SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

CITY OF MILPITAS - NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that a Special Meeting of the Milpitas City Council has been called. It is scheduled for Tuesday, November 10, 2020 at 7:00 PM via teleconference/zoom webinar only (no physical meeting space), which is permitted via Governor's Executive Order.

For assistance in the following languages, you may call:
Đối với Việt Nam, gọi 408-586-3122
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3232

AGENDA

TUESDAY, NOVEMBER 10, 2020
MILPITAS, CA
6:30 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

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 and by providing your email address (not disclosed) and a name.

Register for this November 10 special meeting here**:**
https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_mzmYU7EpRgqTos4Knv-Efg
After you register online, you will receive a confirmation email containing information about joining the webinar.

A link will be sent to you to join the City Council meeting in order to give 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. 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. 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 (6:30 PM)

ADJOURN TO CLOSED SESSION

a) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to Government Code Section 54956.9(d)(2). City as Defendant
Demand to Cure and Correct Alleged Brown Act Violation (written justification: e-mail in agenda packet)

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)

PRESENTATION

- Proclaim November 2020 as *Native American Heritage Month*

PUBLIC FORUM

Those interested are invited to address the City Council on the agenda item listed below only, by using the "raise hand" in the zoom webinar online (see instructions on page 1). Speakers may state their name and city of residence for the record, and limit spoken remarks to three minutes, or less, at the discretion of the Mayor.

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

READING OF THE 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 Calendar of Meetings for November 2020 (Staff Contact: Mary Lavelle, 408-586-3001)**

C2. **Approve City Council meeting minutes of the October 15, 22, 26 and 28, 2020 Special and October 20 Regular City Council Meetings (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Approve meeting minutes of the October 15, 22, 26 and 28 Special City Council and October 20, 2020 Joint City Council/ Milpitas Municipal Financing Authority meetings, as drafted by the City Clerk.

C3. **Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Housing/Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative; and Approve a related budget amendment (Staff Contact: Sharon Goei, 408-586-3260)**

Recommendations:

a) Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative.
b) Approve a budget amendment to appropriate $10,000 from the Affordable Housing Community Benefit Fund to the FY 2020-21 Building Safety and Housing Operating Budget.

C4. **Adopt a Resolution Granting Acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, Authorizing the City Engineer to File a Notice of Completion, and Authorize Him to Issue a Notice of Final Acceptance (Staff Contact: Steve Erickson, 408-586-3301)**

Recommendation: Adopt a resolution granting acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, authorizing the City Engineer to file a Notice of Completion, and authorize him to issue a Notice of Final Acceptance after the one-year warranty.

C5. **Adopt a Resolution Approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services Agreement and Authorizing the City Manager to Execute the Agreement (Staff Contact: Rick Frawley, 408-586-2824)**

Recommendation: Adopt a Resolution approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services Agreement and authorizing the City Manager to execute the agreement.

C6. **Accept the Racing Hearts Foundation Grant and Approve a Related Budget Amendment (Staff Contact: Jared Hernandez, 408-586-2406)**

Recommendation**:** Accept the Racing Hearts Foundation Grant in the amount of $29,777.44 for the purchase of Automated External Defibrillators (AEDs) and approve a budget appropriation to the Police Department's FY 2020-21 operating budget.

COMMUNITY DEVELOPMENT (7:50 PM)

7. **Discuss and Provide Direction on a Milpitas Unhoused Response and Prevention Plan; Approve and Authorize the City Manager to Execute an Agreement with the County of Santa Clara for Homeless Outreach, Assessment, and Case Management Services (Staff Contacts: Sharon Goei, 408-586-3260 and Adam Marcus, 408-586-3244)**

Recommendations:

a) Receive staff presentation; discuss and provide direction on a Milpitas Unhoused Response and Prevention Plan.
b) Approve and authorize the City Manager to execute an agreement with the County of Santa Clara for homeless outreach, assessment, and street-based case management services, in a form approved by the City Attorney.

LEADERSHIP AND SUPPORT SERVICES (9:30 PM)

8. Introduce Ordinance No. 23.15 for Updates to Milpitas Municipal Code on Purchasing (Staff Contact: Walter C. Rossmann, 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.

9. 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 (10:00 PM)

10. 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.

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

12. 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)

13. Per Request of Vice Mayor, Discuss Hosting a "Safety First" Community Event, Planned with/by the Milpitas Community Advisory Commission (Contact: Vice Mayor Nuñez, 408-586-3023)

14. Receive and Direct Staff on List of Agenda Items Requested by City Councilmembers (Contacts: 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 it is scheduled as a full agenda item.

