement with Engie Services U.S., Inc. (Engie) in which Engie performed facility audits and equipment surveys in order to understand the City’s current infrastructure and energy/water usage and to make recommendations for improvements that would result in energy and water savings for the City. In addition to cost savings, implementation of potential projects could also result in environmental benefits, improvements in user experience, and enhancement to City facility resiliency. The improvements generally consist of utility modernization, LED lighting upgrades, and energy resiliency improvements to certain facilities to mitigate impacts from future power outages.

Total Estimated Project Cost. The total cost of the Project is estimated at \$27.10 million, of which \$20.88 million is expected to be funded with the net proceeds of the Bonds, and the remainder from funds already spent by the City or available to the City to be spent on future costs as part of its Capital Improvement Program (CIP). Bond proceeds in the approximate amount of \$9.60 million are expected to finance the estimated \$15.82 million cost of the fire station and Bond proceeds in the approximate amount of \$11.28 million are expected to finance the estimated \$11.28 million cost of the energy efficiency improvements.

Estimated Sources and Uses

The estimated sources and uses of funds relating to the Bonds are as follows:

Sources:

Principal Amount of Bonds	\$
Plus (Less): [Net] Original Issue Premium (Discount)	
TOTAL SOURCES	\$

Uses:

Project Fund	\$
Capitalized Interest ⁽¹⁾	
Costs of Issuance ⁽²⁾	
TOTAL USES	\$

(1) Includes amount necessary to pay a portion of interest on the Bonds through and including June 1, 2022.

(2) Represents funds to be used to pay Costs of Issuance, which include legal fees, printing costs, rating agency fees, Underwriter's discount and other costs of issuing the Bonds.

THE LEASED PROPERTY

Initial Leased Property

The initial Leased Property is, collectively, (i) the site of the fire station component of the Project, together with the new Fire Station No. 2 building being constructed thereon, and (ii) the Barbara Lee Senior Center located at 40 N. Milpitas Boulevard within the City. The Lease provides that, subject to the conditions therein regarding value, property may be released from the Lease. See “–Substitution and Release of Leased Property,” below. Accordingly, upon completion of the fire station component of the Project, the City anticipates sufficient value will exist for the Barbara Lee Senior Center to be released as a component of the Leased Property, with the result that the new Fire Station No. 2, including the site on which it is built, will serve as the sole Leased Property.

Fire Station No. 2. As noted above, a portion of the proceeds of the Bonds will be used for the fire station component of the Project, which consists of the replacement of the former Fire Station No. 2 building with a new fire station on the same site. Demolition of the former First Station No. 2 building is complete, and completion of the new fire station building is expected by mid-2022.

Fire Station No. 2 is located at 1263 Yosemite Drive in the City, near the intersection of Highway 680 and East Calaveras Boulevard. The City estimates the value of the site on which the new Fire Station No. 2 is being constructed is \$3.2 million. For additional details on Fire Station No. 2 and its site, see “FINANCING PLAN – The Project” above.

Barbara Lee Senior Center. The Barbara Lee Senior Center, located adjacent to City Hall, was built in 2010 and serves as a community amenity for senior citizens of the City. It is constructed of wood, steel and concrete, and covers approximately 22,091 square feet on a single level, with an insured value of approximately \$10.9 million, on the site of the Senior Center, which is estimated to be worth approximately \$10 million.

The facility consists of a Community Room/auditorium, two game rooms (one for table games and one with pool and ping pong), three classrooms, an art room, an exercise/dance room, and a fitness center. The facility also has a lounge and coffee/snack bar area, and a Case Manager services area. The Senior Center offers many programs and activities, such as classes, trips, socials and a weekday lunch program. In addition, the Barbara Lee Senior Center Community Room, conference room, and classrooms are available for rent.

The City may install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items will remain the sole property of the City and may be modified or removed by the City at any time, provided that the City must repair all damage to the Leased Property resulting from the installation, modification or removal of any such items.

Substitution and Release

Release of Leased Property. Under the Lease, the City has the option at any time and from time to time to release any portion of the Leased Property from the Lease (the “**Released Property**”) provided that the City has satisfied all of the requirements under the Lease that are conditions precedent to such removal, which include (among others) the following: the City must file with the Authority and the Trustee, and cause to be recorded in the office of the Santa Clara

County Recorder sufficient memorialization of, an amendment of the Lease, the Site Lease and the Assignment Agreement that removes the Released Property from the Site Lease, the Lease and the Assignment Agreement, and the City must certify in writing to the Authority and the Trustee that the value of the property that remains subject to the Lease following such release is at least equal to the then outstanding principal amount of the Bonds, and the fair rental value of the property that remains subject to the Lease following such release is at least equal to the Lease Payments thereafter coming due and payable thereunder. Upon the satisfaction of all the conditions precedent set forth in the Lease, the term of the Lease will end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release.

As noted above, upon completion of the new Fire Station No. 2 facility, the City anticipates that there will be sufficient value from the Fire Station No. 2 site and facility such that it can, and will automatically, release the Barbara Lee Senior Center as part of the Leased Property.

Substitution of Lease Property. Under the Lease, the City has the option at any time and from time to time, to substitute other real property (the “**Substitute Property**”) for the Leased Property or any portion thereof (the “**Former Property**”), upon satisfaction of all of the conditions set forth in the Lease, which include (among others) the following:

- The City must file with the Authority and the Trustee, and cause to be recorded in the office of the Santa Clara County Recorder sufficient memorialization of, an amendment of the Site Lease, Lease and Assignment Agreement that adds the legal description of the Substitute Property and deletes therefrom the legal description of the Former Property.
- The City must certify in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be important to the proper, efficient and economic operation of the City and to serve a proper governmental function of the City.
- The City must file with the Authority and the Trustee a written certificate of the City or other written evidence stating that the estimated fair rental value of the Leased Property following the substitution will be at least equal to the aggregate principal amount of the Bonds then outstanding, and that the useful life of the Substitute Property at least extends to the stated termination date of the Lease.

Upon the satisfaction of all the conditions precedent contained in the Lease, the term of the Lease will end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this provision of the Lease.

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the Bonds.

Year Ending June 1	Principal	Interest	Total Debt Service
-------------------------------	------------------	-----------------	-------------------------------

Total:

THE BONDS

This section provides summaries of the Bonds and certain provisions of the Indenture. See APPENDIX C for a more complete summary of the Indenture. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Authority for Issuance

The Bonds are being issued under the Law, the Indenture, the Authority Resolution (which was adopted by the Board of the Authority on October [20], 2020), and the City Resolution (which was adopted by the City Council on October [20], 2020).

General Provisions

Bond Terms. The Bonds will be dated their date of delivery and issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple of \$5,000. The Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Payments of Principal and Interest. Interest on the Bonds will be payable on June 1 and December in each year, beginning June 1, 2021 (each an “**Interest Payment Date**”). Interest on the Bonds is payable from the Interest Payment Date next preceding the date of its authentication unless: a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date, a Bond is authenticated on or before 15 days prior to the first Interest Payment Date, in which event interest thereon will be payable from the Closing Date, or interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is computed on the basis of a 360-day year composed of 12 months of 30 days each and payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner.

While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to the Bonds will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the Bonds. See “– Book-Entry Only System” below.

Record Date. Under the Indenture, “**Record Date**” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

Transfer, Registration and Exchange

The following provisions regarding the exchange and transfer of the Bonds apply only during any period in which the Bonds are not subject to DTC’s book-entry system. While the Bonds are subject to DTC’s book-entry system, their exchange and transfer will be effected through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See “APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Bond Register. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which will upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as provided in the Indenture.

Transfer and Exchange. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee will require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond is or Bonds are surrendered for transfer, the Authority will execute and the Trustee will authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee will require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

The Trustee may refuse to transfer or exchange, under the provisions of the Indenture described above, any Bonds selected by the Trustee for redemption under the Indenture, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

Redemption*

Optional Redemption. The Bonds maturing on or before June 1, _____, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after June 1, _____, are subject to redemption in whole, or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on any date on or after June 1, _____, from any available source of funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

Mandatory Sinking Fund Redemption. The Bonds maturing June 1, _____ (the “**Term Bonds**”) are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on June 1 in the respective years as set forth in the following table; *provided, however*, that if some but not all of the Term Bonds have been optionally redeemed, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Authority (as set forth in a schedule provided by the Authority to the Trustee).

Term Bonds Maturing June 1, _____

Sinking Fund Redemption Date (June 1)	Principal Amount To Be Redeemed
---	------------------------------------

Extraordinary Mandatory Redemption. The Bonds are subject to mandatory redemption prior to maturity in whole or in part, among maturities as determined by the Authority, on any date, at a redemption price equal to 100% of the principal amount thereof to be redeemed (plus accrued but unpaid interest to the redemption date), without premium, from Net Proceeds received under from amounts deposited in the Insurance and Condemnation Fund under the Indenture, and any other funds available under the Indenture for purposes of that fund.

Selection of Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee will select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee will treat each Bond as consisting of separate \$5,000 portions and each such portion will be subject to redemption as if such portion were a separate Bond.

Notice of Redemption. The Trustee will give notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption

* Preliminary; subject to change.

date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board.

Neither the failure to receive any notice nor any defect therein will affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds will be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

However, while the Bonds are subject to DTC's book-entry system, the Trustee will be required to give notice of redemption only to DTC as provided in the letter of representations executed by the Authority and received and accepted by DTC. DTC and the Participants will have sole responsibility for providing any such notice of redemption to the beneficial owners of the Bonds to be redeemed. Any failure of DTC to notify any Participant, or any failure of Participants to notify the Beneficial Owner of any Bonds to be redeemed, of a notice of redemption or its content or effect will not affect the validity of the notice of redemption, or alter the effect of redemption set forth in the Indenture.

Rescission of Redemption Notice. The Authority has the right to rescind any notice of the redemption of Bonds under the Indenture by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption will be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation will not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee will mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Indenture.

Effect of Redemption. When notice of redemption has been duly given as set forth in the Indenture, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption will become due and payable, interest on the Bonds so called for redemption will cease to accrue, those Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture, and the Owners of those Bonds will have no rights in respect thereof except to receive payment of the redemption price thereof.

Book-Entry Only System

The Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in the denomination of \$5,000 or any integral multiple of \$5,000, under the book-entry system maintained by DTC. While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent disbursement to Beneficial Owners of the Bonds. Purchasers of the Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM" for further information regarding DTC and the book-entry system.

SECURITY FOR THE BONDS

The principal of and interest on the Bonds are not a debt of the Authority or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the Bonds and certain provisions of the Indenture, the Lease and the Site Lease. See “APPENDIX C – Summary of Principal Legal Documents” for a more complete summary of the Indenture, the Lease and the Site Lease. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Revenues; Pledge of Revenues

Pledge of Revenues and Other Amounts. Under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under the Indenture are pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of the Indenture. This pledge constitutes a lien on and security interest in the Revenues and such amounts and will attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

Definition of Revenues. “Revenues” are defined in the Indenture as follows:

(a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding (i) any amounts the City is obligated to pay under the Lease as additional amounts of rental for the use and occupancy of the Leased Property if such additional amounts of rental are pledged or assigned for the payment of any bonds (other than the Bonds or Additional Bonds), notes, leases or other obligations, and (ii) any Additional Rental Payments (described below); and

(b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

Assignment to Trustee

Under the Assignment Agreement, the Authority will transfer to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under the provisions of the Lease regarding Additional Rental Payments, repayment of advances, indemnification, and the payment of attorneys’ fees). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and will immediately be paid by the Authority to the Trustee. The Trustee is also entitled to and will, subject to the provisions of the Indenture regarding duties of the Trustee, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

Allocation of Funds by Trustee

Deposit of Revenues into Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the “Bond Fund” which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required under the Indenture or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in the Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under the Indenture, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

Transfers from the Bond Fund. On or before each Interest Payment Date, the Trustee will transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Bond Fund), the following amounts in the following order of priority:

Deposit to Interest Account. The Trustee will deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.

Deposit to Principal Account. The Trustee will deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date.

Application of Accounts within Bond Fund.

Application of Interest Account. All amounts in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

Application of Principal Account. All amounts in the Principal Account will be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

Application of Redemption Fund. The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of any Bonds to be optionally redeemed under the Indenture.

Lease Payments

Requirement to Make Lease Payments. Under the Lease, subject to the provisions of the Lease concerning rental abatement (see – “Abatement,” below) and prepayment of Lease Payments, the City agrees to pay to the Authority, its successors and assigns, the Lease

Payments in the respective amounts specified in the Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in the Lease, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in the Lease (defined as the 5th Business Day immediately preceding each Interest Payment Date).

Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under the Lease, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder.

The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee.

The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

Rate on Overdue Lease Payments. If the City fails to make any of the payments of Lease Payments required in the Lease, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The Authority and the City have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under the Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

Additional Rental Payments. In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority:

- (a) All fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due;
- (b) All reasonable compensation to the Trustee for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture;
- (c) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare

audits, financial statements, reports, opinions or provide such other services required under the Lease or the Indenture;

- (d) Amounts coming due and payable as Excess Investment Earnings in accordance with the Lease; and
- (e) The reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of the Lease or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving the Lease, the Bonds, the Indenture or any of the other documents contemplated thereby, or otherwise incurred in connection with the administration of the Lease.

Limited Obligation

THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY, THE AUTHORITY OR THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Additional Bonds

In addition to the Bonds, the Authority may establish one or more other issues of Additional Bonds secured and payable from the Revenues on a parity with the Bonds, and may issue and deliver such Additional Bonds in such principal amount as shall be determined by the Authority, but only upon compliance by the Authority with specific conditions set forth in the Indenture, which are conditions precedent to the issuance of such Additional Bonds and include the following:

(a) The Authority shall have entered into an amendment to the Lease, in and by which the City obligates itself in the manner provided in the Lease to make Lease Payments for the lease of the Leased Property at the times and in the amounts sufficient to provide for the payment of the principal of and interest on such Additional Bonds as such principal and interest become due and to make all other payments in the manner provided in the Lease, and the City shall certify in writing, that such Lease Payments, as amended, in any year shall not exceed the then fair rental value of the Leased Property.

(b) If necessary to ensure that the Lease Payments payable after the issuance of Additional Bonds does not exceed the fair rental value of the Leased Property in any year, the Authority and the City shall have amended the Lease to add additional property to the Leased Property.

Source of Lease Payments; Covenant to Budget and Appropriate

The Lease Payments are payable from any source of available funds of the City, subject to the provisions of the Lease regarding abatement. See “– Abatement” herein.

Under the Lease, the City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of the Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. This covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in the Lease agreed to be carried out and performed by the City.

Abatement

Termination or Abatement Due to Eminent Domain. Under the Lease, if the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of the Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

(a) the Lease will continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and

(b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

Abatement Due to Damage or Destruction. The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain as described above) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof.

The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction.

If any such damage or destruction occurs, the Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

Property Insurance

Liability and Property Damage Insurance. Under the Lease, the City is required to maintain or cause to be maintained throughout the Term of the Lease, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns.

Such policy or policies must provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies must

provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Lease regarding self-insurance, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

Casualty Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds.

Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, fire and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be subject to such deductibles as the City deems adequate and prudent.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in the Lease.

Rental Interruption Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the casualty insurance requirements described above, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as they become due and payable.

Insurance Net Proceeds; Form of Policies. Each policy of casualty insurance, rental interruption insurance and title insurance maintained under the Lease must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by the Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby.

The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required under the Lease are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any liability and property damage insurance maintained under the Lease is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

THE AUTHORITY

The Authority was created as of March 1, 2016, by the City and the City of Milpitas Housing Authority under a Joint Exercise of Powers Agreement, for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements in the City. The members of the City Council serve as the governing board of the Authority, and certain City staff serve as the officers of the Authority. The Joint Exercise of Powers Agreement was entered into under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California. The Authority is a separate entity constituting a public instrumentality of the State of California.

THE CITY

General

The City was incorporated in January 1954 and encompasses 13.63 square miles. It is located in Santa Clara County, adjacent to the City of San Jose and 45 miles south of San Francisco, in the northern part of the County. The City is located within the “Silicon Valley” area, a region of the southern San Francisco Bay Area, widely considered a global center for high technology, innovation and social media. The Silicon Valley area corresponds roughly to the geographical Santa Clara Valley, although its boundaries have increased in recent decades. As a result of its location, the City has grown from a small agricultural town and later a stop-over point for travelers between Oakland and San Jose into one of the world’s premier computer and semiconductor producing areas.

The City provides a full range of municipal services, including police, fire, neighborhood services, public improvements, planning, building and public facility inspection, engineering, water and sewer utilities, redevelopment, and general administrative services.

For additional background, and certain demographic and economic information regarding the City and the County, see APPENDIX B.

City Government

The City is a general law city and operates under a Council-Manager form of government. The City Council, which is comprised of five members, is the City's political and legislative body and is empowered by the general laws of the State of California to formulate City-wide policy, including a fiscal program, City services and appointment of the City Manager and the City Attorney.

Of the five members of the City Council, four are elected at-large for staggered four-year terms, while the position of Mayor is selected every two years in a separate City-wide election. The City Council makes the ultimate planning and policy decisions for residents, and oversees the City's approximate \$220 million annual budget. The five Council members carry out twice monthly public meetings.

The current members of the City Council are as follows:

<u>Name and Office</u>	<u>Current Term Expires</u>
Richard Tran, <i>Mayor</i>	November 2020
Bob Nunez, <i>Vice-Mayor</i>	November 2020
Karina R. Dominguez, <i>Council Member</i>	November 2022
Carmen Montano, <i>Council Member</i>	November 2022
Anthony Phan, <i>Council Member</i>	November 2020

The City Manager is responsible for the day-to-day administration of City business and the coordination of all City departments. Below are brief biographies of the City Manager and certain members of the City's professional staff:

Steve McHarris, City Manager. Mr. McHarris was appointed City Manager of the City in May 2020. Prior to that, he had been serving as Interim City Manager since June 2019 and, before that, Deputy City Manager since 2018. In his role as Deputy City Manager, he oversaw the operations of three departments: Building Safety and Housing, Planning, and Economic Development, as well as related inspection activities and development services in the Engineering and Fire departments. Mr. McHarris has a successful history with the City, having previously served as Director of Planning and Neighborhood Services from 2012 until 2015, when he worked for the City of San José as its Planning Official of the San José Planning, Building and Code Enforcement Department. Mr. McHarris' 31 years of public service includes his service at Milpitas and San José, and his planning roles for the City of Fremont and University of California, Irvine. He advanced into planning and leadership roles with the cities of Soledad, Atascadero, Milpitas, and San José. He also served in the past as an appointed Design Review Board member for the City of Orange and an elected official in the County of San Luis Obispo. A graduate of California State Polytechnic University-Pomona, he holds a Master's Degree in Public Administration/Urban Planning from California State University Fullerton and is an American Institute of Certified Planning (AICP) certified planner.

Ashwini Kantak, Assistant City Manager. Ashwini Kantak was appointed as Assistant City Manager for the City of Milpitas in June 2018. In this role, Ms. Kantak leads a wide range of operational, program, and policy priorities. Prior to joining Milpitas, Ms. Kantak worked for the City of San José where she served as the Chief Operating Officer of Environmental Services, a department with a budget of \$310 million and 550 employees. In addition to oversight of the budget, regulatory compliance, legislative affairs, and sustainability, Ms. Kantak led a \$1.4

billion capital improvement program. In previous roles, she led the implementation of the San José Green Vision, a 15-year strategic plan for economic growth and environmental stewardship, the coordination of the city's multi-billion-dollar capital improvement program, and the development of several policies and citywide initiatives. Ms. Kantak is a licensed architect and has 10 years of experience in the private sector as a project architect. Ms. Kantak has undergraduate and graduate degrees in architecture and a graduate degree in public policy and administration.

Walter C. Rossmann, Deputy City Manager. Mr. Rossmann was appointed Director of Finance of the City in June 2019 and was recently promoted to Deputy City Manager. Prior to joining the City, Mr. Rossmann held numerous roles grounded in finance, including Budget Director for the City of Palo Alto, Assistant Budget Director for the City of San José, supporting debt issuances, Deputy Director of Finance for Accounting for the City of San José and Purchasing and Procurement and Information Systems Manager for the City of San Diego. Most recently, Mr. Rossmann served as Chief Operating Officer for the City of Santa Clara and, before that, as the Assistant City Manager for the City of Sunnyvale. Mr. Rossmann holds a Master of Science in Applied Mathematics from Texas A&M University-Corpus Christi. In his role of Director of Finance, Mr. Rossmann oversees the Finance Department, and as Deputy City Manager he oversees the Public Safety Community Service Area.

Tony Ndah, Public Works Director. Mr. Ndah was appointed as the City's Public Work Director in January 2018, having previously been appointed Deputy Public Works Director in July 2017. Prior to joining the City, he worked for the Santa Clara Valley Water District. He has over 20 years of experience in civil engineering, and is a licensed Professional Civil Engineer. He holds a bachelor's degree in civil engineering and a master's degree in Public Administration from San José State University. In his role as Public Work's Director, Mr. Ndah plans, organizes, directs and oversees the operations and maintenance of the Water System. He also assists with providing recommendations to the City Engineer for the preparation and administration of capital improvements programs for the Water System.

Steven P. Erickson, Engineering Director/City Engineer. Mr. Erickson has been with the City for 29 years and was appointed as the City's Engineering Director in January 2018, having previously been the Capital Improvement Program Manager since 2007. He has over 25 years of experience in civil engineering, and is a licensed Professional Civil Engineer. He holds a bachelor's degree in civil engineering from San José State University. In his role as Engineering Director/City Engineer, Mr. Erickson directs and oversees the City's Capital Improvement Program, manages work and activities within the city's right-of-way, directs and oversees activities of the Land Development and Traffic Engineering Sections.

Brian R. Sherrard, Fire Chief. Mr. Sherrard was sworn in as the Milpitas Fire Chief in December 2018. He was previously employed by Tualatin Valley Fire and Rescue for 26 years. He has over 30 years of experience in the fire service. He holds a BA degree in Sociology/Social Work with a minor in Spanish from Pacific University, a BS in Fire Administration from Western Oregon University, and a Masters degree in Leadership from City University in Seattle. He directs and oversees all divisions of the fire department including Administration, Operations, Emergency Medical Services, Fire Prevention, and the Office of Emergency Services.

CITY FINANCIAL INFORMATION

Budgetary Process and Administration

Annual Budget Adoption. The annual operating budget is the primary short-term financial plan for the City. The operating budget serves as the policy document of the City Council for implementing its goals and objectives and sets forth estimates of resources available to fund services that are consistent with the City Council's goals. Since no plan will prove to be an absolutely accurate reflection of future events, management must have sufficient flexibility to make adjustments during the year, provided these adjustments do not materially alter the general intent of the City Council when adopting the budget. As part of adopting the annual budget, the Council approves the Fiscal Policies and Budget Guidelines which set the fiscal framework for the annual budget process and long-term financial decisions. The Fiscal Policies are broken down into General Financial Goals; Operating Budget, Revenue, and Expenditure Policies; Utility Rates and Fees; Capital Budget Policies; Debt, Reserve, and Investment Policies; and Accounting, Auditing, and Financial Reporting Policies. The Budget Guidelines provide flexibility and establish adequate controls, through budget monitoring and periodic reporting, to ensure that the overall distribution of resources achieves the results contemplated by the City Council. Simultaneously with adoption of the annual operating budget, the City Council adopts a separate, but related, capital improvement program (CIP) budget. Included within the operating budget is an "Unanticipated Expenditure Reserve" (formerly referred to as an "Appropriated Contingency Reserve") equal to 1% of budgeted operating expenditures.

The City Manager is responsible for proposing to the City Council a balanced budget which is consistent with the City Council's service level priorities and sound business practices and where the anticipated operating revenues and other financing resources, including carryover of outstanding encumbrances from prior year, are equal to or exceed operating expenditures. The City Manager is also responsible for establishing a system for the preparation, execution, and control of the budget which provides reasonable assurances that the intent of City Council policies is met. The City Manager also has the authority to make revisions involving transfers from the Unanticipated Expenditure Reserve account provided that the City Council is notified in writing of the revision, given the reason, the amount of the revision and the year-to-date total amount of revisions as part of the quarterly financial status reports.

The Director of Finance is responsible for coordinating the operating budget creation process on behalf of the City Manager, synchronizing the operating budget with the annual capital plan, developing a ten-year General Fund Financial Forecast, establishing budget and fiscal policies, providing periodic budget status reports to the City Manager and the City Council, and developing internal monthly budget management reports for department heads to facilitate control and compliance with the budget.

The department heads are responsible for assisting in the development of annual budgets and monitoring their respective budgets for compliance with the intent of Council priorities to ensure that appropriations of the aggregate total of the department are not exceeded.

Long-Term Financial Forecasts. As part of its annual budget development process, the City also forecasts revenues and expenses for the City's major funds, including the General Fund, over longer periods of 3, 5 and/or 10 fiscal years. This assists the City Council, City Manager and City department heads with long-term planning for the future and with understanding the long-term impact of the applicable year's budgetary decisions.

Fiscal Policies

General – Types of Policies. The City Council has adopted various fiscal policies for the City. These include operating budget policies, revenue policies, expenditure policies, utility rate and fee policies, capital budget policies, debt policies, reserve policies, and investment, accounting, auditing and financial reporting policies. The overall goals of these policies are: (1) to maintain a financially viable City that can maintain an adequate level of municipal services, (2) to maintain financial flexibility in order to be able to continually adapt to local and regional economic change and (3) to maintain and enhance the sound fiscal condition of the City. For the City's current investment policies and investment portfolio, see “– Investment Policy and Portfolio.”

Reserve Policies – Types of Reserves. The City's reserve policies are meant to help ensure that the City has sufficient reserve balances to adequately provide for emergencies, economic uncertainties, unforeseen operating or capital needs, economic development opportunities and cash flow requirements. To this end, the City maintains various General Fund reserves for various purposes, including the following:

Unassigned Reserves

- *Contingency Reserve.* This reserve is maintained in an amount at least 16.67% (2 months) of the annual operating expenditures in the General Fund per the previous year's audited financial statements, to be used only in the case of dire need as a result of physical or financial emergencies and disasters, as determined by the City Council. (The Contingency Reserve is separate from the Appropriated Contingency Reserve which is set at 1% of budgeted operating expenditures each year, and was renamed, as part of the Fiscal Year 2020-21 budget adoption process, the “Unanticipated Expenditure Reserve.”)
- *Budget Stabilization Reserve.* This reserve has a target of 16.67% (2 months) of the annual operating expenditures in the General Fund. The target was increased to 2-months of expenditures from 1-month of expenditures as part of the Fiscal Year 2020-21 budget adoption process. The purpose of this reserve is to provide budget stabilization when there are fluctuations that result in lower than projected revenues and/or higher than projected expenditures. Use requires vote of the City Council.
- *Other Unassigned Reserve.* Any amount of unassigned reserves not deposited in the Contingency Reserve or Budget Stabilization Reserve are Other Unassigned Reserves. There is no target level for these reserves, and they are available for any lawful purpose of the City.

Committed Reserves

- *PERS Rate Stabilization Reserve.* This reserve may be maintained in the General Fund and the Water and Sewer Utility Enterprise Funds or in a Section 115 Trust and is to be funded from annual pension cost savings and by 20% of any General Fund annual operating surplus as described below. The City may use the reserve to fund either the annual required contribution (ARC) amount in lieu of a contribution amount derived from a percentage of salary, pay down

unfunded pension liabilities or reduce the length of pension cost amortization schedules with PERS. For additional information on the City's plans to establish a Section 115 Trust, see "– Pension Plans" below.

- *Retiree Medical Benefits Trust.* The City maintains a retiree medical benefits account established by an irrevocable trust and funds the required contribution annually. For additional details, see "– Pension Plans" below.
- *Capital Reserve for Equipment.* This reserve is set up as an internal service fund to enable the timely replacement of vehicles and depreciable equipment, with the City maintaining a fund balance of at least 30% of the replacement costs for equipment accounted for in this fund.
- *Facilities Replacement Reserve.* This reserve is maintained by the City with a target of \$10 million, for the purpose of accruing funding for major rehabilitation or replacement of City facilities (buildings/structures).
- *Technology Replacement Reserve.* This reserve is maintained by the City with a target of \$5 million and an annual allocation of at least \$300,000, for the purpose of accruing funding for technology projects.
- *Artificial Turf Replacement Reserve.* This reserve is maintained by the City with a target of \$2 million and an annual set-aside of at least \$230,000, for the purpose of accruing funding for the normal depreciation expense of the City's artificial turf fields over their useful lives.

Reserve Policies – Allocation of Annual Budget Surpluses to Reserves. The policy of the City is to fund the following reserves with any General Fund audited year-end operating surplus after all Contingency Reserve and Budget Stabilization Reserve requirements (described below) are met:

- 20% to the PERS Rate Stabilization Reserve
- 20% to the General Government Capital Improvement Fund
- 10% to the Housing Community Benefit Fund
- 10% to Transportation/Transit
- 40% to the Unassigned General Fund Reserve

Reserve Policies – General Fund Reserve Balances. The following table shows current and projected balances in various General Fund reserve categories.

**City of Milpitas – General Fund Reserves
(Dollars in Millions)**

<i>Type of Reserve</i>	Reserve Balance as of May 5, 2020	Unaudited FY2019-20 Allocation	Adopted FY2020-21 Allocation	Projected Balance as of June 30, 2021	Reserve Target Per Reserve Policies
<u>Contingency Reserve</u>	\$20.30	\$(2.74)	\$0.00	\$17.56	\$17.56
Budget Stab. Reserve (BSR) ⁽¹⁾	9.45	8.09	(2.38)	15.16	17.56
Other Unassigned	2.10	0.00	(2.10)	--	N/A
Total Unassigned	31.85	5.35	(4.48)	32.72	N/A
Artificial Turf	0.98	0.23	--	1.21	2.00
Facilities Replace.	7.00	--	--	7.00	10.00
PERS Rate Stab.	33.90	--	--	33.90	N/A
Technology Replace.	2.00	--	--	2.00	5.00
Work Comp/Gen. Liability	2.80	(0.80)	--	2.00	2.00
Total Committed	46.68	(0.57)	--	46.11	N/A
Total Avail. Reserves	\$78.53	\$4.78	\$(4.48)	\$78.83	N/A

(1) The Projected Balance of the BSR as of June 30, 2021 does not include the projected additional shortfall of approximately \$10 million

Source: City of Milpitas Finance Department.

City Budgets for Fiscal Years 2019-20 and 2020-21

Adopted Budget for Fiscal Year 2019-20 and Amendments. The City's budget for Fiscal Year 2019-20 was adopted by the City Council on June 11, 2019. The total budget amount was \$247.9 million, of which the General Fund portion was \$121.6 million. As is typical, following adoption of the budget, staff monitored and tracked revenues and expenditures for all funds, with an emphasis on the General Fund and the City's enterprise funds. As noted above, in accordance with the City Council's approved Budget Guidelines, the City Manager has the authority to make revisions involving transfers from the Appropriated Contingency Reserve (now known as the Unanticipated Expenditure Reserve) provided that the City Council is notified in writing of the revision, given the reason, the amount of the revision and the year-to-date total amount of revisions. For Fiscal Year 2019-20, the Appropriated Contingency Reserve (now known as the Unanticipated Expenditure Reserve) was budgeted at \$1.1 million, or 1% of budgeted operating expenditures.

On April 7, 2020, City staff presented a preliminary fiscal impact on the General Fund due to the COVID-19 pandemic. Based on information available at that time, the City was projecting a decline of approximately \$5 million of revenues versus budget for Fiscal Year 2019-20. On May 5, 2020, City staff presented a further update to the City Council in which the City projected a decline of approximately \$7.1 million of revenues versus budget for Fiscal Year 2019-20. The main sources of revenue declines were sales & use tax, transient occupancy tax (TOT) and license/permit revenues. The City Council approved offsetting the \$7.1 million anticipated decline in revenues by using various reserves.

After rebalancing the budget with use of reserves to offset the projected loss of revenue on May 5, 2020, City staff reported a budget surplus of \$4.8 million based on unaudited figures primarily due to expenditure savings. Per the Council Reserve Policies the surplus was allocated and other reserves aligned and the actions directed in the FY 2020-21 Adopted Budget which

resulted in an net increase of the Budget Stabilization Reserve in the amount of \$5.71 million from \$9.45 million to \$15.2 million or 86% of the target.

Adopted Budget for Fiscal Year 2020-21. The City's budget for Fiscal Year 2020-21 was adopted by the City Council on June 2, 2020.

In April 2020, the City was anticipating a \$25 million shortfall in its General Fund over a three fiscal year period (Fiscal Years 2020-21 through 2022-23). By refining the City's budgeting methodology for personnel costs, reducing non-personnel expenditures, suspending the annual transfer of \$500,000 from the General Fund to the Storm Drain CIP Fund for two fiscal years and deferring the first debt service payment/lease payments to Fiscal Year 2021-22, staff was able to reduce the projected shortfall for Fiscal Years 2020-21 through 2022-23 from approximately \$25 million to approximately \$10 million. Reserves will be used to fund this remaining shortfall. The adopted budget for Fiscal Year 2020-21 continues to fund the same service level for the City, with very minor changes and does not eliminate positions. The General Fund is projected to achieve a slight surplus in Fiscal Years 2023-24 and 2024-25.

To the extent the current economic downturn caused by the COVID-19 pandemic continues or increases, City staff will return to the City Council mid-year for appropriate revisions to the Fiscal Year 2020-21 Adopted Budget, which may include reducing expenditures by eliminating personnel and/or working with our bargaining units to reduce salary and benefits costs. The City has already instituted a non-essential hiring and expenditure freeze to strategically keep positions vacant. To provide additional revenue, the City Council directed staff to place a ¼ cent general sales tax measure on the November 2020 ballot.

Complete copies of the City's adopted fiscal year 2019-20 and 2020-21 budgets can be obtained from the City's Finance Department or the City's website at www.ci.milpitas.ca.gov. *The information on this website is not incorporated by reference into this Official Statement.*

On September 1, 2020, City staff presented an update of the FY 2021-2030 Ten-Year General Fund Financial Forecast. With the receipt of actual revenues for the quarter ending June 30, 2020, which covers the majority of time since the SIP order from mid-March, and updated revenue projections, which became available after completion of this staff report, staff updated the revenue projections. Additionally, staff updated expenditure information related to the City's Retiree Medical benefit as discussed below. The updated Forecast projects a decline of approximately \$13.3 million of revenues versus budget for Fiscal Year 2020-21 primarily attributable to Transient Occupancy Tax (-\$8.9 million) and Sales Tax (-\$3.6 million) offset with savings for the Retiree Medical benefit (-\$2.5 million) resulting in an increase of the deficit in the amount of \$10.8 million from the prior deficit of \$4.8 million to \$15.2 million. Additionally, staff presented that the Forecast indicates a structural deficit of about \$9 million. The updated Forecast slightly decreased the Property Tax projection eliminating any projected Education Revenue Augmentation Fund (ERAF) receipts mostly offset with higher property tax estimates as provided and advised by the County of Santa Clara.

In response to the additional shortfall, Council adopted the COVID-19 Fiscal Response Strategies and Guidelines to mitigate negative financial impacts going forward. Additionally, staff discussed overall budget strategies such as increasing revenue, working with all bargaining groups to reduce salary and benefits costs, and reducing service levels to the community.

Adopted Budget Comparison. The table below shows the City's adopted operating budget revenues and expenditures for the General Fund for Fiscal Year 2019-20, amended as

of May 5, 2020, and Fiscal Year 2020-21 Adopted Budget. Due to the Coronavirus Pandemic, economic activity was severely impacted forcing the City to adjust its revenue estimates downward primarily for Transient Occupancy Tax and Licenses, Permits, and Fines on May 5, 2020 using funds from the Budget Stabilization Reserve to offset the projected revenue loss.

As described above, based on actual revenue received in FY 2019-20, the City staff presented to the Council an updated FY 2021-2030 Ten-Year General Fund Financial Forecast on Sept. 1 which projects an additional significant reduction in Transient Occupancy Tax and Sales Tax for FY 2020-21 and beyond than already assumed in the FY 2020-21 Adopted Budget. Based on the updated Forecast, staff will bring forward budget amendment recommendations for Council consideration quarterly adjusting revenues and expenditures as necessary. On November 3, voters will decide whether to increase the local sales rate from 9.00% to 9.25%. If the measure does not pass, ongoing expenditure reductions are required mid-year. Accordingly, investors should be aware that actual results for Fiscal Year 2020-21 could vary significantly from the budget adopted on June 2, 2020.

TABLE 1
City of Milpitas
General Fund Budget Summary
Fiscal Years 2019-20 and 2020-21
(In Thousands of Dollars)

	2019-20 Adopted Budget	2019-20 Amended Budget⁽¹⁾	2020-21 Adopted Budget
Revenues			
Property Tax ⁽²⁾	\$34,807	\$36,697	\$36,872
Sales & Use Tax	27,200	27,375	28,372
Transient Occupancy Tax	19,558	12,175	13,453
License, Permits & Fines	15,250	13,186	9,907
Charges for Services	6,961	7,074	7,815
Franchise Fees	4,937	5,337	5,515
Use of Money and Property	1,267	1,267	1,364
Other Taxes	1,128	1,162	1,197
Intergovernmental	1,446	1,830	808
Other Revenues	241	241	258
Net Operating Transfers-In	5,993	6,019	7,014
Total Revenues	118,788	112,363	112,575
Expenditures			
Salaries	52,903	52,903	55,525
Benefits	39,069	39,069	39,008
Services and Supplies	22,522	23,303	22,083
Debt Service	100	100	--
Capital Outlay	183	183	248
Operating Transfers Out	800	800	300
Total Expenditures	115,577	116,358	117,164
Net Operating Results	\$3,211	\$(3,995)	\$(4,589)⁽³⁾

(1) Budget for Fiscal Year 2019-20, as-amended as of May 5, 2020. The negative net operating results were offset with the use of unrestricted reserves.

(2) Property Tax line item includes current property taxes, supplemental property taxes and RPTTF distributions.

(3) Projected deficit for Fiscal Year 2020-21 expected to be filled using unrestricted reserves once the Contingency Reserve target of 16.67% of FY 2018-19 operating expenditures was met.

Source: City of Milpitas Adopted Budgets.

Financial Statements

Overview. Set forth in the following tables are the City's General Fund balance sheets and statements of revenues, expenditures and changes in General Fund Balance for fiscal years 2015-15 through 2018-19, which are based on the City's audited financial statements as well as the City's unaudited numbers for fiscal year 2019-20. The balance sheets and statements presented in this Official Statement are subject to the various notes attached to the City's financial statements for the respective years. The City's Comprehensive Annual Financial Report ("**CAFR**") for fiscal year ended June 30, 2019, which includes the City's 2018-19 audited financial statements, is set forth in Appendix A. The CAFR for fiscal year ended June 30, 2020 is scheduled to be released in late November 2020.

Changes in General Fund Balance Sheets. As shown in the following table, the Total Assets of the General Fund increased substantially from Fiscal Year 2015-16 to Fiscal Year 2019-20. The majority of these assets are held in cash and cash investments. See "– Investment Policy and Portfolio" for additional details. With only a modest increase in Total Liabilities, the balances in the various reserves held within the General Fund grew substantially, although the balances decreased slightly from Fiscal Year 2018-19 to Fiscal Year 2019-20 due to the pandemic's economic impact on the City's finances. See "– Fiscal Policies" for additional details on the various reserves held by the City with respect to its General Fund and "– Adopted Budget for Fiscal Year 2019-20 and Amendments" for details.