NEXT AGENDA PREVIEW

15. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on November 17, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive list of anticipated agenda items for the November 17, 2020 regular City Council meeting.

ADJOURNMENT OF SPECIAL MEETING (11:00 PM)

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 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)

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.

Mary Lavelle

From: Chris Martin <rayemart1977@gmail.com>
Sent: Thursday, October 15, 2020 11:34 PM
To: Mary Lavelle; Christopher Diaz; Steven McHarris; Anthony Phan; Bob Nuñez; Carmen Montano; Karina Dominguez; Rich Tran
Cc: jeff.smith@ceo.sccgov; ghase@metronews.com; jgeha@bayareanewsgroup.com
Subject: Cure and Correct Brown Act Violation
Attachments: letter2.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION - EXTERNAL SENDER.

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Mayor Rich Tran,
Milpitas City Council Members

Dear City Attorney:
Christopher J. Diaz ,

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Milpitas City Council and City Attorney.

The nature of the violation is as follows: On 10/15/2020, the Milpitas City Council took action to withdraw and Stop the Project Homekey (located at 1000 Hillview Court, Milpitas CA) However the Mayor, without public comment, and without a council Majority vote, sent an earlier letter (dated 10/13/2020, 2 days before the Schedule Special Council Meeting), (attached below) to the County of Santa Clara requesting the County to Stop the Project. Therefore, tainting the 10/15/2020 meeting and acting without good faith or transparency with blatant disregard for the democratic process.

The action taken was not in compliance with the Brown Act because The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda.

Either method is permissible, though public comment on public hearing items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to "pull" items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3)

In the event it appears to you that the conduct of the Milpitas City Council specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

Pursuant to that provision (Government Code Section 54960.1), I demand that the Milpitas City Council cure and correct the illegally taken action as follows: All individual Votes to withdraw from the Project Homekey proposal on 1000 Hillview Court, Milpitas CA, be deemed invalid , e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action, however due to the extreme time restraint created by the funding and Project Schedule and because the Mayor took a stance and spoke for the City Council as a whole in advance (on 10/13/2020) on a development project prior to Public Hearings I request ALL INDIVIDUAL VOTES BE DEEMED INVALID. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,
Christopher Martin,
1850 Blue Spruce CT, Milpitas CA 95035
(Submitted 10/15/2020)

CITY OF MILPITAS

OFFICE OF MAYOR RICH TRAN

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE 408-586-3029, FAX 408-586-3056, EMAIL rtran@ci.milpitas.ca.gov

October 13, 2020

RE: Project HomeKey (Milpitas)

To the Santa Clara County Board of Supervisors and County Executive Jeff Smith

It is a great blessing to be a resident of Santa Clara County, in my opinion the greatest County in our nation. We are fortunate to have many resources in Milpitas, such as the County run library and our very valued Valley Health Clinic. Furthermore, Milpitas residents have a special place in our hearts for Ed Levin Park. Our City's partnership with the County has always been strong.

Over the past few months and most recently with the funds granted for Project HomeKey Milpitas, many of our residents have been greatly alarmed with the lack of community engagement and transparency surrounding this project from the County. This is not the same process for homeless housing projects like in the past with Measure A (Housing Bond 2016), where cities in Santa Clara County can have greater influence. We understand State AB 83, but it cannot be a law that excuses the absence of equal treatment for Milpitas residents who have been faithful to our County government. I have considered a lot of good faith for our County to represent Milpitas fairly, however this project has now become a troubling issue.

I stand with the residents of Milpitas, [illegible] and many of whom who are employed throughout Santa Clara County. We ask you to stop the project, hold meetings for Milpitas residents, and provide us a voice through the democratic process that America promises. There are many Milpitas residents that are opposed to this project as do I.

On behalf of your constituents in Santa Clara County, we await your response, and remain hopeful our County will continue to serve us with honor. I can be reached via phone, email, or through the City Manager/City Attorney. Thank you and God Bless.