TABLE 2
City of Milpitas
General Fund Balance Sheets
Fiscal Years 2015-16 through 2018-19 (audited) and 2019-20 (unaudited)

	2015-16	2016-17	2017-18	2018-19	Unaudited 2019-20
<u>Assets</u>					
Cash and investments	\$35,077,421	\$63,428,475	\$92,184,730	\$96,896,785	\$96,110,257
Accounts receivable	2,865,917	2,294,835	2,079,146	2,724,722	979,460
Due from other government agencies	5,733,481	2,096,505	3,110,278	6,272,633	5,074,187
Interest receivable	175,708	171,201	354,684	509,759	418,524
Loans receivable	--	10,335,400	--	--	--
Due from other funds	--	7,151	--	--	--
Prepaid items and other assets	714,740	554,209	654,241	743,932	594,977
Property held for resale	17,600,000	4,200,000	4,200,000	4,200,000	4,200,000
Advances to other funds	5,072,208	5,119,750	5,189,042	5,290,250	5,394,208
Total Assets	67,239,475	88,207,526	107,772,121	116,638,081	\$112,771,613
<u>Liabilities</u>					
Accounts payable	2,333,958	1,952,732	1,754,357	1,741,813	2,197,415
Accrued payroll	3,155,332	2,042,141	2,439,301	2,982,178	3,720,608
Refundable deposits	3,205,657	3,909,569	3,163,931	2,842,948	2,886,205
Unearned revenues	4,256,166	7,561,623	7,534,098	8,244,314	8,667,844
Total Liabilities	12,951,113	15,466,065	14,891,687	15,811,253	\$17,472,072
<u>Deferred Inflow of Resources</u>					
Unavailable revenue	--	--	69,292	170,500	274,458
			69,292	170,500	\$274,458
<u>Fund Balances</u>					
Nonspendable	\$23,386,948	\$20,209,359	\$10,043,283	\$10,234,182	10,189,185
Committed	8,439,565	19,025,620	33,642,501	43,851,915	44,081,915
Assigned	9,052,333	8,066,566	8,629,416	5,915,559	5,262,405
Unassigned	13,409,516	25,439,916	40,495,942	40,654,672	35,491,578
Total Fund Balance	54,288,362	72,741,461	92,811,142	100,656,328	\$95,025,083
Total Liabilities & Fund Balance	\$67,239,475	\$88,207,526	\$107,772,121	\$116,638,081	\$112,771,613

Source: City of Milpitas audited financial statements for fiscal years 2014-15 through 2018-19.

Changes in General Fund Revenues, Expenditures and Fund Balance. As shown in the following table, General Fund revenues net decreased to \$99.7 million in Fiscal Year 2019-20, down \$8.4 million from the prior fiscal year. Decreases came from sales taxes, other taxes (which includes transient occupancy tax and franchise fees), licenses and fines, use of money and property, charges for services offset with an increase in property tax. Property tax revenue increased \$4.0 million primarily due to the continued demand in the housing market thus increasing the assessed valuation of properties throughout the City.

Sales tax revenues decreased by approximately \$3.8 million. Revenues are 7% less than last year at the same time which is due to the COVID-19 Virus causing sales tax generating businesses to close during the 4th Quarter to comply with the Shelter-in-Place order. However, taking into account the timing change in payments from the California Department of Tax and Fee Administration (CDTFA), which allocated an extra payment, revenues are actually 13% less than last year at the same time. Other taxes decreased by \$3.3 million primarily due to decreased Transient Occupancy Tax (TOT) revenue. Revenues for TOT are 22% lower than last year at the same time which is due to the Shelter-in-Place order and substantive reduction of business and leisure travel related to the COVID-19 Virus. Licenses and permits decreased \$2.7 million primarily from the building permit and inspection fees as a result of service delivery delay in the Building, Safety and Housing Department as well as to less building permits being issued because of the uncertainty caused by the COVID-19 pandemic.

General Fund expenditures increased \$9.5 million to \$102.8 million in fiscal 2019-20 primarily due to an increase in salary and benefits costs.

TABLE 3
City of Milpitas
Statements of Revenues, Expenditures and Changes in General Fund Balance
Fiscal Years 2015-16 through 2018-19 (audited) and 2019-20 (unaudited)

	2015-16	2016-17	2017-18	2018-19	Unaudited 2019-20
Revenues					
Property taxes	\$27,068,110	\$30,261,513	\$31,893,019	\$33,811,009	\$37,799,083
Sales taxes	24,718,975	26,213,910	27,854,331	28,889,785	25,058,325
Other taxes	16,754,122	16,861,843	17,942,112	20,872,163	17,598,760
Licenses and fines	8,050,689	10,496,738	12,757,868	11,757,117	9,039,341
Use of money and property	1,311,119	823,603	796,131	4,446,580	3,060,413
Intergovernmental	1,145,819	771,293	1,390,799	1,501,243	1,582,302
Charges for services	6,567,398	6,404,867	6,349,731	6,510,806	5,139,769
Other	106,164	154,327	139,240	315,330	390,062
Total Revenues	85,722,396	91,988,094	99,123,231	108,104,033	99,668,055
Expenditures					
Current:					
General Government	13,449,719	16,805,261	15,170,168	18,206,286	17,900,376
Building and Safety	2,884,974	3,148,178	3,633,031	5,038,327	5,633,523
Human Resources and Recreation	3,383,594	3,876,080	4,496,881	5,143,600	5,226,706
Public Works	5,084,646	5,919,513	5,834,642	7,048,127	8,202,655
Engineering	2,508,988	2,838,918	2,541,020	2,858,064	3,412,607
Planning and Neighborhood Services	2,098,120	2,231,823	2,344,514	1,648,282	1,950,945
Police	25,857,856	26,989,073	27,657,857	30,180,922	34,029,212
Fire	17,469,713	18,455,992	21,033,591	23,225,089	26,415,595
Debt Service: principal	--	--	--	--	--
Debt Service: interest	--	--	--	--	--
Total expenditures	72,737,610	80,264,838	82,711,704	93,348,742	102,771,619
Excess (deficiency) of revenues over (under) expenditures	12,984,786	11,723,256	16,411,527	14,755,291	(3,103,564)
Other financing sources(uses)					
Proceeds from sale of property	160,122	7,275,743	(6,612)	1,315	2,474
Transfers in ⁽¹⁾	4,469,000	6,024,100	5,551,542	6,996,682	6,019,566
Transfers out ⁽¹⁾	(12,900,000)	(6,570,000)	(1,900,000)	(13,908,102)	(8,549,721)
Total other fin. sources (uses)	(8,270,878)	6,729,843	3,658,154	(6,910,105)	(2,527,681)
					(5,631,245)
Net change in fund balance	4,713,908	18,453,099	20,069,681	7,845,186	
Fund balance, beginning as restated	49,574,454	54,288,362	72,741,461	92,811,142	100,656,328
Fund balance, ending	\$54,288,362	\$72,741,461	\$92,811,142	\$100,656,328	\$95,025,083

(1) Transfers-in generally represent amounts payable to the General Fund from the City's enterprise funds (solid waste, water, sewer), while transfers-out generally represent transfers to the City's capital improvement fund, storm drain fund and other funds/reserves, consistent with the City's adopted fiscal policies. The as-adopted budget for Fiscal Year 2020-21 contemplates approximately \$800,000 of transfers-out. See Table 1.

Source: City Finance Department and City of Milpitas audited financial statements for fiscal years 2014-15 through 2018-19.

Revenues Available for Lease Payments

The City will make Lease Payments on each Lease Payment Date from moneys held in the General Fund that are available for general government purposes. The following table shows such revenues received by the City for fiscal years 2016-17 through 2019-20.

TABLE 4
City of Milpitas
General Fund Revenues by Revenue Source
Fiscal Years 2016-17 through 2018-19 audited, 2019-20 unaudited

Category	<u>2016-17</u>		<u>2017-18</u>		<u>2018-19</u>		<u>2019-20 (Unaudited)</u>	
	Revenues	% of Total	Revenues	% of Total	Revenues	% of Total	Revenues	% of Total
Property Tax	\$30,261,513	32.9%	\$31,893,019	32.2%	\$33,811,009	31.3%	\$37,799,083	37.9%
Sales & Use Tax	26,213,910	28.5	27,854,331	28.1	28,889,785	26.7	25,058,325	25.1
Other Taxes	16,861,843	18.3	17,942,112	18.1	20,872,163	19.3	17,598,760	17.7
Licenses and Fines	10,496,738	11.4	12,757,868	12.9	11,757,117	10.9	9,039,341	9.1
Charges for Services	6,404,867	7.0	6,349,731	6.4	6,510,806	6.0	5,139,769	5.2
Other ⁽¹⁾	1,749,223	1.9	2,326,170	2.3	6,263,153	5.8	5,032,777	5.0
Total⁽²⁾	\$91,988,094	100.0%	\$99,123,231	100.0%	\$108,104,033	100.0%	\$99,668,055	100.0%

(1) "Other" consists of Use of Money and Property, Intergovernmental and Other, as shown in Table 3, above.

(2) Totals may not add due to rounding.

Source: City of Milpitas Finance Department.

Property Taxes

Property Taxes represent the largest source of revenues to the City's General Fund, accounting for more than 30% of total General Fund revenues over the past three fiscal years. Property taxes represent a very stable source of revenue to the City, and are based in large part on assessed valuations of property located in the City. For Fiscal Year 2019-20, property tax revenue totaled \$37.8 million, an increase of \$4 million over the prior fiscal year due to new construction activity and price escalation in transfers of ownership.

General Method of Property Tax Calculations. Proposition 13, passed in 1978, established the current property tax regime for local agencies, including the City, throughout the State. Under Proposition 13, subject to voter-approved debt and certain other exceptions, the base property tax rate on a parcel is limited to 1% of its assessed value and the property tax collected by this 1% County-wide rate is shared by the local agencies eligible to receive property taxes within the applicable County pursuant to applicable State law. Under Proposition 13, the 1975-76 fiscal year serves as the original base year used in determining the assessment for real property. Thereafter, annual increases to the base year value are limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less. A new base year value, however, is also established whenever a property, or portion thereof, has had a change in ownership or has been newly constructed. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIII A of the State Constitution" for additional information.

Proposition 8, enacted in 1978, allows for a temporary reduction in assessed value when a property suffers a "decline-in-value." As of the January 1st (lien date) each year, the Assessor must enroll either a property's Proposition 13 value (adjusted annually for inflation by no more than 2%) or its current market value, whichever is less. When the current market value replaces

the higher Proposition 13 value, the lower value is commonly referred to as a “Proposition 8 Value.” “Proposition 8 values” are temporary and, once enrolled, must be reviewed annually by the assessor until the Proposition 13 adjusted base year value is enrolled.

The California Tax on Commercial and Industrial Properties for Education and Local Government Funding Initiative has qualified to appear on the ballot in California as an initiated Constitutional amendment on November 3, 2020. The ballot initiative would amend the State Constitution to require commercial and industrial properties, except those zoned as commercial agriculture, to be taxed based on their market value. The proposal to assess taxes on commercial and industrial properties at market value, while continuing to assess taxes on residential properties based on purchase price as described above, is known as “split roll.” At this time, the City is unable to determine the likelihood of passage of the measure or the impact on the City’s property tax receipts from passage.

Levy and Collection of Property Taxes. Property taxes are levied for each fiscal year on taxable real and personal property as of the preceding January 1. For assessment and collection purposes, property is classified either as “secured” or “unsecured” and is listed accordingly on separate parts of the assessment roll. The “secured roll” is that part of the assessment roll containing State-assessed public utilities property and real property the taxes on which have a viable tax lien, in the opinion of the County Assessor, to secure payment of the taxes. Other property is assessed on the “unsecured roll.”

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year, and become delinquent on December 10 and April 10, respectively. A penalty of 10% attaches immediately to all delinquent payments. Property on the secured roll with respect to which taxes are delinquent become tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of a penalty of 1% per month to the time of redemption, plus costs and a redemption fee. If taxes are unpaid for a period of five years or more, the property is deeded to the State and may be sold at public auction.

Property taxes on the unsecured roll are due as of the January 1 lien dates and become delinquent on August 31. A 10% penalty attaches to delinquent unsecured taxes. If unsecured taxes are unpaid at 5:00 p.m. on October 31, an additional penalty of 1% attaches to them on the first day of each month until paid. The County has four ways of collecting delinquent unsecured personal property taxes: (1) a civil action against the taxpayer; (2) filing a judgment in the office of the County Clerk specifying certain facts in order to obtain a lien on certain property of the taxpayer; (3) filing a certificate of delinquency for record in the County Recorder’s office in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee.

Beginning in 1978-79, Proposition 13 and its implementing legislation shifted the function of property tax allocation to the counties, except for levies to support prior voted debt, and prescribed how levies on county-wide property values are to be shared with local taxing entities within each county.

Property Tax Delinquencies; Teeter Plan. Certain counties in the State of California, including Santa Clara, offer a statutory program entitled Alternate Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “**Teeter Plan**”). Under the Teeter Plan local taxing entities receive 100% of their tax levies net of delinquencies, but do not receive interest or penalties on delinquent taxes collected by the county. The County includes the City’s

property tax collections in its Teeter Plan. Consequently, the City's receipt of property taxes is equal to 100% of the amount levied. There is no assurance that the County will continue the Teeter Plan or that the City will continue to participate in the Teeter Plan. Delinquencies in the payment of property taxes could have an adverse effect on the ability of the City to make Lease Payments should the County discontinue the Teeter Plan or the City withdraw from or not be able to continue in the Teeter Plan.

Historical Assessed Valuations. The table below presents the assessed valuation of taxable property in the City from fiscal year 2011-12 through fiscal year 2020-21.

TABLE 5
City of Milpitas
Assessed Value of Taxable Property
Fiscal Years 2011-12 through 2020-21

Fiscal Year	Local Secured	Utility	Unsecured	Total	%Change
2011-12	\$10,090,056,225	\$1,638,025	\$1,407,271,419	\$11,498,965,669	(3.5)%
2012-13	10,214,143,164	1,638,025	1,684,930,610	11,900,711,799	3.5
2013-14	11,054,278,719	1,638,025	1,757,441,530	12,813,358,274	7.7
2014-15	12,179,007,971	1,937,087	1,879,841,311	14,060,786,369	9.7
2015-16	13,218,856,454	1,937,087	1,837,965,404	15,058,758,945	7.1
2016-17	14,494,922,930	1,937,087	1,521,949,143	16,018,809,160	6.4
2017-18	15,758,847,633	1,937,087	1,704,573,354	17,465,358,074	9.0
2018-19	16,588,038,735	2,142,292	1,753,718,208	18,343,899,235	5.0
2019-20	18,085,699,586	2,142,292	1,911,184,582	19,999,026,460	9.0
2020-21	19,593,045,669	1,369,973	1,883,680,709	21,478,096,351	7.4

Source: California Municipal Statistics, Inc.

Assessed Valuations and Parcels by Land Use. The following table shows secured assessed valuations and parcels by land use for fiscal year 2020-21. As shown in the table, approximately 93% of the parcels in the City, representing almost 68% of the assessed valuation in the City, has residential uses.

Table 6
City of Milpitas
Secured Assessed Valuation and Parcels by Land Use
Fiscal Year 2020-21

	2020-21 Assessed Valuation ⁽¹⁾	% of Total	No. of Parcels	% of Total
Non-Residential:				
Agricultural	\$13,658,870	0.1%	14	0.1%
Commercial/Industrial	5,730,627,120	29.2%	762	3.7%
Recreational	49,979,469	0.3%	15	0.1%
Government/Social/Institutional	84,866,832	0.4%	359	1.7%
Miscellaneous	2,814,850	0.0%	24	0.1%
Subtotal Non-Residential	\$5,881,947,141	30.0%	1174	5.7%
Residential:				
Single Family Residence	\$7,612,458,110	38.9%	12,647	61.3%
Condominium/Townhouse	3,610,108,319	18.4%	5,744	27.8%
Mobile Home	25,255,401	0.1%	389	1.9%
2-4 Residential Units	206,891,589	1.1%	301	1.5%
5+ Residential Units/Apts.	1,820,709,980	9.3%	76	0.4%
Subtotal Residential	\$13,275,423,399	67.8%	19,157	92.9%
Cross Reference	\$116,015,874	0.6%	64	0.3%
Vacant Parcels	\$319,659,255	1.6%	230	1.1%
SBE Nonunitary	1,369,973	0.0%	7	0.0%
Total	\$19,594,415,642	100.0%	20,632	100.0%

(1) Local Secured Assessed Valuation.
Source: HdL Coren & Cone

Principal Property Taxpayers. The top ten largest local secured property taxpayers in the City, as shown on the 2020-21 secured tax roll, are listed in the table below. For fiscal year 2020-21, the total assessed valuation of the ten largest local secured taxpayers is 14% of the total City fiscal year 2020-21 assessed valuation of \$18,085,699,586. See “–Property Taxes” above for additional information on the levy and collection of property taxes in the City.

TABLE 7
City of Milpitas
Principal Property Taxpayers
Fiscal Year 2020-21

No.	Taxpayer	Primary Land Use	2019-20 Assessed Valuation	Percentage of Total Assessed Valuation ⁽¹⁾
1.	Cisco Systems Inc.	Industrial	\$497,147,477	2.54%
2.	KLA Tencor Corporation	Industrial	493,940,280	2.52
3.	Milpitas Mills LP	Regional Mall	342,671,781	1.75
4.	Sandbox Expansion LLC	Industrial	241,923,583	1.23
5.	Campus 237 Owner LLC	Industrial	238,100,000	1.22
6.	Milpitas-District 1 Owner LLC	Apartments	220,914,767	1.13
7.	McCarthy Center Holdings LLC	Apartments	194,779,911	0.99
8.	Lago Vista Milpitas Holdings LLC	Apartments	172,205,403	0.88
9.	Amalfi Milpitas LLC	Apartments	171,056,332	0.87
10.	LMC Milpitas Holdings I LLC	Apartments	170,685,954	0.87
Total			\$2,743,425,488	14.00%

(1) The total City secured assessed valuation for fiscal year 2020-21 is \$19,594,415,342.

Source: HdL Coren & Cone.

New Developments. The Milpitas Transit Area Specific Plan (“TASP”) is a land use plan adopted in 2008 for the redevelopment of an approximately 437-acre area in the southern portion of the City that includes a number of previous industrial uses, as well as the existing Great Mall shopping center, all surrounding the VTA light rail stations and the new Milpitas BART Transit Center. Since the TASP adoption, over 6,950 housing units have been entitled, approximately 5,000 of those have been constructed through Fiscal Year 2019-20, and the remaining units of the 7,109 new units allowed by the plan are anticipated to be entitled and permitted through Fiscal Year 2022-23. The new units have the potential to increase the assessed valuation of the property in the area and, as a result, the amount of property tax revenues collected by the General Fund.

The TASP also allowed for the development of over 287,000 square feet of new retail commercial space, over 993,000 square feet of office space and up to 350 new hotel rooms, little of which has been developed to this point. Approximately 70,000 square feet of commercial retail space is anticipated to be completed by the end of Fiscal Year 2019-20 and an additional 100,000 square feet is anticipated to be constructed through Fiscal Year 2022-23.

The City is currently updating the TASP, to be known as the Milpitas Metro Specific Plan (“MMSP”), which is anticipated to be adopted in 2021. It is expected that the MMSP will increase the housing potential by several thousand housing units and increase the amount of potential office commercial space by more than 500,000 square feet.

Sales & Use Taxes

Sales & Use Taxes represent the 2nd largest source of revenues to the City's General Fund, accounting for just under 30% of total General Fund revenues over the past three fiscal years. Sales & uses taxes are less stable sources of revenues to the City, given that they are based on consumer spending within the City which is impacted by a variety of factors including the overall economy and other factors. For example, the COVID-19 pandemic has, and is expected to continue to, materially adversely impact sales and use taxes collected by the City.

Sales tax revenues totaled \$25.1 million in Fiscal Year 2019-20, a decrease of approximately \$3.8 million over the prior fiscal year. Revenues are 7% less than last year at the same time which is due to the COVID-19 Virus causing sales tax generating businesses to close during the 4th Quarter to comply with the Shelter-in-Place order. However, taking into account the timing change in payments from the California Department of Tax and Fee Administration (CDTFA), which allocated an extra payment, revenues are actually 13% less than last year at the same time. Sales tax revenues are projected to be \$24.7 million in fiscal year 2020-21, a decrease of 1.3% or \$0.3 million compared to fiscal year 2019-20 due to downward business level adjustment from recent actuals trends related to COVID-19.

Taxable transactions in the City for Fiscal Year 2019-20 are subject to the following sales and use tax, of which the City's share is only a portion. The City collects a percentage of taxable sales in the City (minus certain administrative costs) pursuant to the Bradley-Burns Uniform Local Sales and Use Tax (the "**Sales Tax Law**"). The State collects and administers the sales tax under the Sales Tax Law, and makes distributions on taxes collected within the City, as shown in the following table.

TABLE 8
City of Milpitas
Sales Tax Rate
Effective January 1, 2020

Statewide Rate	7.250%
Santa Clara County Retail Transactions and Use Tax	0.125
Santa Clara County Transit District	0.500
Santa Clara County Valley Transportation Authority	0.500
Santa Clara VTA BART Operating and Maintenance Transactions and Use Tax	0.125
Silicon Valley Transportation Solutions Tax	<u>0.500</u>
Total	9.000%

Source: City of Milpitas Finance Department.

Sales and use taxes are complementary taxes; when one applies, the other does not. In general, the statewide sales tax applies to gross receipts of retailers from the sale of tangible personal property in the State. The use tax is imposed on the purchase, for storage, use or other consumption in the State of tangible personal property from any retailer. The use tax generally applies to purchases of personal property from a retailer outside the State where the use will occur within the State. The sales tax is imposed upon the same transactions and items as the statewide sales tax and the statewide use tax.

The City has placed on the November 2020 ballot a ¼ cent Transactions and Use Tax (TUT) tax rate increase from 9.00% to 9.25%. The tax, if passed, is forecast to increase revenue by an additional \$6,500,000 annually for 8 years.

Certain transactions are exempt from the State sales tax, including sales of the following products:

- food products for home consumption;
- prescription medicine;
- newspapers and periodicals;
- edible livestock and their feed;
- seed and fertilizer used in raising food for human consumption; and
- gas, electricity and water when delivered to consumers through mains, lines and pipes.

This is not an exhaustive list of exempt transactions. A comprehensive list can be found in the State Board of Equalization's Publication No. 61 (February 2017) entitled "Sales and Use Taxes: Exemptions and Exclusions," which can be found on the State Board of Equalization's website at <http://www.boe.ca.gov/>. *The reference to this Internet website is provided for reference and convenience only. The information contained within the website may not be current, has not been reviewed by the City and is not incorporated in this Official Statement by reference.*

Sales Tax Collection Procedures. Collection of the sales and use tax is administered by the California Department of Tax and Fee Administration (the "CDTFA"). This process was formerly administered by the State Board of Equalization. The Taxpayer Transparency and Fairness Act of 2017, which took effect July 1, 2017, restructured the State Board of Equalization and separated its functions among three separate entities: the State Board of Equalization, the CDTFA and the Office of Tax Appeals. The State Board of Equalization will continue to perform the duties assigned to it by the State Constitution, while all other duties will be transferred to the newly established CDTFA and the Office of Tax Appeals. CDTFA will handle most of the taxes and fees previously collected by the State Board of Equalization, including sales and use tax.

Under the Sales and Use Tax Law, all sales and use taxes collected by the CDTFA under a contract with any city, city and county, or county are required to be transmitted by the CDTFA to such city, city and county, or county periodically as promptly as feasible. These transmittals are required to be made at least twice in each calendar quarter.

Under its procedures, the CDTFA projects receipts of the sales and use tax on a quarterly basis and remits an advance of the receipts of the sales and use tax to the City on a monthly basis. The amount of each monthly advance is based upon the CDTFA's quarterly projection. During the last month of each quarter, the CDTFA adjusts the amount remitted to reflect the actual receipts of the sales and use tax for the previous quarter.

The CDTFA receives an administrative fee based on the cost of services provided by the Board to the City in administering the City's sales tax, which is deducted from revenue generated by the sales and use tax before it is distributed to the City.

As part of the State government's response to the COVID-19 pandemic, certain businesses were able to defer the payment of their sales taxes due to the City.

Historic Taxable Transactions. The following table shows historical taxable transactions in the City for the most recent five years available.

TABLE 9
City of Milpitas
Taxable Transactions
Fiscal Years 2015 through 2019
(In Thousands)

	2015	2016	2017	2018	2019
Motor Vehicle and Parts Dealers	\$175,166	\$183,213	\$203,731	\$192,212	\$183,524
Home Furnishings and Appliances	68,671	72,599	74,401	73,042	68,859
Building Materials	54,157	121,232	132,201	149,238	138,306
Food and beverage stores	49,565	49,640	51,989	52,081	53,137
Gasoline stations	96,147	89,510	95,369	105,391	104,353
Apparel stores	331,402	333,934	324,751	339,841	341,071
General merchandise stores	78,572	84,442	82,469	78,218	76,880
Food services and drinking places	261,459	278,139	291,252	299,233	316,841
Other retail stores	87,126	85,234	78,312	74,539	82,831
All other outlets	<u>700,857</u>	<u>700,726</u>	<u>982,057</u>	<u>768,251</u>	<u>873,388</u>
Total All Outlets	\$1,903,123	\$1,998,669	\$2,316,532	\$2,132,045	\$2,239,189

(1) Most current information available.

Source: California Department of Tax and Fee Administration.

Other Taxes

The category of Other Taxes includes Transient Occupancy Taxes ("TOT"), real estate transfer taxes and business license taxes. By far the biggest of these taxes is the TOT. All three categories, and particularly the TOT, has been materially adversely impacted by the slowdown in travel caused by the COVID-19 pandemic and related shelter-in-place orders.

Transient Occupancy Tax. Prior to the COVID-19 pandemic, TOT revenues were projected to increase due to anticipated new hotel openings projected to drive up demand, and the increase of the TOT from 10% to 14% following a successful ballot measure (November 2018) effective January 3, 2019. Additionally, on April 30, 2019, a report to approve and authorize the City Manager to execute a voluntary agreement with Airbnb, Inc. for the collection of the City's TOT on residential short-term rentals was presented and subsequently approved by City Council. City staff estimated that the additional TOT collected and remitted through Airbnb, Inc. would be an approximately \$260,000 annually. However, with the onset of the COVID-19 pandemic, TOT revenues collected by the City were significantly lower than anticipated in the last quarter of Fiscal Year 2019-20 and are projected to substantially decrease (\$6.8 million) in Fiscal Year 2020-21 compared to Fiscal Year 2019-20 from \$11.4 million of actual receipts in Fiscal Year 2019-20 to \$4.6 million for Fiscal Year 2020-21.

Other Taxes. Other taxes collected by the City and available to the General Fund include real estate transfer tax and business license tax. As residential units are being developed and occupied, it is anticipated that the City will collect more real estate transfer tax; at the same time, the COVID-19 pandemic may have a material adverse impact on the number of real estate transactions.

Other Sources of Revenues

Franchise Fees. Franchise fees are a regulatory fee charged to utility companies for the privilege of doing business in the City (i.e.: garbage franchise fee, gas and electric franchise fee).

License and Permits. Licenses and permits consist of building permits and fire permits which are primarily construction related. Because they follow the development economic cycle, they are highly volatile in times of economic change. It is projected that these revenues will continue to increase in the next five years due to continued interest in residential developments in the Transit Area; however, as noted elsewhere, the COVID-19 pandemic may have a material adverse impact on the extent and pace of this projected development.

Operating Transfers In. Operating transfers in are mainly reimbursements from other funds for the staff support and administrative services provided by the general fund. These costs are determined through a methodological allocation process (known as the “**Cost Allocation Plan**”, or “**CAP**”). Net transfers into the general fund increase in conjunction with operating expenditure increases, an average of 3% annually.

Direct and Overlapping Debt

Set forth on the following page is a direct and overlapping debt report for the City (the “**Debt Report**”) prepared by California Municipal Statistics, Inc. and dated as of October 1, 2020. The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representations in connection therewith. The Debt Report generally includes long term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases long-term obligations issued by a public agency are payable from the general fund or other revenues of such public agency. The total 2020-21 assessed valuation of \$21,478,096,351 reflected in the Debt Report is provided by California Municipal Statistics, Inc. Neither the City, the Authority nor the Underwriter has verified this information.

TABLE 10
City of Milpitas
Direct and Overlapping Debt Statement
(as of October 1, 2020)

2020-21 Assessed Valuation: \$21,478,096,351

<u>OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt</u>
Santa Clara County	3.898%	\$ 31,678,461
San Jose-Evergreen Community College District	12.484	105,682,543
Milpitas Unified School District	99.134	152,824,974
East Side Union High School District	0.769	6,527,500
Berryessa Union School District	4.933	3,926,895
Santa Clara Valley Water District Benefit Assessment District	3.898	<u>2,552,995</u>
TOTAL OVERLAPPING TAX AND ASSESSMENT DEBT		<u>\$303,193,368</u>

<u>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</u>		
Santa Clara County General Fund Obligations	3.898%	37,585,299
Santa Clara County Pension Obligation Bonds	3.898	13,307,741
Santa Clara County Board of Education Certificates of Participation	3.898	135,650
San Jose-Evergreen Community College District Other Post Employment Benefit Bonds	12.484	5,923,658
Milpitas Unified School District Certificates of Participation	99.134	11,706,872
East Side Union High School District OPEB Bonds	0.769	211,283
Berryessa Union School District Certificates of Participation	4.933	168,996
City of Milpitas⁽¹⁾	100.000	0
Santa Clara County Vector Control District Certificates of Participation	3.898	<u>78,350</u>
TOTAL GROSS DIRECT AND OVERLAPPING GENERAL FUND DEBT		<u>\$69,117,849</u>
Less: Santa Clara County supported obligations		<u>1,244,685</u>
TOTAL NET DIRECT AND OVERLAPPING GENERAL FUND DEBT		<u>\$67,873,164</u>

<u>OVERLAPPING TAX INCREMENT DEBT (Successor Agency):</u>	100.000%	\$87,865,000
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GROSS COMBINED TOTAL DEBT	\$460,176,2170
NET COMBINED TOTAL DEBT	\$458,931,532

Ratios to 2019-20 Assessed Valuation:

Total Overlapping Tax and Assessment Debt	1.41%
Gross Combined Total Debt.....	2.14%
Net Combined Total Debt	2.04%

Ratio to Redevelopment Successor Agency Incremental Valuation:

Total Overlapping Tax Increment Debt	1.02%
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(1) Excludes tax and revenue anticipation notes, revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

Long-Term Obligations Payable Out of General Fund

Outstanding Lease Obligation. In December 2018, the City entered into a lease purchase agreement in the amount of \$952,245 at 4.25% interest with Key Government Finance, Inc. to finance the purchase and installation of the City's Network Upgrade Project. This was paid-off early by the City, and is no longer outstanding.

Investment Policy and Portfolio

On March 3, 2020 the City Council approved outsourcing the management of the City's investment portfolio to Chandler Asset Management. The transition for management of the investment portfolio to Chandler was completed by June 1, 2020. For additional information concerning the City investments, see "APPENDIX A – Audited Financial Statements for Fiscal Year Ended June 30, 2019 – Cash and Investments."

The following table summarizes the City's investment portfolio as of July 30, 2020.

TABLE 11
City of Milpitas
Summary of Investment Portfolio
as of July 30, 2020

<u>Investment Type</u>	<u>% of Investment Portfolio</u>	<u>Market Value</u>
LAIF	42.2%	\$147,033,528
Money Market Funds	4.9	17,050,112
Corporate Notes	5.0	17,536,812
Federal Agency	40.5	141,152,603
Treasury Coupon Securities	7.0	24,396,991
Negotiable CDs	0.4	1,263,791
Total	100.0%	\$348,433,836

Source: City of Milpitas Finance Department.

Employee Relations

The City's relations with its employees are generally considered good, and the City has not experienced a work stoppage or similar event in the past 5 years. Per the Fiscal Year 2020-21 Adopted Budget, full-time equivalent (FTE) benefited positions are increased by 2.0 positions to 439.25 positions. These FTEs are divided within 5 different bargaining units, as shown in the following table. Certain other employees of the City are unrepresented.

<u>Bargaining Unit</u>	<u>MOU Expiration Date</u>
Milpitas Police Officer Association	12/31/2021
International Assoc. of Firefighters	6/30/2022
Mid-Management and Confidential Unit	6/30/2023
Professional and Technical Group	6/30/2023
Milpitas Employee Association	6/30/2023

Source: City of Milpitas Adopted Budget for Fiscal Year 2020-21.

Pension Plans

This caption contains certain information relating to California Public Employees' Retirement System ("CalPERS"). The information is primarily derived from information produced by CalPERS, its independent accountants and actuaries. The City has not independently verified the information provided by CalPERS and makes no representations and expresses no opinion as to the accuracy of the information provided by CalPERS.

The comprehensive annual financial reports of CalPERS are available on its Internet website at www.calpers.ca.gov. The CalPERS website also contains CalPERS' most recent actuarial valuation reports and other information concerning benefits and other matters. Such information is not incorporated by reference in this Official Statement. None of the Authority, City or Underwriter can guarantee the accuracy of such information. Actuarial assessments are "forward-looking" statements that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may not materialize or may be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

Overview of City's Pension Plans and Funded Status. The City has two pension plans with CalPERS – the Safety Plan for its sworn employees and the Miscellaneous Plan for all others. Over the past decade, the cost of the City's pension benefits has risen dramatically. In Fiscal Year 2009-10, annual pension cost was approximately \$7 million for both plans and by Fiscal Year 2018-19 it was \$17 million, an increase of 143% over ten years. The primary reasons for the cost increases are investment losses caused by the last recession, demographic changes, and CalPERS policy changes.

The CalPERS policy charges are described below. The major demographic changes are an increase in the retiree population and a longer-life expectancy. For example, in Fiscal Year 2008-09, the City had 276 active or employed Miscellaneous employees versus 228 retired. For Fiscal Year 2018-19, the City had 202 active Miscellaneous employees versus 383 retired employees.

Due to the various factors described above, the City's unfunded actuarial liability (UAL) for the Miscellaneous Plan and the Safety Plan combined, as of the June 30, 2018 valuation date, was approximately \$207 million, which equates to a funded ratio of 65.2%. By way of

contrast, in Fiscal Year 2006-07, the two Plans were both more than 100% funded. To mitigate rising pension costs, the City Council has taken several actions including:

- Planning for funding in the annual operating budget to ensure that the City pays its annual pension contribution as determined by CalPERS.
- Working with its bargaining units to approve a lower and less-expensive pension benefit (Tier 2) for “classic” (non-PEPRA) employees.
- Setting aside surplus amounts of approximately \$34 million into the PERS Rate Stabilization Reserve to address future liabilities.
- Established a Section 115 Trust for a portion of the funds previously put into the PERS Rate Stabilization Reserve.

Implementation of GASB Nos. 68 and 71. In June 2012 and November 2013, the Governmental Accounting Standards Board issued GASB Statement No. 68, *Accounting and Financial Reporting for Pensions—an amendment of GASB Statement No. 27* (“**GASB Statement No. 68**”) and GASB No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date – An Amendment of GASB Statement No. 68* (“**GASB Statement No. 71**”), respectively. The primary objective of GASB Statement No. 68, as amended, is to improve accounting and financial reporting by state and local governments for pensions and improve information provided by state and local governmental employers about financial support for pensions that is provided by other entities.

GASB Statement No. 68, as amended, revised the accounting treatment of defined benefit pension plans, changing the way expenses and liabilities are calculated and how state and local government employers report those expenses and liabilities in their financial statements. Major changes include: (i) the inclusion of unfunded pension liabilities on the government’s balance sheet (previously, such unfunded liabilities were typically included as notes to the government’s financial statements); (ii) pension expense incorporates more rapid recognition of actuarial experience and investment returns and is no longer based on the employer’s actual contribution amounts; (iii) lower actuarial discount rates that are required to be used for underfunded plans in certain cases for purposes of the financial statements; (iv) closed amortization periods for unfunded liabilities that are required to be used for certain purposes of the financial statements; and (v) the difference between expected and actual investment returns to will be recognized over a closed five-year smoothing period. The reporting requirements took effect in fiscal year 2014-15. Based on the adoption of the new accounting standards, beginning with the fiscal year 2014-15 actuarial valuation, the annual required contribution and the annual pension expense will be different. GASB Statement No. 68, as amended, changes the reporting and disclosure requirements for financial statement accounting purposes, but it does not change the City’s pension plan funding obligations and, therefore, had no effect on the City’s General Fund.

Plan Description. All qualified permanent and probationary employees are eligible to participate in the City’s separate Safety (police and fire) or Miscellaneous (all other) Plans, agent multiple-employer defined benefit pension plans administered by CalPERS, which acts as a common investment and administrative agent for its participating member employers. Benefit provisions under the Plans are established by State statute and City resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding

benefit provisions, assumptions and membership information that can be found on the CalPERS website.

Benefits Provided. CalPERS provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for non-duty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost of living adjustments for each plan are applied as specified by the Public Employees' Retirement Law.

The provisions and benefits of each Plan that were in effect at June 30, 2020, are summarized as follows:

Miscellaneous Plan

	Classic Tier I	Classic Tier II	PEPRA
Hire Date	Prior to October 9, 2011	After October 9, 2011	On or after January 1, 2013
Benefit Formula	2.7% @ 55	2% @ 60	2.0% @ 62
Benefit Vesting Schedule	5 years of service	5 years of service	5 years of service
Benefit Payments	Monthly for life	Monthly for life	Monthly for life
Retirement Age	50-55	50-63	52-67
Monthly Benefits, As a % of Eligible Compensation	2.0% to 2.7%	1.092%-2.418%	1.0% to 2.5%
Required Employee Contribution Rates	8.00%	7.00%	6.25%
Required Employer Contributions Rates	10.040%	10.040%	10.040%
Required Unfunded Actuarial Liability Contribution		\$5,501,100	

Safety Plans

	Classic Tier I	Classic Tier II	PEPRA
Hire Date	Prior to April 8, 2012	After April 8, 2012	On or after January 1, 2013
Benefit	3% @ 50	3.0% @ 55	2.7% @ 57
Benefit Vesting Schedule	5 years of service	5 years of service	5 years of service
Benefit Payments	Monthly for life	Monthly for life	Monthly for life
Retirement Age	50	50-55	50-57
Monthly Benefits, As a % of Eligible Compensation	3.000%	2.4% to 3.0%	2.0% to 2.7%
Required Employee Contribution Rates	9.000%	9.000%	10.000%
Required Employer Contributions Rates	19.318%	19.318%	19.38%
Required Unfunded Actuarial Liability Contribution		\$7,480,263	

Source: Milpitas unaudited Fiscal Year ended June 30, 2020.

Beginning in fiscal year 2016, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability ("UAL"). The dollar amounts are billed on a monthly basis or the City can elect a lump sum payment option. The City's required contributions for the unfunded liability in the Miscellaneous and Safety Plans in Fiscal Year 2018-19 were \$4,727,847 and \$6,321,144, respectively, which were made under the lump sum payment option.

Employees Covered. The following employees were covered by the benefit terms for the Miscellaneous Plan as of the most recent actuarial valuation date of June 30, 2018 and the measurement date of June 30, 2019.

Employees	Miscellaneous Plan			Safety Plan		
	Classic Tier I	Classic Tier II	PEPRA Tier	Classic Tier I	Classic Tier II	PEPRA Tier
Inactive employees or beneficiaries receiving benefits	389					
Inactive employees entitled to but not yet receiving benefits	320					
Active employees	<u>116</u>					
Total	819					

Source: City of Milpitas unaudited Fiscal Year ended June 30, 2020.

Contributions. Section 20814(c) of the California Public Employees' Retirement Law requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. The City is required to contribute the difference between the actuarially determined rate and the contribution rate of employees.

Net Pension Liability. The City's net pension liability for each plan is measured as the total pension liability, less the pension plan's fiduciary net position. The net pension liability of the each of the plans was measured as of June 30, 2019, using an actuarial valuation as of June 30, 2018 rolled forward to June 30, 2018, using standard update procedures, are shown in the following tables.

	Miscellaneous Plan		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability/(Asset)
Balance at June 30, 2018	\$230,556,047	\$163,919,915	\$66,636,132
Changes in the Year:			
Service Cost	3,361,140	--	3,361,140
Interest on the Total Pension Liability	16,517,342	--	16,517,342
Differences Between Actual & Expected Experience	4,569,776	--	4,569,776
Changes of assumptions	--	--	--
Changes in benefit terms	--	--	--
Contribution-employer	--	6,864,376	(6,864,376)
Contribution-employee	--	1,569,027	(1,569,027)
Net Plan to Plan Resource Movement	--	--	--
Net Investment Income	--	10,774,536	(10,774,536)
Administrative expenses	--	(116,977)	116,977
Other Misc. Income/(Expense)	--	381	(381)
Benefit Payments, Including Refunds of Employee Contr.	(11,589,225)	(11,589,225)	--
Net Changes during 2018-19	\$12,859,033	\$7,502,118	\$5,356,915
Balance at June 30, 2019	\$243,415,080	\$171,422,033	\$71,993,047

Source: City of Milpitas unaudited Fiscal Year ended June 30, 2020.