Sincerely,

Rich Tran

Mayor

October 2020

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

Milpitas City Council Calendar
November 2020

December 2020

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

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	**2** ~~**7:00 PM** Parks, Recreation & Cultural Resources Commission (AP)~~	**3** ~~**2:00 PM** Closed Session~~ ~~**7:00 PM** City Council~~ **ELECTION DAY**	**4** **9:00 AM-**City Council -Special Meeting **2:00 PM**-Santa Clara VTA - monthly 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) **7:00 PM**-Science, Technology & Innovation Commission (BN)	**10** **7:00 PM**-City Council – Special Meeting	**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) **5:00 PM**-Public Safety and Emergency Preparedness Commission (KD) **7:00 PM**-Cities Assoc of SCC (CM) **7:00 PM**-Youth Advisory Commission (AP)	**13** ***4:30 PM**-Council Finance Subcomm.(RT/CM)*	**14**
15	**16** **7:00 PM**-Library and Education Commission (CM)	**17** **6:00 PM**-Closed Session **7:00 PM**-City Council	**18** **6:00 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)	**20**	**21**
22	**23** **7:00 PM**-Arts Commission (CM)	**24**	**25**	**26** **CITY HALL CLOSED FOR THANKSGIVING HOLIDAY**	**27**	**28**
29	**30**					

Finance Subcommittee will meet only as needed

Updated 11/4/2020

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of: **Special Meeting of the Milpitas City Council**
Date: **Thursday, October 15, 2020**
Time: **7:00 PM**
Location: **Meeting held via teleconference/zoom webinar online Milpitas, CA**

CALL TO ORDER

Mayor Tran called the special meeting to order at 1:00 PM. City Clerk Mary Lavelle called the roll. The meeting took place online via teleconference/zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Nuñez, and Councilmember Dominguez

ABSENT: Councilmembers Montano and Phan were absent at roll call. He arrived online for the meeting at 1:08 PM and she did so at 1:15 PM.

PLEDGE

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

PUBLIC FORUM

Mayor Tran stated comments would be welcomed after the staff report.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

APPROVAL OF AGENDA

Motion: to approve the October 15, 2020 special meeting agenda, as presented

Motion/Second: Mayor Tran/Councilmember Phan

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Montano)

AGENDA ITEM

City Manager Steve McHarris introduced the meeting topic – developer Jamboree Housing Corp.'s proposal along with the County of Santa Clara to apply state-granted housing funds to transition the current Extended Stay America hotel into a supportive housing site, assisting homeless people to move into 130 units at 1000 Hillview Ct.

Planning Director Ned Thomas provided an overview of the process for a typical application to the City's Planning and Building departments for a commercial or residential development project. He explained how Project Homekey by Jamboree and the County was exempt from the usual process, due to California Assembly Bill 83, effective this year.

Mayor Tran complimented City planning staff on diligently performing their jobs, similarly the Milpitas Planning Commission, and he understood the impact of AB83 which took away the City's authority on land use decision making for this County housing project.

PUBLIC COMMENTS & DISCUSSION

34 speakers addressed the City Council with live comments until 2:30 PM. The following people spoke to the Council via zoom webinar:

Lisa Moreno
Andre Krammer
Louise Auerhahn
Urvishkumar Mehta
Rachel Wang
Charles Schletzbaum
Anh Bui
Paul Kwan
Tom Lin
Simon Wang
Ann Zeise
Rita Yu
Quin
Joy Wu
Roger Kinoshita
Suraj Viswanathan
Jackie Romero
Zhoutong Fu
Jessica Yu
Lan
Phong Nguyen
Victor San Vicente
Ken Chan
Nolan Yan
Janani Hari
Tina Broyles
Linda Wang
AJ Lal
Kimphuong Tran
Loreto Dimaandal
Rekha Pardeshi
Jen Lee
Penny Lee
Keng Ng

At 2:30 PM, Mayor Tran asked Ms. Consuelo Hernandez, Director of the Santa Clara County Office of Supportive Housing, to speak and answer some of the residents' comments and questions.

The Mayor next turned to Councilmembers for their questions of the County staff. Ms. Hernandez replied about a partnership between the City and the County for $75,000 in services. She referred to the informative City staff report to City Council previously provided, explaining the services to homeless persons by the County and how those were allocated. She answered multiple questions from the Council.

At 3:30 PM, after Ms. Hernandez departed the meeting, and the Mayor invited additional public comments. 27 more speakers addressed the Council:

Allysson McDonald
Ling Kong
Tiffany Vuong
Simon Tan
Premal Parekh
Andi Cho
Andy Wong
Jennifer Strohfus
Alan Tran
Tyson Chu
Ting Kong
Janki
Sherlyn Wong
Linda Brennan
Christina Yeh
Peter Ng
Debra Chia
Gino Relampagos
Eva Tsui
Reylen Bangoy
Michelle Dai
Yuling Zhao
Yang Liao
Ron Lam
Wendy Duong
Ricky Davis
David

Mayor Tran and all City Councilmembers commented on the project, homeless people, mental health issues, City of Milpitas budget and the ongoing needs for service.

Councilmember Dominguez asked the Council to take immediate action on the $75,000 commitment (noted earlier by County staff) and to help the School District in its services to homeless families.

Councilmember Phan wanted to know if Measure A funds could be used to help house Sunnyhills residents.

(1) Motion: per Mayor Tran, to ask staff to prepare a final letter to the County of Santa Clara from the City of Milpitas City Council, showing the City's identity in Santa Clara County, show existing partnerships including Elmwood Jail, Milpitas Library, Ed Levin Park, the County Health Center, the history together, with the City expressing voices of its residents from all neighborhoods across the City, with freedom of speech and equal treatment. The letter shall be a firm statement that the City would like for the project to stop, for the County to strongly consider withdrawing its application due to a lack of transparency within the confines of the Project Homekey Milpitas project and due to AB83 regulation and funding, while re-affirming the City's commitment to the County, which would make a decision for all residents, to have some peace going forward on housing advocacy. Per Councilmember Dominguez, the letter shall include a "local jurisdiction" preference in housing projects built in Milpitas, and a specific date for the County to respond, with Mayor Tran asking the County to reply to the City by the following Friday (Oct. 16) or Monday (Oct. 19).

City Attorney Chris Diaz directed that the letter shall be signed by one staff member, not himself due to the agenda item next Tuesday on potential litigation. Mayor Tran designated the City Manager to sign the letter.

Motion/Second: Mayor Tran/Councilmember Montano

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

(2) Motion: to direct staff to bring back to City Council a Milpitas Plan on what to do for the unhoused, including costs, and on what to include: safe parking, a grant for assessment, a social worker, a shower/washer dryer trailer, port-a-potties, and other ideas discussed at this meeting, in a proposal the following Tuesday October 20, 2020 during the discussion of the City's budget

Motion/Second: Vice Mayor Nuñez/Councilmember Dominguez

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

(3) Motion: to direct the City Manager to send a letter to advocate modifying the system of selection so the City would have some say in the process of placing homeless residents, and send it the day after this meeting

Councilmember Dominguez asked to include "local jurisdiction" priority in projects.

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

ADJOURNMENT Mayor Tran adjourned the special City Council meeting at 5:40 PM.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Joint Meeting of the Milpitas City Council and Milpitas Municipal Financing Authority**
Date: **Tuesday, October 20, 2020**
Time: **6:00 PM Closed Session**
7:00 PM Open Session
Location: **Meeting held via teleconference/zoom webinar online Milpitas, CA**

CALL TO ORDER

Mayor Tran called the joint meeting to order at 6:02 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference/zoom webinar.

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

ABSENT: None

CLOSED SESSION

City Council convened into Closed Session (online webinar) to discuss two topics listed on the agenda, one labor negotiations and one anticipated litigation matter.

At 7:30 PM, the Mayor and City Council reconvened for the Open Session.

ANNOUNCEMENT – from Closed Session

City Attorney Chris Diaz stated there was no reportable action taken to announce out of Closed Session.

PLEDGE

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

INVOCATION

Vice Mayor Nuñez offered his own prayer.

PUBLIC FORUM

The following residents provided oral comments (as attendees in the zoom webinar) limited to one minute, per Mayor Tran.

Voltaire Montemayor
Tom Valore
Karen Friedman
Urvish Kumarmehta
Elena Gill
Ana Rodriguez
Paul Kwan
George Xie
Allysson McDonald
Tina Ortiz
Jayant Shekhar
Tom Lin
Maria Martinez
Jackie Romero
Jessica Yu
Dawn Love
Janki Shah
Rekha Pardeshi
Loreto Dimaandal
Lan Nguyen
Xipeng (David) Sui
Jazmen Edwards
Bill Korbe
Ken Ng
Diana Sui
Art Curiel
Joe Renteria
Jen Lee
Penny Lee
Andre Krammer
Debra Chia
Kim Truong
Christina Yeh

ANNOUNCEMENTS

Mayor Tran announced a City-Milpitas Unified School District Collaborative meeting scheduled Friday, October 30, where the girls' softball playing fields was on the agenda.

Vice Mayor Nuñez asked for a future agenda item, for a "safety first" virtual event, through the Community Advisory Commission, partly due to cancellation of this year's National Night Out. City Council consensus for the item was reached.

Councilmember Dominguez asked for a letter of support from the City to the school district, in order to solidify the partnership and move the girls' softball field use issue forward. City Attorney confirmed that she wanted an item to be scheduled on a future meeting to discuss such a letter and provide direction to staff that a discussion about the softball fields at Russell Middle School be placed on a City Council meeting agenda. Mayor Tran noted to include work being done by staff and the MUSD-City Collaborative, in the discussion by the full City Council. All five members agreed.