	Safety Plan		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability/(Asset)
Balance at June 30, 2018	\$344,599,333	\$224,139,384	\$120,459,949
Changes in the Year:			
Service Cost	6,211,449	--	6,211,449
Interest on the Total Pension Liability	24,560,414	--	24,560,414
Differences Between Actual & Expected Experience	4,563,968	--	4,563,968
Changes of assumptions	--	--	--
Changes in benefit terms	--	--	--
Contribution-employer	--	10,288,856	(10,288,856)
Contribution-employee	--	2,441,763	(2,441,763)
Net Plan to Plan Resource Movement	--	--	--
Net Investment Income	--	14,733,700	(14,733,700)
Administrative expenses	--	(159,951)	159,951
Other Misc. Income/(Expense)	--	521	(521)
Benefit Payments, Including Refunds of Employee Contr.	(17,533,455)	(17,533,455)	--
Net Changes during 2018-19	\$17,802,376	\$9,771,434	\$8,030,942
Balance at June 30, 2019	\$362,401,709	\$233,910,818	\$128,490,891

Source: City of Milpitas unaudited Fiscal Year ended June 30, 2020.

Changes in Net Pension Liability are subject to various assumption and are sensitive to changes in the discount rate for the Miscellaneous Plan and the Safety Plan, among other things. For additional details on the Miscellaneous Plan and the Safety Plan and related matters, see Note 11 to the City's audited financial statements for the fiscal year ending June 30, 2019, attached hereto as Appendix A.

Recent Actions Taken by CalPERS. At its April 17, 2013, meeting, CalPERS' Board of Administration (the "Board of Administration") approved a recommendation to change the CalPERS amortization and smoothing policies. Prior to this change, CalPERS employed an amortization and smoothing policy that spread investment returns over a 15-year period with experience gains and losses paid for over a rolling 30-year period. As a result, CalPERS now employs an amortization and smoothing policy that will pay for all gains and losses over a 30-year period with a five-year ramp-up, and five-year ramp-down, period. The new amortization and smoothing policy was used for the first time in the June 30, 2013 actuarial valuations in setting employer contribution rates for fiscal year 2015-16. On February 13, 2018, the Board of Administration voted to shorten the period over which CalPERS will amortize actuarial gains and losses from 30 years to 20 years for new pension liabilities, effective for the June 30, 2019 actuarial valuations. Amortization payments for all unfunded accrued liability bases will be computed to remain a level dollar amount throughout the amortization period, and certain 5-year ramp-up and ramp-down periods will be eliminated.

On February 18, 2014, the Board of Administration approved new demographic actuarial assumptions based on a 2013 study of recent experience. The largest impact, applying to all benefit groups, is a new 20-year mortality projection reflecting longer life expectancies and that longevity will continue to increase. Because retirement benefits will be paid out for more years, the cost of those benefits will increase as a result. The Board of Administration also assumed earlier retirements for Police 3%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@60, which will increase costs for those groups. As a result of these changes, rates increased beginning in fiscal year 2016-17 (based on the June 30, 2014 valuation) with full impact in fiscal year 2020-21.

On November 18, 2015, the Board of Administration adopted a funding risk mitigation policy intended to incrementally lower its discount rate – its assumed rate of investment return –

in years of good investment returns, help pay down the pension fund's unfunded liability, and provide greater predictability and less volatility in contribution rates for employers. The policy establishes a mechanism to reduce the discount rate by a minimum of 0.05 percentage points to a maximum of 0.25 percentage points in years when investment returns outperform the existing discount rate, currently 7.000%, by at least four percentage points. CalPERS staff modeling anticipates the policy will result in a lowering of the discount rate to 6.5% in about 21 years, improve funding levels gradually over time and cut risk in the pension system by lowering the volatility of investment returns. More information about the funding risk mitigation policy can be accessed through CalPERS' web site at the following website address: <https://www.calpers.ca.gov/page/newsroom/calpers-news/2015/adopts-funding-risk-mitigation-policy>. This policy is in suspense until the discount rate is fully reduced to 7.000% as described below. *The reference to this Internet website is provided for reference and convenience only. The information contained within the website may not be current, has not been reviewed by the City and is not incorporated in this Official Statement by reference.*

On December 21, 2016, the Board of Administration voted to lower its discount rate from the current 7.5% to 7.0% over the following three years according to the following schedule.

<u>Fiscal Year</u>	<u>Discount Rate</u>
2017-18	7.375%
2018-19	7.250
2019-20	7.000

For public agencies like the City, the discount rate of 7.000% became effective on July 1, 2019. Lowering the discount rate means employers that contract with CalPERS to administer their pension plans will see increases in their normal costs and unfunded actuarial liabilities. Active members hired after January 1, 2013, under the Public Employees' Pension Reform Act will also see their contribution rates rise. The three-year reduction of the discount rate has resulted in average employer rate increases of about 1 percent to 3 percent of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2 percent to 5 percent increase for most safety plans. No assurance can be given that the Board of Administration will not make further changes to the methods used to determine pension liability of CalPERS members, including the City.

PARS Plan. The Omnibus Budget Reconciliation Act of 1990 mandated that public sector employees who are not members of their employer's existing retirement system as of January 1, 1992 be covered by either Social Security or an alternative plan. The City's part-time, seasonal and temporary employees are covered under the Public Agency Retirement System ("PARS"), a defined contribution plan, which requires these employees to contribute 6% and the City to contribute 1.5% of the employees pay plus administration costs. The City's required contributions of \$31,435 and the employee's required contributions of \$125,740 were made during the fiscal year ending June 30, 2019.

Deferred Compensation Plan. City employees may defer a portion of their compensation under a City sponsored Deferred Compensation Plan created in accordance with Internal Revenue Code Section 457. Under this plan, participants are not taxed on the deferred portion of their compensation until distributed to them; distributions may be made only at termination, retirement, death or in an emergency defined by the plan. The laws governing deferred compensation plan assets require plan assets to be held by a trust for the exclusive benefit of plan participants and their beneficiaries. Since the assets held under these plans are

not the City's property and are not subject to City control, they are excluded from the City's financial statements.

Other Post-Employment Benefits (OPEB). The City provides postretirement health care benefits through its Retiree Medical Benefits Plan and its Dependent Fund Post Employment Benefit (OPEB) Plan to employees who retire in good standing from the City after attaining the age of 50 and to certain employees who retire due to disability.

Retiree Medical Benefits Plan. As of June 30, 2020, there were 295 participants receiving these health care benefits. The City joined the California Employers' Retiree Benefit Trust ("CERBT"), an agent multiple-employer plan administered by CALPERS, consisting of an aggregation of single-employer plans. The CERBT issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained from the California Public Employees' Retirement System, CERBT, P.O. Box 942703, Sacramento, CA 94229-2703.

In order to qualify for postemployment medical and dental benefits an employee must retire from the City and maintain enrollment in one of City's eligible health plans. In addition, there are eligibility rules and contribution requirements defined in the Memorandum of Understanding (MOU) with each employee group. In the MOUs, the Benefit Cap is defined as not more than the single medical premium rate paid by the City for active employees, and the Retiree Cap is 15% above the single Kaiser medical premium rate. The eligibility rules for each MOU are summarized in the City's audited financial statements.

The City's policy is to prefund the benefits by accumulating assets with CERBT pursuant to the City's annual budget approved by the City Council. The annual payment is equivalent to the actuarial defined contribution for the explicit subsidy liability only. For the year ended June 30, 2020, the City's contributions to the plan were \$4,528,174, and the net OPEB liability as of June 30, 2018 was \$13,996,905, which was a \$29,907,979 decrease from the net OPEB liability as of June 30, 2019 of \$43,904,884 primarily due to treating the two different benefits as separate plans. For Fiscal Year 2019-20, the City contributed \$3,478,018 (unaudited) and for Fiscal Year 2020-21, will contribute \$ \$655,375. By separating the two plans, per the City's actuary, the funded status for the Retiree Medical Benefit as of 6/30/2020 for the explicit benefit changed from 66.77% to 113.93%, which substantially reduced the City's annual contributions for FY 2020-21 and thereafter.

Dependent Fund Post Employment Benefit (OPEB) Plan. The City provides continuation of medical coverage to its retiring employees and their eligible dependents. Pursuant to various bargaining agreements with different employee groups, the City contributes a percent of total payroll toward the cost of medical coverage for the eligible dependents of retirees. The City does not define the eligibility for or amount of any such benefits paid, nor is it legally obligated to make any payments to these dependents. The extent of the City's obligation is to make the negotiated contributions to the funds. However, the City has determined that a liability for the projected cost of these benefits must be reported in its financial statements in accordance with current accounting standards.

See APPENDIX A Note 12 for additional details regarding the City's pension and other employee benefits, including as relates to OPEB.

Establishment of Section 115 Trust. In March 2020, the City Council directed City staff to move forward with establishing a Section 115 Trust, so that a portion of the funds

available in the PERS Rate Stabilization Reserve could be deposited into the trust and potentially achieve a higher investment return than within the reserve. A Section 115 Trust is a legal vehicle pursuant to which the City can deposit funds and determine that the funds may only be used for pension-related expenditures. The City retains control over the selection of the investments within the trust, which investments have the potential to earn a higher rate of return than when held in the City's pooled investment accounts.

The next step with respect to the Section 115 Trust was the issuance in August 2020 of a Request for Proposals for an investment management company, proposals have been received and are being evaluated by City staff with the expectation of making a selection by the end of the year.

Risk Management

The City participates in the Pooled Liability Assurance Network Joint Powers Authority ("PLAN JPA"), a joint powers authority established to provide liability insurance coverage, claims and risk management, and legal defense to its participating members. PLAN JPA provides \$2,500,000 of self-funded general liability and auto liability coverage and \$27,500,000,000 excess liability coverage per occurrence (\$22,500,000 of excess auto liability coverage) and is responsible for paying claims in excess of the City's \$100,000 deductible. PLAN JPA also provides \$2,000,000 employee theft coverage in excess of the City's \$10,000 deductible, and \$2,000,000 of government crime coverage (with various sub-limits depending on the type of crime) in excess of the City's \$10,000 deductible. PLAN JPA provides \$225,000 of self-funded property coverage with excess property insurance up to \$1 billion. The City retains a self-insured amount of \$5,000 for each property and \$5,000 for each vehicle per occurrence.

PLAN JPA is governed by a Board of Directors consisting of representatives from member municipalities. The Board controls the operations of PLAN JPA, consisting of funding policies and approval of operating budgets, independent of any influence by member municipalities beyond their representation on the Board.

The City's annual contributions to PLAN JPA are calculated based on the ratio of the City's payroll to the total payrolls of all entities participating in the program and the City's loss experience. Actual surpluses or losses are shared according to a formula developed from overall costs and spread to member entities on a percentage basis.

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

The constitutional and statutory provisions discussed in this section have the potential to affect the ability of the City to levy taxes and spend tax proceeds for operating and other purposes.

Article XIII A of the State Constitution

Section 1(a) of Article XIII A of the State Constitution limits the maximum ad valorem tax on real property to 1% of full cash value (as defined in Section 2 of Article XIII A), to be collected by counties and apportioned according to law. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to ad valorem taxes to pay interest or redemption charges on (1) indebtedness approved by the voters prior to June 1, 1978 or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after June 1, 1978, by two thirds of the votes cast by the voters voting on the Proposition. Section 2 of Article XIII A defines “full cash value” to mean “the county assessor’s valuation of real property as shown on the 1975–76 tax bill under ‘full cash value’ or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.” The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction or reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that notwithstanding any other law, local agencies may not levy any ad valorem property tax except to pay debt service on indebtedness approved by the voters as described above.

The voters of the State subsequently approved various measures that further amended Article XIII A. One such amendment generally provides that the purchase or transfer of (i) real property between spouses or (ii) the principal residence and the first \$1,000,000 of the full cash value of other real property between parents and children, does not constitute a “purchase” or “change of ownership” triggering reassessment under Article XIII A. This amendment could serve to reduce the property-tax revenues of the City. Other amendments permitted the State Legislature to allow persons over 55 or “severely disabled homeowners” who sell their residences and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence’s assessed value to the new residence.

In the November 1990 election, the voters approved the amendment of Article XIII A to permit the State Legislature to exclude from the definition of “newly constructed” the construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies constructed or installed in existing buildings after November 6, 1990.

Article XIII A has also been amended to permit reduction of the “full cash value” base in the event of declining property values caused by damage, destruction or other factors, provided that there would be no increase in the “full cash value” base in the event of reconstruction of property damaged or destroyed in a disaster.

Article XIII B of the State Constitution

Article XIII B of the State Constitution limits the annual appropriations of the State and of any city, county, school district, special district, authority or other political subdivision of the State to the appropriations limit for the prior Fiscal Year, as adjusted for changes in the cost of living, population and services for which the fiscal responsibility is shifted to or from the governmental entity. The “base year” for establishing this appropriations limit is the 1978–79 Fiscal Year. The appropriations limit may also be adjusted in emergency circumstances, subject to limitations.

Appropriations of an entity of local government subject to Article XIII B generally include authorizations to expend during a Fiscal Year the “proceeds of taxes” levied by or for the entity, exclusive of certain State subventions, refunds of taxes, and benefit payments from retirement, unemployment insurance and disability insurance funds. “Proceeds of taxes” include but are not limited to, all tax revenues, certain State subventions received by the local governmental entity and the proceeds to the local governmental entity from (1) regulatory licenses, user charges, and user fees (to the extent that such proceeds exceed the cost of providing the service or regulation) and (2) the investment of tax revenues. Article XIII B provides that if a governmental entity’s revenues in any year exceed the amounts permitted to be spent, the excess must be returned by revising tax rates or fee schedules over the subsequent two fiscal years.

Article XIII B does not limit the appropriation of moneys to pay debt service on indebtedness existing or authorized as of January 1, 1979, or for bonded indebtedness approved thereafter by a vote of the electors of the issuing entity at an election held for that purpose, or appropriations for certain other limited purposes. Furthermore, Article XIII B was amended in 1990 to exclude from the appropriations limit “all qualified capital outlay projects, as defined by the Legislature” from proceeds of taxes. The Legislature has defined “qualified capital outlay project” to mean a fixed asset (including land and construction) with a useful life of 10 or more years and a value which equals or exceeds \$100,000. As a result of this amendment, the appropriations to pay the lease payments on the City’s long term General Fund lease obligations are generally excluded from the City’s appropriations limit.

The City has never exceeded its appropriations limit.

Articles XIII C and XIII D of the State Constitution

General. On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 adds Articles XIII C and XIII D to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act.” Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as “fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. The amendments to Article XIII C define “taxes” that are subject to voter approval as “any levy, charge, or exaction of any kind imposed by a local government,” with certain exceptions.

Taxes. Article XIIC requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City (“general taxes”) require a majority vote; taxes for specific purposes (“special taxes”), even if deposited in the City’s General Fund, require a two-thirds vote.

Property-Related Fees and Charges. Article XIID also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a “special benefit,” as defined in Article XIID, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIC also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City’s General Fund. If such repeal or reduction occurs, the City’s ability to pay debt service on the Bonds could be adversely affected.

Burden of Proof. Article XIIC provides that local government “bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Similarly, Article XIID provides that in “any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance” with Article XIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIC and XIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Impact on City’s General Fund. The City does not believe that any material source of General Fund revenue is subject to challenge under Proposition 218 or Proposition 26.

The approval requirements of Articles XIIC and XIID reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that it may need to meet increased expenditure needs.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State’s Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate,

limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled “The Local Taxpayer, Public Safety and Transportation Protection Act,” was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State’s authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Unitary Property

AB 454 (Chapter 921, Statutes of 1986) provides that revenues derived from most utility property assessed by the State Board of Equalization (“Unitary Property”), commencing with the 1988–89 Fiscal Year, are allocated as follows: (i) each jurisdiction will receive up to 102% of its prior year State–assessed revenue; and (ii) if county–wide revenues generated from Unitary Property are less than the previous year’s revenues or greater than 102% of the previous year’s revenues, each jurisdiction will share the burden of the shortfall or benefit of the excess revenues by a specified formula. This provision applies to all Unitary Property except railroads, whose valuation will continue to be allocated to individual tax rate areas.

The provisions of AB 454 do not constitute an elimination of the assessment of any State–assessed properties nor a revision of the methods of assessing utilities by the State Board of Equalization. Generally, AB 454 allows valuation growth or decline of Unitary Property to be shared by all jurisdictions in a county.

Possible Future Initiatives

Article XIII A, Article XIII B and Propositions 218, 26, IA and 22 were each adopted as measures that qualified for the ballot pursuant to the State’s initiative process. From time to time, other initiative measures could be adopted, further affecting the City’s revenues or its ability to expend revenues.

BOND OWNERS' RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

No Pledge of Taxes

General. The obligation of the City to pay the Lease Payments and Additional Rental Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments and Additional Rental Payments does not constitute a debt or indebtedness of the City, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

The City is currently liable on other obligations payable from general revenues, which are described above under "CITY FINANCIAL INFORMATION – Long-Term Obligations Payable Out of General Fund."

Limitations on Taxes and Fees. Certain taxes, assessments, fees and charges presently imposed by the City could be subject to the voter approval requirements of Article XIIC and Article XIID of the State Constitution. Based upon the outcome of an election by the voters, such fees, charges, assessments and taxes might no longer be permitted to be imposed, or may be reduced or eliminated and new taxes, assessments fees and charges may not be approved. The City has assessed the potential impact on its financial condition of the provisions of Article XIIC and Article XIID of the State Constitution respecting the imposition and increase of taxes, fees, charges and assessments and does not believe that an election by the voters to reduce or eliminate the imposition of certain existing fees, charges, assessments and taxes would substantially affect its financial condition. However, the City believes that if the initiative power was exercised so that all local taxes, assessments, fees and charges that may be subject to Article XIIC and Article XIID of the State Constitution are eliminated or substantially reduced, the financial condition of the City, including its General Fund, could be materially adversely affected.

Although the City does not currently anticipate that the provisions of Article XIIC and Article XIID of the State Constitution would adversely affect its ability to pay Lease Payments and its other obligations payable from the General Fund, no assurance can be given regarding the ultimate interpretation or effect of Article XIIC and Article XIID of the State Constitution on the City's finances. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

Additional Obligations of the City

General. The City is permitted to enter into other obligations which constitute additional charges against its revenues without the consent of Owners of the Bonds, and may in the future be subject to liabilities payable from the general fund (some of which are described below). To

the extent that additional obligations are incurred by (or imposed upon) the City, the funds available to pay Lease Payments may be decreased.

The Lease Payments and other payments due under the Lease (including payment of costs of repair and maintenance of the Leased Property, taxes and other governmental charges levied against the Leased Property) are payable from funds lawfully available to the City. If the amounts that the City is obligated to pay in a fiscal year exceed the City's revenues for such year, the City may choose to make some payments rather than making other payments, including Lease Payments and Additional Rental Payments, based on the perceived needs of the City. The same result could occur if, because of California Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues or is required to expend available revenues to preserve the public health, safety and welfare.

Litigation Unrelated to General Fund. The City is subject to litigation arising in the normal course of business. In the opinion of the City Attorney, there is no pending litigation which is likely to have a material adverse effect on the financial position of the City.

CalPERS Obligations. Many cities and other local agencies in the State have been faced with increased payments due to CalPERS in recent years. The City, like many other cities and local agencies in the State, is responsible for payments to CalPERS for its share of employee pension costs. Amounts owed to CalPERS for pension costs have increased in recent years and are expected to continue to increase, as CalPERS implements changes to its discount rate and other methodologies for calculating pension costs. See "THE CITY – Pension Plans" for additional information on CalPERS.

No Reserve Fund

No reserve fund will be established and maintained with respect to the Bonds. As a result, in the event on non-appropriation or non-payment of the Lease Payments in full when due, no other source of funds will be available to make payments of debt service Bonds while remedial actions are taken with respect to such non-appropriation or non-payment.

Default

Whenever any event of default referred to in the Lease happens and continues, the Trustee (as assignee of the Authority) is authorized under the terms of the Lease to exercise any and all remedies available under law or granted under the Lease. See "APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" for a detailed description of available remedies in the case of a default under the Lease.

If a default occurs, there is no remedy of acceleration of the total Lease Payments due over the term of the Lease. The Trustee is not empowered to sell the Leased Property and use the proceeds of such sale to prepay the Bonds or pay debt service on the Bonds.

The City will be liable only for Lease Payments on an annual basis and, in the event of a default, the Trustee would be required to seek a separate judgment each year for that year's defaulted Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against municipalities in the State, including a limitation on enforcement of judgments against funds of a fiscal year other than the fiscal year in which the Lease Payments were due and against funds needed to serve the public welfare and interest.

Abatement

Under certain circumstances related to damage, destruction, condemnation or title defects which cause a substantial interference with the use and possession of the Leased Property, the City's obligation to make Lease Payments will be subject to full or partial abatement and could result in the Trustee having inadequate funds to pay the principal and interest on the Bonds as and when due. See "SECURITY FOR THE BONDS – Abatement" and "APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

Although the City is required under the Lease to maintain property and liability insurance with respect to the Leased Property, the required insurance coverage is subject to certain conditions and restrictions. See "SECURITY FOR THE BONDS – Property Insurance."

In addition, the City is required to use the proceeds of rental interruption insurance maintained under the Lease to make debt service payments on the Bonds during any period of abatement. See "SECURITY FOR THE BONDS – Property Insurance." However, there is no assurance that the City will receive proceeds of rental interruption insurance in time to make debt service payments on the Bonds when due.

Property Taxes

Property taxes are typically the largest source of General Fund revenue to the City.

Levy and Collection. The City does not have any independent power to levy and collect property taxes. Any reduction in the tax rate or the implementation of any constitutional or legislative property tax decrease could reduce the City's property tax revenues, and accordingly, could have an adverse impact on the ability of the City to make Lease Payments. Likewise, delinquencies in the payment of property taxes could have an adverse effect on the City's ability to pay principal of and interest on the Bonds when due.

Reduction in Inflationary Rate. Article XIII A of the California Constitution provides that the full cash value base of real property used in determining assessed value may be adjusted from year to year to reflect the inflationary rate, not to exceed a 2% increase for any given year, or may be reduced to reflect a reduction in the consumer price index or comparable local data. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS." Such measure is computed on a calendar year basis. Because Article XIII A limits inflationary assessed value adjustments to the lesser of the actual inflationary rate or 2%, there have been years in which the assessed values were adjusted by actual inflationary rates, which were less than 2%. Since Article XIII A was approved, the annual adjustment for inflation has fallen below the 2% limitation a limited number of times.

The City is unable to predict if any adjustments to the full cash value base of real property within the City, whether an increase or a reduction, will be realized in the future.

Appeals of Assessed Values. There are two types of appeals of assessed values that could adversely impact property tax revenues:

Proposition 8 Appeals. Most of the appeals that might be filed in the City would be based on Section 51 of the Revenue and Taxation Code, which requires that for each lien date the value of real property must be the lesser of its base year value annually adjusted by the inflation factor pursuant to Article XIII A of the State Constitution or its full

cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a reduction of their property tax assessment by filing a written application with the appropriate county board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. These market-driven appeals are known as Proposition 8 appeals.

Any reduction in the assessment ultimately granted as a Proposition 8 appeal applies to the year for which application is made and during which the written application was filed. These reductions are often temporary and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIII A.

Base Year Appeals. A second type of assessment appeal is called a base year appeal, where the property owners challenge the original (basis) value of their property. Appeals for reduction in the “base year” value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

No assurance can be given that property tax appeals in the future will not significantly reduce the City’s property tax revenues.

Sales Taxes

Sales tax revenues are typically the second largest source of revenue to the City, behind property taxes. Sales tax revenues are based upon the gross receipts of retail sales of tangible goods and products by retailers with taxable transactions in the City, which could be impacted by a variety of factors.

For example, before final maturity of the Bonds, the City may enter into an economic recession. In times of economic recession, the gross receipts of retailers often decline, and such a decline would cause the sales tax revenues received by the City to also decline.

In addition, changes or amendments in the laws applicable to the City’s receipt of sales tax revenues, whether implemented by State legislative action or voter initiative, could have an adverse effect on sales tax revenues received by the City. For example, many categories of transactions are exempt from the statewide sales tax, and additional categories could be added in the future. Currently, most sales of food products for human consumption are exempt; this exemption, however, does not apply to liquor or to restaurant meals. The rate of sales tax levied on taxable transactions in the City or the fee charged by the CDTFA for administering the City’s sales tax could also be changed.

Natural Calamities

General. The City is located in a seismically active area of California. If there were to be an occurrence of severe seismic activity in the area of the City, such an occurrence may adversely affect economic activity in the City, and could have a negative impact on City finances. There can be no assurance that the occurrence of any natural calamity would not cause substantial interference to and costs for the City or impact the Leased Property.

Other natural disasters, such as flooding, landslides or wildfires, could also affect economic activity in the City, and could have a negative impact on City finances. There can be no assurance that the occurrence of any natural calamity would not cause substantial interference to and costs for the City or impact the Leased Property.

Droughts. California is subject to droughts from time-to-time. On April 1, 2015, for the first time in California's history, Governor Edmund G. Brown directed the State Water Resources Control Board to implement mandatory water reductions in cities and towns across California to reduce water usage by 25%. Following a wet winter in 2016-17, most of the mandatory water reductions were lifted. However, there can be no assurance that drought conditions would not re-appear in the future, leading to interference to and costs for the City or impact the Leased Property.

Sea Level Rise/Climate Change. City finances may be negatively impacted by future sea level rise in the San Francisco Bay area or other negative impacts resulting from climate change. The median elevation of the City is 19 feet. At Piedmont Road, Evans Road, and North Park Victoria Avenue, the elevation is generally about 100 feet, while the western area is almost at sea level. This low elevation, coupled with the proximity to San Francisco Bay, may result in adverse effects to property in the City, and corresponding to Net Revenues, in the future. In addition, facilities owned and/or operated by the City's wholesale water providers may be negatively impacted given their proximity to San Francisco Bay.

The predictions for sea level rise in the San Francisco Bay vary. A report released by the San Francisco Bay Conservation Development Commission predicts sea levels in the San Francisco Bay to rise 16 inches by 2050 and 55 inches by 2100. The State of California's Fourth Climate Change Assessment, released in 2017, estimates sea level rise for the year 2100 in the range of 14 inches to 94 inches with an additional very low probability, worst-case estimate that exceeds 108 inches. A draft paper from the California Climate Change Center posits that increases in sea level will be a significant consequence of climate change over the next century.

Local impacts of climate change are not definitive, but parcels in the City could experience changes to local and regional weather patterns; rising bay water levels; increased risk of flooding; changes in salinity and tidal patterns of San Francisco Bay; coastal erosion; and water restrictions.

COVID-19 Pandemic

The spread of COVID-19 has impacted governments, businesses and people in a manner that is having negative effects on global and local economies. There can be no assurances that the spread of COVID-19 and/or responses intended to slow the spread of COVID-19 such as declining business and travel activity, will not materially adversely impact the state and national economies and, accordingly, materially adversely impact the financial

condition of the City and the City's General Fund. In addition, the City may experience increased personnel costs and/or reduced revenues due to the COVID-19 situation and the related impact on economic and other activity in and around the City.

As part of the adoption of the City's Fiscal Year 2020-21 budget in June 2020, the City projected a \$25 million shortfall in revenues versus expenses for the three fiscal year period of Fiscal Year 2020-21 through Fiscal Year 2022-23. With respect to projected revenues, the actual impact to the City's General Fund will not be fully understood until actual tax proceeds and other revenues are received by the City, which occurs with a lag. With respect to expenditures, the City has instituted certain measures to reduce expenditures in the current and future fiscal years, including (1) cancellation of the July 4th fireworks show for 2020, (2) non-essential hiring and expenditure freeze, including strategically holding certain positions vacant, (3) pushing out first payment on the Bonds to Fiscal Year 2021-22, and (4) reducing operating transfers-out from the General Fund to Storm Drain CIP Fund. It has also initiated polling of residents regarding the level of support for a measure that would increase the sales & use tax in the City by 0.25%, with amounts being available to the General Fund.

Cyber Security

The City, like many other public and private entities, relies on computer and other digital networks and systems to conduct its operations. As a recipient and provider of personal, private or other sensitive electronic information, the City is potentially subject to multiple cyber threats, including without limitation hacking, viruses, ransomware, malware and other attacks. The City maintains insurance coverage for loss resulting from cyber security incidents, however no assurance can be given that the City's efforts to manage cyber threats and attacks will be successful in all cases, or that any such attack will not materially impact the operations or finances of the City, or the administration of the Bonds. The City is also reliant on other entities and service providers in connection with the administration of the Bonds, including without limitation the County tax collector for the levy and collection of Special Taxes, the Trustee, and the dissemination agent. No assurance can be given that the City and/or the other entities will not be affected by cyber threats and attacks in a manner that may affect the Bond owners.

Limitations on Remedies Available to Bond Owners

The ability of the City to comply with its covenants under the Lease may be adversely affected by actions and events outside of the control of the City, and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS" above. Furthermore, any remedies available to the owners of the Bonds upon the occurrence of an event of default under the Lease or the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on Bondowner remedies contained in the Lease and the Indenture, the rights and obligations under the Bonds, the Lease and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the

sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

The opinion to be delivered by Bond Counsel, concurrently with the issuance of the Bonds, will include a qualification that the rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture, the Lease and the Site Lease may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in accordance with principles of equity or otherwise in appropriate cases. See "APPENDIX E — FORM OF OPINION OF BOND COUNSEL."

Loss of Tax-Exemption

As discussed under the caption "TAX MATTERS," interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued, as a result of future acts or omissions of the City or the City in violation of their respective covenants in the Lease and the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption and will remain Outstanding until maturity or until redeemed under other provisions set forth in the Indenture.

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that any Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

TAX MATTERS

Federal Tax Status. In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public at which a Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "bond premium" for purposes of federal income taxes and State of California personal income taxes.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Under the Tax Code, bond premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of bond premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of bond premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Bonds.

California Tax Status. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

Other Tax Considerations. Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, such legislation would apply to bonds issued prior to enactment.

The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of such opinion, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the Bonds, or as to the consequences of owning or receiving interest on the Bonds, as of any future date. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Other than as expressly described above, Bond Counsel expresses no opinion regarding other federal or state tax consequences arising with respect to the Bonds, the ownership, sale or disposition of the Bonds, or the amount, accrual or receipt of interest on the Bonds.

CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render an opinion with respect to the validity of the Bonds, the form of which is set forth in "APPENDIX E — FORM OF OPINION OF BOND COUNSEL." Certain legal matters will also be passed upon for the City and the Authority by Jones Hall, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney.

NO LITIGATION

Except as may otherwise be set forth in this Official Statement, to the best knowledge of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending and notice of which has been served on and received by the City or, to the knowledge of the City, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease, the Site Lease or the Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions

contemplated by the Lease, the Site Lease or the Indenture, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under the Lease.

RATING

S&P Global Ratings ("**S&P**"), a division of Standard & Poor's Financial Services LLC has assigned its municipal bond rating of "___" to the Bonds. This rating reflects only the views of S&P, and an explanation of the significance of this rating, and any outlook assigned to or associated with this rating, should be obtained from S&P. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The City has provided certain additional information and materials to the rating agency (some of which does not appear in this Official Statement). There is no assurance that this rating will continue for any given period of time or that this rating will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency, circumstances so warrant. Any such downward revision or withdrawal of any rating on the Bonds may have an adverse effect on the market price or marketability of the Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data by not later than nine months after the end of the City's fiscal year, or March 31, of each year (based on the City's current fiscal year-end of June 30), commencing March 31, 2021, with the report for the 2019-20 fiscal year (the "**Annual Report**") and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**"). The specific nature of the information to be contained in the Annual Report or the notices of listed events by the City is set forth in "APPENDIX D – Form of Continuing Disclosure Certificate."

The City has previously entered into continuing disclosure undertakings under the Rule in connection with the issuance of long-term obligations. During the past five years, the City has not failed to comply, in all material respects, with its undertakings under the Rule. [**Note: Underwriter to review/confirm**]

MUNICIPAL ADVISOR

The City and the Authority have retained Fieldman, Rolapp & Associates, Inc., of Irvine, California, as municipal advisor (the "**Municipal Advisor**") in connection with the offering of the Bonds. All financial and other information presented in this Official Statement has been provided by the City and the Authority from their records, except for information expressly attributed to other sources. The Municipal Advisor takes no responsibility for the accuracy or completeness of the data provided by the City, Authority or others and has not undertaken to make an independent verification or does not assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The fee of the Municipal Advisor is contingent upon the successful closing of the Bonds.

UNDERWRITING

Stifel, Nicolaus & Company, Inc. (the "**Underwriter**"), has entered into a Bond Purchase Agreement with the Authority under which it will purchase the Bonds at a purchase price of \$_____ (which is equal to the par amount of the Bonds, less an Underwriter's discount of \$_____, and plus (less) a net original issue premium (discount) of \$_____).

The Underwriter will be obligated to take and pay for all of the Bonds if any are taken. The Underwriter intends to offer the Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. After the initial public offering, the public offering price may be varied from time to time by the Underwriter.

PROFESSIONAL SERVICES

In connection with the issuance of the Bonds, fees payable to the following professionals involved in the offering are contingent upon the issuance and delivery of the Bonds: Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel; Fieldman, Rolapp & Associates, Inc., Irvine, California, as municipal advisor to the Authority and the City; Quint & Thimmig LLP, as counsel to the Underwriter; and U.S. Bank National Association, as Trustee.

EXECUTION

The execution of this Official Statement and its delivery have been authorized by the Board of the Authority and the City Council of the City.

MILPITAS MUNICIPAL FINANCING AUTHORITY

By: _____
Executive Director

CITY OF MILPITAS

By: _____
City Manager

APPENDIX A
AUDITED FINANCIAL STATEMENTS
FOR FISCAL YEAR ENDING JUNE 30, 2019

APPENDIX B

GENERAL INFORMATION ABOUT THE CITY OF MILPITAS AND THE COUNTY OF SANTA CLARA

*The following information concerning the County of Santa Clara (the “**County**”) and the City of Milpitas (the “**City**”) is included only for the purpose of supplying general information regarding the region in which the Water System is located. The Bonds are not a debt of the County, the City, the State of California (the “**State**”) or any of its political subdivisions, and neither the County, the City, the State nor any of its political subdivisions is liable therefor. The City and the Underwriter take no responsibility for the accuracy or completeness of such information.*

General

The City. The City was incorporated in January 1954 and encompasses 13.63 square miles. It is located 45 miles south of San Francisco in the northern part of Santa Clara County and is situated in the northeastern side of Silicon Valley. Once a small agricultural town and later a stop-over point for travelers between Oakland and San Jose, Milpitas has grown into one of the world’s premier computer and semiconductor producers.

Milpitas is a general law city that operates under a Council-Manager form of government. The City’s political and legislative body is the City Council, which is empowered by the general laws of the State of California to formulate citywide policy, including a fiscal program, City services and appointment of City Manager and City Attorney. There are four City Council members who are elected at-large for staggered four-year terms; the Mayor is selected every two years in a separate citywide election.

The City provides a full range of municipal services, including police, fire, neighborhood services, public improvements, planning, building and public facility inspection, engineering, water and sewer utilities, redevelopment, and general administrative services.

The County. The County covers an area of over 1,300 square miles and is located south of the San Francisco Bay in Northern California. There are two distinct valleys in the County, which are referred to as North County and South County. South County primarily features agricultural land and is comprised of only two cities, twenty miles apart from each other. Comprised of 13 adjoining cities, North County is densely populated, heavily industrialized and extensively urbanized. The northwestern portion of North County is commonly referred to as “Silicon Valley,” owing to the high concentration of companies involved in the creation of silicon-based semiconductors. Several small lakes and reservoirs are scattered across the County and the highest peak can be found in San José at Mount Hamilton. Several major highways serve the County, including Highway 101 providing access to San Francisco and Los Angeles.

Population

The following table lists population estimates for the City, the County and the State for the last five years, as of January 1 each year.

CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
Population Estimates
Years 2016 through 2020, as of January 1

Year	City of Milpitas	Santa Clara County	State of California
2016	74,766	1,931,565	39,131,307
2017	74,922	1,942,176	39,398,702
2018	75,083	1,951,088	39,586,646
2019	76,211	1,954,833	39,659,376
2020	77,961	1,961,969	39,782,870

Source: California Department of Finance, Demographic Research Unit.

Industry and Employment

The City is part of the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area ("MSA"), which is comprised of Santa Clara and San Benito Counties. The unemployment rate in the San Jose-Sunnyvale-Santa Clara MSA was 2.2 percent in December 2019, down from a revised 2.3 percent in November 2019, and below the year-ago estimate of 2.5 percent. This compares with an unadjusted unemployment rate of 3.7 percent for California and 3.4 percent for the nation during the same period. The unemployment rate was 5.0 percent in San Benito County, and 2.2 percent in Santa Clara County.

SAN JOSE-SUNNYVALE-SANTA CLARA MSA Civilian Labor Force, Employment and Unemployment Calendar Years 2014 through 2018 March 2018 benchmark

	2014	2015	2016	2017	2018
Civilian Labor Force ⁽¹⁾	1,021,000	1,039,100	1,056,300	1,041,700	1,079,700
Employment	967,200	994,900	1,015,700	1,008,000	1,050,800
Unemployment	53,800	44,200	40,600	33,700	28,900
Unemployment Rate	5.3%	4.3%	3.8%	3.2%	2.7%
<u>Wage and Salary Employment:</u>					
Agriculture	5,300	5,500	6,000	5,800	5,800
Mining and Logging	300	200	300	200	200
Construction	39,700	43,900	48,900	49,300	49,400
Manufacturing	159,500	162,400	163,600	166,400	172,300
Wholesale Trade	37,200	37,200	37,800	32,900	31,700
Retail Trade	86,400	87,800	87,700	85,800	86,300
Transportation, Warehousing, Utilities	14,400	14,600	15,300	134,100	134,100
Information	65,700	70,500	74,600	84,700	91,700
Financial Activities	34,100	34,600	35,600	36,100	37,100
Real Estate and Rental and Leasing	13,300	13,500	14,000	14,500	15,300
Professional and Business Services	203,000	216,300	225,200	237,400	237,300
Educational and Health Services	150,000	156,300	162,100	168,800	172,700
Leisure and Hospitality	91,900	95,800	98,900	103,400	105,000
Other Services	26,400	26,900	27,400	28,900	28,800
Federal Government	9,900	9,900	10,000	10,200	9,900
State Government	6,400	6,700	6,700	6,800	7,100
Local Government	77,100	76,400	77,400	78,600	79,900
Total all Industries ⁽²⁾	1,020,600	1,058,500	1,091,500	1,110,700	1,131,000

(1) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Totals may not add due to rounding.

Source: State of California Employment Development Department.

Principal Employers

The following table lists the principal employers within the City for fiscal year 2019-20.

CITY OF MILPITAS Principal Employers Fiscal Year 2019-20

Employer Name	No. of Employees
Cisco Systems, Inc.	3,347
Flextronics International	2,732
KLA-Tencor Corporations	2,223
San Disk Corporation	1,913
Linear Technology Corporation	1,283
Milpitas Unified School District	811
Headway Technologies	735
FireEye, Inc.	528
Wal-Mart	439
Kaiser Permanente Medical Offices	361

Source: City of Milpitas.

The following table lists, in alphabetical order, the largest manufacturing and non-manufacturing employers within the County as of February 2020.

COUNTY OF SANTA CLARA
Major Employers
As of February 2020
(In Alphabetical Order)

<u>Employer Name</u>	<u>Location</u>	<u>Industry</u>
Adobe Inc	San Jose	Publishers-Computer Software (mfrs)
Advanced Micro Devices Inc	Santa Clara	Semiconductor Devices (mfrs)
Alphabet Inc	Mountain View	Internet Search Engines
Apple Inc	Cupertino	Computers-Electronic-Manufacturers
Applied Materials Inc	Santa Clara	Semiconductor Manufacturing Equip (mfrs)
California's Great America	Santa Clara	Amusement & Theme Parks
Christopher Ranch LLC	Gilroy	Garlic (mfrs)
Cisco Systems Inc	San Jose	Computer Peripherals (mfrs)
Ebay Inc	San Jose	E-Commerce
Flextronics International	Milpitas	Semiconductor Devices (mfrs)
Fujitsu Laboratories of Amer	Sunnyvale	Laboratories-Research & Development
HP Inc	Palo Alto	Computers-Electronic-Manufacturers
Intel Corp	Santa Clara	Semiconductor Devices (mfrs)
Intuitive Surgical Inc	Sunnyvale	Physicians & Surgeons Equip & Supls-Mfrs
Kla Corp	Milpitas	Semiconductor Devices (mfrs)
Lockheed Martin Space Systems	Sunnyvale	Satellite Equipment & Systems-Mfrs
Lucile Packard Children's Hosp	Palo Alto	Hospitals
Lumileds Lighting Co	San Jose	Lighting Fixtures-Supplies & Parts-Mfrs
Maxim Integrated Products Inc	San Jose	Printed & Etched Circuits-Mfrs
NASA	Mountain View	Federal Government-Space Research/Tech
Netapp Inc	Sunnyvale	Computer Storage Devices (mfrs)
Prime Materials	San Jose	Semiconductors & Related Devices (mfrs)
SAP Center	San Jose	Stadiums Arenas & Athletic Fields
Stanford School of Medicine	Stanford	Schools-Medical
Super Micro Computer Inc	San Jose	Computers-Electronic-Manufacturers

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2020 1st edition.

Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the total effective buying income for the City, the County, the State, and the United States for the period 2016 through 2020.

**CITY OF MILPITAS, SANTA CLARA COUNTY,
STATE OF CALIFORNIA AND UNITED STATES
EFFECTIVE BUYING INCOME
As of January 1, 2016 through 2020**

<u>Year</u>	<u>Area</u>	<u>Total Effective Buying Income (000's Omitted)</u>	<u>Median Household Effective Buying Income</u>
2016	City of Milpitas	\$2,246,958	\$84,507
	Santa Clara County	73,637,380	79,345
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	City of Milpitas	\$2,461,558	\$85,924
	Santa Clara County	77,917,425	81,466
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	City of Milpitas	\$2,683,721	\$90,988
	Santa Clara County	85,859,495	88,243
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
2019	City of Milpitas	\$2,895,468	\$95,783
	Santa Clara County	91,332,099	92,773
	California	1,183,264,399	62,637
	United States	9,017,967,563	52,841
2020	City of Milpitas	\$3,194,603	\$103,379
	Santa Clara County	97,710,060	98,882
	California	1,243,564,816	65,870
	United States	9,487,165,436	55,303

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019 and 2020.

Commercial Activity

A summary of historic taxable sales within the City and the County during the past five years in which data is available is shown in the following tables.

Total taxable sales during three quarter of calendar year 2019 in the City were reported to be \$1,630,771,884 a 5.53% increase over the total taxable sales of \$1,545,263,091 reported during three quarters of calendar year 2018. Annual figures are not yet available for calendar year 2019.

CITY OF MILPITAS
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2014 through 2018 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2014	1,225	\$1,170,696	1,975	\$1,682,260
2015 ⁽¹⁾	1,283	1,202,266	2,178	1,903,123
2016	1,251	1,297,943	2,161	1,998,669
2017	1,218	1,334,475	2,144	2,316,532
2018	1,133	1,363,795	2,108	2,132,045

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.

Source: State Board of Equalization. Taxable Sales in California (Sales & Use Tax) for years 2014-2016. State Department of Tax and Fee Administration for year 2017 and 2018.

Total taxable sales during three quarter of calendar year 2019 in the County were reported to be \$33,318,189,196 a 1.49% increase over the total taxable sales of \$32,830,367,823 reported during three quarters of calendar year 2018. Annual figures are not yet available for calendar year 2019.

COUNTY OF SANTA CLARA
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2014 through 2018 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2014	30,058	\$23,271,753	45,852	\$39,628,655
2015 ⁽¹⁾	20,057	23,700,907	50,573	41,231,759
2016	30,146	24,158,590	50,519	41,831,669
2017	30,263	24,862,883	50,812	42,805,399
2018	30,266	26,885,138	52,994	45,353,074

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.

Source: State Board of Equalization. Taxable Sales in California (Sales & Use Tax) for years 2014-2016. State Department of Tax and Fee Administration for year 2017 and 2018.

Construction Activity

Construction activity in the City and the County for the past five years for which data is available is shown in the following tables.

CITY OF MILPITAS Building Permit Valuation For Calendar Years 2014 through 2018 (Dollars in Thousands)⁽¹⁾

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<u>Permit Valuation</u>					
New Single-family	\$70,570.5	\$22,537.4	\$38,510.7	\$128,153.7	\$145,144.3
New Multi-family	188,133.1	61,894.8	99,729.0	106,327.3	260,595.1
Res. Alterations/Additions	<u>2,896.8</u>	<u>4,963.3</u>	<u>8,225.0</u>	<u>30,821.0</u>	<u>14,314.1</u>
Total Residential	\$261,600.4	\$89,395.50	\$146,464.70	\$265,302.0	\$420,053.5
 New Commercial	 \$9,753.0	 \$409.9	 \$37,529.3	 \$48,700.3	 \$109,077.5
New Industrial	0.0	684.9	0.0	17,616.1	0.0
New Other	26,612.1	3,224.3	1,883.8	2,110.8	\$4,121.9
Com Alterations/Additions	<u>45,753.7</u>	<u>43,976.0</u>	<u>77,342.4</u>	<u>95,341.9</u>	<u>\$93,005.6</u>
Total Nonresidential	\$82,118.8	\$47,995.0	\$116,755.6	\$163,769.1	\$206,205.0
 <u>New Dwelling Units</u>					
Single Family	170	72	135	391	415
Multiple Family	<u>1,025</u>	<u>175</u>	<u>384</u>	<u>561</u>	<u>1,168</u>
TOTAL	1,195	247	419	952	1,583

(1) Totals may not foot due to rounding.

Source: Construction Industry Research Board, Building Permit Summary.

SANTA CLARA COUNTY Building Permit Valuation For Calendar Years 2014 through 2018 (Dollars in Thousands)⁽¹⁾

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<u>Permit Valuation</u>					
New Single-family	\$594,472.7	\$653,970.2	\$660,301.6	\$732,652.1	\$728,590.6
New Multi-family	1,196,127.8	706,781.1	564,761.0	1,760,303.9	1,098,643.3
Res. Alterations/Additions	<u>439,747.1</u>	<u>505,844.7</u>	<u>484,820.1</u>	<u>547,991.7</u>	<u>558,024.6</u>
Total Residential	\$2,230,347.6	\$1,866,596.0	\$1,709,882.7	\$3,040,947.7	\$2,385,258.0
 New Commercial	 \$818,913.3	 \$1,258,808.7	 \$2,327,643.2	 \$1,150,170.4	 \$1,962,366.5
New Industrial	10,172.2	100,301.2	44,268.9	118,567.1	32,080.0
New Other	292,113.9	533,644.5	282,966.1	303,729.1	120,557.4
Com Alterations/Additions	<u>1,534,213.1</u>	<u>1,697,046.2</u>	<u>2,072,862.8</u>	<u>1,786,849.8</u>	<u>2,017,142.3</u>
Total Nonresidential	\$2,655,412.5	\$3,589,800.6	\$4,727,741.0	\$3,359,316.3	\$4,132,146.2
 <u>New Dwelling Units</u>					
Single Family	1,602	1,710	1,608	2,022	2,011
Multiple Family	<u>8,310</u>	<u>3,906</u>	<u>3,297</u>	<u>6,629</u>	<u>6,342</u>
TOTAL	9,912	5,616	4,905	8,651	8,353

(1) Totals may not foot due to rounding.

Source: Construction Industry Research Board, Building Permit Summary.

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

\$ _____
MILPITAS MUNICIPAL FINANCING AUTHORITY
2020 Lease Revenue Bonds
(Capital Projects)

This Continuing Disclosure Certificate (this “Disclosure Certificate”) is executed and delivered by the City of Milpitas (the “City”) in connection with the issuance by the Authority of the bonds captioned above (the “Bonds”). The Bonds are being issued under an Indenture of Trust dated as of November 1, 2020 (the “Indenture”), by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”). The City hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means March 31 of each year.

“*Dissemination Agent*” means Willdan Financial Services, or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

“*Official Statement*” means the final official statement dated _____, 2020, executed by the City and the Authority in connection with the issuance of the Bonds.

“*Participating Underwriter*” means Stifel, Nicolaus & Company, Incorporated, the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2021, with the report for Fiscal Year 2019-20, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b). The City shall provide a written certificate with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) in a timely manner to the MSRB, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City’s Annual Report shall contain or incorporate by reference the following:

(a) Audited Financial Statements of the City prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City’s audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not contained in the audited financial statements filed pursuant to the preceding clause (a), the Annual Report shall contain information showing:

(i) the principal amount of Bonds outstanding as of June 30 preceding the filing of the Annual Report;

(ii) the balance in each fund under the Indenture as of June 30 preceding the filing of the Annual Report; and

(iii) updates as of June 30 preceding the filing of the Annual Report of the substance of the information contained in Tables 1, 2, 3, 5, and 7 in the Official Statement.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the Bonds:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults, if material.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.
- (12) Bankruptcy, insolvency, receivership or similar event of the City or other obligated person.
- (13) The consummation of a merger, consolidation, or acquisition involving the City or an obligated person, or the sale of all or substantially all of the assets of the City or an obligated person (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

- (15) Incurrence of a financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material (for definition of "financial obligation," see clause (c)).
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties (for definition of "financial obligation," see clause (c)).

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds under the Indenture.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(e) For purposes of Section 5(a)(15) and (16), "financial obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in

full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event,

in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2020

CITY OF MILPITAS

By _____
Name: _____
Title: _____

ACCEPTED AND AGREED:

Willdan Financial Services,
As Dissemination Agent

By _____
Authorized Representative

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Milpitas Municipal Financing Authority

Name of Bond Issue: \$_____ Milpitas Municipal Financing Authority 2020 Lease
Revenue Bonds (Capital Projects)

Date of Issuance: _____, 2020

NOTICE IS HEREBY GIVEN that the City of Milpitas (the "City") has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate dated as of _____, 2020, executed by the City. The City anticipates that the Annual Report will be filed by _____.

Dated: _____

CITY OF MILPITAS:

By: _____
Its: _____

cc: Dissemination Agent

APPENDIX E

FORM OF OPINION OF BOND COUNSEL

[Closing Date]

Milpitas Municipal Financing Authority
455 East Calaveras Boulevard
Milpitas, California 95035

OPINION: \$_____ Milpitas Municipal Financing Authority
 2020 Lease Revenue Bonds (Capital Projects)

Members of the Board of the Directors:

We have acted as bond counsel to the Milpitas Municipal Financing Authority (the "Authority") in connection with the issuance by the Authority of its Milpitas Municipal Financing Authority 2020 Lease Revenue Bonds (Capital Projects) in the aggregate principal amount of \$_____ (the "Bonds"), under an Indenture of Trust dated as of November 1, 2020 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee, and under the provisions of Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Bond Law"). The Bonds are secured by Revenues as defined in the Indenture, including certain lease payments made by the City of Milpitas (the "City") under a Lease Agreement dated as of November 1, 2020 (the "Lease") between the Authority as lessor and the City as lessee. We have examined the Indenture, the Lease, the Bond Law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Authority and the City contained in the Indenture, the Lease and in the certified proceedings, and upon other certifications furnished to us, without undertaking to verify the same by independent investigation. Based upon our examination, we are of the opinion, under existing law, as follows:

1. The Authority is a joint exercise of powers agency duly organized and existing under the laws of the State of California, with power to enter into the Indenture and the Lease, to perform the agreements on its part contained therein and to issue the Bonds.

2. The Bonds constitute legal, valid and binding special obligations of the Authority enforceable in accordance with their terms and payable solely from the sources provided therefor in the Indenture.

3. The Indenture and the Lease have been duly approved by the Authority and constitute the legal, valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms.

4. The Indenture establishes a valid first and exclusive lien on and pledge of the Revenues (as that term is defined in the Indenture) and other funds pledged thereby for the security of the Bonds, in accordance with the terms of the Indenture.

5. The City is a municipal corporation duly organized and existing under the laws of the State of California, with power to enter into the Lease and to perform the agreements on its part contained therein. The Lease has been duly approved by the City and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

6. Interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. The opinions set forth in the preceding sentence are subject to the condition that the Authority and the City comply with all requirements of the Internal Revenue Code of 1986, as amended, which must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Authority and the City have covenanted in the Indenture, the Lease and in other instruments relating to the Bonds to comply with each of such requirements, and the Authority and the City have full legal authority to make and comply with such covenants. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the ownership, sale or disposition of the Bonds, or the amount, accrual or receipt of interest on the Bonds.

7. Interest on the Bonds is exempt from California personal income taxation.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture and the Lease may be subject to bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity.

Respectfully submitted,

A Professional Law Corporation

APPENDIX F

DTC AND THE BOOK-ENTRY ONLY SYSTEM

The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Bonds (the “Issuer”) nor the trustee appointed with respect to the Bonds (the “Agent”) take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is

the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI

Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

RESOLUTION NO. 8705 / SA 10 / PFA 21

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
THE BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY
AND THE BOARD OF THE MILPITAS PUBLIC FINANCING AUTHORITY
APPROVING THE ADOPTION OF A DEBT MANAGEMENT POLICY**

WHEREAS, Senate Bill 1029 (SB 1029), which became effective on January 1, 2017, amended California Government Code 8855 to add certain requirements related to the issuance and administration of debt by local agencies such as the City of Milpitas (the "City"), the Successor Agency to the former Milpitas Redevelopment Agency (the "Successor Agency") and the Milpitas Public Financing Authority (the "Authority"), including the requirement to adopt a debt policy meeting the requirements of California Government Code 8855 prior to issuing any debt; and

WHEREAS, the City Council of the City, the Board of the Successor Agency and the Board of the Authority wish at this time to approve a debt policy that is compliant with California Government Code 8855 to govern future issuances of debt by the City, the Successor Agency and the Authority, as applicable; and

NOW, THEREFORE, the City Council of the City, the Board of the Successor Agency to the former Milpitas Redevelopment Agency, and the Board of the Milpitas Public Financing Authority hereby find, determine and resolve as follows:

1. Approval of Debt Management Policy. The City Council, the Board of the Successor Agency and the Board of the Authority hereby jointly approve and adopt the Debt Management Policy in the form presented to the meeting at which this Resolution is adopted. The Debt Management Policy shall govern the issuance and administration of debt issued by the City, the Successor Agency and the Authority, all in accordance with, and subject to, the conditions set forth in such policy.

2. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this 17th day of October 2017, by the following vote:

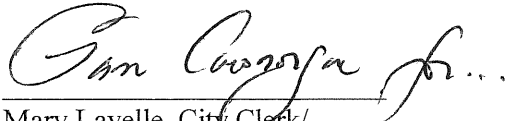
AYES: (3) Mayor Tran, Vice Mayor Grilli, Councilmember Barbadillo

NOES: (2) Councilmembers Nuñez and Phan

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk/
Successor Agency Secretary/
Public Financing Authority Secretary

APPROVED:



Rich Tran, Mayor/
Successor Agency Chair/
Public Financing Authority Chair

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney/
Successor Agency Counsel/
Public Financing Authority Counsel

**CITY OF MILPITAS
SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY
MILPITAS PUBLIC FINANCING AUTHORITY**

DEBT MANAGEMENT POLICY

Effective October 17, 2017

This Debt Management Policy (the “Debt Policy”) establishes the parameters within which debt may be issued and administered by the City of Milpitas (the “City”), the Successor Agency to the former Milpitas Redevelopment Agency and the Milpitas Public Financing Authority (collectively, the “Covered Entities”). Additionally, these policies apply to debt issued by a Covered Entity on behalf of assessment district, community facilities district, or other special district, and conduit-type financing by a Covered Entity for multifamily housing or industrial development projects.

The Debt Policy may be utilized by staff of the Covered Entities with the discretion to deviate as determined appropriate by the City Manager or Director of Financial Services (or their equivalent positions), and may be amended by the governing board of the applicable Covered Entity as it deems appropriate from time to time in the prudent management of the debt and capital financing needs of the Covered Entities.

1. Findings

This Debt Policy is intended to comply with Government Code Section 8855(i), effective on January 1, 2017, and shall govern all debt undertaken by a Covered Entity.

The Covered Entities hereby recognize that a fiscally prudent debt policy is required in order to:

- Maintain the Covered Entities’ sound financial position.
- Ensure the Covered Entities have the flexibility to respond to changes in future service priorities, revenue levels, and operating expenses.
- Protect the Covered Entities’ credit-worthiness.
- Ensure that all debt is structured in order to protect both current and future taxpayers, ratepayers and constituents of the Covered Entities.
- Ensure that the Covered Entities’ debt is consistent with their planning goals and objectives and capital improvement program or budget, as applicable.

2. Policies

A. Purposes For Which Debt May Be Issued

(i) Long-Term Debt. Long-term debt may be issued to finance the construction, acquisition, and rehabilitation of capital improvements and facilities, equipment and land to be owned and operated by the City.

(a) Long-term debt financings are appropriate when the following conditions exist:

- When the project to be financed is necessary to provide basic services.
- When the project to be financed will provide benefit to constituents over multiple years.
- When total debt does not constitute an unreasonable burden to the Covered Entities and the City's taxpayers and/or ratepayers, as applicable.
- When the debt is used to refinance outstanding debt in order to produce debt service savings or to realize the benefits of a debt restructuring.

(b) Long-term debt financings will not generally be considered appropriate for current operating expenses and routine maintenance expenses.

(c) The Covered Entities may use long-term debt financings subject to the following conditions:

- The project to be financed must be approved by the governing board of the Covered Entity.
- The weighted average maturity of the debt (or the portion of the debt allocated to the project) will not exceed the average useful life of the project to be financed by more than 20%.
- The Covered Entity estimates that sufficient revenues will be available to service the debt through its maturity.
- The Covered Entity determines that the issuance of the debt will comply with the applicable state and federal law.

(ii) Short-term debt. Short-term debt may be issued to provide financing for the Covered Entities' operational cash flows in order to maintain a steady and even cash flow balance. Short-term debt may also be used to finance short-lived capital projects; for example, the Covered Entities may undertake lease-purchase financing for equipment.

(iii) Financings on Behalf of Other Entities. The Covered Entities may also find it beneficial to issue debt on behalf of other governmental agencies or private third parties in order to further the public purposes of Covered Entities. In such cases, the Covered Entities shall take reasonable steps to confirm the financial feasibility of the project to be financed and the financial solvency of any borrower and that the issuance of such debt is consistent with the policies set forth herein.

B. Types of Debt

The following types of debt are allowable under this Debt Policy:

- General obligation bonds (GO Bonds)
- Bond or grant anticipation notes

- Lease revenue bonds, certificates of participation (COPs) and lease-purchase transactions
- Other revenue bonds and COPs
- Tax and revenue anticipation notes (TRANS)
- Land-secured financings, such as special tax revenue bonds issued under the Mello-Roos Community Facilities Act of 1982, as amended, and limited obligation bonds issued under applicable assessment statutes
- Tax increment financing to the extent permitted under State law
- Conduit financings, such as financings for affordable rental housing and qualified 501(c)(3) organizations

The governing body may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment of this Debt Policy.

C. Relationship of Debt to Capital Improvement Program and Budget

The City and Covered Entities are committed to long-term capital planning. The City and Covered Entities intend to issue debt for the purposes stated in this Debt Policy and to implement policy decisions incorporated in the capital budget and the capital improvement plan.

The City and Covered Entities shall strive to fund the upkeep and maintenance of its infrastructure and facilities due to normal wear and tear through the expenditure of available operating revenues. The City and Covered Entities shall seek to avoid the use of debt to fund infrastructure and facilities improvements that are the result of normal wear and tear.

The Covered Entities shall integrate their debt issuances with the goals of the capital improvement program by timing the issuance of debt to ensure that projects are available when needed in furtherance of their public purposes.

The Covered Entities shall seek to issue debt in a timely manner to avoid having to make unplanned expenditures for capital improvements or equipment from its general fund.

D. Policy Goals Related to Planning Goals and Objectives

The City and Covered Entities are committed to long-term financial planning, maintaining appropriate reserves levels and employing prudent practices in governance, management and budget administration. The Covered Entities intend to issue debt for the purposes stated in this Debt Policy and to implement policy decisions incorporated in the annual operations budget.

It is a policy goal of the City and the Covered Entities to protect taxpayers, ratepayers (if applicable) and constituents by utilizing conservative financing methods and techniques so as to obtain the highest practical credit ratings (if applicable) and the lowest practical borrowing costs.

The City and the Covered Entities will comply with applicable state and federal law as it pertains to the maximum term of debt and the procedures for levying and imposing any related

taxes, assessments, rates and charges.

When refinancing debt, it shall be the policy goal of the Covered Entities to realize, whenever possible, and subject to any overriding non-financial policy considerations, minimum net present value debt service savings equal to or greater than 3.0%.

E. Internal Control Procedures

When issuing debt, in addition to complying with the terms of this Debt Policy, the Covered Entities shall comply with any other applicable policies regarding initial bond disclosure, continuing disclosure, post-issuance compliance, and investment of bond proceeds.

Without limiting the foregoing, the Covered Entities will periodically review the requirements of and will remain in compliance with the following:

- Any continuing disclosure undertakings entered into by the Covered Entities in accordance with SEC Rule 15c2-12.
- Any federal tax compliance requirements, including, without limitation, arbitrage and rebate compliance.
- Investment policies as they relate to the use and investment of bond proceeds.

Proceeds of debt will be held either (a) by a third-party trustee or fiscal agent, which will disburse such proceeds to or upon the order of the Covered Entities upon the submission of one or more written requisitions by the City Manager or Director of Financial Services (or their equivalent positions), or his or her written designee, or (b) by the Covered Entity, to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the Covered Entity.

RESOLUTION NO. MFA1

**A RESOLUTION OF THE BOARD OF THE MILPITAS MUNICIPAL FINANCING AUTHORITY
APPROVING A DEBT MANAGEMENT POLICY**

WHEREAS, the City of Milpitas (the “City”) and the City of Milpitas Housing Authority have entered into a Joint Exercise of Powers Agreement, dated as of March 1, 2016, establishing the Milpitas Municipal Financing Authority (the “Authority”) for the purpose, among others, of having the Authority issue its bonds to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, Senate Bill 1029 (SB 1029), which became effective on January 1, 2017, amended California Government Code 8855 to add certain requirements related to the issuance and administration of debt by local agencies such as the Authority, including the requirement to adopt a debt policy meeting the requirements of California Government Code 8855 prior to issuing any debt; and

WHEREAS, on October 17, 2017, the City Council, as the governing body of the City of Milpitas, the Successor Agency to the former Milpitas Redevelopment Agency, and the Milpitas Public Financing Authority, adopted a debt management policy (the “Original Debt Policy”); and

WHEREAS, the Board of the Authority wishes at this time to adopt and approve the Original Debt Policy, together with the revisions on file with the Secretary at this meeting, to govern future issuances of debt by the Authority; and

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BOARD OF THE MILPITAS MUNICIPAL FINANCING AUTHORITY, AS FOLLOWS:

1. The Board of the Authority 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 Board of the Authority hereby approves the Debt Policy which shall govern the issuance and administration of debt issued by the Authority, all in accordance with, and subject to, the conditions set forth in such policy.

PASSED AND ADOPTED this 15th day of October 2019, by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Dominguez, Councilmembers Tran, Nuñez, and Phan

NOES: (0) None

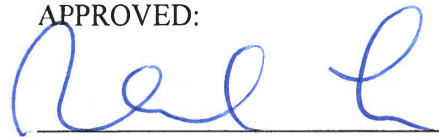
ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


Mary Lavelle, Secretary

APPROVED:


Rich Tran, Chair

APPROVED AS TO FORM:


Christopher Diaz, General Counsel

RESOLUTION NO. 8446 / SA 7 / PFA 16

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, THE BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY AND THE BOARD OF THE MILPITAS PUBLIC FINANCING AUTHORITY APPROVING THE ADOPTION OF DISCLOSURE POLICIES AND PROCEDURES

WHEREAS, the Securities and Exchange Commission (the "SEC") recommends that issuers of municipal bonds adopt policies and procedures to govern compliance and implement training with respect to their initial disclosure and continuing disclosure undertakings; and

WHEREAS, in response to the SEC's recommendations and in order to better monitor compliance with its disclosure undertakings, the City of Milpitas, the Successor Agency to the Former Milpitas Redevelopment Agency and the Milpitas Public Financing Authority find it desirable to adopt and maintain disclosure policies and procedures; and

WHEREAS, there has been presented to this meeting a proposed form of disclosure policies and procedures (the "Procedures"), a copy of which is attached hereto as Attachment 1.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City, the Board of the Successor Agency to the Former Milpitas Redevelopment Agency, and the Board of the Milpitas Public Financing Authority as follows:

Section 1. The City Council, the Board of the Successor Agency and the Board of the Authority hereby jointly approve and adopt the Disclosure Policies and Procedures attached hereto as Attachment 1, including Exhibit A thereto, presented to the meeting at which this Resolution is adopted,

Section 2. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this 3rd day of February, 2015, by the following vote:

AYES: (5) Mayor/Chair Esteves, Vice Mayor/Vice Chair Montano, and Members Barbadillo, Giordano and Grilli

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST:


Mary Lavelle, City Clerk/Successor Agency
Secretary/Public Financing Authority Secretary

APPROVED:


Jose S. Esteves, Mayor /
Successor Agency Chair /
Public Financing Authority Chair

APPROVED AS TO FORM:


Michael J. Ogas, City Attorney /
Successor Agency Counsel /
Public Financing Authority Counsel

ATTACHMENT 1

CITY OF MILPITAS SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY MILPITAS PUBLIC FINANCING AUTHORITY

Disclosure Policies and Procedures

Article I *General*

These Disclosure Policies and Procedures (the “**Disclosure Procedures**”) of the City of Milpitas (the “**City**”), the Successor Agency to the Former Milpitas Redevelopment Agency (the “**Successor Agency**”) and the Milpitas Public Financing Authority (the “**Authority**”) and together with the City and the Successor Agency, the “**Local Agencies**” and each a “**Local Agency**”) are intended to ensure that the each Local Agency is in compliance with all applicable federal and state securities laws.

Article II *Disclosure Coordinator*

The chief financial officer of each Local Agency shall be the disclosure coordinator of such Local Agency (each, a “**Disclosure Coordinator**”).

Article III *Review and Approval of Official Statements*

The Disclosure Coordinator of each Local Agency shall review any Official Statement prepared in connection with any debt issuance by such Local Agency in order to ensure there are no misstatements or omissions of material information in any sections that contain descriptions of information prepared by such Local Agency.

In connection with its review of the Official Statement, the Disclosure Coordinator of each Local Agency shall consult with third parties, including outside professionals assisting such Local Agency, and all members of such Local Agency’s staff, to the extent that such Disclosure Coordinator concludes they should be consulted so that the Official Statement will include all “material” information (as defined for purposes of federal securities law).

As part of the review process, the Disclosure Coordinator of each Local Agency shall submit all Official Statements to the legislative body or governing board of such Local Agency (each, a “**Legislative Body**”) for approval. The cover letter used by the Disclosure Coordinators to submit the Official Statements shall be in substantially the form of Exhibit A.

The approval of an Official Statement by a Legislative Body shall be docketed as a new business matter and shall not be approved as a consent item. Each Legislative Body shall undertake such review as deemed necessary by such Legislative Body, following consultation with the applicable Disclosure Coordinator, to fulfill the responsibilities of such Legislative Body under applicable federal and state securities laws. In this regard, the Disclosure Coordinator for each Local Agency shall consult with disclosure counsel to the applicable Local Agency to the extent such Disclosure Coordinator considers appropriate.

Article IV
Continuing Disclosure Filings

To the extent that the Local Agencies have entered into continuing disclosure undertakings in connection with their respective debt offerings, the Local Agencies are required each year to file annual reports with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system in accordance with such undertakings. Such annual reports are required to include certain updated financial and operating information, and the City's audited financial statements.

To the extent that the Local Agencies have entered into continuing disclosure undertakings in connection with their respective debt offerings, the Local Agencies are also required under their continuing disclosure undertakings to file notices of certain events with EMMA.

The Disclosure Coordinator for each Local Agency is responsible for establishing a system (which may involve the retention or one or more consultants) by which:

- (i) such Local Agency will make the annual filings required by its continuing disclosure undertakings on a complete and timely basis, and
- (ii) such Local Agency will file notices of enumerated events on a timely basis.

Article V
Public Statements Regarding Financial Information

Whenever the Local Agencies make statements or release information relating to their finances to the public that are reasonably expected to reach investors and the trading markets, the Local Agencies are obligated to ensure that such statements and information are complete, true, and accurate in all material respects.

Article VI
Training

Each Disclosure Coordinator shall ensure that the staff members of their respective Local Agencies involved in the initial or continuing disclosure process and the respective Legislative Bodies of the Local Agencies are properly trained to understand and perform their responsibilities.

Each Disclosure Coordinator shall arrange for disclosure training sessions to be conducted by disclosure counsel for the respective Local Agencies. Such training sessions shall include education on these Disclosure Procedures, the respective disclosure obligations of the Local Agencies under applicable federal and State securities laws and the disclosure responsibilities and potential liabilities of staff members of the Local Agencies and members of their Legislative Bodies. Such training sessions may be conducted using a recorded presentation.

EXHIBIT A

Form of Staff Report

To: Members of the [City Council][Board]

From:

Date: _____

This Staff Report relates to the proposed issuance of _____ (the "Obligations") by the [City][Successor Agency to the Former Milpitas Redevelopment Agency][Milpitas Public Financing Authority]. The [City Council][Board] is asked to approve issuance of the Obligations and all related documents. The near-final versions of these documents are attached.

The attached Preliminary Official Statement has been reviewed and approved for transmittal to the [City Council][Board] by the [City's][Successor Agency's][Authority's] financing team. The distribution of the Preliminary Official Statement by the [City][Successor Agency][Authority] is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Obligations. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Obligations. If the [City Council][Board] concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Obligations, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the [City's][Successor Agency's][Authority's] compliance with the federal securities laws, has issued guidance as to the duties of the [City Council][Board] with respect to its approval of the Preliminary Official Statement. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC indicated that, if a member of the [City Council][Board] has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Obligations, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC indicated that the steps that a member of the [City Council][Board] could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

Section 1. *Purpose of Financing.*

Section 2. *Documents for Approval; Security for the Obligations.*

Section 3. *Risks Relating to Repayment and Tax-Exempt Status of the Obligations.*

Section 4. *Requested Approvals.*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Staff Report and Consider Adopting Uncodified Urgency Ordinance No. 307 to Temporarily Limit Fees Charged by Third-party Food Delivery Service Providers to Help Local Restaurants During the COVID-19 Emergency
Category:	Community Development
Meeting Date:	10/20/2020
Staff Contacts:	Alex Andrade, 408-584-4036 and Nicole Inamine, 408-586-3045
Recommendations:	1. Receive staff report on temporarily limiting fees charged by third-party food delivery service providers to help local restaurants during the COVID-19 emergency. 2. Following the City Attorney reading the title, move to waive the reading of Ordinance No. 307 and adopt Uncodified Urgency Ordinance No. 307 by a minimum 4/5 vote of the City Council, to be effective October 20, 2020.

Background:

To curb the spread of COVID-19, multiple Health Orders were issued by federal, state, and local governments to encourage residents to Shelter-in-Place and social distance. Milpitas City Manager, Steve McHarris, declared a State of Local Emergency in Milpitas due to COVID-19 on March 12, 2020. Effective March 16, 2020, Santa Clara County was among the first jurisdictions to enact a Shelter-in-Place Order, which prohibited many “non-essential” business operations from continuing, including indoor dining.

The City has undertaken various efforts to assist small businesses during the pandemic including, but not limited to, the Milpitas Microenterprise Grant Program, establishing a Virtual Business Assistance Center, Milpitas Small Business Spotlight Program, and using Constant Contact to inform business representatives of valuable business resources. The City also developed a Temporary Outdoor Dining Program consisting of registration and no-fee for restaurants to participate in outdoor dining.

Of the 225+ food establishments in Milpitas, approximately 75 have registered for the Temporary Outdoor Dining Program. On October 5, 2020, the County of Santa Clara issued a Revised Risk Reduction Order in compliance with the State of California’s Public Health Department’s promotion of the County into the Orange Tier as of October 13, 2020. While the County of Santa Clara enters a new phase of allowed business activity, the County will keep indoor dining levels in the Red Tier, which limits restaurants to 25% capacity or 100 customers, whichever is fewer. While restaurants are slowly expanding their services again, they have yet to return to pre-COVID-19 levels and are struggling to stay afloat. During the pandemic, restaurateurs have increased their use and reliance on third-party delivery services to remain viable during this difficult time. Restaurants partner with third-party food delivery services out of necessity to stay viable during COVID-19. This partnership can result in high fees that compromise the restaurants’ ability to retain sufficient profits.

Analysis:

For many restaurants prior to the COVID-19 pandemic, third-party delivery services had already been an established method for serving customers and as a supplemental revenue stream. The pandemic has forced restaurants to adapt to new restrictions placed on them, making thin margins even thinner. With the prohibition of indoor dining for the past seven months, until last week, and with approximately one-third of restaurants participating in the outdoor dining program, third-party food delivery services have become a significant source of

generating income. The most prominent third-party food delivery services are Uber Eats, Grubhub, and DoorDash. These companies charge varying fee structures to fund operational costs related to the following:

- Delivering food;
- Listing and marketing the restaurant on the third-party delivery service platform;
- Processing orders, including credit card processing fees; and
- General maintenance of the online platform.

Third-party food delivery service providers charge various rates for different options. For example, DoorDash has a variable commission rate depending on the various marketing services a restaurant may decide to utilize. In addition, Grubhub has charged 10% for listing restaurants on their website, 15% for delivery, and a range of prices for additional marketing services. Uber Eats has charged a flat rate commission of 30% that is inclusive of all three elements described above. Restaurateurs are often charged fees ranging from 20% to 30% per order, which is a considerable amount of a restaurant's profits. There are reports that some restaurants have experienced a net loss in profits because of high fees being charged. As such, the proposed temporary third-party food delivery service fee caps can protect restaurants during a time of heavy reliance and the pandemic.

Key Provisions of the Proposed Temporary Urgency Ordinance

Pursuant to Article XI, Section 7 of the California Constitution and California Government Code section 36937, the City Council has the authority to adopt an Urgency Ordinance as an emergency measure to promote stability and safe and healthy operations within the local restaurant sector during the pandemic. The adoption of the proposed Urgency Ordinance requires at least a four-fifths vote of the City Council. The proposed action will help to prevent avoidable business closures, ensure that jobs stay intact, and promote economic vitality within Milpitas. Furthermore, adoption of the Urgency Ordinance will help restaurants with limited bargaining power remain viable, enable the City to ensure continuity of essential food services for its residents, protect restaurants against predatory activity, and ensure that restaurants operate in a safe manner where social distancing can be maintained in accordance with guidance from the State and local health officials.

1) Why 15% and 10% specifically?

A 15% delivery fee cap was first enacted by the Cities of San Francisco and Santa Cruz in April 2020, followed by at least nine other Bay Area cities (Attachment B). Staff recommends a similar 15% fee cap on delivery orders to remain consistent with the precedent set by nearby cities, and the proposed cap would result in significantly less than the typical 30% fees currently charged to restaurants. In addition, the City of South San Francisco has enacted a 10% fee cap for non-delivery orders to further protect consumers. Staff proposes to add a similar 10% fee cap provision because non-delivery orders, defined as when the consumer places an order through a third-party app then picks up the food from the restaurant themselves, do not warrant the same level of service as delivery orders. Staff recognizes that third-party food delivery service providers must still cover operational and service costs, so 10% would be a reasonable middle ground for non-delivery orders.

2) Unlawful to Reduce Delivery Drivers' Compensation

The proposed Urgency Ordinance includes specific language prohibiting third-party service providers from shifting costs by reducing delivery drivers' compensation. Similar provisions have been included in other cities' ordinances and executive orders reviewed by staff.

3) Disclosure of All Charges

By receiving an itemized receipt for each order placed through a third-party service provider, restaurant owners can easily calculate that they have not been charged more than the 15% cap for delivery orders and 10% for non-delivery orders. If a restaurant finds that they have been overcharged, then they have recourse against the third-party food delivery service provider as explained in the following paragraph.

4) Enforcement

Under the proposed Urgency Ordinance, if a third-party food delivery service provider charges a fee greater than 15% of the online purchase order with delivery or greater than 10% of the online order for non-delivery, then the

restaurant owner may pursue civil action if the violation is not cured within 7 business days of the restaurant providing a written notice to the third-party delivery service provider. The restaurant may recover all actual damages resulting from a violation of the Ordinance and reasonable attorneys' fees and costs. Additionally, there is a grace period of 7 days, from October 20 to October 27, immediately following when the Urgency Ordinance takes effect, which allows third-party food delivery service providers the time to understand and make the necessary changes to their platforms to incorporate the terms of the Urgency Ordinance.

5) Temporary Urgency Ordinance

The proposed Urgency Ordinance will expire 90 days after the Milpitas City Council terminates the declared local emergency.

Third-party food delivery services continue to be an important platform for restaurants to remain open during the COVID-19 pandemic. However, high fees charged per order by third-party food delivery service providers make it even harder for restaurants to retain enough or any profits. The proposed temporary Urgency Ordinance will help local restaurants maximize their share of the profits and their chances of surviving this challenging time.

Policy Alternatives:

Alternative 1: The City Council could choose not to adopt the temporary Urgency Ordinance at this time.

Pros: Staff would to continue to conduct research on other best practices on helping restaurants through the pandemic.

Cons: Restaurants would continue to struggle by paying high third-party food service delivery fees, which may negatively affect businesses and potentially result in permanent closures.

Reason not recommended: Restaurants would continue to pay high commissions and fees to third-party food delivery service providers during a time when business owners must rely on food delivery and online ordering to be financially viable and comply with COVID-19 Health Orders.

Alternative 2: Adopt more restrictive third-party food service delivery fees than the proposed recommendation.

Pros: Restaurants would be given a better opportunity to maximize their profits and maximize their chances of surviving the pandemic.

Cons: More restrictive fees may result in third-party food delivery service providers reducing marketing and delivery services, which could lead to reduced order volume. A more restrictive ceiling than what other Bay Area cities have already approved may also expose the City of Milpitas to legal liability.

Reasons not recommended: Third-party food delivery service providers have the right to participate in the open market and recoup service costs through fees in order to provide necessary marketing and delivery services to restaurants. The proposed recommendation aligns with actions approved by other Bay Area cities as a precedent has been set.

Staff Outreach

Staff intended to present the proposed Urgency Ordinance to the Economic Development and Trade Commission at its October 12, 2020 meeting; however, a quorum was not reached. Staff's review of similar ordinances included talking with representatives of other Bay Area cities including South San Francisco, Santa Clara, and Fremont. In addition, staff sent emails regarding the proposed Urgency Ordinance to third-party food delivery service providers such as Grubhub, DoorDash, and Uber Eats on October 13, 2020., DoorDash representatives have responded to staff's correspondence and a meeting is scheduled for Friday, October 16.

Fiscal Impact:

If the recommendation is approved by the City Council, staff will continue to dedicate time to educate local restaurateurs about the regulations imposed by the Urgency Ordinance. As the recommended action is in

response to COVID-19's negative economic impacts to local restaurants, staff will continue to record and track time associated with this effort for the potential of state and/or federal reimbursement.

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. Receive staff report on temporarily limiting fees charged by third-party food delivery service providers to help local restaurants during the COVID-19 emergency.
2. Following the City Attorney reading the title, move to waive the reading of Ordinance No. 307 and adopt Uncodified Urgency Ordinance No. 307 by a minimum 4/5 vote of the City Council, to be effective October 20, 2020.