Mayor Tran expressed his goal for a short City Council regular meeting on November 3, with only consent calendar items. Further discussion yielded agreement to cancel the meeting on November 3, and to schedule a Special City Council meeting one week later on Tuesday, November 10. All five Councilmembers agreed.

Councilmember Phan asked to defer the Responsible Construction ordinance (item no. 11) on this agenda. He also thought that item no. 10 (purchasing update ordinance) might take some time and could be deferred to a future meeting.

Councilmember Dominguez wanted discussion on naming the "Milpitas Hills" on an agenda. She asked to send this idea to the Economic Development Commission for discussion. Four were in favor, with the Mayor opposed

City Manager Steve McHarris announced that on Thursday, October 22 at 7:00 PM, the City would host a public meeting (online) to answer questions on Ballot Measure F (1/4 cent sales tax increase) and all were welcome. Also, Covid-19 testing would be available on Friday, October 30 by County Health Services at Milpitas Sports Center.

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.

Vice Mayor Nuñez and Councilmember Phan stated that in the past, each had received a contribution from the Building and Trades Council.

PROCLAMATIONS

Mayor Tran noted that October 12, 2020 was proclaimed as *Indigenous Peoples Day*. He proclaimed October 24 as *United Nations Day* in Milpitas, celebrating 75 years of the U.N.'s existence.

Vice Mayor Nuñez mentioned he walked during the march with Milpitas resident Ms. Tiny Rosales, who was due to get an award from Assemblymember Ash Kalra for keeping Native American dance alive. In reply, Mayor Tran said he would like to give her a key to the City.

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 20, 2020 meeting agenda, as amended

Mayor Tran said he would move up item no. 9 (Parks and Recreation Master Plan) to be heard after the public hearing (no. 8).

City Attorney Chris Diaz noted Councilmember Phan's earlier request to remove items no. 10 and no. 11, to be rescheduled to a later meeting date.

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 – C5

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

C1. Council Calendar

Received calendars of upcoming meetings for October and November 2020.

C2. Meeting Minutes

Approved the City Council meeting minutes of the Regular City Council meeting on September 29, October 6 and 9, 2020.

C3. Resolution

Adopted Resolution No. 9012 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. Amendment No. 2 to Agreement with Alta

1. Received a status report on the Trails and Bikeway Master Plan Update, Project No. 3448.
2. Approved and authorized 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. Approved a budget appropriation of $36,219 from the General Government CIP Fund into Project No. 3448.

C5. Change Order No. 2 – Playgrounds Rehab.

Approved 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

6. Tax-Exempt Lease Revenue Bonds – Sale and Issuance

Deputy City Manager/Finance Director Walter Rossmann defined the necessary steps, and the use of consultants, involved with bringing forward actions for the sale and issuance of tax-exempt bonds. Projects to be funded included Fire Station No. 2 Replacement and energy savings projects (per the approved contract with Engie). Bond consultants from Jones, Hall displayed historic bond yields over time, with borrowing rates trending down significantly.

Mayor Tran opened the public hearing for comments from Voltaire Montemayor and Urvishkumar Mehta.

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: to adopt City Council Resolution No. 9013 and Milpitas Municipal Financing Authority Resolution No. MFA 4 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 not to exceed $25 million to finance construction of Fire Station No. 2 and energy efficiency projects

Motion/Second: Mayor Tran/Councilmember Montano

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

COMMUNITY DEVELOPMENT

7. Urgency Ordinance

Economic Development Director Alex Andrade expressed a request for the proposed temporary urgency ordinance. Economic Development Specialist Nicole Inamine explained third party food delivery service from restaurants was provided for a fee, and discussed why local municipalities were placing a cap on those fees and defined the fee structures. Councilmembers spoke out in favor of the ordinance.

Councilmember Phan asked for two changes: (1) for the term end date, so the ordinance would be in effect up to when the local state of emergency time period ends, and when indoor dining was up to 100% capacity; and, (2) for the cost service fee (processing fee) to be capped no higher than 3% and for optional services, up to 10%.

Public comments were heard from residents Voltaire Montemayor and Urvishkumar Mehta.

City Attorney Chris Diaz read aloud specific changes to be included in the text of the ordinance to incorporate additions requested by Mr. Phan. He read the title of the proposed ordinance, "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."

Motion: to adopt Urgency Ordinance No. 307 effective immediately, by a 4/5 minimum vote of the City Council, with a seven-day grace period

Motion/Second: Councilmember Montano/Councilmember Phan

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

8. Plan on Homelessness

Item was not heard.

COMMUNITY SERVICES

9. Parks & Recreation Master Plan

This item was heard following the Public Hearing, item no. 6.

City Engineer Steve Erickson addressed the Council on the Master Plan for the City's parks and recreation facilities and programs. The Master Plan was last adopted in 2008. The consultant Gates and Associates was contracted in June 2019 to develop a plan, for which a scope of work was identified.

Ms. Linda Gates and Ms. Melonie O'Sullivan from Gates and Associates made a presentation on the plan. Consultant Alan Pennington addressed fees and the Cost Recovery Scope of Services for sample cost recovery policy for Recreation.

Councilmember Montano requested to include softball field needs in the list of "user groups" for those who would give input into the Master Plan.

The following residents provided public comments: Urvishkumar Mehta, Voltaire Montemayor, Tina Ortiz, Allysson McDonald, and Jackie Romero.

Vice Mayor Nuñez asked that all City Commissioners be engaged in the community outreach process.

The City Manager explained that further discussion and approach to the City's fee schedule, would be discussed with next year's budget process.

LEADERSHIP

10. Ordinance No. 23.15	Item was removed from the agenda.
11. Ordinance No. 65.150	Item was removed from the agenda.
12. Community Engagement Budget	Agenda items no. 12 through 17 were not heard.
13. Project Labor Agreement	
14. Council Sponsored Events, and US Census	
15. Council Ideas to Assist	
16. Cap on Bus. Rent	
17. List of Agenda Items	

NEXT AGENDA PREVIEW

18. Preview Agenda Items	Received list of anticipated agenda Items for the next regular City Council meeting scheduled for November 3, 2020.

ADJOURNMENT Mayor Tran adjourned the joint meeting at 12:09 AM on Wednesday, October 21, 2020.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Special Meeting of the Milpitas City Council**
Date: **Thursday, October 22, 2020**
Time: **1:00 PM**
Location: **Meeting held via teleconference/zoom webinar online**
Milpitas, CA

CALL TO ORDER

Mayor Tran called the special meeting to order at 1:00 PM. City Clerk Mary Lavelle called the roll. The meeting took place online via zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Nuñez, Councilmember Dominguez

ABSENT: Councilmembers Montano and Phan were absent at roll call. Councilmember Montano arrived in the public meeting shortly thereafter. Councilmember Phan arrived in the Closed Session.

PLEDGE

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

PUBLIC FORUM

None

CLOSED SESSION

At 1:02 PM, the City Council adjourned to Closed Session (via zoom webinar). City Attorney Chris Diaz stated the matter was conference with legal counsel regarding anticipated litigation with the City as plaintiff, related to Project Homekey in Milpitas.

ANNOUNCEMENT

City Attorney Chris Diaz reported out that City Council did vote unanimously 5-0 to pursue litigation against any and all parties involved in the Project Homekey located at Extended Stay America in Milpitas.

Mayor Tran called for another Closed Session special meeting to be held on Monday, October 26 at 6:00 PM.

ADJOURNMENT

The Special City Council meeting was adjourned at 2:23PM.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft CITY OF MILPITAS
MEETING MINUTES

Minutes of: **Special Meeting of the Milpitas City Council**
Date: **Monday, October 26, 2020**
Time: **6:00 PM**
Location: **Meeting held via teleconference/zoom webinar online**
Milpitas, CA

CALL TO ORDER

Mayor Tran called the special meeting to order at 6:02 PM. City Clerk Mary Lavelle called the roll. The meeting took place online via zoom webinar.

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

ABSENT: Councilmember Phan was absent at roll call, and arrived online at 6:05 PM.

PLEDGE

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

PUBLIC FORUM

Seven residents addressed the City Council on possible litigation and Project Homekey:

Tom Valore
Rob Means
Janice Breaux
Allysson McDonald
Bill Korbe
Tiffany Vuong
Jastine

CLOSED SESSION

At 6:15 PM, the City Council adjourned to Closed Session (via zoom webinar). City Attorney Chris Diaz stated the matter was regarding potential litigation, as listed on the meeting agenda, concerning Project Homekey in Milpitas.

ANNOUNCEMENT

Upon returning to the open session meeting, Mayor Tran asked the City Attorney to comment. Mr. Diaz announced that the City Council did take a vote in Closed Session to direct the City Attorney's office to look at specialized law firms to handle this matter (litigation) on behalf of the City, as the City Attorney's office does have a legal conflict of interest under the state bar rules of professional conduct.