Attachments:

- A. Urgency Ordinance No. 307
- B. Bay Area Cities with Limitations on Third-Party Food Delivery Service Fees

URGENCY

NUMBER: 307

TITLE: AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING A TEMPORARY LIMIT ON FEES CHARGED BY THIRD-PARTY FOOD DELIVERY SERVICES ON COVERED ESTABLISHMENTS DURING THE COVID-19 EMERGENCY

HISTORY: This Ordinance was adopted by the City Council by a four-fifths (4/5) vote in order to protect the public health, safety and welfare at its meeting of _____, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may make and enforce all regulations and ordinances using its police powers; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes which has been named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”); and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 12, 2020, the City Manager, in his capacity as Director of Emergency Services, declared a local emergency in the City of Milpitas due to the COVID-19 pandemic, which the City Council affirmed on March 17, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 16, 2020, the County of Santa Clara joined Contra Costa, Marin, San Francisco, San Mateo counties and the City of Berkeley on a legal order directing their respective residents to shelter at home for three weeks beginning March 17, 2020 (“Shelter-in-Place Order”). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the Order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel; and

WHEREAS, the County of Santa Clara’s Public Health Officer has issued subsequent orders that continue to restrict movement and public and private gatherings as set forth in the Health Officer Risk Reduction Order; including restrictions on restaurant dining; and

WHEREAS, on July 13, 2020, the State Public Health Officer issued an order closing all indoor restaurant dining statewide, among other indoor operations; and

WHEREAS, on October 5, 2020, the County of Santa Clara’s Public Health Officer issued a Revised Risk Reduction Order in compliance with the State Public Health Department’s promotion of the County into the Orange Tier as of October 13, 2020. While the County enters a new phase of allowed business activity, the County will keep indoor dining levels in the Red Tier, which limits restaurants to 25 percent capacity or 100 customers, whichever is fewer; and

WHEREAS, with modified capacity, many restaurants are seeing an increase in carry-out and delivery offerings, placing a sudden and severe financial strain on the industry, particularly on restaurants that are small businesses, a category of businesses which typically already operate on thin margins; and

WHEREAS, as of the date of this Ordinance, many restaurant and food establishments have begun to reopen, and it is critical they operate in a safe manner where social distancing can be maintained in accordance with guidance from the State of California and local health officials; and

WHEREAS, continuity of operations among the City’s restaurants is critical for the delivery of essential food services to the residents of Milpitas and to sustain these sources of employment and neighborhood vitality within the City; and

WHEREAS, in Milpitas, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party platforms and food delivery service providers charge restaurants fees up to 30 percent of an order amount; and

WHEREAS, restaurants, and particularly restaurants that are small businesses, have limited bargaining power to negotiate lower fees with third-party platforms, given the high market saturation of third-party platforms, and the dire financial strains small business restaurants are facing in this COVID-19 emergency; and

WHEREAS, given that only a few companies in the marketplace provide such delivery services, small restaurants that do not operate their own delivery service resort to contracting with third-party delivery service providers as a means to compete in the marketplace; and

WHEREAS, capping delivery service per-order fees at 15 percent and non-delivery services at 10 percent per order will achieve the public purpose of ensuring the continued operation of local restaurants and third-party platforms during the period of emergency; the 15 percent cap and 10 percent cap is based on the findings and experience of other California cities and cities nationwide that have already adopted 15 percent fee ceilings or similar caps as reasonable emergency regulations in collaboration with food delivery companies; and

WHEREAS, this Ordinance is temporary in nature and only intended to promote stability and safe and healthy operations within the restaurant and food markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures thereby serving the public peace, health and safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers and powers afforded to the City in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and Chapter 1 of Title V of the Milpitas Municipal Code to protect the peace, health, and safety of the public. The City Council finds that this Ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this Ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this Ordinance is necessary to provide for the protection of life and property.

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. FINDINGS

The City Council hereby finds, determines, and declares that this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety because:

- A. Social distancing and Risk Reduction Health Orders are expected to remain in force for the foreseeable future, threatening loss of employment to more residents and loss of income.
- B. Continuity of operations among the City's restaurants is critical for the delivery of essential food services to the residents of Milpitas and to sustain these sources of employment and neighborhood vitality within the City. As state anti-gouging laws do not provide any protections in the market for food delivery services, this Ordinance is necessary to enable the City to ensure continuity of essential food services for its residents and to protect against predatory activity during the period of emergency. Recent history also shows that the risk of price gouging increases with a sustained state of emergency, and news outlets have already reported incidents of unjustified increases in fees for food delivery services threatening the continued viability of local restaurants.
- C. Failure to adopt this Urgency Ordinance would result in the avoidable displacement or exposure to COVID-19 of the City's small businesses and to the amplification of the factors that lead to the spread of the virus, as described in the foregoing recitals.

SECTION 3. URGENT NEED

Based on the foregoing recitals and findings, all of which are deemed true and correct, this Ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Ordinance shall take effect immediately upon adoption and shall terminate ninety (90) calendar days after such time that the Milpitas City Council terminates the declared local emergency, as affirmed by the City Council on March 17, 2020.

SECTION 4. DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply:

- A. “City” means the City of Milpitas.
- B. “Covered establishment” means a restaurant that offers, in a single commercial transaction over the internet, such as online order, or over the telephone, such as a telephone order, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City.
- C. “Online order” means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.
- D. “Purchase price” means the menu price of an online order. Such term therefore excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an order.
- E. “Telephone order” means an order placed by a customer to a food service establishment through a telephone call or the use of the third-party food delivery service providers’ platform and/or on-line phone system, or via text for delivery or pickup within the City.
- F. “Third-party food delivery service” means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from a covered establishment.

SECTION 5. TEMPORARY LIMIT ON THIRD-PARTY FOOD DELIVERY SERVICE CHARGES

- A. It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee that totals more than 15 percent of the purchase price of an online or telephone order for delivery services and more than 10 percent of the purchase price of an online or telephone order for non-delivery services.
- B. It shall be unlawful for a third-party food delivery service to reduce the compensation rates paid to the delivery service driver or retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the third-party delivery service, in its entirety, to the person delivering the food or beverages.

SECTION 6. DISCLOSURES

Each receipt generated by the third-party food delivery service for either the customer or covered establishment shall be itemized and shall clearly state the fees charged, the gratuities paid, and any discounts offered by the covered establishment.

SECTION 7. ENFORCEMENT

A violation of this Ordinance shall subject the violator to the following:

- A. An action in the Superior Court of the State of California to recover all actual damages resulting from a violation of this Ordinance.

- B. Reasonable attorneys' fees and costs awarded by a court to a plaintiff that prevails in an action against a third-party food delivery service.
- C. A civil action alleging a violation of any provision of this article shall commence only after the following requirements have been met:
 - 1. Written notice is provided by the covered establishment to the third-party food delivery service of the provisions of the Ordinance alleged to have been violated and the facts to support the alleged violation; and
 - 2. The third-party food delivery service is provided 7 business days from the date of the written notice to cure any alleged violation.
- D. Notwithstanding any provision of the Milpitas Municipal Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this Ordinance.
- E. A third-party food delivery service shall not be found in violation of this Ordinance if between October 20, 2020 and October 27, 2020, it imposes a fee per online or telephone order for delivery services that totals more than 15 percent of the purchase price of such order, or for non-delivery services that totals more than 10 percent of the purchase price of such order, provided it refunds the portion of the fee that exceeds the fee percentage set forth in this Ordinance to the covered establishment prior to November 3, 2020.

SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 9. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 10. CERTIFICATION

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

Attachment B – Bay Area Cities with Limitations on Third-Party Food Delivery Service Fees

City	Delivery Fee Cap	Non-Delivery Cap	Compensation for Delivery Driver	Enforcement
Santa Cruz	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
San Francisco	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
South San Francisco	15%	10%	Unlawful to reduce the compensation or retain any tip or gratuity. Any tip or gratuity shall be paid by the Third-Party Delivery Service, in its entirety, to the delivery person	Onus on restaurant; 7-day cure period; right to civil action
Santa Clara	15% (aggregate)	N/A	Unlawful to reduce the compensation or retain any tip or gratuity. Any tip or gratuity shall be paid by the Third-Party Delivery Service, in its entirety, to the delivery person	Onus on restaurant; 15-day cure period; right to civil action
Fremont	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
Hayward	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
Oakland	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
San Leandro	15% (aggregate)	N/A	N/A	Onus on restaurant; 7-day cure period; right to civil action
Berkeley	15% (aggregate)	N/A	Unlawful to reduce the compensation or retain any tip or gratuity. Any tip or gratuity shall be paid by the Third-Party Delivery Service, in its entirety, to the delivery person	Onus on restaurant; 15-day cure period; right to civil action



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Presentation on the Parks and Recreation Master Plan Update, Fee Assessment and Development of Cost Recovery Policy and Provide Direction to Staff, Project No. 5115
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	10/20/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Receive a presentation on the Parks and Recreation Master Plan Update Fee Assessment and Development of Cost Recovery Policy; and, provide direction to staff on Project No. 5115.

Background:

The City adopted a Park and Recreation Master Plan in 2008 that provided an analysis of park conditions and recommended improvements to each of the City's 36 parks. Due to its age of the document, it was recommended that the 2008 plan be updated and improved to keep up with the evolving trends, demographic patterns, and economic development within Milpitas that have changed over last decade.

Project Number 5115, Parks and Recreation Master Plan Update (Master Plan Update) is included in the approved 2020-2025 Capital Improvement Program. The Project provides for an update to the City's existing 2008 Parks Master Plan which entails an analysis of the current conditions of City parks and provides recommendations for improvement. The Plan update additionally includes the analysis of fees and cost recovery options for Recreation and Community Services' classes, facility and park rentals, and programs offered throughout the City's 36 parks and 6 community facilities.

The firm of Gates & Associates (Gates) along with sub-consultant Matrix Consulting Group (Matrix) was retained in November 2019 to provide the comprehensive Master Plan update including fee assessment and cost recovery recommendations. Gates has provided professional consulting services within the Bay Area for many years and has expertise in park and recreation master planning, landscape architecture, park development, capital cost estimating, and community outreach. Gates has completed numerous park and recreation master plans for many public agencies around the region, including but not limited to: Town of Windsor, City of South San Francisco, City of Menlo Park, City of Patterson, and City of Monterey.

Matrix will assist Gates with the Master Plan Update and will bring extensive experience in conducting detailed assessment of municipal park and recreation operations. Matrix assisted the City a year ago with analysis of City's development fee structure, and will lead the recreation fee assessment and cost recovery section of the Master Plan Update which will include growth analysis and recommended programming based on data obtained from community outreach events and analysis of programs offered at other Bay Area municipalities.

Analysis:

The Master Plan Update is a long-range planning tool to assist staff with the effective utilization and improvement of park infrastructure, recreation programs and services, and it will help guide in the exploration of future park and recreation development opportunities. It will address regulatory compliance of parks, recommended improvements, and address future park and programming needs to accommodate growth and limited parkland within Milpitas. As mentioned above, the draft Master Plan Update will be in two sections.

Section one will be completed by Gates and include the analysis and recommended improvements for the City's parks and community facilities, and programs. Section two is being completed by Matrix and will include an assessment of City recreation fees and cost recovery policy recommendations.

Matrix will present its assessment and analysis of recreation fees and discuss a recommended cost recovery policy at the October 20, 2020 City Council meeting. Section one of the Master Plan update including recommended park improvements and programs is anticipated to be presented to the City Council for consideration and direction next Spring 2021.

Community Engagement

City staff and Gates have completed eight community outreach events that were held to determine the type of park improvements and infrastructure desired by the Milpitas community. Staff and Gates hosted an information table and spoke with attendees at the 2019 Tree Lighting Ceremony and the February 2020 Lunar New Year event. More than 1,000 responses were obtained from attendees at these two events. In March 2020 following the Covid-19 stay at home order, City staff and Gates initiated community outreach and participation opportunities using online survey questionnaires and interactive mapping tools to gather park specific community input. 750 survey invitation postcards were sent to random Milpitas residents to maximize survey participation. More than 400 responses were received from these online events.

Four focus group meetings with new resident communities, organized sports representatives, teens, and a discussion focused on social services, and two virtual townhall meetings were held on October 10 and 14 to allow the community to share its ideas for its parks and recreation programs. These outreach events were publicized on the City's website and social media, recreation and community services customer emails, media press releases, and in the senior newsletter. All outreach was translated into Chinese, Vietnamese, and Spanish.

Information and data gained from these outreach events assisted Gates in its analysis of the City's existing park infrastructure and recreation programs.

Parks System Assessment

Gates has completed an inventory to evaluate the condition, amenities, recreational uses, accessibility and overall health of the City's 36 parks. The analysis explores each park's relationship to the surrounding neighborhood and connectivity to other nearby parks, and recommended improvements and improvement cost for each park were determined using input from the Milpitas community obtained through the community outreach tasks. Gates continues to analyze the park inventory data gathered, but the information is clear that several City parks have amenities that are in poor condition and are in need to renovation.

In effort to ensure consistency between City projects and Master Plans, the Parks and Recreation Master Plan update is being developed in collaboration with the update to the Bike, Pedestrian and Trails Master Plan and the update to the City's General Plan, which are both underway. Several coordination meetings have occurred between City staff and the consultants completing the different plan updates to ensure plan updates are not in conflict and will complement each other.

Park and Recreation Fees

With the elimination of the City's Redevelopment Agency over ten years ago, the City's General Fund and Park Fund are the primary sources of funding for the improvement and renovation of City parks. Currently funding from the General Fund and Park Fund is limited and park renovation projects approved with the 2020-2025 Capital Improvement Program are not funded due to lack of available funding.

Recreation and Community Services programs and services are also funded through the General Fund and through fees collected for programs and services provided. The General Fund is used to subsidize the Milpitas Assistance Program which was established in 2019 to support low income families and individuals needing financial assistance to participate in Recreation and Community Services' and programs offered by the City. With the limitation in available funding for park improvements and Recreation and Community Services programs, it is recommended the City complete an assessment of fees charged for recreation services and programs and develop a comprehensive program cost recovery policy.

Matrix Consulting Group has completed the assessment of City recreation programs, fees charged including cost recovery percentages, and has compared with comparative Bay Area municipalities. Communities utilized as comparatives include Fremont, Mountain View, Redwood City and San Jose. Matrix determined that Milpitas recreation services/programs and fees charged were generally in alignment with the other agencies, however, it is recommended the City update its policy on cost recovery. City cost recovery targets are indicated in the City's Municipal Code, which established general goals for a few program areas.

Analysis of current cost recovery for recreation programs and services indicates the City is averaging over the last three years at 48.6% direct cost recovery and a 29.5% for total cost recovery, however, half of fiscal year 2019-20 year was impacted by COVID-19. City indirect costs are approximately 65% of the direct costs and these include the cost for utilities and maintenance related to the facilities and outdoor spaces in which the services are provided to the community (Sports Center, Senior Center, Higuera Adobe, Cardoza Park, etc.).

Overall, the consultant is recommending the City target achieving a minimum 40% total cost recovery including both direct and indirect costs. Matrix recommends the City adjust its total cost recovery policy to achieve a minimum of 40% for total cost recovery to better offset use of the General Fund to help provide funding for other park improvements and recreation services. It is also recommended that cost recovery targets are based upon the type of programs offered. Recreation programs that have high personal or individual benefit would have higher cost recovery targets than those that are mainly a public benefit. Having varied cost recovery targets based upon the type of program allows the City to provide programs beneficial to the community without focusing on the cost of the program and better assist the underserved population.

Three program categories are recommended according to the level of personal/individual benefit and each with a different cost recovery goal. Recreation programs and services are recommended to be classified using the following Category definition to assist in meeting the cost recovery target:

Category A Programs/Services: Recreation Programs/services that have high personal/individual benefit would have no or limited City subsidy. This category would include programs that are principally of personal/individual benefit with little to no public benefit and may include high-demand programs. Examples of programs in this category include adult sports leagues, private/semi-private lessons (non-therapeutic/adaptive), advanced level classes/programs, tournaments, facility/park rentals, and trips. Programs/services in this category would have a cost recovery range of 80%-100% with a long-term goal of 100%.

Category B Programs/Services: Recreation Programs/services that provide both personal/individual and some community benefit. This category would include program/services such as: childcare, special events (limited capacity), swim lessons (beginning), youth fitness/sports, workshops, and educational enrichment classes (SAT Prep). Programs/services in this category would have a cost recovery range of 35%-50% with a long-term goal of 50%.

Category C Programs/Services: Recreation Programs/services that provide limited personal/individual benefit and have high public benefit or address specific policy goals adopted by the City. This category would have the highest level of City subsidy and include senior programs, social service programs/classes, community wide events, therapeutic/adaptive programs/classes/services, arts enrichment, teens social and skill development programs. Programs/services in this category would have a cost recovery range of 10%-20% with a long-term goal of 20%.

The Milpitas Assistance Program (MAP) was established in 2019 to support low income families and individuals needing financial assistance to participate in Recreation and Community Services programs. It is envisioned that if fees are increased in certain program areas, MAP funds would continue to help subsidize those enrollment fees for families or individuals that otherwise could not afford or would find it difficult to afford to participate in City Recreation and Community Service Programs. In addition to fee offsets, the MAP program provides the setup of payment plans, so any fee balance that is the responsibility of customers can be broken into several low payments. The Milpitas Recreation and Community Services Department will seek to ensure affordability of recreation activities through scholarships, certain free youth activities, time-limited price promotions, and by cultivating volunteers and partnerships.

Next Steps

Following the fee assessment and cost recovery presentation by Matrix at the October 20 City Council meeting, staff will incorporate directions from Council and will continue with the update to the Master Plan including completing the following steps:

- Prepare draft recommendation of park improvements and program fees;
- Conduct additional community outreach to gain feedback and comment;
- Develop an action plan for the next 10 years to include strategies, probable costs and analysis of potential funding sources for recreation programs, parks, and recreation facilities improvement funding sources, and;
- Identify joint use and public/private partnership opportunities related to park and community facility improvement funding sources;
- Prepare the administrative draft Master Plan document with short, medium, and long-term project recommendations.

Section one of the Master Plan update including recommended park improvements and program fees is anticipated to be presented to the City Council for consideration and direction next Spring 2021.

Fiscal Impact:

There is no fiscal impact associated with receiving this presentation. Adequate funds are available in the project budget and additional funding is not required.

California Environmental Quality Act:

Not applicable

Recommendation:

Receive a presentation on the Parks and Recreation Master Plan Update Fee Assessment and Development of Cost Recovery Policy; and, provide direction to staff on Project No. 5115.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing
Category:	Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contact:	Walter C. Rossmann, Deputy City Manager, 408-586-3111
Recommendations:	1. Receive presentation from staff. 2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15. 3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

Background:

The City's Purchasing Division (Division), housed in the Finance Department, is responsible for the centralized purchasing of goods and services governed by City's Purchasing Ordinance (Ordinance) except for capital improvement related contracting which is handled by the Engineering Department as well as small dollar purchases which are delegated to City Departments consistent with the Municipal Code.

The Division is headed by the Purchasing Agent, who is responsible for implementing the Ordinance, and supported by 1.0 Buyer and 0.5 Temporary Buyer. Annually, the Purchasing Division develops and processes over 200 contracts in support of City operations consistent with the Ordinance.

In FY 2019-20, the City substantially completed the implementation of ProcureNow, its e-procurement and contract management system and underwent a procurement study involving stakeholders across all departments. The study identified 39 recommendations. During the last six months, staff completed 11 recommendations and has been working on addressing the remaining recommendations.

The County of Santa Clara Shelter-in-Place order in response to the COVID-19 Pandemic accelerated the implementation of identified recommendations and forced streamlining operations through online approval of contracts using DocuSign, implementation of the contract management database for Purchasing originated contracts including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases. Further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Ordinance.

On September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines to be implemented by the City Manager. These fiscal strategies and guidelines were designed to ensure an effective response to the economic crisis and related impact on the City's finances caused by COVID-19, while minimizing service cuts to our community. One of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for the Council's consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements.

Analysis:

The recommended changes to the Ordinance are based on a thorough review by the City Attorney, staff, and the consultant who studied the City's procurement function. The primary recommended changes include updates to Procurement Methods and Procedures, increased bidding thresholds and related contract

amendment authority, annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changes of definitions, and alignment to existing practices.

Procurement Methods and Procedures

This section of the Ordinance was primarily restructured for better understanding and transparency. For example, a new paragraph providing an overview of the section was added which outlines the various procurement methods and bidding thresholds, the public agency procurement paragraph was simplified, common procurement procedures of various solicitation methods were made consistent, and the requirements for bonds and insurance was expanded. Additionally, staff recommends adding the Request for Qualifications solicitation method, an "or equals" process, and criteria for standardization of supplies, material or equipment.

The current ordinance defines the Request for Quotes, the Invitation for Bids, and the Request for Proposals solicitation methods. Staff recommends adding the Request for Qualifications (RFQ) solicitation method which may be used only for competitively selecting professional services under one or more of the following considerations:

1. For establishing a pool of qualified bidders;
2. The ability of the firms to provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience, and efficiency of the firm;
4. The quality of performance of previous services;
5. Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services;
6. The sufficiency of the financial resources and ability of the firm to provide the service;
7. The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
8. The number and scope of conditions attached to the Solicitation.

With the RFQ method price is not a consideration initially. However, price will be determined through a competitive Best and Final Offer process and/or negotiations with finalists.

With the acquisition of supplies, material and equipment, staff may develop specifications. With the "or equals" process, staff may reference a product by its brand name in solicitation documents and add the words "or equals." Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only and describes a product best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City. A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference.

When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if "an equal" offered meets the specification. At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal." at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities. If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

The current ordinance provides guidance for standardizing supplies, material or equipment including technology products and services. However, such guidance is not based on quantifying cost savings. Standardization shall be considered if the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that repair or maintenance costs would be minimized; training of user and/or repair and maintenance personnel would be simplified; supplies or spare parts would be readily available; modifications to existing equipment would not be necessary; or matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program. The City Council currently approves standardizations for supplies, material or equipment including technology products and services.

In contrast, the recommended changes to the standardization section of the Ordinance outlines more detailed criteria requiring staff to quantify cost savings for the Purchasing Agent's review and approval of standardizing on supplies, material, equipment or technology products and services with a focus on cost savings. These criteria are as follows:

1. In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
2. When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
3. In order to achieve significant cost savings based upon consideration of the following cost factors:
 - a. Timeliness and quality of installation, repair and maintenance;
 - b. Quality of user training;
 - c. Supplies and replacement parts;
 - d. Modification of existing equipment, materials or systems;
 - e. Future upgrades and updates;
 - f. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.
 - g. Administrative costs.

Based on the detailed criteria focusing on cost savings related to standardization, staff recommends that, consistent with sole source purchase approvals, the Purchasing Agent is authorized to review and approve standardizations and submit annually a report to the City Council listing all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization as authorized in the Ordinance and detailed above.

Bidding thresholds and related contract amendment authority

Consistent with the Council approved COVID-19 Fiscal Response Strategies and Guidelines, staff recommends increasing the thresholds for informal to formal competition based on estimated pricing. As the table below shows, currently for purchases of \$5,000 or less, the Ordinance requires for staff to obtain three quotations whenever possible; for purchases over \$5,000 and less than \$20,000, the Ordinance requires staff to get at least three quotations in writing; and for purchases above \$20,000 to engage in a formal competitive process such as an Invitation for Bid or a Request for Proposals process.

Staff recommends increasing the solicitation method thresholds based on the estimated cost of purchase as outlined in the table below. For estimated purchases not to exceed \$10,000, the updated Ordinance would require staff to obtain three quotations whenever possible. Increasing this threshold from \$5,000 to \$10,000 is consistent with similar sized cities in Santa Clara County. The cities of Mountain View and Palo Alto require that quotes be obtained for estimated purchases of \$10,000 and higher. For the City of Santa Clara, the threshold is \$15,000 and for the City of Cupertino the threshold is \$60,000. Only the City of Sunnyvale requires quotes for estimated purchases of \$5,000 or higher.

For an estimated cost of purchase of more than \$10,000 and less than \$50,000, the Ordinance would require staff to issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three quotations. For an estimated cost of purchase of more than \$50,000, the updated ordinance requires formal solicitation methods such as Invitation for Bid, Request for Proposals, etc. unless exempted by the Ordinance. This change increases the requirement for a formal solicitation method from \$20,000 to \$50,000 which is consistent with similar sized cities in our county. For the cities of Mountain View and Palo Alto the formal solicitation threshold starts with estimated purchases of more than \$50,000. For the City of Santa Clara and Mountain View the threshold is \$100,000 and for the City of Cupertino the threshold is \$200,000.

Solicitation Method	Current Thresholds (Based on actual cost of purchase)	Recommended Thresholds (Based on estimated cost of purchase)
No mandatory competition	\$5,000 or less	Not to exceed \$10,000
Informal Solicitation Method - Request for Quotes (supplies and services)	Over \$5,000 and less than \$20,000	More than \$10,000 and no more than \$50,000
Formal Solicitation Method - Invitation for Bid (primarily for supplies, material and equipment) - Request for Proposal (primarily for services) - Request for Qualifications (professional services only)	\$20,000 or more	More than \$50,000

The City Manager is authorized to award contracts up to a contract amount of \$100,000 and any contract with a value greater than \$100,000 requires Council approval. This Ordinance clarifies that the City Manager is authorized to award California Uniform Public Construction Cost Accounting Act (CUPCCA) up to a contract amount of \$100,000.

Per the current Ordinance, the Purchasing Agent has certain contract amendment authority which is based on the previous City Manager contract approval authority of \$50,000 and to extend a contract without increase in compensation for up to six months. As shown in the table below, the Purchasing Agent may amend a contract based on certain conditions and up to a certain amount for individual amendments and cumulative contract amendments.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than \$50,000	10% of Award or \$5,000 whichever is less	15% of Award or \$7,500 whichever is less
More than \$50,000	10% of Award or \$10,000 whichever is less	15% of Award or \$20,000 whichever is less

Staff recommends aligning the contract amounts from \$50,000 to \$100,000 with the City Manager contract authority with similar conditions as shown in the table below. Additionally, staff recommends changing the Purchasing Agent's authority to extend a contract without increase in compensation from up to six months to up to 12 months. These changes in authority will streamline City operations.

Contract Amount	Individual Contract Amendment Authority	Cumulative Contract Amendment Authority
No more than \$100,000	10% of Award or \$10,000 whichever is less	15% of Award or \$15,000 whichever is less
More than \$100,000	10% of Award or \$20,000 whichever is less	15% of Award or \$40,000 whichever is less

Annual reporting requirements and deadlines for sole source purchases and standardization of supplies, material or equipment

Currently, Municipal Code section I-310-3.70 (c) (4) requires that not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. In praxis, this reporting requirement has been assumed by the Purchasing Agent because the Purchasing Agent per the Ordinance (Section I-2-3.09, titled "Sole Source Procurement"), prior to award of a sole source contract, is required to determine in writing, after conducting a good faith review of available

sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. Since the deadline for reporting all sole source purchases occurs during the annual Council recess, staff is required to submit the report twice. First, the report is provided as an Information Memorandum to the City Council by July 15 and then as a staff report after the recess on an August Council agenda so that the public can review the information as well.

With this ordinance change, staff recommends moving the reporting requirement from the current Chapter to the Ordinance, requiring the Purchasing Agent to submit the annual report, and extending the reporting deadline to August 31 to provide additional time to compile the data after the end of the fiscal year and avoid having to submit the report twice.

Additionally, with the annual sole source report, staff recommends adding the requirement to report on approved standardizations of supplies, material or equipment by August 31 for prior fiscal year actions.

Changes of definitions

Changes of definitions include clarifying additions such as including Purchase Orders (POs) in the definition of contracts. A PO has potentially two functions. It serves as a payment vehicle and as a contract. Unlike an agreement, a PO does not have to be signed by a vendor. Therefore, purchases of goods, supplies, and equipment, governmental agencies can be expedited by attaching standard terms and conditions to a PO.

The definition for professional services is recommended to be expanded to include information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS). Currently, contracts for information technology are not addressed in the ordinance. With this change, the exception for not issuing Purchase Orders related to technology services is recommended to be removed.

The definition of Purchasing Agent is clarified to include the Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter. This change provides clarity in the absence of the Purchasing Agent.

The definition of Signature is aligned with electronic signatures as established by law and current practice of accepting scanned signatures.

The overarching term of Solicitation is introduced which includes an invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.

Alignment to existing practices

In addition to aligning the sole source reporting requirement, staff recommends authorizing the disposition of firearms in the Municipal Code consistent with the current Memorandum of Understanding (MOU) with the Milpitas Police Officer Association. Per MOU, a sworn officer who has served satisfactorily in the Department for at least five years may purchase a service weapon based on its depreciated value upon satisfactory separation from City service. Further upon retirement, the City shall give an officer his/her service weapon and holsters without charge under certain conditions.

Other alignments to existing practices include adding contract management to the Department Heads' list of responsibilities.

Policy Alternative:

Alternative: Do not approve the Ordinance changes.

Pros: Staff will continue procuring goods and services within the existing framework of rules and regulations.

Cons: The Ordinance changes are modernizing the existing Ordinance consistent with best practices.

Reason not recommended: Our City would not streamline the City's purchasing system to reduce the administrative burden and cost while ensuring open and fair competition and competitive pricing.

Fiscal Impact:

With Council approval of the recommended Ordinance amendments, the citywide purchasing system will be streamlined freeing up staff time to work on other high priority projects.

California Environmental Quality Act:

Not applicable

Recommendations:

1. Receive presentation from staff.
2. Following the City Attorney reading the title, move to waive the first reading beyond the title of Ordinance No. 23.15.
3. Introduce Ordinance No. 23.15 to update the municipal code section on purchasing.

Attachment:

Draft Ordinance No. 23.15

PLEASE NOTE:

This copy of Ordinance No. 23.15 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 23.15

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 2 (PURCHASING) AND 310 (OPEN GOVERNMENT ORDINANCE) OF TITLE I (ADMINISTRATION) OF THE MILPITAS MUNICIPAL CODE RELATING TO PURCHASING

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City’s Purchasing Division in the Finance Department supports all City Departments to procure and contract for goods and services while ensuring fair and open competition consistent with the Municipal Code; and

WHEREAS, the City studied its procurement function including process mapping to streamline procurement processes and reducing administrative costs while ensuring competitive pricing; and

WHEREAS, on March 16, 2020, the County of Santa Clara ordered residents to shelter-in-place (“Shelter-In-Place Order”) in response to the COVID-19 pandemic; and

WHEREAS, the Shelter-in-Place Order accelerated the streamlining of operations through online approval of contracts using DocuSign, implementation of the contract management database for contracts originating from the Purchasing Division including automatic notification for renewal of contracts and insurance, and online payment for Procurement Card (P-Card) purchases; and

WHEREAS, further streamlining while ensuring fair and open competition and competitive pricing is dependent on updating the Purchasing Ordinance; and

WHEREAS, on September 1, 2020, the City Council approved the COVID-19 Fiscal Response Strategies and Guidelines; and

WHEREAS, the City Manager was directed to follow these fiscal strategies and guidelines to ensure an effective response to the economic crisis and related impact on the City’s finances caused by COVID-19, while minimizing service cuts to our community; and

WHEREAS, one of these fiscal strategies and guidelines directs the City Manager to identify and bring forward for Council consideration City policy and ordinance changes, as applicable, that would enable/facilitate service delivery improvements; and

WHEREAS, the primary recommended changes to the City’s Purchasing Ordinance include updating procurement methods and procedures, increasing bidding thresholds and related contract amendment authority, establishing annual reporting requirements and deadlines for sole source purchases and standardization of equipment, changing definitions, and aligning the Purchasing Ordinance with existing practices.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 310

Title I (Administration), Chapter 310 (Open Government Ordinance), Section 3.70 (Public Information that Must be Disclosed) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.70 - Public Information that Must be Disclosed

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

- (a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.
- (b) Litigation Material.
- (1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this chapter:
 - (i) A pre-litigation claim against the City;
 - (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
 - (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this [Chapter](#).
 - (2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.
- (c) Contracts, Bids and Proposals.
- (1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.
 - (2) Contracts, contractors' bids, responses to requests for proposals and all other records of communication between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to an RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of an RFP has been completed.
 - (3) During the course of negotiations for:
 - (i) Personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
 - (ii) Leases or permits having total anticipated revenue or expense to the City;
 - (iii) Any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five (5) working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

~~(4) — Not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Section.~~

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) ~~—Reserved.~~

~~(g) —~~Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

~~(h) —Reserved.~~

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

Title I (Administration), Chapter 2 (Purchasing) of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 2 - PURCHASING

Sections:

Section 1 - Purpose and Application: Definitions

I-2-1.01 - Purpose

The purpose of this Purchasing Ordinance is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

I-2-1.02 - Application

Except as otherwise provided herein, this ~~C~~chapter applies to contracts for the procurement of supplies and services; entered into by the City. When the procurement involves the expenditure of federal assistance, contract, or grant funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this ~~e~~Chapter shall prevent ~~the City and any public~~City affiliated agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

I-2-1.03 - Definitions

The words defined in this section shall have the meanings set forth below whenever they appear in the Purchasing Ordinance, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.

1. ~~BIDDER. Any person who submits a response to a competitive City solicitation—~~~~BRAND NAME OR EQUAL SPECIFICATION. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.~~

~~2. 2—BIDDER. Any person who submits a response to a competitive City solicitation.~~

3. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

~~43.~~ CITY. The City of Milpitas—~~and City affiliated agency.~~

54. CONTRACT. All types of City contracts ~~or~~, agreements, or purchase orders with the exception of public works contracts ~~which shall be governed by 1-2-3-20~~, for the procurement of supplies and services or the disposal of surplus supplies.
65. CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract ~~accomplished by mutual action of the parties to the contract.~~
76. CONTRACTOR. Any person having a contract with ~~a governmental body~~ the City.
87. DATA. Any recorded information, regardless of form or characteristic.
98. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
109. ELIGIBLE LOCAL PROVIDER. Any local provider who is an otherwise responsible bidder and otherwise responsive to ~~the~~ a City's ~~invitation for bids~~ competitive solicitation.
11. ~~10.~~ ENVIRONMENTALLY PREFERABLE PRODUCTS OR MATERIALS. Any products or materials contained in the products that have a reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials' acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
1211. GENERAL SERVICES. The furnishing of goods and services by a vendor that does not typically require a license, certification or other professional criteria to perform the work. This includes services such as equipment maintenance, janitorial, printing, landscaping and refuse disposal. ~~This term shall not include employment agreements or collective bargaining agreements.~~
1312. GRANT. Any furnishing of funds by an outside agency or other organization to support a program authorized by law.
14. ~~INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting bids.~~
1513. LOCAL PROVIDER. A supplier or provider of equipment, materials, supplies or services which has an established place of business within the City of Milpitas, which has a City of Milpitas business license, which has paid all currently due business license fees and taxes, and which began doing business within the City of Milpitas at least one (1) year prior to the City's inviting bids or quotations for the respective purchase.
1614. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.
1715. POST-CONSUMER MATERIAL OR PRODUCT. Any material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, including any waste material and by-products which have been recovered or diverted from solid waste.
1816. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract and contract administration.
1917. PROFESSIONAL SERVICES. ~~Those services~~ Services, generally of an intangible nature that typically require a license, certification, and/or other professional criteria to perform the work as defined by the laws of the State of California including, but not limited to, Architect, Engineer, Land Surveyor, Attorney, Public Accountant, ~~as well as information technology services such as installation and implementation of information technology projects, software licensing and maintenance, and Software as a Service (SaaS).~~
2018. PROVIDER. The terms bidder, supplier, contractor, vendor or provider, may be used interchangeably and shall refer to the person, company, or corporation from whom the City of Milpitas purchases supplies or services or with whom the City enters into a contract.
2119. PUBLIC AGENCY. A public agency is defined as any school district, ~~city~~ City, state, federal agency, U.S. Communities program or other nonprofit association or group consisting of governmental entities.
2220. PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
2321. PUBLIC WORKS CONTRACT. Any City contract for the performance of a "public project" as defined in Public Contract Code ~~Section~~ section 22002, as it may be amended from time to time.
24. ~~RECYCLED PRODUCT PREFERENCE. A price preference, equal to ten percent (10%) of the lowest cost bid, given to bidders offering recycled products over those offering nonrecycled products.~~

- ~~25.~~ 22. PURCHASING AGENT. The Purchasing Agent, the Director of Finance or his or her designee, or such position designated by the City Manager to administer this Chapter.
23. ~~REQUESTING DEPARTMENT.~~ Any organizational unit of the City of Milpitas that utilizes any supplies or services procured under this Ordinance.
- ~~24.~~ ~~26~~ RESPONSE. means a bid, proposal, quote, statement of qualification or other communication offered in response to a competitive City solicitation.
25. RESPONSIBLE BIDDER. A bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
- ~~27~~ 26. RESPONSIVE BIDDER. A bidder who has complied with the instructions and requirements established by the City and set forth in the ~~contract, purchase order or request for quotations~~ City's solicitation documents.
- ~~28~~ 27. SIGNATURE. Shall be defined as a manual signature affixed in ink, ~~or provided through other acceptable means established by law.~~ A faxed or scanned signature is acceptable ~~so long as it is followed up within ten (10) calendar days by the original document.~~
- ~~29~~ 28. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.
- ~~30~~ 29. SOLICITATION. An invitation for bids or request for proposals, qualifications, quotes, or other document including all documents, whether attached or incorporated by reference, utilized in furtherance of a City procurement of goods or services.
30. SUPPLIES. All property (including, but not limited to, equipment, goods and materials) except as otherwise provided herein.
31. SURPLUS SUPPLIES. Supplies which are worn out, obsolete or unsuitable for City use.
32. WRITING OR IN WRITING. The product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Section 2 - Division of Purchasing

I-2-2.01 - Establishment

There is hereby established for the City a Division of Purchasing, headed by a Purchasing Agent, who shall report to the Director of the ~~Financial Services~~ Finance Department.

I-2-2.02 - Responsibilities

In accordance with this ~~C~~ hapter, the Purchasing Agent shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;
- ~~2. Exercise direct supervision over the City central stores and general supervision over all other inventories of supplies belonging to the City;~~ Award contracts for Fifty Thousand Dollars (\$50,000) or less;
- ~~3. Amend contracts or purchase orders awarded for amounts of Fifty Thousand Dollars (\$50,000) or less as necessary, as long as the total amount of the amended contract does not exceed Fifty Thousand Dollars (\$50,000).~~
4. Sell, trade or otherwise dispose of surplus supplies belonging to the City;
- ~~45.~~ Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
- ~~56.~~ Provide ongoing training and support to the City departments pertaining to procurement of supplies or services ~~under Five Thousand Dollars (\$5,000);~~
- ~~6. Execute and administer~~ 7. Administer contracts with vendors for the purchase of citywide services and supplies such as paper, office supplies, janitorial services and office equipment;
- ~~78.~~ Establish and maintain a central vendor database categorized by goods and services;
- ~~89.~~ Provide management of the Procurement Card and Single Merchant Credit Card Programs;
- ~~910.~~ Adopt operational procedures relating to the execution of any of the above duties and responsibilities.

I-2-2.03 - Purchases made by Departments

Each Department has the authority to purchase supplies, materials, equipment and services not to exceed Ten Thousand Dollars (\$10,000) or less. For supplies, materials, and equipment, the department shall use a Procurement Card or submit a Purchase Requisition to Finance for issuance of a Purchase Order. For services with a value greater than One Thousand Dollars (\$1,000), the department shall submit a Purchase Requisition to Finance for issuance of a contract and ensure compliance with insurance requirements as promulgated by the Risk Manager.

I-2-2.04 - Delegation

The Purchasing Agent may delegate authority to purchase supplies, or services, and to dispose of surplus supplies, to other City officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 3 - Procurement ~~Authority~~—Methods and Procedures

~~I-2-3.01 —Purchases—~~ Selection of Five Thousand Dollars (\$5,000) or Less Solicitation Method

~~Each Requesting Department has the authority to purchase supplies and services for Five Thousand Dollars (\$5,000) or less, but must obtain three (3) quotations whenever possible to determine the best value. The Purchasing Agent shall be available to provide ongoing training and support for purchases at the Five Thousand Dollars (\$5,000) or less dollar level.~~

~~I-2-3.02 —Purchases Over Five Thousand Dollars (\$5,000) and Less Than Twenty Thousand Dollars (\$20,000)~~

~~The purchase of supplies and services in an amount over Five Thousand Dollars (\$5,000) and less than Twenty Thousand Dollars (\$20,000) may be made by the Purchasing Agent through competitive bid, using the following procedures:~~

- ~~(a) —Whenever possible, competitive bid in the open market shall be based on at least three (3) quotations.~~
- ~~(b) —The Purchasing Agent may solicit quotations from prospective vendors both on and off the vendor database. Quotations must be written and may include facsimile and electronic mail.~~
- ~~(c) —The Purchasing Agent shall keep a record of all open market orders and quotes for a period of one (1) year after the submission of quotes or placing of orders.~~
- ~~(d) —The Purchasing Agent is authorized to award a contract for less than Twenty Thousand Dollars (\$20,000) to the lowest responsive and responsible bidder.~~
- ~~(e) —If no responsive bid is received after soliciting quotations, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market.~~
- ~~(f) —The provisions of Section I-2-3.02 shall not apply to purchases that do not exceed Five Thousand Dollars (\$5,000).~~
- ~~(g) —The Purchasing Agent may amend contracts or purchase orders awarded for amounts under Twenty Thousand Dollars (\$20,000) as necessary, as long as the total amount of the amended contract does not exceed Twenty Thousand Dollars (\$20,000).~~

~~I-2-3.03 —Purchases of \$20,000.00 or More~~

~~3.03-1 Formal Bid Procedures. The Purchasing Agent shall solicit bids for supplies, equipment or services of a value of \$20,000.00 or more using the following formal sealed bid procedures. The purchase of supplies, equipment or services for a value less than or equal to \$100,000.00 may be approved by the City Manager. The purchase of supplies, equipment or services for a value in excess of \$100,000.00 must be approved by the City Council.~~

- ~~(a) —A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured, and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.05. The Purchasing Agent may also solicit sealed bids from responsible prospective suppliers and contractors whose names are not in the vendor database.~~
- ~~(b) —Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents.~~

~~The Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered by electronic mail to all registered bidders via the eProcurement System within 72 hours after the bid opening. A tabulation of all bids received shall be posted on the City's website for a period of not less than 30 calendar days after the bid opening.~~

~~(c) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented, and readvertise for bids.~~

~~(d) The bid shall be awarded to the lowest responsive and responsible bidder.~~

~~(e) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, equipment hire or have services performed in the open market.~~

~~3.03-2 Exceptions. The bidding procedures under Sections I-2-3.02 and I-2-3.03 may be dispensed with:~~

~~(a) In an emergency as defined in Section I-2-3.10;~~

~~(b) Where it is determined that the supply or service is available from only one source, as defined in Section I-2-3.09, Sole source procurement. The basis upon which this determination is made shall be in writing;~~

~~(c) Where supplies and services are purchased through a piggyback arrangement pursuant to Section I-2-3.07 or a cooperative purchasing arrangement pursuant to Section I-2-3.08;~~

~~(d) Where, in the best interests of the City, supplies and services are purchased through the Request for Sealed Proposals method pursuant to Section I-2-3.06.~~

~~3.03-3~~ City shall where practicable engage in competitive procurement. The Purchasing Agent shall use the following solicitation methods under the circumstances described below:

(a) Purchases which are estimated not to exceed ten thousand dollars may be made without a competitive procurement method.