Mayor Tran called for another Special City Council meeting on Wednesday, October 28, 2020 at 6:00 PM.

ADJOURNMENT

The Special City Council meeting was adjourned at 9:02 PM.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

Draft **CITY OF MILPITAS**
MEETING MINUTES

Minutes of: **Special Meeting of the Milpitas City Council**
Date: **Monday, October 28, 2020**
Time: **6:00 PM**
Location: **Meeting held via teleconference/zoom webinar online**
Milpitas, CA

CALL TO ORDER

Mayor Tran called the special meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll. The meeting took place online via zoom webinar.

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

ABSENT: Councilmember Dominguez was absent at roll call. She arrived in the meeting shortly thereafter.

PLEDGE

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

PUBLIC FORUM

The following 80 residents and organization representatives addressed the City Council concerning Project Homekey in Milpitas:

Tessa Baizer
of Law Foundation of Silicon Valley
John Agg
Ron Lind
Debra Chia
AJ Lal
Matt Svihovec
Andrea Morgan
of Corporation for Supportive Housing
Paul Kwan
Tom Lin
Hsia Yu
Lan Ng
Nalla
Joe Pat
Chaitanya G
Jeffrey Buchanan
of Working Partnerships USA
Rico
Lobsang Partsang
Anil Aranjany
Johnson
Quang Huynh
Charles Schletzbaum
Rambabu Manu
Philip Yu
Minghung Ho
Suraj Viswanathan
Michelle Dai
Gaurav Khurana
Tina
Yen
Manish Das
Jayant Shekar
Reylen Bangoy
Bill Korbe
Christopher Martin
Son Nguyen
Ngoc Dang
Urvishkumar Mehta
Richard Joe
Wiley Rankin
Jen Lee
Gino Relampagos
Janani Hari
Krish Jayaraman
Baozhen Yu
Yu Ping Zhao
Yifan Ye
Diana Y
Sandy Chang
Mikhaila Parrish
Ram U
Evelyn Salud
Kelly Clark
Jackie Romero
Sergey Odintsov
Rekha Pardeshi
Roger Paul
Jammie Schletzbaum
Lisa
Zhoutong Fu
Cynthia Liu
Barbara Martens
Christina Yeh
Mike Smith
Linda Wang
Tiffany Vuong

Esther Tsang	Allysson McDonald
Penny Lee	Joy Wu
Jessica Yu	Maulik Shah
Keng Ng	Andre Krammer
Karen Friedman	Helen Lee
Xipeng Sui	Dustin Wang
Ashish Khare	Thomas Valore

CLOSED SESSION At 7:52 PM, the Mayor and City Council adjourned to Closed Session (via zoom webinar). City Attorney Chris Diaz stated the subject was conference with legal counsel concerning anticipated litigation regarding Project Homekey in Milpitas.

ANNOUNCEMENT Upon returning to the open session meeting, City Attorney Diaz stated that direction was given to staff, but nothing was legally required to be reported out of the Closed Session.

ADJOURNMENT Mayor Tran adjourned the Special City Council meeting at 9:38 PM.

Draft meeting minutes submitted by
City Clerk Mary Lavelle

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Housing/Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative; and Approve a related budget amendment**
Category:	Consent Calendar-Community Development
Meeting Date:	11/10/2020
Staff Contact:	Sharon Goei, Director of Building Safety and Housing, 408-586-3260
Recommendations:	1. Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative. 2. Approve a budget amendment to appropriate $10,000 from the Affordable Housing Community Benefit Fund to the FY 2020-21 Building Safety and Housing Operating Budget.

Background:

The process for determining each jurisdiction's projected housing need is called the Regional Housing Needs Allocation (RHNA). The process begins with the State – the California Department of Housing and Community Development (HCD) – which estimates the existing housing need and determines the projected statewide growth in households. Through the RHNA process, HCD allocates housing demand by region to the regional council of governments (COG). In turn, each regional COG allocates the projected regional growth to local jurisdictions within the region. The nine-county Bay Area's COG is the Association of Bay Area Governments (ABAG), which works closely with the Metropolitan Transportation Commission (MTC) to assign housing allocations and distribute RHNA objectives to each local jurisdiction in the Bay Area. Each jurisdiction produces a Housing Element that demonstrates the jurisdiction's ability to accommodate the housing need identified in its RHNA during each eight-year planning cycle. The Bay Area's next RHNA cycle will cover the period from 2023-2031.