(b) Request for quotes process shall be used for purchases with an estimated value of more than ten thousand dollars and no more than fifty thousand dollars.

(c) Request for proposals process shall be used for purchases of services with an estimated value of more than fifty thousand dollars and for supplies, materials and equipment when the Purchasing Agent determines that it is in the best interest of the City to do so.

(d) Request for qualifications process may only be used for purchases of professional services with an estimated value of more than fifty thousand dollars.

(e) Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than fifty thousand dollars or for services when the Purchasing Agent determines that it is in the best interest of the City to do so.

I-2-3.02 - Split Orders-

It is a violation of the Ordinance to divide the purchase of supplies or general services ~~in the amount of \$20,000.00 or more~~ into smaller orders for the purpose of evading the competitive ~~bidding~~ solicitation requirements of this ~~section~~ Chapter.

~~I-2-3.04 - Competitive Bids~~

~~Where~~

I-2-3.03 - Procurements where competitive methods are not practicable-

The City is not required to engage in competitive procurement under the following circumstances:

(a) Emergency authority of Purchasing Agent pursuant to Section I-2-3.04

(b) Public agency purchases pursuant to Section I-2-3.05

(c) Sole source procurements pursuant to Section I-2-3.06

(d) As authorized by the City Council to be in the best interest of the City

I-2-3.04 - Emergency Authority of Purchasing Agent

3.04-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this Chapter upon a finding that such purchases are required to prevent or mitigate the loss or impairment of life, health, property, or essential public services and that there is sudden, unexpected occurrence that poses a clear and imminent danger. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Fifty Thousand Dollars (\$50,000), without competitive bids upon notice.

3.04-2 Not later than seven (7) days after the emergency action, or at the next succeeding City Council meeting if that meeting will occur not later than 14 days after the action, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Fifty Thousand Dollars (\$50,000), a description of the supplies or services purchased, and the prices thereof.

3.04-3 The City Council shall continue to review the emergency action at every subsequent regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless the Purchasing Agent has terminated the action prior to the City Council reviewing the emergency action.

I-2-3.05 – Public Agency Purchases

The Purchasing Agent may without observing the competitive procurement requirements prescribed by this Chapter:

- (a) Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or
- (b) Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
- (c) The Purchasing Agent may arrange for the City to enter into purchase contracts with a supplier or contractor for the purchase of supplies or general services, the pricing and terms of which have been previously established by another public agency or improved pricing and terms, provided that the Purchasing Agent determines that such purchase contracts are in the City's best interest; or
- (d) The Purchasing Agent may purchase supplies and services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or entered into by any public agency or cooperative purchasing program utilizing public agency procurements as the basis for contracts offered, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that:
 - i. The underlying purchase was made using competitive negotiation or procurement procedures, and may include a nationally bid cooperative contract; and
 - ii. The public agency is a "public agency" as defined in Government Code section 6500.

I-2-3.06 - Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file.

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year including the name of the department, description of the product or general service, vendor, and dollar amount.

~~are required, they shall be submitted electronically~~

I-2-3.07 – Request for Quotes (RFQ) Procedure

- (a) The Purchasing Agent shall issue a Request for Quotes indicating the basis of award through the City's e-procurement system and vendors known to be able to provide the supplies and services and base the award of the contract, whenever possible, on at least three (3) quotations.
- (b) Responses must be in writing as instructed in the Request for Quotes.
- (c) If no responsive quote is received after issuance of a Request for Quotes, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

I-2-3.08 - Formal Bid Procedures:

- (a) A notice of invitation for bid shall include a general description of the supplies, equipment or services to be purchased, state where the bid forms and specifications may be secured and state the final deadline and method for submitting bids. Notice shall be given as provided in Section I-2-3.10.
- (b) Bidders shall submit electronic bids through the City's eProcurement System per the instructions in the bid documents. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids. ~~City's eProcurement System per the instructions in the bid documents.~~
- (c) Bids shall be opened at the time and date indicated in the bid document. A tabulation of all bids received shall be delivered by electronic mail to all registered bidders via the eProcurement System within 72 business hours after the bid opening. A tabulation of all bids received shall be made available on the City's eProcurement System or website for a period of not less than 30 calendar days after the award of the bid.
~~Where competitive bids are required, the purchase or disposal shall be made on the basis of three or more of said bids, unless the Purchasing Agent shall certify in writing that less than three prospective bidders have submitted bids or that, to the best of the Agent's knowledge, there are less than three prospective vendors from whom the supplies or services are available and that bids were invited from all of said vendors. Any bid may be withdrawn by a written request signed by the bidder and received by the Purchasing Agent prior to the final time and date for the receipt of bids.~~
- (d) The Purchasing Agent or City Council shall have the discretion to reject any and all bids presented and re-advertise for bids.
- (e) The bid shall be awarded to the lowest responsive and responsible bidder.
- (f) If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire, or have services performed in the open market provided that negotiations are conducted as appropriate as to price, terms and conditions of contract award.

~~I-2-3.05 Competitive Bids (Notice)~~

~~For purchases under Sections I-2-3.03, Purchases of \$20,000.00 or More, and I-2-3.06,09 - Request for Sealed Proposals (RFP), where notice is required, notice shall be given by one or more of the following methods:~~

- ~~(1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.~~
- ~~(2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.~~
- ~~(3) Through direct electronic notification via the City's eProcurement System.~~
- ~~(4) Any other manner of notice required by law for the particular goods or services to be purchased.~~

~~Nothing in this subsection shall prohibit the City from notifying suppliers and contractors of solicitations by electronic means, and nothing in this subsection shall prohibit the City from notifying suppliers and contractors who are not in the City's Vendor Database.~~

~~The notice shall include a general description of the supplies or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.~~

~~(Ord. No. 289.1, § 2, 11/7/17; Ord. No. 23.12, § 2, 5/5/09; Ord. 23.10 (part), 1/3/06)~~

~~I-2-3.06 Request for Sealed Proposals (RFP)~~

3.06) Procedure

3.09-1 The Purchasing Agent shall be authorized to utilize the request for ~~sealed~~ proposal method for purchase of supplies or services upon a determination by the Purchasing Agent that the use of competitive bidding is not practical or advantageous to the City because of one (1) or more of the following considerations:

- (a) Price is not a primary consideration;
- (b) The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts or services;
- (e) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical supplies or services;

- (f) Delivery and installation, post-sale service or maintenance, reliability, warranties or availability of replacements, are overriding in relation to price or need to be evaluated in relation to prices;
- (g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (h) The need to evaluate the utilization of a fixed-price or cost-type contract;
- (i) The need to evaluate whether the ~~market place~~ marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;
- (j) The number and scope of conditions attached to the Solicitation.

3.0609-2 Receipt of Proposals.

No proposals shall be handled so as to permit disclosure of ~~the identity of any bidder or~~ the contents of any proposal to competing bidders during the process of negotiation. A register of proposals shall be prepared containing the name of each bidder ~~and a description sufficient to identify the item offered.~~ The register of proposals shall be open for public inspection only after contract award.

3.0609-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.0609-4 Discussion with Responsible Bidders and Revisions to Proposals.

Discussions may be conducted with responsible bidders who submit proposals determined to be reasonably possible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.0609-5 Award.

Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value and the evaluation factors set forth in the request for proposals.

3.0609-6 Rejection.

Without limitation to the applicability of any other provisions of this Cchapter, the Purchasing Agent or City Council may reject any and all proposals.

I-2-3.07 ~~Piggyback Procurement~~ 10 - Request for Qualifications (RFQa) Procedure

3.10-1 The Purchasing Agent ~~may arrange for the City to enter into purchase contracts with a supplier or contractor~~ shall be authorized to utilize the request for the qualification method for purchase of supplies or general professional services, the pricing and terms of which have been previously established upon a determination by another public agency, provided that the Purchasing Agent ~~determines that a "piggyback" purchase is in the City's best interest. The Purchasing Agent is required to determine and apply all of the following, prior to entering into the purchase:~~

- (1) ~~There are no local suppliers or contractors who could provide the product or service at~~ that the use of competitive rates;
- (2) ~~A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's Purchasing Ordinance;~~
- (3) ~~The specifications of the item or service required by the City are not materially different from those specified in the originating agency's solicitation;~~
- (4) ~~The price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this Ordinance;~~
- (5) ~~The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation;~~

- (6) ~~No more than a ten percent (10%) variation is allowed for customizing the order or for desirable options. In addition, a cost of living adjustment (using San Francisco Oakland San Jose Consumer Price Index All Urban Consumers) can be added for up to two (2) years; and~~
- (7) ~~The City enters into a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions and prices.~~

~~1-2 3.08 Cooperative Procurement~~

~~3.08 1 The Purchasing Agent may purchase supplies and general services without complying with the quotation or bidding requirements of this Chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any public agency, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that~~ is not practical or advantageous to the City because of one (1) or more of the following considerations:

- (a) ~~The underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City's, and may include a nationally bid cooperative contract; and~~
- (b) ~~The public agency is a "public agency" as defined in Government Code section 6500.~~

~~3.08 2 In all such cases, the supplies or general~~ (a) Price is not part of the scoring criteria;

(b) For establishing a pool of qualified bidders;

(c) The ability of the bidder to provide the service promptly, or within the time specified, without delay or interference;

(d) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(e) The quality of performance of previous services;

(f) Quality, availability, or capability is overriding in relation to price in procurement of research, development, technical services ~~purchased must;~~

(g) The sufficiency of the financial resources and ability of the bidder to provide the service;

(h) The need to evaluate whether the marketplace will respond better to a solicitation permitting a range of alternative proposals or evaluation and discussions of them before entering the contract;

(j) The number and scope of conditions attached to the Solicitation.

3.10-2 Receipt of Statements of Qualifications.

No statements of qualifications ("SOQs") shall be the same handled so as to permit disclosure of the contents of any SOQs to competing bidders during the process of negotiation. A register of SOQs shall be prepared containing the name of each bidder. The register of SOQs shall be open for public inspection only after contract award.

3.10-3 Evaluation Factors.

The request for qualifications shall state evaluation factors, which shall be considered the primary basis for evaluating the SOQs.

3.10-4 Discussion with Responsible Bidders and Revisions to SOQs.

Discussions may be conducted with responsible bidders who submit SOQs determined to be reasonably possible of being selected for award, for the purpose of cost, clarification to assure full understanding of, and conformance to, the solicitation requirements. All bidders shall be accorded equal treatment. Revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of the bidder or any information contained in competing offers.

3.10-5 Award.

Award shall be made to the responsible bidder whose SOQ is determined in writing to be the most advantageous to the City, taking into consideration value and the evaluation factors set forth in the request for qualifications.

3.10-6 Rejection.

Without limitation to the applicability of any other provisions of this Chapter, the Purchasing Agent or City Council may reject any and all SOQs.

I-2-3.11 – Noticing of Solicitations for estimated Purchase of more than \$50,000

For purchases with an estimated value of more than \$50,000, where notice is required, notice shall be given by one or more of the following methods:

- (1) Publishing notice in a newspaper of general circulation within the City on at least one occasion at least five days prior to the date set for the final receipt of bids. Provided, that publication may be made in any newspaper of general circulation in Santa Clara County which the Purchasing Agent shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
- (2) Posting on the City of Milpitas website at least five days prior to the date set for the final receipt of bids.
- (3) Through direct electronic notification via the City's eProcurement System.
- (4) Any other manner of notice required by law for the particular goods or services to be purchased.

~~be offered at the same price as the supplies~~Nothing in this section shall prohibit the City from notifying prospective firms of solicitations by electronic means, and nothing in this section shall prohibit the City from notifying prospective firms who are not in the City's Vendor Database.

The notice shall include a general description of the goods or services to be purchased or City property to be disposed; date, time and place of bid opening; and whether bonds will be required. The notice shall also include such information as to the proposed purchase or disposal as the Purchasing Agent deems sufficient to comply with relevant State law, regulation or City ordinance.

~~services subject to the agreement or program.~~

I-2-3.12 – Use of "or equals" in specifications and testing of "equals:"

- (a) Any reference to a specific brand name followed by the term "or equal" in specifications is illustrative only. A reference to a brand name or equal describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A bidder may offer an equivalent ("or equal") in response to a brand name or equal reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract and the City determines if "an equal" offered meets the specification.
- (c) At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal;" at bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
- (d) If the City rejects a response or part of a response containing any "or equal," the Purchasing Agent shall determine the decision in writing.

~~I-2-3.09 – Sole Source Procurement~~

~~A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply or service. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A written statement of the basis for the sole source determination shall be placed in the contract file. The sole source designation shall remain effective for five (5) years unless the Purchasing Agent determines the classification is no longer warranted.~~

~~I-2-3.10 – Emergency Authority of Purchasing Agent~~

~~3.10-1 Precluding action by the City Council, the Purchasing Agent may authorize emergency purchases without observing the bidding procedures set forth in this chapter upon a finding that such purchases are required for the immediate preservation of the public health, safety, or welfare and that there is an immediate or imminent emergency. The Purchasing Agent may purchase supplies or services, even though the amount thereof may exceed Twenty Thousand Dollars (\$20,000), without competitive bids upon notice.~~

~~3.10-2 At the next succeeding City Council meeting, the Purchasing Agent shall submit to the City Council a written statement of the circumstances of such emergency purchase over Twenty Thousand Dollars (\$20,000), a description of the supplies or services purchased, and the prices thereof.~~

~~I-2-3.11 – Authority to Modify Contracts Awarded by City Council~~

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or general service contract previously approved by the Council within the following guidelines:

- (1) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed six (6) consecutive months from the last Council approved expiration date;
- (a) (2) To make minor revisions to the scope of services or schedule;
- (b) (3) To make clerical corrections; or
- (c) (4) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

Individual Change Order Authority	Cumulative Change Order Authority
10% of Award or \$5,000 whichever is less	15% of Award or \$7,500 whichever is less
10% of Award or \$10,000 whichever is less	15% of Award or \$20,000 whichever is less

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

- (5) This subsection does not apply to contracts for professional services.

I-2-3.12 - Contracting for Consultants

~~3.12-1 The City Council finds and declares that the competitive bid process is ill suited for the selection of consultants.~~ 3.12-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in I-2-3.08, the request for qualifications (RFQa) process established in I-2-3.09, or a similar process based on evaluating consultant qualifications, is better suited.

~~3.12-2 The requesting department shall be empowered to engage a consultant (including, but not limited to, material testing services and construction inspection services) without the necessity of competitive bidding or notice thereof:~~

- (a) ~~Without City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged does not exceed \$100,000.00.~~
- (b) ~~With City Council approval if the consultant's total fee for materials and services under the contract by which the consultant is engaged exceeds \$100,000.00.~~

~~3.12-3~~ Architects, Engineers and Land Surveyors.

In addition to the provisions of ~~paragraphs~~paragraph 3.12-1 ~~and 3.12-2~~ of this ~~subsection~~section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

- (a) The requesting department or division head shall negotiate a contract with the ~~best qualified firm for~~firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
- (b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be ~~the most~~competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second

most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.

- (c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and ~~qualification~~, qualifications and continue negotiation until an agreement is reached.

I-2-3.13 - Standardization

3.13-1 Where the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the ~~city~~City, or that ~~significant~~ cost savings have been demonstrated, standardization of supplies, materials or equipment, including information and communication technology products and services, for purchase or to be used in a public works project, shall be considered. The specifications may stipulate a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

- ~~i. (a) — Repair or maintenance costs would be minimized;~~
- ~~(a) (b) — Training of user~~ In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
- ~~(b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.~~
- ~~(c) In order to achieve significant cost savings based upon consideration of the following cost factors:~~
 - ~~1. Timeliness and/or quality of installation, repair and maintenance personnel would be simplified; ;~~
 - ~~2. (e) — Quality of user training;~~
 - ~~2.3. Supplies or spare and replacement parts would be readily available; ;~~
 - ~~4. (d) — Modifications to Modification of existing equipment would not, materials or systems;~~
 - ~~5. Future upgrades and updates;~~
 - ~~6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination.~~
 - ~~7. Administrative costs.~~

3.13-2 The Purchasing Agent's written decision shall state the facts reviewed in arriving at the decision, the reasons for the decision, the period of time for which it is valid for making purchases and under what conditions it must be reviewed for possible revision. A copy of the Purchasing Agent's decision shall be ~~necessary~~; attached to any report to the City council seeking approval of a purchase under this section.

- ~~(e) — Matching existing supplies, materials or equipment is required for proper operation of a particular piece of equipment or City program.~~

3.13-~~23~~ Available Competition.

When there is more than one (1) source for the standardized supply or service, competitive ~~bidding~~procurement in accordance with Sections I-2-3.~~02 Purchases of Over Five Thousand Dollars (\$5,000) and Less than Twenty Thousand Dollars (\$20,000) and~~06, I-2-3.~~03 Purchases of Twenty Thousand Dollars (\$20,000) or More~~07 and I-2-3.08 is required.

3.13-~~3~~ Approval. ~~The 4 Annual Report.~~

Not later than August 31st annually, the Purchasing Agent shall provide to the City Council ~~has the final authority to approve~~ a list of all standardizations approved during the past fiscal year including the product, manufacturer, and reasons for the standardization of supplies or services based on the recommendation of staff. ~~The standardization shall be valid for no more than ten (10) years, but may be revised sooner if the Purchasing Agent or requesting department can show substantial justification for an earlier revision. (Ord. 23.10 (part), 1/3/06)~~ as authorized in this section.

I-2-3.14 - Local Purchasing Preference

3.14-1 Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall be applicable to the following types of purchases or contracts executed in excess of ~~Five~~Ten Thousand Dollars (\$~~5~~10,000) and pursuant to either a formal or an informal bid:

- (a) Purchases or contracts for the purchase of supplies, materials and equipment; and
- (b) Purchases or contracts for ~~nonprofessional~~ services that are not otherwise of the kind contemplated by Section I-2-3.~~12~~11.

3.14-2 Exceptions to the Application of Local Preference.

The provisions of this section and the local preference established pursuant to this section shall not be applicable to the following types of purchases or contracts:

- (a) Purchases or contracts for professional services of the kind contemplated by Section I-2-3.~~12~~11;
- (b) Public works contracts;
- (c) Emergency purchases made pursuant to Section I-2-3.~~10~~03;
- (d) Sole source purchases made by the Purchasing Agent pursuant to Section I-2-3.~~09~~05;
- (e) ~~Piggyback~~Public Agency purchases made by the Purchasing Agent pursuant to Section I-2-3.~~07~~04;
- ~~(f) Cooperative purchases made by the Purchasing Agent pursuant to Section I-2-3.08;~~
- ~~(g)~~ Purchases or contracts where legal constraints on the expenditure of funds prohibit the application of the local preference or those contracts funded by the federal or state government, including federal or state grant funding, when such funding would be jeopardized by application of the local preference.

3.14-3 Reduction of Bid by Eligible Local Provider; Procedure for Applying the Local Preference.

In contracting for ~~equipment, materials~~, supplies or services as specifically set forth in this section, the City shall grant preference to a local provider who submits a bid within ten percent (10%) of the lowest responsible bidder and who is otherwise responsive and responsible to the invitation for bids, which preference shall allow the local provider the opportunity to reduce its bid to an amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than an Eligible Local Provider. In the event an Eligible Local Provider reduces its bid to the amount of the lowest responsible bid, the Eligible Local Provider shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

- (a) The preference and opportunity to reduce the amount of the bid shall be provided first to the lowest Eligible Local Provider and, if not accepted by such Eligible Local Provider within five (5) business days of the opening of the bids, then to each successive Eligible Local Provider who is within ten percent (10%) of the lowest responsible bid, in ascending order of the amount of the bids.
- (b) The local provider shall certify under penalty of perjury, as a part of its bid and in a form and manner as required by the City, that the bidder qualifies as a local provider. The preference established in this section shall be waived if the certification does not appear on the respective bid.

3.14-4 No Exemption from Local Sales Tax.

The application of a local preference as set forth in this section shall not exempt any Eligible Local Provider to which a contract is executed or awarded from having to pay all applicable federal, state or local sales tax.

I-2-3.15 - Recycled Product Procurement

3.15-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore, bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of ~~nonrecycled~~non-recycled products.

- ~~(a) The City shall require all businesses doing business with the City to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products or supplies offered or sold to the City. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.~~

~~(b) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.~~

~~(e)(a)~~ The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.

~~(d) The City shall ensure that they and their contractors use recycled paper in printed material that bears an imprint identifying the recycled content of the paper, whenever practicable.~~

~~(e)(b)~~ The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.

~~(f)(c)~~ To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.

~~(b)(d) (g) All~~ To the extent possible, all printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber ~~as specified in Section 12209 of the Public Contract Code.~~

~~(h)(e)~~ The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 ~~The~~ Where the use of recycled products is designated, the Purchasing Agent ~~s~~ shall:

(a) Maintain a list of designated recycled products that contain ~~the maximum~~ a practicable amount of recovered material and are consistent with State and Federal guidelines and ~~shall~~ coordinate with all departments to purchase environmentally preferable products whenever practicable.

(b) ~~Grant~~ Where the contract is competitively solicited, grant the supplier of recycled products with a minimum of 10% recycled content in its product(s) a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible ~~bidder~~ or highest ranked bidder depending upon procurement process used.

~~(e)(b)~~ Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.

~~(e)(c)~~ Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

I-2-3.15 – Testing and Inspection of Samples

3.15-1 The Purchasing Agent may require vendors to provide samples to be tested and inspected as part of the applicable procurement process. The Purchasing Agent shall have the authority to require chemical, physical, or other tests of samples submitted with bids which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Agent shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the bidder's expense.

I-2-3.16 - Brand Names or Equal Specification

~~3.16 1 Purpose and Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:~~

~~(a) No other design or performance specification or qualified products list is available;~~

~~(b) Time does not permit the preparation of another form of purchase description, not including a brand name specification;~~

~~(c) The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or~~

~~(d) Use of a brand name or equal specification is in the City's best interests.~~

~~3.16 2 Designation of Brand Names.~~

~~(a) Brand name or equal specifications shall state that substantially equivalent products to those designated will be considered for award.~~

~~(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.~~

I-2-3.17 – Waiver of Informalities: Rejection of Bids Responses

Where the Purchasing Agent or City Council are required to make purchases upon competitive ~~bids~~solicitations, said Purchasing Agent or City Council may waive any informalities or minor irregularities related to the procurement process, solicitation documents or responses or may reject any and all ~~bids~~responses (anything herein contained to the contrary notwithstanding) if said Purchasing Agent or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Agent or City Council, as the case may be. Upon rejection of ~~bids~~responses, the Purchasing Agent or the City Council, as the case may be, may:

- (1) Give subsequent notice for a new competitive ~~bids~~solicitation;
- (2) Postpone said purchase or disposal definitely or indefinitely; or
- (3) Elect to make the purchase without competitive ~~bids~~solicitation, upon notice (and as if a competitive ~~bids~~solicitation, upon notice, had not been required in the first instance) in accordance with the authority granted by the various subsections of this sSection.

I-2-3.17 – Insurance and Bonds

- (a) The Purchasing Agent is authorized to require vendors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City.
- (b) Where required by the Purchasing Agent, all responses to solicitations shall include such bidders' security as is required by the solicitation documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Purchasing Agent to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting responses or in the specifications referred to therein.
- (c) To secure faithful performance of the contract, the Purchasing Agent is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as the Purchasing Agent shall deem reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires such security, the form and amount thereof shall be described in the notice inviting responses or in the specifications referred to therein. Unless otherwise required by law or the funding source, the Purchasing Agent need not require such security if the Purchasing Agent does not deem such to be reasonably necessary to protect the best interest of the City, or if the Purchasing Agent believes the interests of the City are best served by not requiring the same.

I-2-3.18 –~~Bonds~~

~~When deemed necessary by the Purchasing Agent or City Attorney, any person entering into a contract with the City may be required to furnish bid, labor and materials, and/or performance bonds for supply or service contracts as required by law or as deemed advisable to protect the City's interests. All bond requirements shall be set forth in the solicitation. Bonds shall not be used as a substitute for a determination of a bidder's responsibility. Said person (and his surety, if a bond is furnished) shall be liable for any damages upon said bidder's failure to faithfully perform the terms of his contract.~~

I-2-3.19 –~~Bid~~ Protest Procedure

~~3.19~~18-1 Any interested party may file a protest to ~~an~~ a proposed award of ~~bid~~a contract in an amount over Five~~Ten~~ Thousand Dollars (\$5~~10~~,000). The protest shall be filed with the Purchasing Agent in writing no later than ~~ten~~(10~~seven~~ 7) calendar days after the posting of the intent to award and shall set forth the basis for the protest and any proposed remedy. ~~The time to file a protest shall commence when the award is posted on the City's website.~~

~~3.19-2~~ If a protest is filed, the award shall be suspended until the Purchasing Agent determines the validity of the protest, unless the Purchasing Agent determines that the purchase or services of the award must proceed prior to the protest hearing in order to protect the public health, safety and welfare.

~~3.19-3 The Purchasing Agent shall hear~~3.21-2 The Purchasing Agent will review the protest as soon as possible and ~~shall notify interested parties of the date, time and place for the protest hearing. Notice may be provided in writing by fax, email, or mail.~~

~~3.19-4 The Purchasing Agent shall hear such evidence as the Purchasing Agent deems relevant. The protest hearing shall be voice recorded. The decision of the Purchasing Agent shall be made as soon as possible. Notice of the decision shall be provided in any manner that the original notice of hearing may be given.~~will provide a written response to the protestor. The Purchasing Agent's decision on a bid protest for a procurement in an amount ~~lessno more~~ than ~~TwentyFifty~~ Thousand Dollars (\$~~2050~~,000) shall be final.

~~3.19-518-3 For procurements having a value of Twenty~~more than Fifty Thousand Dollars (\$~~2050~~,000)~~or more, an appeal of the Purchasing Agent's decision may be filed with~~, the City Council.~~All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of serving the Purchasing Agent's decision~~will consider the protest and take action thereupon, which action shall be final.

I-2-3.2019 - Public Works Contract Purchasing Procedures

3.2019-1 Definitions.

For the purposes of this Section I-2-3.2019 the following words and phrases shall have the following meanings:

1. Act means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code ~~Section~~section 22000 et seq.).
2. Commission means the California Uniform Construction Cost Accounting Commission.
3. Facility means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection 4 of the definition for public project below, real property, streets and highways, or other public works improvement.
4. Public project has the meaning assigned to it under Public Contract Code ~~Section~~section 22002, as it may be amended from time to time.

3.2019-2 Public Project Contracting Procedures.

The City shall follow the contracting procedures set forth in Article 3 of Act (Public Contract Code ~~Section~~section 22030 et seq.). The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time.

3.2019-3 Contractors List.

The Directors of Engineering and Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

3.2019-4 Informal Bidding - Notice.

- (a) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
 - (1) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and
 - (2) Mailed notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County; and
 - (3) Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.
- (b) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

- (c) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.
- (d) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

3.2019-5 Formal Bidding—Notice.

- (a) When a public project is to be performed that requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:
 - (1) The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
 - (2) The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City.
 - (3) The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the receipt of such notice for Santa Clara County. The notice shall be mailed at least 15 calendar days before the date of opening the bids.

3.2019-6 Award of Contracts.

The City Manager is authorized to award contracts for public projects ~~consistent with the contract authority under I-4 2.00:~~ of less than or equal to one-hundred thousand dollars.

3.2019-7 Rejection of Bids.

The City Manager or the City Council, as the case may be, may, in the Manager's or Council's discretion, reject all bids and proceed as authorized by the Act.

3.2019-8 Approval of Plans and Designs.

The City Engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the City.

I-2-3.20 - Authority to Modify Contracts Awarded by City Council

The Purchasing Agent is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any amendment or change order to a supply or service contract previously approved by the Council within the following guidelines:

- (a) To extend the term of the contract, at the recommendation of the Requesting Department, for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
- (b) To make minor revisions to the scope of services or schedule;
- (c) To make clerical corrections; or
- (d) The Purchasing Agent may also approve and sign assignments of contracts previously approved by the City Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

All modifications to contracts, including, but not limited to, changes to the scope of the work, quantity of goods, price or term shall be made in writing and approved by the Requesting Department. Amendments or change orders are permitted only if the modification would not cause the contract to exceed the monetary limits defined below:

<u>Contract Amount</u>	<u>Individual Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
<u>Under \$100,000</u>	<u>10% of Award or \$10,000 whichever is less</u>	<u>15% of Award or \$15,000 whichever is less</u>
<u>Over \$100,000</u>	<u>10% of Award or \$20,000 whichever is less</u>	<u>15% of Award or \$40,000 whichever is less</u>

All contract changes must be reflected on the Purchase Order and/or contract amendment. All other changes outside the parameters defined in this section must be approved by the City Council.

Section 4 - Purchase Orders

~~I-2-4.01 - Purchases Over Five Thousand Dollars (\$5,000) Must Be in Writing~~ No I-2-4.01 – Purchase Order Requirement.

Except as otherwise approved by the Purchasing Agent or pursuant to Section I-2-2.03, no contract award for supplies or services ~~or the disposal of City property where the total expenditure or value is over Five Thousand Dollars (\$5,000)~~ shall be deemed to be an ~~acceptance of any offer or bid unless and until the same is reduced to writing and signed by the Purchasing Agent and dispatched~~ authorization to the vendor or purchaser. ~~It is a violation of the ordinance to divide the purchase of~~ proceed with provision of the supplies or ~~general services or the disposal of City property in an amount over Five Thousand Dollars (\$5,000) into smaller orders for the purpose of evading the~~ until a purchase order requirements of this section is appropriately authorized and issued.

~~I-2-4.02 - Preparation~~ Issuance of Purchase Orders.

Upon ascertaining the price to be paid for supplies or services, the Purchasing Agent shall ~~prepare~~ issue a purchase order. The Purchasing Agent shall forward the original purchase order to the vendor, retaining one (1) copy for his purchase order file. He shall likewise forward one (1) copy of the purchase order to the requesting department to be used as a receiving report.

~~I-2-4.03 - Sufficient Funds Must be Available.~~

No purchase order shall be issued until it has been ascertained that there is to the credit of the requesting department a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

~~I-2-4.04 - Exceptions to Purchase Orders~~

~~Payments for annual maintenance, upgrades or subscriptions for computer hardware and/or software that has already been purchased pursuant to this chapter shall not require a purchase order for the payment to be issued.~~

Section 5 - Receipt of Goods and Services

~~I-2-5.01 - Department Head Responsible for Checking Quality~~ and Contract Management.

Upon receipt by any Department of supplies or services, the Department head or designee, shall be responsible for the making of a careful check of the quality, condition, and quantity of goods received against a copy of the purchase order and the packing list, when applicable, or services rendered as specified in the contract.

~~I-2-5.02 - Department Head Responsible for Checking Invoice.~~

The Department head or designee, upon receipt of a vendor's invoice, shall check the invoice for correctness of quantities, unit prices, price extensions, discounts, transportation, allowances, ~~etc.~~ services rendered, hourly rates etc. When applicable, the Department head or designee shall compare the same with the purchase order and packing list. Approved invoices shall be forwarded to Accounts Payable for payment processing.

Section 6 - Inspections

~~I-2-6.01 - Department Head's Inspection.~~

The Department head or designee shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Department head or designee shall have the authority to require chemical, physical, or other tests of samples ~~submitted with bids and samples~~ of deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Department head or designee shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory at the vendor's expense.

Section 7 - ~~Storing of Materials~~

~~I-2-7.01—Storerooms and Warehouses~~

~~The Purchasing Agent shall control and supervise the Purchasing warehouses of the City of Milpitas. The Purchasing Agent shall be responsible and accountable for all supplies in his or her custody and shall maintain a suitable inventory record thereof. (Ord. 23.10 (part), 1/3/06)~~

~~Section 8—Disposal of City Property~~

~~I-2-87.01 - Disposal of Property with an Estimated Value of Five Thousand Dollars (\$5,000) or Less.~~

Except as otherwise provided by State law or City ordinance, the Purchasing Agent or designee shall be empowered to dispose of property of the City, including abandoned property, which cannot be used by any department of the City, at public or private sale or by renting or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the Purchasing ~~Agent's~~Agent or designee's discretion, and upon such terms as he or she deems best) provided any single item of property involved does not exceed Five Thousand Dollars (\$5,000) in estimated current market value.

~~I-2-87.02 — Deposit.~~

The Purchasing Agent or designee may, in his or her discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon the disposal of City property.

~~I-2-87.03 - Disposal of Property with an Estimated Value of More Than Five Thousand Dollars \$5,000.~~

In the event that the estimated value of any single item of property exceeds Five Thousand Dollars (\$5,000) in current market value, the City Council may, upon notice, empower the Purchasing Agent to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were estimated at Five Thousand Dollars (\$5,000) or less in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provisions, terms and conditions the City Council may elect.

~~I-2-87.04 - Retired K-9 Units and Firearms.~~

~~Council finds that retired police dogs of the Police Department's K-9 unit have no value to the City of Milpitas and are a financial liability and detriment. Accordingly, said police dogs may be returned to the original supplier, the animal's handler or former handler without compensation. This subsection constitutes an exception to this Section.~~

Notwithstanding the other provisions of this Chapter, the City Manager or designee is authorized to determine the disposition of:

(a) police service dogs including:

- (1) sale or donation of the police service dog to the assigned police officer when the officer leaves the canine unit or if the police service dog can no longer perform its required duties;
- (2) the original supplier; or
- (3) any other method that best serves the interests of the City; and

(b) surplus firearms including:

- (1) sale or donation to a law enforcement agency;
- (2) sale to an authorized firearms retailer;
- (3) sale or donation to an active or retired sworn member of the police department consistent with the Memorandum of Understanding between the City and the Milpitas Police Officers Association; or
- (4) destruction if no safe alternative is available.

Section ~~98~~ – Claims

~~I-2-98.01 - Filing of Claims.~~

Claims for loss, damage, breakage, shortage or otherwise, claims for refund, claims for adjustment, and claims for insurance or other indemnity shall be made promptly by the Purchasing Agent.

Section ~~109~~ - Ethics in Public Purchasing

I-2-~~109~~.01 - Ethics in Public Purchasing.

Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

- (1) ~~___~~ — City employees shall not obligate the City, financially or otherwise, by any means, including, but not limited to, purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
- (2) ~~___~~ — City employees shall not accept any form of gratuities.
- (3) ~~___~~ — City employees may not accept discounts, reward points, sales, reduced prices, or other benefits offered for personal purchases by suppliers because of employee's relationship with the City.
- (4) ~~___~~ — City employees shall be personally liable for any unauthorized procurements.

Section ~~110~~ - Severability

I-2-~~110~~.01 ~~—~~ Severability.

If any provisions of this ~~C~~chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this ~~C~~chapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this ~~C~~chapter are declared to be severable.

Section ~~1211~~ - Exclusions from Chapter

I-2-~~1211~~.01 - Exclusions from Chapter.

The provisions of this Chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services, but is not intended to be all inclusive.

~~12.01-1 To public projects (separately governed by the provisions of the California Public Contract Code);~~

~~12.01-2~~11.01-1 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

~~1211.01-3~~ Where State or Federal law requires a different procedure;

~~1211.01-4~~ To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

~~1211.01-4~~ To the purchase of insurance;

11.01-5 To the purchase of ~~insurance~~art;

~~1211.01-6~~ To the ~~purchase of art~~;

~~12.01-7~~ To the leasing, purchase or sale of land or any interest therein;

~~1211.01-8~~ To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

~~1211.01-9~~ To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

~~1211.01-10~~ To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

~~1211.01-1110~~ To the payments of debt service and bond indebtedness; arbitrage compliance; refunds of deposits; payments and/or pass through of collections on behalf of other governmental agencies; budget approved memberships and dues; authorized Community Development Block Grants (CDBG); memorandum of understanding obligations; budget approved contributions to not-for-profit organizations; United States Postal Service postage; City Council approved ~~recreation grants~~grant programs; employee travel expenses.

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:	Introduce Ordinance No. 65.150 Regarding Responsible Construction
Category:	Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contacts:	Christopher J. Diaz, City Attorney 408-586-3040 Steve McHarris, City Manager 408-586-3059
Recommendation:	Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and Introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

Background:

At the August 4, 2020, City Council meeting, the City Council unanimously agreed to direct staff to return with a draft Responsible Construction Ordinance as requested by Mayor Rich Tran and Councilmember Anthony Phan. In general, the draft Responsible Construction Ordinance would impose certain provisions requiring private developers receiving financial assistance from the City involved in construction, alteration, and/or demolition work within the City, valued in excess of \$500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid wage theft or other judgments or outstanding violations.

Analysis:

The Responsible Construction Ordinance would impose on any "Covered Party," as defined in the Ordinance to include any private developer or building permit holder receiving financial assistance from the City (with the exception of any owner working on their own residence), the requirement that it ensure that any contractor or subcontractor performing work in excess of \$500,000 on a "Major Construction Project," as defined in the Ordinance, disclose:

- any wage theft violations in the five years prior;
- any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health in the five years prior;
- any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior;
- any liability for failing to maintain worker's compensation insurance, or any fraudulent activity related to worker's compensation insurance, in the five years prior;
- any liability for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission during the five years prior;
- any liability for failing to pay any payroll taxes during the five years prior;
- any liability for violating any laws relating to human trafficking during the five years prior;
- whether the contractor or subcontractor has been found by the Contractors State License 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 during the five years prior;

- whether any judgments, decisions, determinations, orders, or citations have been issued against the contractor or subcontractor by a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance or prevailing wage requirements, an arbitrator, or an arbitration panel that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal; and
- whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

In addition to the disclosure requirements detailed above, a “Covered Party” and its contractors are also required to provide access to the project site, project records, and the workers to ensure compliance with the Ordinance.

In order to enforce the Ordinance, it imposes a fine of up to \$1,000 for each violation. The City could also enforce the Ordinance through the existing Administrative Citation provisions in the City’s Municipal Code. Finally, the City has the right to require the Covered Party to re-pay any City financial assistance provided if they are found to have an unsatisfied judgment.

It is important to note that staff is currently not trained in investigating potential complaints of non-compliance and the disclosure requirements outlined in the ordinance nor is staff time dedicated to handle potential complaints. It would require extensive resources to learn and understand the body of work related to the Ordinance. Therefore, prior to adoption of the Ordinance, staff had intended to contract with the City of San Jose for responding to complaints of non-compliance, which may require funding. The City of San Jose Office of Equality Assurance has over 20 years of experience with various construction-related wage compliance issues. However, at this time San Jose has not adopted a similar ordinance nor does it have an anticipated date of adoption so staff will need to explore other contractual options for enforcement. Staff has also not conducted robust outreach on this ordinance. Thus, staff is recommending bringing back additional information related to enforcement program and costs and community outreach, prior to ordinance adoption.

Policy Alternatives:

Alternative 1: The City Council could choose not to introduce the Ordinance.

Pros: The City will not need to develop an enforcement program and incur associated costs for enforcement.

Cons: If the City Council does not introduce the Ordinance, the Responsible Construction Ordinance provisions will not become law in Milpitas in the future.

Reason not recommended: The City Council directed that the Ordinance return at a future City Council meeting, and staff is bringing this Ordinance forward per the City Council’s request.

Alternative 2: Do not require additional information about enforcement and outreach efforts prior to adoption of the Ordinance.

Pros: The City will be able to move forward on this Ordinance in an expeditious manner.

Cons: The enforcement program and associated costs have not been determined. The City has also not engaged in stakeholder outreach.

Reason not recommended: Staff still needs to explore enforcement options, determine associated costs as well as conduct stakeholder outreach which may inform the Ordinance as currently written and prompt additional staff recommendations for effective enforcement of the Ordinance upon adoption.

Fiscal Impact:

Introduction and adoption of the Ordinance in itself would not lead to any financial impact; however, enforcement of the Ordinance would lead to a financial impact on the City in terms of staff time or other costs if the City opts to delegate enforcement to a neighboring agency pursuant to a contractual arrangement.

California Environmental Quality Act:

The introduction and adoption of this Ordinance is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to a administrative activity of the government intended to ensure wage laws are followed in the City pursuant to CEQA Guideline 15378.

Recommendation:

Following the reading of the title by the City Attorney, move to waive the first reading beyond the title and introduce Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code.

Attachment:

Ordinance No. 65.150 for introduction

REGULAR

NUMBER: 65.150

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 32 (RESPONSIBLE CONSTRUCTION) TO TITLE III OF THE MILPITAS MUNICIPAL CODE**

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the City of Milpitas desires to adopt certain provisions requiring certain types of private developers receiving financial assistance from the City and involved in construction, alteration, and/or demolition work within the City, valued in excess of \$500,000, to file disclosure forms with the City confirming their contractors and subcontractors have no unpaid judgments or outstanding violations; and

WHEREAS, the City Council finds that such provisions shall serve the best interests of the citizens of Milpitas by requiring that any work being performed on certain private construction projects in the City be made by responsible construction contractors; and

WHEREAS, this Ordinance is intended to protect vulnerable worker populations in the City by establishing safeguards for responsible construction practices.

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

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE ADDING A NEW CHAPTER 32 TO TITLE III

Title III of the Milpitas Municipal Code is hereby amended by adding a new Chapter 32, "Responsible Construction," to read as follows:

Chapter 32 - RESPONSIBLE CONSTRUCTION

III-32-1.00 - Title

This Chapter shall be known as the "Responsible Construction Ordinance."

III-32-2.00 - Authority

This Chapter is adopted pursuant to the powers vested in the City of Milpitas under the laws and Constitution of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution. Any Developer or Building Permit holder subject to this Chapter shall be required to comply with this Chapter and it will be enforced through a condition of approval and/or through the execution of a development agreement, or through any enforcement options provided for in this Chapter or in the City's Municipal Code.

III-32-3.00 - Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

- (a) "Building permit holder" means a person or entity that has obtained a building permit from the City to undertake a major construction project that has been granted any Financial Assistance. A building permit holder does not include an owner self-performing work on the owner's residence.

- (b) “City” means the City of Milpitas, California or any agency designated by the City to administer the terms of this Chapter.
- (c) “Covered party” means a developer or building permit holder as defined in this Chapter.
- (d) “Developer” means an entity or person who owns or controls a major construction project that has been granted any Financial Assistance. Developer does not include an owner undertaking work on the owner’s residence.
- (e) “Final judgment” means a judgment, decision, determination, order, or citation, for which there is no pending appeal and the time for filing an appeal has passed, that was issued by:
 - (1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or
 - (2) an arbitrator, or an arbitration panel.
- (f) “Financial Assistance” means any financial incentive or investment provided by the City or a City-controlled entity or political subdivision to facilitate or support a major construction project, including:
 - (1) Taxes, fees, costs, rents, insurance or bond premiums, loans, interest rates, inclusionary housing obligations, inclusionary housing in-lieu fees, or other obligations that would normally be required, that are paid, reduced, charged at less than fair market value, waived, rebated, granted an exception to, or forgiven by the City, as well as any other City tax or fee break programs available to new developments or to a particular sub-category of developments, unless required by state law.
 - (2) The payment of money or the equivalent of money for the design, development, construction, financing or any other component related to development of the project, including, but not limited to, infrastructure costs, preconstruction costs, demolition costs, construction costs, financing costs, equipment costs, design costs, environmental review costs, and environmental mitigation costs; and
 - (3) Any loan or loan guarantee.
- (g) “Major construction project” means a project that will involve construction, alteration, and/or demolition work in excess of \$500,000 within the City.

III-32-4.00 - 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 that has been granted or will be granted Financial Assistance, and prior to awarding any contract to perform work on a major construction project that has been granted or will be granted Financial Assistance, that every contractor and subcontractor performing work on the project in excess of \$50,000 complete and return to the covered party the disclosure form required by this Chapter.

(b) A covered party shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work for a covered party, 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. Nothing in this Chapter shall preclude a covered party from disqualifying the contractor or subcontractor for additional reasons.

(c) A covered party shall file a copy of the completed disclosure form required by this Chapter with the City prior to the contractor or subcontractor performing work on the project.

(d) A contractor or subcontractor performing work for a covered party for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

(e) Upon notification from the City to a covered party that a contractor or subcontractor performing work for a covered party for which a disclosure form is required has not completed a disclosure form, has submitted a disclosure form that is incomplete, or has submitted a disclosure form that is materially false, the City may enforce this Chapter through any enforcement options provided for in this Chapter or in the City's Municipal Code.

III-32-5.00 - Disclosure Form

(a) The disclosure form required by this Chapter shall be completed by each contractor and subcontractor, as specified in Section III-32-4.00(a), on a form provided by the City. The completed disclosure form shall be verified by a representative of the contractor or subcontractor and signed under penalty of perjury.

(b) In the disclosure form, the contractor or subcontractor shall confirm the following facts regarding its past performance and work history and its current qualifications:

- (1) Name, address, and telephone number
- (2) Responsible managing officer
- (3) Contractor state license number
- (4) Name and location of the project
- (5) Project owner or developer
- (6) Party who retained the contractor or subcontractor to perform work on the project
- (7) Approximate date the contractor or subcontractor is scheduled to commence work on the project
- (8) Whether the contractor or subcontractor has 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 during the five years prior to completion of the disclosure form.
- (9) Whether the contractor or subcontractor has been subject to any citations or penalties imposed by the U.S. Department of Labor, the California Department of Industrial Relations, the California Labor Commissioner's Office, or the California Division of Occupational Safety and Health during the five years prior to completion of the disclosure form.
- (10) Whether the contractor or subcontractor has been subject to any cause findings by the California Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission for the laws enforced by those agencies during the five years prior to completion of the disclosure form.
- (11) Whether the contractor or subcontractor has been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance during the five years prior to completion of the disclosure form.
- (12) Whether the contractor or subcontractor has 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 U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Fair Employment and Housing, or the U.S. Equal

Employment Opportunity Commission during the five years prior to completion of the disclosure form.

- (13) Whether the contractor or subcontractor has been found liable by any court or administrative agency for failing to pay any payroll taxes during the five years prior to completion of the disclosure form.
- (14) Whether the contractor or subcontractor has been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking during the five years prior to completion of the disclosure form.
- (15) Whether the contractor or subcontractor has been found by the Contractors State License 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 during the five years prior to completion of the disclosure form.
- (16) Whether any judgments, decisions, determinations, orders, or citations, that a) require the payment of money by the contractor or subcontractor, b) have not been fully satisfied, and c) are no longer subject to appeal, have been issued against the contractor or subcontractor by:
 - (1) a court of law, an administrative agency authorized to enforce applicable federal, state and local labor standards laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the City of Milpitas minimum wage ordinance, and prevailing wage requirements, or
 - (2) an arbitrator, or an arbitration panel.
- (17) Whether enforcement of any unsatisfied judgments, decisions, determinations, orders, or citations issued against the contractor or subcontractor have been stayed by court order or operation of law.

III-32-6.00 - 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 Chapter 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 Chapter and such investigators shall be provided with jobsite access and 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.

III-32-7.00 - Retaliation Prohibited

No covered party, or contractor or subcontractor performing work for a covered party, shall discriminate or retaliate against any person or entity for cooperating with an investigation under this Chapter or for making a complaint concerning an alleged violation of this Chapter.

III-32-8.00 - Prevailing Wage Requirement

(a) Consistent with existing state law, a contractor or subcontractor performing work for a covered party shall comply with State prevailing wage law.

III-32-9.00 - Enforcement

(a) A covered party, or contractor or subcontractor performing work for a covered party, shall be subject to a civil fine payable to the City of up to \$1,000 for each violation of this Chapter. The City may also enforce this Chapter through other enforcement options provided for in the City's Municipal Code.

(b) If a covered party is found to have an unsatisfied final judgment, then in addition to any other penalties, the City may require the covered party to repay the full amount of the Financial Assistance provided for that project, including but not limited to the full amount of any tax and fees that were reduced, suspended, or waived as part of an economic incentive program. Any such repayments shall be deposited in the fund which was the source of the incentive, or in the case of tax and fee breaks, in the fund to which the tax or fee would have been directed.

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:	General Fund Structural Deficit Community and Employee Engagement Discussion and Direction
Category:	Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendation:	Discuss and provide direction regarding Community and Employee Engagement Strategies to address the General Fund structural deficit.

Background:

On March 12, 2020, in response to the growing Coronavirus threat and the State of California's declaration of a state of emergency, City Manager Steve McHarris proclaimed a local emergency. On March 13, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place (SIP) order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County.

Since the onset of the pandemic economic activity has been suppressed, which has significantly impacted General Fund revenues. For example, in comparison to actual revenues received in FY 2018-19, the FY 2019-20 actual unaudited revenues decreased by \$8.4 million, or 7.80%, from \$108.1 million to \$99.7 million.

On September 1, 2020, staff updated the FY 2021-2030 Ten-Year General Fund Financial Forecast (Forecast). The updated Forecast based on actual revenues received for the quarter ending June 30, 2020, which covers the four months the SIP order from mid-March, projects a structural deficit of \$9 million. Based on the updated projections, General Fund revenues are projected to decline by \$7 million, or 7.00%, from \$99.7 million (FY 2019-20 Unaudited) to \$92.7 million (FY 2020-21 as of Sept. 1, 2020). The cumulative decline in actual and projected revenues from FY 2018-19 to FY 2020-21 are expected to be \$15 million or nearly 15%.

In light of the currently projected structural deficit of \$9 million, at the October 6, 2020 City Council meeting, the Council discussed community and employee engagement strategies. The initial discussion focused on bringing back the Budget Task Force and evolved into scheduling a Special Meeting to discuss community and employee engagement to resolve the structural deficit.

Analysis:

In preparation for a Special City Council meeting to be scheduled based on Council availability during the second or third week of November, staff is seeking further input regarding the Budget Task Force discussion and a preliminary agenda for the meeting.

Budget Task Force and Community Engagement

The Council discussed the formation of a Budget Task Force similar to the Citizens Budget Task Force which was authorized by a previous Council on May 4, 2010 consisting of seven members, appointed by the Mayor and confirmed by City Council. Per records staff researched, the Task Force members consisted of certified public accountants, business owners, residents, and former city officials. Per the Task Force's report (see attached), which was released on Nov. 16, 2010, the Task Force was asked to make recommendations to City

Council as to how to reduce the \$11,000,000 deficit in the General Fund at that time over a period of three years. Receiving input from residents and employees, the Task Force made recommendations to

- reduce wage and benefit costs including salary freezes,
- outsource City services,
- institute a managed hiring freeze with flexibility granted to the City Manager,
- achieve 100% cost recovery for City sponsored programs except for Senior Programs, DARE, Crossing Guards, and Volunteer Services
- advance a 1% Utility Tax measure with a sunset clause

Staff is seeking direction on whether the Council would like staff to explore the formation of a similar Task Force or would prefer a different format to engage the community.

Employee Engagement

At the Special City Council meeting, as indicated below, staff will present potential employee engagement strategies. These strategies will be consistent with the City's meet and confer obligations.

Structural Deficit Special City Council Meeting Preliminary Agenda

The FY 2020-21 Adopted Budget development process was significantly revamped with the implementation of the OpenGov budget system and the incorporation of best practices such as determining the annual base budget. The annual base budget provides the currently Council approved service level with updated costs per established Memoranda of Understanding between the City and its bargaining units, pension and healthcare costs or contractual agreements.

The first step in determining the FY 2021-22 Base Budget is the development of the initial preliminary FY 2022-31 Ten-Year General Fund Financial Forecast (Forecast), which will also set the stage for the Structural Deficit Special Council Meeting. The development of the Forecast started this month and is expected to be completed by mid-November. The revenue projections of the Forecast will be based on revenue data as of Sept. 30, if available. The Forecast will also include updated revenue and expenditure projections for the current fiscal year as presented at the Sept. 1 City Council meeting.

Therefore, staff recommends the following preliminary Agenda for the Structural Deficit Special Council Meeting:

1. City Manager Opening Remarks
2. Report on outcome of Measure F
3. Initial Preliminary FY 22-31 Ten-Year General Fund Financial Forecast Presentation
4. Status Update of COVID-19 Fiscal Response Strategies and Guidelines
5. Overview of potential budget strategies
6. Review of current Council Priorities
7. FY 2021-22 Budget Calendar
8. Discussion of potential Community and Employee Engagement Strategies
9. Council Discussion
10. Public Input
11. City Manager Closing Remarks

Depending on the severity of the structural deficit, staff may recommend different community and employee engagement and budget reduction approaches which may require the contracting for professional services.

Fiscal Impact:

Not applicable

California Environmental Quality Act:

Not applicable

Recommendation:

Discuss and provide direction regarding Community and Employee Engagement Strategies to address the General Fund structural deficit.

Attachment:

Citizens Budget Task Force Report dated Nov. 16, 2010

Citizens Budget Task Force 2010

Report to City Council November 16, 2010

Members

Task Force Members

- Joseph Weinstein (Chair)
- Anjula Nigam (Vice-Chair)
- Alan David
- Deepka Lalwani
- Dan Manassau
- Ami Shah

Assigned Task

Make recommendations to City Council as to how to reduce the \$11,000,000 deficit in the General Fund over a period of 3 years.

There are no winners in this project.

What might be fair for taxpayers may not seem fair for the city employees.

The city exists to serve the taxpayers.

We have created this challenge together and we will only solve it by working together.

The Problem

Approximately 83 % of the General Fund expenditures are composed of Salaries and Benefits.

83% seems higher than the normal year. This may be due other programs that have been cut more aggressively.

The reality is that the Task Force focused upon 83% of expenditures composed of salary and benefits and 17% of expenditures comprised of programs, etc.

~\$11,000,000 deficit in the General Fund

Shrinking Employee Pool

- Must note that one issue in regard to solving any of the funding problems is that under the leadership of our current City Manager the number of city employees has been reduced from around 500 to less than 400 in 5 years.
- This results in the pool of employees being less attractive to any pension fund, especially in light of our growing retiree population.
- More efficient staff with less dollars to attract pension funds

Input of Citizens and Public Reports

- Public Meetings
- City Web-Site
- City's Electronic Sign
- 3 Public-Forums
- Door Knocking at Citizens' Homes
- Conversations with Citizens and City Employees
- Santa Clara County Grand Jury Report
- San Jose Budget Task Force Report
- Just published policy brief: University of California

Areas of Focus

- Departments
- Programs
- Revenue and Income
- Salaries and Benefits

Budget Policy Recommendations

- Recommend a new city ordinance:
The City Council to adopt a budget in which expenses never exceed General Fund Revenues.
- We are now the 8th largest Redevelopment Agency in California.
 - Recommend an internal study of the allocation of RDA funds to the General Fund, or reorganization to determine more effective allocation of RDA functions.

Response from Citizen and City Employee Input

- Create joint administration for all Public Safety
- Double/overlapping responsibilities for one function but managed by two departments.
- Accounting work duplicated at department levels and city finance department.
- Outsourcing of city departments/functions
 - 1 City Study on park maintenance estimated a \$1.2 million dollar annual savings. City Council did not pursue this recommendation from city staff.

Outsourcing Policy

- Recommend that City Council shall direct City Manager to identify departments/tasks that might be outsourced. City Manager will initiate an RFQ process on an on-going basis that provides an “outsourcing” look at each selected department/task every 3 years under the following guidelines:

Outsourcing Policy

Guidelines for outsourcing RFQ's:

1. No government organizations.
2. Must be 5 private companies that provide comparable service and 3 companies must be included in RFQ.
3. Outsourcing RFQ's must be for equivalent tasks and at prevailing wage.

Salaries and Benefits

- Overall discomfort with total compensation for city employees
 - View shared by many citizens and city employees
- Belief that some job classification salaries are too high
- Belief that benefits are too high

Are We Competitive?

- Recommend that an outside and independent consultant complete a study that shows where our job classifications rank with other cities in Santa Clara County, San Mateo County and the private sector in regard to total compensation.

Unanswered Questions

- In the year 2010 why are city employees still receiving a guaranteed pension benefit when it has virtually disappeared from the private sector?
- How to control “retiree” costs when retirees have no method to recover lost benefits if they are reduced.
- How to solve the issue that retirees compensation limits our ability to solve pension issues; this is magnified even more with a smaller employee base.

Policy Challenges

- Recommend changes in the process of implementing city policies in regard to Collective Bargaining
- Citizens want open government

Recommend the Following Ordinance Change

(5) Collective Bargaining. Any collectively bargained agreement shall be made publicly available at least twenty (20) calendar days before the meeting of the policy body to which the agreement is to be reported. If the collective bargaining agreement is being submitted to the City Council for final approval, it shall also be placed on the agenda for Council review and public comment at least one Council Meeting before the meeting at which final approval is sought.

Policy Change

- Recommend that the city organize its compensation negotiations into two categories:
 - Public Safety
 - Non-Public Safety
- Achieve a level playing field between bargaining units in these two categories.

Addressing the Deficit: Salaries

- Salary Freeze for all MOU's effective immediately (freeze to last until General Fund has excess capacity)

Savings Projected

Savings of
\$690,000 Annually

Compensation Recommendations

- Suspend supplemental income incentives until General Fund has excess capacity

Projected Savings

\$2,500,000
Annually

Hiring Freeze

- Immediate hiring freeze on all positions* for 3 years (assume 5 positions per year)
- * City Manager must have flexibility to hire based upon impact to General Fund due to either overtime or specific position expertise

Projected Savings per year

1. \$ 600,000
2. \$ 1,200,000
3. \$ 1,800,000

Pensions

- The Taxpayers should not be subject to any risk of underfunding of any pension or benefit.

Pension Recommendations

Recommend immediate termination of LIUNA and any City contributions to any other non-PERS pension or other retirement benefits

Projected Savings

\$260,000
Annually

Policy Recommendation

- We recommend that this Budget Task Force be formalized into an on-going City Commission with one representative assigned to the city negotiation committee.

Pension Recommendations

- CALPers (2nd Tier)
 - Increase retiree age to maximum and lowest formula available
 - Public Safety: 2% at 55
 - Non-Public Safety: 2% at 60
 - Non-public safety should retire at Fed retirement age.

Projected Savings

\$1,400,000
Annually

Pensions/CALPers

- (2nd Tier) Change from highest 1 year salary to average of highest 3 year salary for future retirees

Projected Savings

\$233,000
annually

Pension/CALPers (2nd Tier)

Recommend that City move to a defined contribution plan in conjunction with suggested cafeteria plan (to be discussed later)

City saves
\$1,200,000 for
every 3%
increase in
costs

Benefits/Cafeteria Plan

- CAP Benefits at 35% of base salary for non-public safety; 40% for public safety
- Provide a cafeteria plan to allow employees to use pre-tax dollars and flexibility to choose benefits from menu

Projected Savings

\$6,507,000
Annually

MOU Additional Income Benefits

Negotiated MOU Provisions

- Bilingual Pay
- Canine Assignment
- Certification of License
- Career Development Incentive
- Confidential Pay
- Educational Incentive
- Emergency Operations
- FLSA Premium
- Hazardous Material
- Holiday-In-Lieu Pay
- Longevity Pay/non-Public Safety
- Motorcycle Incentive
- Shift Differential
- Special Assignment
- SWAT Assignment
- Uniform – Safety
- Uniform – MEA and MPOA Non-safety
- Working Out of Class Pay
- Physical Fitness

Projected Savings

\$ 2,400,000*
Annually

* Actual figure is \$ 3,000,000

Reduction of Benefit

- Longevity
- Terminate for Non-Public Safety
- Limit to 3% for Public Safety

Projected Savings

\$319,000
annually

Benefits to Adjust

- Limit vacation and sick leave to a 30 day maximum accrual. No cash out. Use it or lose it.
- Establish a Catastrophic Bank of Hours to be used for “family” catastrophic illness. No cash out.

Projected Savings

\$808,000
annually

Benefits to Terminate

Benefit	Projected Savings
• Automatic Step Increases:	\$279,000
• Confidential Pay:	\$ 18,000
• Education Pay:	\$644,000
• Special Assignment Pay:	\$ 58,000
• Bilingual Pay:	\$ 73,000
• Special Certificate Pay:	\$ 79,000
• Physical Fitness Comp:	<u>\$ 80,000</u>
	\$1,231,000

Medical Benefits Adjustments

- Cap Employee Medical Benefit at current Kaiser Rate until employee contribution equals 50% of medical premium.

Projected Savings

- Year 1: \$365,000
- Year 2: \$766,000
- Year 3: \$1,208,000

Retirees Medical Benefits

- Eliminate medical benefits after retirees reach Medicare age

Projected Savings

- Year 1: \$183,000
- Year 2: \$213,000
- Year 3: \$263,000

Retiree Dependent Medical Benefit

- Eliminate contribution to Dependent medical benefit fund for current and future retirees

Projected Savings

\$396,000
Annually

Program Revenue/Income

- All city sponsored programs should be revenue neutral and provide 100% cost recovery except for Senior Program, DARE, Crossing Guards, Volunteer Services

Projected Revenue

Direct Cost Savings:
\$1,400,000 annually

* 20% reduction built
into number

Programs

- Express concern/recommend
 - Pre-School Program:
 - 33 other commercial pre-schools
 - Not organized on a “income/need basis”
 - Why serving non-residents
 - After the Bell
 - Expand this program
 - Charge competitive fees
 - Not “income/need based”

Programs

- Terminate “Tidal Waves” program
 - Program costs are in excess of \$850.00 per student
 - Serves less than 200 people
 - No compelling reason that taxpayers should support this swimming program while Little League, Soccer, PAL, and others are supported by parents.

Projected Savings

\$250,000
Annually

Revenue/Income

- Bill Santa Clara County for unreimbursed services provided to County Jail

Projected Revenue

\$320,000
Annually

Increase Revenue Through Improved Tax Base

- Sales Tax Revenue
\$60,000 to \$80,000

Projected Revenue

\$60,000 - \$80,000

Raise Taxes and Fees

It is extremely difficult and controversial to raise fees or taxes. As an alternative to cutting essential services and programs, we suggest considering a sunset defined increase of a 1% utility tax.

Projected Revenue

Utility Tax: \$ 3,000,000 Annually

Summary of Project Immediate Fiscal Impact

Component	Fiscal Impact
Salary Freeze	\$ 690,000
Longevity	\$ 319,000
MOU Additional Benefits	\$2,400,000
Freeze Hiring	\$ 600,000
Terminate Non-PERS Pension Contributions	\$ 260,000
Limit Vacation and Sick Days	\$ 800,000
Benefits to Terminate	\$ 1,231,000
Medical Benefit Adjustment	\$ 365,000
Medical Benefit/Retirees	\$ 183,000
Eliminate Contribution/Dependent Medical	\$ 396,000
Terminate Tidal Waves	\$ 250,000
Programs/Revenue Neutral	\$1,400,000
Country Reimbursement of Jail Expense	\$ 320,000
Walmart Sales Tax	\$ 70,000
Total	\$9,284,000

Summary of Project Immediate Fiscal Impact

Percentage Benefit Cap

\$6,507,000

Two-Tier Savings

Component	Fiscal Impact
Increase Retirement Age to Maximum/Lowest	\$1466,000
Highest Year Salary to 3 highest years	\$ 233,000
Move to Defined Contribution Benefit Plan	Unknown
Total	\$1,699,000

Raise Taxes

Component	Fiscal Impact
1 % Utility Tax	\$ 3,000,000
Total	\$ 3,000,000

Final Thoughts



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement and/or adopt a resolution committing to negotiate and execute a Project Labor Agreement per project
Category:	Leadership and Support Services
Meeting Date:	10/20/2020
Staff Contact:	Christopher J. Diaz, 408-586-3040 Steve McHarris, 408-586-3059
<u>Recommendation:</u>	Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement with the Building and Construction Trades Council and/or consider adopting a resolution committing to negotiate and execute a Project Labor Agreement per project.

Background:

At the August 4, 2020 City Council meeting, the City Council directed staff to return with a draft Project Labor Agreement or Community Workforce Agreement. A project labor agreement ("PLA") ensures that City projects covered by the PLA are performed by union-represented workers. A PLA requires that all contractors performing work typically within the jurisdiction of the trade unions on the covered projects, 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.

Analysis:

As a general matter, a PLA is an agreement entered 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 workers 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.

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 Section 2500(a). 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.)

Key Terms of draft PLA

Staff is seeking input on the draft PLA. The draft PLA is intended to be an agreement between the City of Milpitas and the Santa Clara and San Benito Building and Construction Trades Councils (Building Trades Council) and its affiliated Unions. The purpose of this Agreement is to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project(s) covered by this Agreement

Term of agreement

Staff is proposing an Agreement term of three years. Council approval will be required to continue the agreement after the three-year term.

Eligible Projects

Eligible projects include all projects for which the City sends out the initial solicitation of a bid or proposal after the effective date of the Agreement, and that meets all three of the following requirements:

1. It is a public works project (subject to certain exemptions) for construction awarded by the City,
2. It is paid for in whole or in part out of City funds, and
3. The City's engineer's estimate of the total cost of the Construction Contract(s) to construct it exceeds three million dollars.

In determining the \$3 million threshold, the City will consider all Construction Contracts required to complete an integrated construction project and will include design costs for a design-build Construction Contract but will not include costs covered by design consultants or other technical consultants.

Each year on the anniversary date of the day this Agreement became effective, the parties will adjust up or down the \$3 million threshold based on the Consumer Price Index for All Urban Consumers — U.S. city average. The adjusted threshold amount will apply to Construction Contracts in which the City solicits bids or proposals after the effective date of the adjusted amount.

This Agreement does not apply to the following:

1. Any Project in which a federal, state, or other public entity with jurisdiction over, or with authority to approve, all or some portion of the Project prohibits the use of project labor agreements on the Project.
2. Renovation, assessment, repair, and rehabilitation projects and programs such as projects for street resurfacing and re-striping; bridge and soundwall repair and renovation; curb, gutter, & sidewalk repair program; park renovations; building repairs; water meter replacement program; hydrant replacement program; sewer pump station rehabilitation program; and sanitary sewer assessment program.
3. Work required to complete emergency repairs such as water, storm, and sanitary sewer pipeline breaks.
4. On-call contracts for various repairs and minor projects.

Based on an evaluation of recently completed, current, and upcoming capital projects, the City anticipates that approximately 39 projects in the City's Capital Improvement Program (CIP) will be subject to the proposed PLA.

Pre-Job Conferences

The City's Project Manager shall convene and conduct, at a location and time mutually agreeable to the Building Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues, at least fourteen (14) calendar days prior to the commencement of any Project work, and the commencement of Project work on any subsequently awarded Construction Contract. The pre-job conference shall include but not be limited to the following subjects: a listing of each Contractor's scope of work; the craft assignments; the estimated number of craft workers required to perform the work; transportation arrangements; the estimated start and completion dates of the work; and discussion of pre-fabricated materials.

Local Area Preference

The Agreement strives to facilitate employment of Local Area residents and to use resources in the Local Area in construction of the Project. It is the objective of the parties that not less than twenty percent (20%) of all hours worked on the Project will be worked by residents of the Local Area, defined as the City of Milpitas. However, if a Contractor/Employer does not have a sufficient number of City of Milpitas residents to satisfy the goal, the Contractor/Employer may count residents of Santa Clara County toward the goal. The Unions will exert their utmost efforts to recruit sufficient numbers of craft persons to fulfill the referral requirements of the Contractor(s)/Employer(s). To the extent allowed by law, and consistent with the Unions' hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

Apprenticeships

Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured. In order to increase apprenticeship opportunities for traditionally underrepresented and targeted workers, the parties shall comply with the Targeted Hire Addendum (Addendum B) in the Agreement.

Compliance

It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement.

Dispute Resolution

All disputes involving the application or interpretation of the proposed Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XIV, shall be subject to resolution by the grievance arbitration procedures set forth in Article XIII of the Agreement.

All jurisdictional disputes on this Project between or among the Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

Joint Administrative Committee

In order to ensure the terms of this Agreement are being fulfilled and concerns pertaining to the operation of this Agreement are addressed, the City and the Building Trades Council shall establish a Joint Administrative Committee comprised of an equal number of representatives from the City and the Council. The Joint Administrative Committee shall meet on a periodic basis during the term of construction, at least semi-

annually, to assess the implementation of this Agreement, review the progress of the Projects, and facilitate harmonious relations between the parties. Both the City and the Council shall have the right to call a meeting of the Joint Administrative Committee

Next Steps

Based on Council input and direction, staff will negotiate Agreement with the Building Trades Council and bring back to Council for approval.

Policy Alternative:

Alternative: Adopt a Resolution committing the City to negotiate and enter into PLAs for specific future projects, as outlined in the draft Resolution.

Pros: Enables the City to focus staff time and effort towards a limited number of large projects that would benefit from PLAs. This policy alternative could also result in a higher number of competitive bids and lower construction costs for projects not subject to PLAs.

Cons: Does not align with prior Council direction.

Reason not recommended: Does not align with prior Council direction, but Council could provide new direction through adoption of a resolution.

Fiscal Impact:

At this time, although staff anticipates some additional staff time to implement and enforce the PLA and also additional construction costs to account for the additional time and effort required from contractors, staff is unable to accurately determine the potential fiscal impacts of this policy. If Council provides direction to move forward with the policy, staff will need to evaluate the impact of the policy on staff costs, number of competitive bids, and construction costs and return to Council with the information.

California Environmental Quality Act:

This action(s), and any potential adoption of a resolution, is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to a administrative activity of the government intended to working conditions on public projects in the City pursuant to CEQA Guideline 15378.

Recommendation:

Discuss and provide direction to staff on negotiating a citywide Project Labor Agreement with the Building and Construction Trades Council, or consider adopting a resolution committing to negotiate and execute a Project Labor Agreement per project.

Attachments:

Draft Agreement
Draft Resolution

PROJECT LABOR AGREEMENT FOR THE CITY OF MILPITAS

INTRODUCTION/FINDINGS

This Project Labor Agreement is entered into this ____ day of _____, 20____, by and between the City of Milpitas (hereinafter the “City”), together with its contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the “**Agreement to be Bound**” (**Addendum A**) (hereinafter the “Contractor(s)/Employer(s)”), and the Santa Clara & San Benito Counties Building and Construction Trades Council (hereinafter the “Council”) and its affiliated local Unions that have executed this Agreement (referred to collectively herein as the “Union(s)”).

WHEREAS, the City's purpose in entering this Agreement is to efficiently procure public works contracts awarded by the City where the City engineer's estimate of the total cost of the contract to construct the project exceeds \$3 million, as adjusted for inflation;

WHEREAS, this Agreement applies only to those qualifying public works contracts in which the initial bid or proposal solicitation occurs during the term of the Agreement;

WHEREAS, the purpose of this Agreement is to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project(s) covered by this Agreement.

WHEREAS, the timely and successful completion of the Project is of the utmost importance to meet the needs of the City and avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of construction work on the Project and will be represented by the Unions who are signatory to this Agreement and employed by the Contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, it is recognized that on a Project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption may be substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions, and the Contractors/Employers would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, potentially leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractors/Employers and the Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event the provisions of this Agreement shall prevail; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways in the construction industry; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the Public Contract Code, the City's applicable ordinances, and all state, local and federal laws; and

WHEREAS, the City has the right to select the lowest responsive and responsible bidder for the award of public works contracts to which this Agreement is applicable; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES
HERETO, AS FOLLOWS:

ARTICLE I **DEFINITIONS**

1.1 "Agreement" means this City-wide Project Labor Agreement .

1.2 "Agreement to be Bound" means the agreement (attached hereto as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on the Project.

1.3 "City" means the City of Milpitas, California and its governing board, officers, agents and employees, including managerial personnel.

1.4 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract and the City has filed a Notice of Completion. For purposes of this definition, "Final Acceptance" means that point in time at which the City has determined upon

final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written acceptance of the work.

1.5 “Construction Contract” means a public works contract awarded by the City for the construction of the Project, as defined in Section 1.9. It includes design-build contracts, lease-leaseback contracts or other contracts for construction work on a Project. Construction Contracts do not include design, engineering, or other design related professional services agreements separately entered into by the City.

1.6 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of the Project, and all contractors and subcontractors of any tier.

1.7 “Council” means the Santa Clara & San Benito Counties Building and Construction Trades Council.

1.8 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.9 “Project” means a project for which the City sends out the initial solicitation of a bid or proposal after the effective date of the Agreement, and that meets all three of the following requirements: (1) it is a public works project for construction awarded by the City (subject to section (c) below), (2) it is paid for in whole or in part out of City funds, and (3) the City's engineer's estimate of the total cost of the Construction Contract(s) to construct it exceeds three million dollars (\$3,000,000).

- (a) In determining the three million-dollar (\$3,000,000) threshold, the City will consider all Construction Contracts required to complete an integrated construction project and will include design costs for a design-build Construction Contract.
- (b) Each year on the anniversary date of the day this Agreement became effective, the parties will adjust up or down the three million-dollar (\$3,000,000) threshold based on the Consumer Price Index for All Urban Consumers — U.S. city average. The adjusted threshold amount will apply to Construction Contracts in which the City solicits bids or proposals after the effective date of the adjusted amount.
- (c) The City and the Building Trades Council may mutually agree in writing to add additional projects to be covered by this Agreement. The term Project applies to all projects as defined in this section, whether used in the singular or plural herein.

1.10 “Project Manager” means the person(s) or entity(ies) designated by the City to

oversee all phases of construction on the Project and the implementation of this Agreement.

1.11 “Rehabilitation Work” means rehabilitation projects and programs undertaken by the City to maintain and update existing public improvements, such as projects for street resurfacing program; bridge rehabilitation; street pavement re-striping; Americans with Disabilities (ADA) transition program; soundwall & barrier repair and renovation program; curb, gutter, & sidewalk repair program; park renovation and rehabilitation programs sports field and sports court rehabilitation and renovation programs; building repairs, replacement, renovation, and rehabilitation projects; water meter replacement program; hydrant replacement program; sewer pump station rehabilitation program; sanitary sewer assessment program

1.12 “Union” or “Unions” means the Santa Clara & San Benito Counties Building and Construction Trades Council and its affiliated Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II

SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing work under a Construction Contract on the Project (including subcontractors at any tier), and their successors and assigns, the City, the Building Trades Council, and its affiliated Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on the Project. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.4, except when the City directs a Contractor to engage in repairs, warranty work, modifications, or punch list work under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.3 Covered Work: This Agreement covers all construction work, not including design phase work, performed under the Project Construction Contract(s), without limitation, all site preparation, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of the Project Construction Contract(s), including, without limitation to the following examples, landscaping and temporary HVAC, exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed to supply materials to the Project.

2.3.1 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established solely for the Project). This Agreement also covers any off-site work, including fabrication, that is traditionally performed by the Unions and is directly or indirectly part of the Project, provided such work is covered by a Master Agreement or local addenda to a national agreement of the applicable Union(s).

2.3.2 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all Project related construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records in accordance with applicable law, within ten (10) days of written request or as required by the bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement.

2.4.1 This Agreement shall not apply to work performed by the City's own employees as permitted by applicable law.

2.4.2 This Agreement is not intended to, and shall not, affect or govern the award of public works contracts by the City that are not included in the Project and/or excluded from this Agreement by this section, including Rehabilitation Work as defined in Section 1.11 above.

2.4.3 This Agreement shall not apply to a Contractor/Employer's non-construction craft executives, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.

2.4.4 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment and on-site supervision of such work.

2.4.6 The City is not limited or restricted on the choice of material or the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. The City has the right to purchase

material and equipment from any source, and craft persons covered by this Agreement will handle and install such material and equipment.

2.4.7 This Agreement does not apply to work performed by employees of a manufacturer or vendor that is necessary to maintain such manufacturer's or vendor's warranty or guaranty provided that if the work can be performed by craft workers covered by this Agreement without voiding or limiting such warranty or guaranty, such work will be performed by such qualified craft workers. All such work shall be identified and discussed at the Pre-Job Conferences as provided in Article V of this Agreement.

2.4.8 This Agreement shall not apply to any start-up, calibration, commissioning, testing, integration, repair, maintenance, and operational revisions to systems and/or subsystems, unless such work is covered by a Master Agreement and is done pursuant to the Construction Contract.

2.4.9 This Agreement shall not apply to any emergency work which requires the City to enter into any contract to address an emergency or Act of God endangering public health or safety.

2.4.10 This Agreement does not apply to any Project in which a federal, state, or other public entity with jurisdiction over, or with authority to approve, all or some portion of the Project prohibits the use of project labor agreements on the Project.

2.4.11 This Agreement does not apply to any Project funded in whole or in part by a federal, state or local grant if a condition of that grant prohibits the use of project labor agreements.

2.5 Award/Administration of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of a Construction Contract under this Agreement in accordance with applicable law. The City shall at all times maintain the sole right to administer all such contracts, including, terminating and/or suspending any bid, contract, and/or Project if the City determines such contract action is appropriate. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project. The City shall provide a copy of all such invitations to bid to the Building Trades Council at the time of issuance.

2.6 Termination, Suspension and/or Delay of Work: It is understood and agreed that the City, at its sole option, may change, terminate, delay and/or suspend any and all portions of the covered work at any time. Further, the City may prohibit some or all work on certain days or during certain hours of the day to comply with applicable codes, laws or regulations, permits or to accommodate the ongoing operations of the City's facilities and/or to mitigate the effect of the ongoing Projects' work on the businesses and residents in the neighborhood of the Project sites; and/or require such other operational or schedule changes that may be deemed necessary, in its sole judgment, to effectively maintain the primary purpose of the City's facilities and to remain a good neighbor to the residents and businesses in the area of any Projects. In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the affected

Contractor and Union(s) with reasonable notice of any changes it requires pursuant to this Section.

ARTICLE III **EFFECT OF AGREEMENT**

3.1 By executing this Agreement, the Building Trades Council, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for the Project, whether as a Contractor or subcontractor thereunder, all Contractors/Employers agree to be bound by each and every provision of this Agreement and agree to evidence their acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the Agreement to be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a Construction Contract on the Project.

3.4 This Agreement shall only be binding on the signatory parties hereto, and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any dispute between the Union(s) and the Contractor(s) with respect to compliance with this Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement conflicts with a Schedule A, the provision of this Agreement shall prevail. Where a provision of a Schedule A does not conflict with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1. The Unions, the City, and the Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or any other City facility because of a dispute on the Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on the Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of a demand for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on the Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck, of the intent to withhold labor from the Contractor/Employers' or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City or any Contractor contends that any Union has violated this Article, it will so notify in writing the Senior Executive of the Building Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Building Trades Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator, under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, the parties shall select the arbitrator from the list in Section 13.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City, the involved Contractor, and the party alleged to be in violation, and to the Building Trades Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the permanent arbitrator named above, or the alternate if the permanent arbitrator is not available, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article, and the arbitrator's award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator's award ordering the party to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 The arbitrator's award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In a proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceeding may be *ex parte*. However, such agreement does not waive any party's right to seek or participate in a hearing for a final order of enforcement. Any court order enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance with the above procedure, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

ARTICLE V

PRE-JOB CONFERENCES

5.1 **Timing:** The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Building Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

- (a) The commencement of any Project work, and
- (b) The commencement of Project work on any subsequently awarded Construction Contract.

5.2 The pre-job conference shall be attended by a representative of each participating Contractor and each affected Union, and the Building Trades Council and City may attend at their discretion.

5.3 The pre-job conference shall include but not be limited to the following subjects:

- (a) A listing of each Contractor's scope of work;
- (b) The craft assignments;
- (c) The estimated number of craft workers required to perform the work;
- (d) Transportation arrangements;
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of pre-fabricated materials.

5.4 **Joint Administrative Committee:** In order to ensure the terms of this Agreement are being fulfilled and concerns pertaining to the operation of this Agreement are addressed, the City and the Building Trades Council shall establish a Joint Administrative Committee comprised of an equal number of representatives from the City and the Building Trades Council. The Joint Administrative Committee shall meet on a periodic basis during the term of construction, at least semi-annually, to assess the implementation of this Agreement, review the progress of the Projects, and facilitate harmonious relations between the parties. Both the City and the Building Trades Council shall have the right to call a meeting of the Joint Administrative Committee.

ARTICLE VI

NO DISCRIMINATION

6.1 The Contractors/Employers and the Unions agree to comply with all anti-discrimination provisions of federal, state, and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII **UNION SECURITY**

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by Contractors/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before eight (8) days of consecutive or cumulative employment on the Project. Membership shall be satisfied by the tendering of periodic dues and fees that are uniformly required, to the extent allowed by law.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII **REFERRAL**

8.1 Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s), unless such craft construction employee is covered by a Master Agreement.

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain the worker(s) from any source. A Contractor/Employer who hires a worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 It is in the interest of the parties to this Agreement to facilitate employment of Local Area residents and to use resources in the Local Area in construction of the Project. It is the objective of the parties that not less than twenty percent (20%) of all hours worked on the Project will be worked by residents of the Local Area, defined as the City of Milpitas. However,

if a Contractor/Employer does not have a sufficient number of City of Milpitas residents to satisfy the goal, the Contractor/Employer may count residents of Santa Clara County toward the goal. The Unions will exert their utmost efforts to recruit sufficient numbers of craft persons to fulfill the referral requirements of the Contractor(s)/Employer(s). To the extent allowed by law, and consistent with the Unions' hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

8.5 Core Workers. A Contractor may request by name, and the Union shall honor, referral of Core Workers who have applied to the Union for Project Work and who demonstrate to the Union dispatcher and provide satisfactory proof (with a copy of such proof provided to the Project Manager) that the worker meets all the following qualifications:

- (a) Appearance on the Contractor/Employer's active payroll for at least the last ninety (90) out of the one hundred and twenty (120) working days prior to award of a Construction Contract;
- (b) Possession of all licenses and certifications required by applicable state and federal law for the Project Work; and
- (c) Has worked at least two thousand (2,000) hours in the appropriate construction craft during the past two years.

8.5.1 The following procedure shall apply for dispatch of Core Workers: The first one (1) worker will be referred from the applicable Union hiring hall out-of-work list, then one (1) Core Worker shall be selected and referred from the hiring hall, followed by one (1) worker from the hiring hall out-of-work list, and this process shall repeat until such Contractor/Employer's requirements are met or until such Contractor/Employer has hired five (5) such Core Workers for that trade or craft, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the applicable hiring hall out-of-work list. In the event the Contractor/Employer reduces the workforce, such reduction will take place in the reverse order starting with a Core Worker and in the same ratios as was applied in hiring. In addition, at the request of the Building Trades Council or Union, Contractor/Employer shall submit a Core Worker list to the requesting party and shall provide payroll records evidencing the worker's qualifications as a Core Worker.

8.5.2 This provision applies only to employers not currently working under a current Master Agreement and is not intended to limit the transfer provisions of the Master Agreement of any trade. As part of this process, and in order to facilitate the contract administration procedures and appropriate fringe benefit fund coverage, all Contractor(s)/Employer(s) shall require their Core Workers to register with the appropriate Union hiring hall prior to the first day of employment on the Project and to comply with Union security on or before the eighth [8th] day of consecutive or cumulative employment on the Project.

8.5.3 Prior to each Contractor performing any Project Work, such Contractor or subcontractor shall provide a list of its Core Workers to the City and the Building Trades

Council. Failure of such a Contractor to do so will result in that Contractor being prohibited from using any Core Workers on that Construction Contract.

ARTICLE IX

WAGES AND BENEFITS

9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the applicable Master Agreement(s).

9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis upon which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if they were appointed by the Contractors/Employers. The Contractors/Employers agree to execute a separate subscription agreement(s) when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement and also include any City holidays established by the City.

ARTICLE X

APPRENTICES

10.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

10.2 Apprentice ratios will be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination.

10.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly indentured and supervised.

10.4 In order to increase apprenticeship opportunities for traditionally underrepresented and targeted workers, the parties shall comply with the Targeted Hire Addendum attached hereto as **Addendum B**.

ARTICLE XI **HELMETS TO HARDHATS**

11.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

11.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XII **COMPLIANCE**

12.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent wages or Trust Fund contributions from Contractors/Employers on the Project. Because the Project is a public work subject to the California Labor Code, the City shall ensure that all required state prevailing wage requirements as well as those of this Agreement are incorporated into and enforced through the City's bid and contract documents.

ARTICLE XIII **GRIEVANCE ARBITRATION PROCEDURE**

13.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XIV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article.

13.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or discharged without just cause.

13.3 No grievance shall be recognized unless the grieving party (Union or Building Trades Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

13.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or Building Trades Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting or the conclusion of efforts to resolve the grievance at Step 1, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. This time limit may be extended by mutual consent of both parties. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Building Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, either party may request the dispute be submitted to arbitration within five (5) business days of the Step 2 meeting or the conclusion of efforts to resolve the grievance at Step 2. This time limit may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to arbitration, the representatives shall notify the permanent arbitrator designated in Article IV, or if not available, the alternate arbitrator designated in Article IV, for final and binding arbitration. If the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. William Riker
2. Carol Vendrillo
3. Morris Davis

13.5 The decision of the arbitrator shall be final and binding on all parties. The arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties. The arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

13.6 The time limits specified at any step of the grievance procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

13.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this grievance procedure, the parties agree that such settlements shall not be precedent setting.

13.8 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the City withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, or its higher-tier Contractor, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the City until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an arbitrator shall so order.

13.9 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

ARTICLE XIV

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) calendar days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

14.5 Each Employer will conduct a pre-job conference with the Building Trades Council prior to commencing work. The City and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XV

MANAGEMENT RIGHTS

15.1 Consistent with the Schedule A agreements, the Contractor(s)/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that all lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVI

DRUG AND ALCOHOL TESTING

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 Drug and alcohol testing shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Schedule A.

ARTICLE XVII

SAVINGS CLAUSE

17.1 If any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word that will meet the objections to its validity and will be in accordance with its original intent.

17.2 In the event a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of the Agreement's provisions, and the City accordingly determines that compliance with this Agreement will not be required in order to perform work under a Construction Contract, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XIX

TERM

18.1 This Agreement shall be included in all bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for the Project.

18.2 This Agreement shall apply until the Completion of each Project in accordance with Sections 1.4 and 2.2.

18.3 This Agreement shall become effective on the day it is executed by the City and the Building Trades Council. Prior to each three (3) year anniversary of the effective date of this Agreement, the City and the Building Trades Council shall meet to discuss proposed changes, if any, to the Agreement. Upon mutual written agreement, and subject to the approval of the City Council, the Agreement may be amended to for an additional three (3) years.

ARTICLE XVII **MISCELLANEOUS PROVISIONS**

19.1 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

19.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

19.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.4 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

19.5 All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first herein above written.

CITY OF MILPITAS

By: _____

Name/Title: _____

Date: _____

SANTA CLARA & SAN BENITO COUNTIES
BUILDING AND CONSTRUCTION TRADES
COUNCIL

By: _____

Date: _____

Name/Title: _____

DRAFT

[UNION SIGNATURES]

DRAFT

Addendum A
AGREEMENT TO BE BOUND

[Date]
[Addressee]
[Address]

Re: City of Milpitas Project Labor Agreement
Agreement to be Bound

Dear _____:

The undersigned confirms that it agrees to be a party to and bound by the City of Milpitas Project Labor Agreement (“Agreement”) as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 9.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor Carrier (CA) Permit No.: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Authorized Person: _____

Address of Authorized Person: _____

State Public Works Registration Number: _____

Addendum B

TARGETED HIRE ADDENDUM

Purpose. The Parties to the City of Milpitas Project Labor Agreement (“Agreement”) recognize the need to increase training and career opportunities for underrepresented and targeted individuals in the construction trades through apprenticeship and pre-apprenticeship programs, and to develop a pipeline to ensure the continued availability of skilled, qualified, and readily available construction workers for future construction projects.

Additionally, the Santa Clara and San Benito Counties Building and Construction Trades Council (“Council”) is signatory, with other parties, to the Santa Clara County Construction Careers Collaborative Memorandum of Understanding (“MOU”), which established a pre-apprenticeship program in Santa Clara County that serves as a pipeline into the construction trades for youth and job-seekers.

Additionally, in order to increase construction career opportunities for individuals presently underrepresented in the building trades, the Parties to the Agreement agree to exert their best efforts to recruit, refer, and employ Targeted Workers as apprentices, and to cooperate with the Community Workforce Coordinator to maximize the employment of Targeted Workers on projects covered by the Agreement (“Covered Projects”).

The Parties to the Agreement therefore enter into this Targeted Hire Agreement to participate in the community workforce pipeline as set forth in the MOU, in furtherance of the above-stated purpose.

I. Definitions.

All capitalized terms not defined in this Targeted Hire Agreement are as defined in the Agreement.

Approved Pre-Apprenticeship Program. An Approved Pre-Apprenticeship Program means the Santa Clara County Trades Orientation Program or an equivalent structured, MC-3 certified career training and placement program or Union-sponsored program, that: (1) serves Underrepresented Workers, and (2) is sponsored by a Building Trades Council-approved community-based organization, a Building Trades Council affiliate, the Building Trades Council itself, the California State Building & Construction Trades Council, or North America’s Building Trades Unions (“NABTU”).

Community Workforce Coordinator. Community Workforce Coordinator means the Santa Clara County Trades Orientation Program, or another entity as determined by mutual written agreement between the Building Trades Council and the City. The Community Workforce Coordinator is responsible for maintaining an up-to-date list of Targeted Workers who are available for work and their current contact information, and will provide this list to any of the Parties upon request.

Participating Contractor. Participating Contractor means a contractor of any tier that performs \$250,000.00 or more of Covered Work (as that term is defined in Section 2.3 of the Agreement) on a Covered Project. A Participating Contractor is subject to the

Workforce Goal set forth in Section II below. If a contractor performs less than \$250,000 of Covered Work on a Covered Project, that contractor is not subject to the Workforce Goal, but may nonetheless participate voluntarily in the Workforce Goal.

Targeted Worker. Targeted Worker means an individual who has completed an Approved Pre-Apprenticeship Program.

Underrepresented Worker. An Underrepresented Worker is an individual who, prior to commencing work on a Covered Project, has at least one of the following barriers to employment:

- Veteran of the U.S. military;
- Currently receiving public assistance;
- Emancipated from the foster care system;
- Participating in a re-entry program or formerly incarcerated;
- Homeless, recently housed (within the past twelve months), or at risk of losing their housing;
- Continuously unemployed for the previous one year;
- Has family or household income below the current HUD threshold for Low Income Households in Santa Clara County;
- A survivor of labor trafficking; or
- An At-Risk Youth.

At-Risk Youth means a person between 18 and 24 years old that is either: 1) disconnected from school and/or work; 2) currently or formerly justice engaged; 3) in the foster care system; 4) pregnant/parenting; or 5) homeless.

II. Workforce Goal. The Parties have a goal of employing Targeted Worker(s) as Apprentices on all Covered Projects to the maximum extent allowable under applicable hiring hall procedures, Master Agreement(s), and apprenticeship program standards, for at least twenty-five percent (25%) of each Participating Contractor's apprentice hours on a Covered Project. In meeting this goal, priority shall be given to the employment of First Year Apprentices, subject to the needs of the Project.

- a) Nothing herein requires a Participating Contractor either to hire a particular individual or to retain a particular individual in employment. Any individual referred to a Covered Contractor shall be hired and employed at the Participating Contractor's discretion.
- b) A Participating Contractor will receive credit toward the Workforce Goal for hours performed by a Targeted Worker assigned to work on a Covered Project or on another jobsite at the employer's discretion, provided the worker is assigned to the same job classification that would apply to the Targeted Worker on a Covered Project.
- c) Participating Contractors shall properly supervise and pay all apprentices in accordance with the Master Agreements.

- d) Participating Contractors will provide, upon request, certified payroll records and/or records of hours worked by Targeted Workers to the General Contractor (or equivalent), the City, the Building Trades Council, the Unions, or the Community Workforce Coordinator.
- e) Participating Contractors will retain documentation sufficient to demonstrate that they requested a sufficient number of Targeted Worker apprentices to satisfy the Workforce Goal.
- f) **Community Workforce Coordinator Obligations.** The Community Workforce Coordinator will, upon request, refer the names of qualified, available, and willing Targeted Workers to the City, the Building Trades Council, the Unions and Participating Contractors. The Community Workforce Coordinator will also work with City to facilitate outreach events.
- g) **Union Obligations.** To the maximum extent allowable, consistent with the applicable hiring hall procedures, Master Agreement(s), and apprenticeship program standards, the Unions shall:
- Refer Targeted Workers as apprentices to Participating Contractors;
 - Cooperate with the City and community-based organizations designated by mutual agreement of the City and the Building Trades Council in conducting outreach to recruit and refer Underrepresented Worker applicants to Approved Pre-Apprenticeship Programs for which they are qualified or qualifiable;
 - Cooperate with the Community Workforce Coordinator and Participating Contractors in order to satisfy the requirements of this Targeted Hire Agreement; and
 - Facilitate, encourage, and assist Targeted Worker apprentices in their progress and success in joint labor/management apprenticeship programs.
- h) **City Obligations.** The City shall have a designated person or persons responsible for liaising with the Community Workforce Coordinator and conducting at least the following activities, to maximize the employment of Targeted Workers on Covered Projects:
- Notify the Community Workforce Coordinator on a quarterly basis of upcoming Covered Projects;
 - Communicate with the Community Workforce Coordinator regarding Covered Project work schedules, delays, major changes in scope, or other updates affecting labor demand in order to facilitate timely referral of Targeted Workers;
 - Host or coordinate outreach events with Participating Contractors or prospective contractors on Covered Projects;

- Monitor compliance with this Targeted Hire Agreement via reporting requirements in its Construction Contracts.

III. *Satisfying Workforce Goal.* A Participating Contractor meets its obligations under this Targeted Hire Agreement by complying with both of the following:

- (a) Prior to commencing work on the Covered Project, submitting a Targeted Hiring Form to the Community Workforce Coordinator and the Santa Clara & San Benito Counties Building and Construction Trades Council;
- (b) Making best efforts to employ Targeted Workers on all Covered Projects for a least twenty-five percent (25%) of apprentice hours (or equivalent work on another jobsite, provided the apprentice is assigned to the same job classification the apprentice would have been assigned to on the Covered Project). Best faith efforts shall include, at a minimum:
 - 1) Requesting a list of available and qualified Targeted Workers from the Community Workforce Coordinator prior to hiring for Covered Project work;
 - 2) Sponsoring a Targeted Worker into a Union apprenticeship program and employing that Targeted Worker on a Covered Project, if sponsorship is available; or
 - 3) Requesting that the applicable Union(s) provide qualified and available Targeted Workers for employment consideration in a number sufficient to meet the Workforce Goal under Section II.

IV. *Consequences of Non-Compliance.* The Joint Administrative Committee (“JAC”) established by the Agreement shall consider allegations of non-compliance with this Targeted Hire Agreement. If there is a determination by the JAC that a Party failed to meet its obligations hereunder, the issue will be referred to the grievance procedure as provided in Article 13 of the Agreement. At any time during the process of compliance review, the JAC shall have the authority to reach a resolution with the Participating Contractor.

V. *Reporting.* The Building Trades Council and Community Workforce Coordinator shall report to the City on an annual basis regarding the goals of this Targeted Hire Agreement. Such reports will be discussed and approved at JAC meetings before provision to the City. Participating Contractors agree to provide information upon request to the Building Trades Council, the Community Workforce Coordinator, or the City, as needed to assess the effectiveness of this Targeted Hire Agreement.

The City and the Building Trades Council may request to meet and confer regarding additional or revised terms and/or procedures in order to improve the employment of Targeted Worker apprentices on Covered Projects.

Nothing in this Targeted Hire Agreement is intended to conflict with or supersede the reporting requirements imposed by the City on its contractors.

VI. Implementation. The JAC shall help monitor and implement this Targeted Hire Agreement.

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DRAFT

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS COMMITTING TO NEGOTIATE
AND EXECUTE A PROJECT LABOR AGREEMENT PER PUBLIC PROJECT FOR SPECIFIED PROJECTS**

WHEREAS, at the August 4, 2020 City Council meeting, the City Council directed staff to return with a draft Project Labor Agreement or Community Workforce Agreement; and

WHEREAS, a project labor agreement (“PLA”) ensures that City projects covered by the PLA are performed by union-represented workers; and

WHEREAS, a PLA requires that all contractors performing work typically within the jurisdiction of the trade unions on the covered projects, 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; and

WHEREAS, although staff has been working on drafting and negotiating a citywide PLA, the City Council may in addition to, or in the alternative, seek to express its commitment to ensuring that a PLA is negotiated and executed per public project for specified projects as discussed in this Resolution; and

WHEREAS, the commitment expressed by the City Council in this resolution shall only control in the event a citywide PLA is abandoned or cannot be successfully negotiated and executed.

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 expresses its commitment to ensuring that a PLA is negotiated and executed per public project for specified projects to be discussed and decided upon annually by the City Council at the time the budget is reviewed and discussed prior to adoption.
3. The City Council hereby directs staff to provide a list of all upcoming public projects to be bid for the financial year at the time the budget is reviewed and discussed prior to adoption so that the City Council and staff can determine which public projects shall be subject to a PLA.

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

City Manager's Office



DATE: September 9, 2020

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager *Steve McHarris*

FROM: Ashwini Kantak, Assistant City Manager *Ashwini Kantak*

SUBJECT: **2020 Census Update**

This Information Memorandum is in response to a request initiated by Councilmember Dominguez and supported by the full Council at the September 1, 2020 Council meeting. It is intended to provide an update of 2020 Census outreach activities and several factors that impact overall participation including COVID-19 and the recent California Wildfires.

BACKGROUND

The 2020 Census goal is to count everyone once, only once, and in the right place. Each decade the Census takes a count of America's population. Census data provides vital information that helps determine political representation in every State and allocation of more than \$675 billion in federal funding that support creating jobs, providing housing, preparing for emergencies and building schools, roads and hospitals. The 2020 Census is considered to be the most accessible survey in census history. For the very first time, an internet self-response option makes it easier for anyone, anywhere to respond at any time.

The 2020 Census has been confronted with a number of setbacks that could lead to a significant undercount, which can translate to Congressional underrepresentation and reapportionment of California dollars. These challenges include increased government distrust with attempts to include a citizenship question, general concerns about data privacy and confidentiality, inadequate language accessibility, Presidential order to exclude undocumented immigrants in the apportionment process, limited federal budget for advertising and outreach, and the impact of COVID-19 and California Wildfires that threaten overall participation.

SIGNIFICANT IMPACT OF COVID-19 ON REACHING THE HARD-TO-COUNT

Due to the statewide shelter-in-place order, Census Bureau operations as well as state, county and local government outreach initiatives have been suspended because of restrictions on public gatherings. Most previously developed strategies to reach the hard-to-count were in-person meetings and events including access to public library computers to complete the form. Unfortunately, changes in tactics have greatly impacted effective outreach to historically undercounted and low-response groups such as individuals experiencing homelessness, immigrant populations and in-language dependent households, renters, students and children under the age of five.

CENSUS OUTREACH EFFORTS

City staff has conducted and will continue to implement and support the following activities through the remainder of the Census operation.

- Inclusion of information resources on the City Website;
- Inclusion of messaging around Census takers who will start knocking on doors for the month of September on the City Website and social media platforms;
- Partnership with the County of Santa Clara Complete Count Committee on Non-response Follow-Up outreach;
- Collaboration with United Way of the Bay Area and Homebase to help enumerate people experiencing homelessness (especially first-time homeless due to COVID-19 and California Wildfires);
- Outreach activities during scheduled food distribution City events.

UPDATED CENSUS DEADLINE

During the second quarter of 2020, the Census Bureau shared plans to extend the Census deadline to October 31 from July 31 to address operational delays brought forth by COVID-19. However, the Bureau provided an update regarding the end to all of its counting efforts on September 30, a month sooner than previously announced. This includes critical door-knocking efforts and response collection online, phone and mail. The latest move is part of the Bureau's efforts to accelerate the completion of data collection and apportionment counts by the statutory deadline of December 31, 2020, as required by law.

NON-RESPONSE FOLLOW-UP (NRFU)

Census takers have started visiting homes that have not responded to the Census on August 11. All Census takers are required to wear masks, regardless of state and local guidelines. They will knock on doors and immediately step back six feet to create appropriate space between themselves and the respondents. Census takers will be given additional masks to provide residents should they need one, as well as a hand sanitizer. They will be using an app to collect information, which means they will no longer pass paperwork back and forth with respondents.

CENSUS TIMELINE

Noted below are the schedule modifications across the various Census operational phases.

Activity	Original Schedule	Updated Schedule
Self-Response Phase	March 12 – July 31	March 12 – September 30
Mobile Census Questionnaire	March 30 – July 31	Started in July
Non-Response Follow-Up (NRFU): In-person enumeration by Census taker.	May 13 – July 31	August 11 – September 30
Service-Based Enumeration & Homeless/Displaced Count	March 30 – April 1	September 22 - 24
Deliver Apportionment Count to the President	December 31, 2020	December 31, 2020*
Deliver Redistricting Count to States	April 1, 2021	April 1, 2021*

*Pending Census Bureau confirmation

PUBLIC INFORMATION

The City will continue to share information on its [2020 Census webpage](#), which has been created to provide accurate reports on Census operations. Additionally, regular public updates will be provided through the City's social media accounts on Facebook, Twitter, and Nextdoor.

MEMORANDUM

Office of the City Manager



DATE: September 10, 2020

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager *Steve McHarris*

FROM: Ashwini Kantak, Assistant City Manager *Ashwini Kantak*

SUBJECT: City Council Sponsored Events

This Information Memorandum is in response to a request initiated by Councilmember Dominguez and supported by the full Council at the September 1, 2020 Council meeting, to agendize a discussion about City Council sponsored events at the September 15 Council meeting.

Background:

During the Fiscal Year 2019-2020 Budget development process, the City Council expressed an interest in individual Councilmembers having the ability and funding to host events that benefit the City and the Milpitas community, and to use City facilities for this purpose.

The use of City facilities is governed by the Milpitas Facility Use Manual and updates to this Manual needed to be brought forward for Council consideration to enable use of City facilities by individual Councilmembers.

A draft policy for Council sponsored events (a policy for City Council training was also part of the same agenda item) and related draft Facility Use Manual update were both brought forward for Council consideration on August 20, 2019. Both items were deferred multiple times and were finally discussed at the November 19, 2019 City Council meeting. Although no formal action was taken by Council, staff was directed to bring back both items at a later date. The discussion related to use of facilities by the City Council, the subsequent Facility Use Manual update to capture those uses, as well as the policy on City Council sponsored events has not occurred to date.

Analysis:

The draft Council policy for events, presented to Council in late 2019, was intended to establish City policy, guidelines and conditions for the use of funds appropriated to individual members of the City Council for hosting events, donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. These events were to support the City Council's priorities and not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

The Approved Fiscal Year 2020-2021 Budget includes funding in the amount of \$25,000 for the City Council (\$5,000 for each member of the Council) to make donations to intergovernmental agencies and non-profit organizations and to approve fee waivers for events and for individual Councilmembers to either host his/her own events or to donate to additional events and provide fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07.

Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration. Based on historical information about Council donations and fee waivers, when this item was brought forward for Council discussion in 2019, staff had recommended setting aside a budget of \$10,000 for the full City Council and \$3,000 each for every individual member of the City Council.

The draft policy outlined general conditions as described below:

Any events hosted or sponsored by an individual Councilmember were intended to be for a wide-reaching public purpose serving the Milpitas community at-large, and supporting the priorities of the full Council. Events were to be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events were not to be related to a campaign event. To ensure the integrity of the events, the draft policy stated that no hosted events would take place six months preceding a municipal election.

The draft policy provided guidance about type of staff support and number of staff hours. The draft policy also described the responsibilities of the City Councilmembers and the City Manager and outlines the procedures for reimbursement of expenses.

Key items that were noted for Council consideration and input included:

1. Allocation amounts from the total \$25,000 budget for the full City Council and individual Councilmembers.
2. Eligible expenditures for individual Councilmember funds.
3. Number of events hosted by individual Councilmembers.
4. Use of City facilities
5. Timeframe of events hosted by individual Councilmembers with respect to municipal elections.
6. Amount of staff support hours per event and cumulative number of hours for events hosted by each Councilmember.
7. Approval Process

As noted earlier, Council did not take action on the draft policy or the Facility Use Manual update but provided input on the item and asked staff to return at a future date.

Links to the prior Agenda Report, draft policy, and meeting minutes are included below for reference.

Links to documents:

[November 19, 2019 Agenda Report and Draft Policies](#)

[November 19, 2019 Agenda Report and Draft Facility Manual](#)

[November 19, 2019 Council Meeting Minutes, Pages 6-8](#)



MEMORANDUM

Date: 09/15/2020

To: City Manager Steve McHarris, City Attorney Chris Diaz

CC: City Clerk Mary Lavelle

Subject: City Council Events

From: Councilmember, Karina Dominguez 

Background:

During the Fiscal Year 2019-2020 Budget development process, the City Council expressed an interest in individual Councilmembers having the ability and funding to host events that benefit the City and the Milpitas community, and to use City facilities for this purpose.

The proposed Council policy for events establishes City policy, guidelines and conditions for the use of funds appropriated to individual members of the City Council for hosting events, donating to intergovernmental agencies, faith base organizations, Neighborhood Associations, non-profit organizations and other agencies providing a free service in Milpitas and are requesting fee waivers for events. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

On November 5, 2019 a draft policy came before Council and feedback was provide to staff in order to bring back a policy with modifications. The final proposal for council consideration and approval can be found in attachment 1 of this memo.

The City of Milpitas' Facility Use Manual is the guiding document for the general use and rules of the City's Indoor and Outdoor facilities, fields and parks (Facility). At the Special City Council Budget Study Session on March 12, 2019, Council directed staff to bring back modifications to the Facility Use Manual that would enable the use of City facilities by City Councilmembers for non-campaign related community programs and events. These modifications are located on pages 4-8 of the Manual. A copy of the full manual can be here: <http://www.ci.milpitas.ca.gov/wp-content/uploads/2016/08/Facility-Manual-Updated-062016-FINAL.pdf>

Analysis:

The Approved Fiscal Year 2020-2021 Budget includes funding in the amount of \$25,000 for the City Council (\$5,000 for each member of the Council) to make donations to intergovernmental agencies and non-profit organizations and to approve fee waivers for events and for individual Councilmembers to either host his/her own events or to donate to additional events and provide fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07.

Per this policy, all requests for events and fee waivers or donations for organizations providing a public service in Milpitas shall continue to be brought forward for Council consideration.

Based on prior council direction and feedback we are proposing the following council policy for city sponsored events, please see attachment 1:

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain how the event aligns with a city priority and 4) select a date that is not currently reserved by another group or departments. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendaized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law or if the use is inconsistent with the Councilmember's written request.

The final language to update the City of Milpitas Facility Use Manual can be found in attachment 2 of this memo.

Fiscal Impact No additional funding is needed at this time.

No. x-x Effective

: xx Revised:

CITY OF MILPITAS, CALIFORNIA

SUBJECT: COUNCIL POLICY FOR EVENTS

PURPOSE OF THE POLICY

The purpose of this policy is to establish City policy, guidelines and conditions for the use of funds appropriated to the City Council for hosting or donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. This policy addresses the desire of the City Council for individual Councilmembers to be able to host events that benefit the City and the Milpitas community. These events support the City Council's priorities and shall not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

PROCEDURES

A. General Conditions 1. The City Council has an approved budget for donations and fee waivers for intergovernmental agencies or non-profit organizations that provide Milpitas community benefit. In addition to this, each individual Councilmember shall have an approved budget for either hosting his/her own events or for donating to additional events and providing fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07. Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration. 2. Guidelines for the use of City facilities for a Councilmember hosted or sponsored program or event are outlined in the City of Milpitas Facility Use Manual (Indoor and Outdoor Facilities). 3. Any events hosted or sponsored by an individual Councilmember shall be for a wide-reaching public purpose serving the

Milpitas community at-large, and shall support the priorities of the full Council. Events shall be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events shall not be related to a campaign event. To ensure the integrity of the events, no hosted events shall take place in the three months preceding a municipal election. 4. Staff support for any individual Councilmember hosted events shall be limited to 5 hours, including staff time needed for facility use, unless approved by the full Council. The level of staff support, excluding general facility attendant staff, will be identified and assigned by the City Manager or his/her designee. 6. Events that are approved by the council would be able to use the city logo for marketing and communication purposes. 5. The approved budget may be used for facility rentals within the City of Milpitas, refreshments, contractual services, and supplies but cannot be used to provide gifts to event participants or to serve alcohol.

B. Responsibility of the Councilmember 1. Each Councilmember, with the assistance of staff, must complete the Event and Facility Use Request Forms and submit to the City Manager and City Attorney's office for review to ensure compliance with state law, and approval. 2. Event coordination and any purchase of refreshments and supplies for events hosted by individual Councilmembers shall be the responsibility of the individual Councilmember. 3. Each Councilmember shall submit all receipts related to the event within 30 days after the event in order to be reimbursed. 4. Each Councilmember shall provide a brief verbal report to the full Council on the benefits and outcome of the event, including event attendance.

C. Responsibility of the City Manager It is the City Manager or designee's responsibility to review and track the events budget for each Councilmember and to provide regular updates.

D. Expense Reimbursement Councilmembers shall submit expense reimbursement requests on Finance Department provided forms with original receipts within 30 days after the event.

I. PRIORITIES

Priorities are designed to determine fee and reservation status.

1.1 To provide for public activities in the best interest of the Community, City facilities will be reserved in accordance with the following group priorities:

Priority I. City administered programs, including any program hosted by a councilmember for a non-campaign related community event with a wide-reaching public purpose serving the Milpitas community at-large, as determined by the City Manager in consultation with the City Attorney. Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

Any councilmember request under Priority I shall be on a form established by the City Manager. In the form, the councilmember shall state why the event is not campaign related and provide a documented public purpose consistent with state law. The City Attorney shall review the form to ensure compliance with state law. Approval of councilmember requests under Priority I shall be approved by the City Council

1. No deposit 3. No staff fee 2. No rental fee 4. No application fee

Priority II. Programs or activities for Senior Citizens and approved co-sponsored groups which are principally composed of local residents (51% or more), public schools located in Milpitas, the Milpitas Chamber of Commerce and governmental agencies(excluding staff trainings, poll worker trainings, staff retirement parties, staff / volunteer recognition events).

1. No deposit 2. Rental fee according to Fee Schedule / Joint Use Agreement 3. Staff fee according to Fee Schedule / Joint Use Agreement 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority III. Non-profit groups that are organized for recreational, social, cultural, religious or civic purposes and whose membership is principally composed of local residents (51% or more) or who is based in Milpitas and renting no more than 3 rental dates per quarter.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority IV. Any other group, business, private school or individual resident of the City of Milpitas.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

Priority V. Any non-resident group, business or individual.

1. Facility deposit according to the Fee and Deposit Schedule 2. Rental fee according to Fee Schedule 3. Staff fee according to Fee Schedule 4. Application fee (non-refundable) 5. Any applicable insurance and processing fees that may apply

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II. APPLICATIONS

1.A. Permits for use of City facilities (indoor and outdoor) shall be issued by the City upon the approval of the City Manager or authorized representative and shall be consistent with City regulations governing such use. No blanket or on-going permits will be allowed. Applications for consecutive-day events will be considered only during minimal use periods.

2.B. The use of those facilities shall not be inconsistent with other such use for City purposes or interfere with the regular conduct of City programs. City sponsored programs shall receive first priority over use by any other group or organization. The City reserves the right, if necessary, to preempt, or revoke permit (if previously issued) for the use if for any reason it becomes unavoidably necessary for the City to utilize said facility or facilities at the same time. If and

when such action is necessary, the City will give applicants as much advance notice as possible. The City also reserves the right to revoke any approval provided to a Milpitas councilmember under Priority I if the use of the City facility violates state law or if the use is inconsistent with the councilmember's written request.

3.C. Applications for use of indoor City facilities and parks will not be accepted more than one (1) year to the date prior to proposed use for Priorities II-IV.

4.D. Priority V applications will not be accepted more than 6 months prior to the proposed use.

5.E. Applications for the Milpitas Sports Center Large Gym will not be accepted more than 90 days prior to proposed use for Priorities II-V.

6.F. For outdoor City facilities and sports fields, applications are accepted six (6) months to the date prior to the proposed use for Priorities II-IV and 90 days for Priority V.

7.G. Applications will not be accepted with less than 30 days prior to the proposed date, unless authorized by the Recreation Services Manager or his/her authorized representative.

8.H. In cases where the earliest date to reserve a facility falls on a weekend (Saturday or Sunday) or City holiday, reservations will be accepted on the preceding weekday. Should the preceding weekday be a City holiday, applications will be accepted on the prior workday.

9.I. Priority III organizations may reserve up to three dates on one application per quarter and must submit an application according to the reservation schedule listed on Page 5. Groups may not use a facility without an application on file. Should additional maintenance or custodial services be required, or the group exceeds the reserved rental hours, the groups will be assessed additional fees or charges as necessary.

10.J. Priorities II and III may reserve indoor facilities for one-time special event or party under the set Fee Schedule for Priority IV rentals / charges.

11.K. Priority III groups may drop off Facility Use Application(s) with requested dates and times as outlined above during facility business hours.

12.L. On the following business day, the designated City representative will review all Priority III applications with requested dates and times and distribute dates equally between any groups requesting the same dates. Should there not be an equal amount of dates available, the city representative will do a lottery pull for any extra date an



MEMORANDUM

Date: 09/15/2020

To: City Manager Steve McHarris, City Attorney Chris Diaz

CC: City Clerk Mary Lavelle

Subject: City Council Events

From: Councilmember, Karina Dominguez

Background:

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Based on prior council direction and feedback we are proposing the following council policy for city sponsored events, please see attachment 1:

Under the California Constitution, Article XVI, Section 6, there is a prohibition on the gift of public funds unless there is a documented public purpose. Further, California Government Code Section 8314 prohibits the use of public resources, including land and facilities, for campaign related purposes.

City Councilmembers wishing to host a program or event in a City-owned Facility could implement a request and approval process as part of the City of Milpitas Facility Use Manual, as long as the proposed program or event is non-campaign related and has a wide-reaching public purpose serving the Milpitas community at large.

To ensure compliance with state law and City Council policy, the review and approval of a Councilmember's request to host a program or event in a City-owned Facility would go through a process ensuring the documentation of public purpose, availability of facility space, and approval of funds associated with the use of a City-owned Facility by the City Council. City Councilmember requests would be submitted on a request form to: 1) describe the proposed program or event scope, 2) state additional community partners, 3) explain how the event aligns with a city priority and 4) select a date that is not currently reserved by another group or departments. The request form would be reviewed by the City Attorney's office and City Manager's office for public purpose review and determination of an available facility. Once reviewed, the request would be agendaized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law or if the use is inconsistent with the Councilmember's written request.

The final language to update the City of Milpitas Facility Use Manual can be found in attachment 2 of this memo.

Fiscal Impact No additional funding is needed at this time.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Request No.	Topic	Submitted by:	A, F, or CM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
2020					
9	Emergency request to cap rents on small businesses (tenants) in Milpitas	Dominguez	A	10/6/2020	10/20/2020
8	Discuss budget reductions in next FY with input from residents, employees	Nuñez	A	10/6/2020	
7	Discuss potential litigation - re: govts' action on Jamboree-Project Homekey	Tran	A	10/6/2020	Closed Session 10/20/2020
6	Opportunity to share ideas for US census & on City "sponsored" events	Dominguez	A	9/1/2020	Resched from 9/15, to 10/06, to 10/20
5	Discussion of Minute Man as City's image, when City branding comes back	Phan	A	8/18/2020	
4	Consider adding state certification NEC for electrical work done in the City (safety)	Dominguez	A	6/30/2020	
3	Establish a Day Worker Program	Montano	A	6/16/2020	
2	Form a Historical Commission	Montano	A	6/2/2020	
1	Consider satellite consular offices	Montano	A	6/2/2020	

2020	TOPICS SCHEDULED OR COMPLETED				
	(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
	Resolution on financial status of the City, steps to be taken	Nuñez	A	8/18/2020	Resolution adopted 9/01/2020
	Require implicit bias training for City Council, Commissioners & staff	Dominguez	A	6/16/2020	approved 8/18/2020
	Read "Code of Conduct" aloud prior to each City Council meeting	Montano	A	6/2/2020	approved 8/18/2020. City Attorney began this practice 9/01/20

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	Discussion/staff report on Beautify Milpitas, graffiti abatement, resources	Montano	A	6/30/2020	8/18/20: Directed staff to develop a program requiring min. staff resources & bring back to Council	
	Celebrate Mexican Independence Day annually on September 16	Montano	A	6/2/2020	approved on consent 8/18/2020	
	Consider change in term limits for Mayor + Councilmembers	Montano	A	6/16/2020		8/4/2020: Voted 3 -2 to pursue
	Discussion of campaign finance reform and/or Open Government Ordinance	Phan	A	6/30/2020		withdrawn @8/4/2020 CC meeting
	Community Workforce Agreement	Nuñez	A	2/18/2020		8/4/2020: directed staff to draft agreement, find CIP projects to apply to, then work with Labor org.
	Responsible Construction Ordinance	Phan	A	2/4/2020		8/4/2020: City Atty shall return with draft Ord.
	List of city charges/costs that could be waived for small businesses	Dominguez	A	6/16/2020		6/30/2020 info memo withdrawn, covered by other govt
	Emergency item for next agenda: extend tenant eviction protections	Dominguez	A	6/16/2020		
	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		5/19/20 Reso. adopted. 8/04/20 CEDAW Ord. adopted
	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	to Rules 8/23/2019	3/24 and 6/02/2020. Pending
	Discuss having 4th of July parade	Nuñez	A	2/18/2020		not under discussion

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	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

2019	TOPICS SCHEDULED OR COMPLETED				To Rules Subcom	
1	Establish Railroad quiet zone	Tran, Montano	F	9/17/2019	8/04/20, Council asked City Manager to work w Vice Mayor to schedule on agenda	
	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

PREVIEW LIST OF AGENDA ITEMS

MILPITAS CITY COUNCIL MEETING

NOVEMBER 3, 2020

PRESENTATIONS

- Proclaim *Native American Heritage Month*
- Proclaim November 11 as *Veterans Day*

CONSENT CALENDAR

- 1) Receive City Council calendar for November and December 2020 (City Clerk)
- 2) Approve City Council meeting minutes of October 15 and 20, 2020 (City Clerk)
- 3) 2nd reading/Adopt Ordinance No. 23.15 to update Purchasing section of Milpitas Municipal Code (Walter Rossmann)
- 4) 2nd reading/Adopt Ordinance No. 65.150 regarding Responsible Construction practices (Chris Diaz)
- 5) Adopt a Resolution Granting Acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, Authorize City Engineer to File a Notice of Completion, and Authorize him to Issue a Notice of Final Acceptance (Steve Erickson)
- 6) Adopt a Resolution Granting Acceptance of City Improvements on Lower Berryessa Creek by Valley Water District as Part of its Flood Protection Work, Project No. 3452, Authorize Reimbursement for City Improvements Completed as part of the project (Steve Erickson)
- 7) Adopt a Resolution authorizing the City to continue in the Cites Association of Santa Clara County Planning Collaborative and authorize \$10,000 to continue consultant services for the Planning Collaborative; and approve a budget amendment (Sharon Goei)
- 8) Adopt a Resolution approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services and Authorizing the City Manager to Execute the Agreement (Rick Frawley)
- 9) Re-appoint one current Milpitas Arts Commissioner to a new 3-year term (Mayor Tran)
- 10) Accept the Racing Hearts Foundation Grant of \$29,777 to Purchase Defibrillators for Milpitas Police Department (Jared Hernandez)

REPORT

- 11) Review List of Future Agenda Items Requested by Mayor and City Councilmembers (Mayor/City Council)

PREVIEW NEXT AGENDA

- 12) Preview list of items for November 17, 2020 City Council meeting (City Clerk)