Most jurisdictions throughout the state have experienced challenges in meeting their RHNA goals, including those in the Bay Area. The upcoming RHNA allocation is anticipated to be 2-3 times larger than previous years and stricter state laws will make the housing element planning process more challenging. As a result, jurisdictions will require significant technical assistance to complete a housing element that will be certified by HCD.

The Cities Association of Santa Clara County is a membership organization that was founded in 1990 and includes representatives from 15 jurisdictions. The purpose of the organization is to increase collaboration and to advocate on issues that impact the South Bay. In 2019, the Cities Association explored the formation of an HCD sanctioned RHNA Subregion to allow for flexibility in how RHNA housing growth would be distributed between jurisdictions in the County. However, the Cities Association determined a Subregion would be too costly and complicated to form. Instead, the Cities Association formed the Santa Clara County Planning Collaborative to build relationships across agencies, leverage resources, share information, and to increase the cohesiveness of housing planning and implementation across the South Bay.

On December 3, 2019, the Milpitas City Council adopted Resolution No. 8927 authorizing the City to join the Cities Association in forming a Planning Collaborative and to contribute an amount between $3,125 and $5,0

(depending on the number of jurisdictions joining the Collaborative) for consultant services relating to the RHNA process, RHNA methodology, the implications of recent state housing laws, proposed legislation, and other affordable housing matters. A total of fifteen jurisdictions ultimately joined the Collaborative. Each participating jurisdiction, including Milpitas, contributed $3,333.33. This relatively small $50,000 Cities Association contract was intended as a pilot to see if the Planning Collaborative would improve staff productivity. The Cities Association contracted with Baird + Driskell Community Planning, the firm that facilitated the San Mateo County's 21 Elements housing collaborative for over ten years.

By September–October 2020, the hours funded by the Planning Collaborative contract were depleted. The Cities Association surveyed jurisdiction staff and received positive feedback about the Planning Collaborative and the consultant. Based on this feedback, the Cities Association requested an updated scope of work from Baird + Driskell to continue facilitating the group, planning special work sessions, conducting focused research, providing educational materials, serving as a liaison with HCD and ABAG/MTC, creating templates and best practice tools, conducting focused countywide data analysis, conducting an accessory dwelling unit (ADU) survey, and educating Sacramento lawmakers on experience in our region. Additional services are available at extra cost for individual jurisdictions that need assistance with performing analysis or writing sections of their Housing Element. A detailed scope of services for the Planning Collaborative is included as **Attachment B**.

On October 8, 2020, the Cities Association Board of Directors voted to extend the Baird + Driskell contract, which supports the Planning Collaborative. The overall contract extension would be for $160,000 and would run from October 2020 through January 2023 (28 months). The cost for Milpitas would be $10,000 and was based on a tiered system using the same formula that determines the jurisdiction dues structure for the Cities Association.

This report evaluates the work of the Planning Collaborative to date and explores how the proposed contract extension would benefit housing planning efforts in Milpitas.

Analysis:

The City of Milpitas has been an active member of the Planning Collaborative since it began in April 2020. The Collaborative has been well-attended by housing staff and planners from Santa Clara County jurisdictions. Below is a summary of the technical assistance Baird + Driskell has provided to the group over the last six months:

- Conducted a survey on the topics that would be most useful for the Planning Collaborative and created a website to post meeting materials and resources.
- Shared updates on the ABAG/MTC Local Early Action Planning (LEAP) and Regional Early Action Planning (REAP) grant programs along with a brainstorming session for project ideas.
- Discussed ADU codes and requested data to complete a regional ADU production survey.
- Prepared a briefing on Housing Element timelines, new rules for conducting housing site inventories, and new HCD draft guidance.
- Provided updates on state housing legislation and the Governor's budget.
- Facilitated a discussion on how to integrate an Assessment of Fair Housing into the Housing Element, as required by new state laws.
- Provided regular updates on the ABAG/MTC Housing Methodology Committee (HMC) process, which has made a recommendation on how future housing growth should be distributed throughout the Bay Area.
- Convened a small working group to discuss the feasibility of the initial baseline proposal, which would have allocated an extremely large housing goal to Santa Clara County jurisdictions. The Cities Association Executive Board submitted a letter for the public record as part of the Housing Methodology Committee process. The final HMC recommendation called for a more moderate amount of growth in Santa Clara County.

The technical assistance provided by the Planning Collaborative comes at an important time as ABAG/MTC move to finalize the housing allocation for Bay Area jurisdictions over the coming months and as jurisdictions begin work on their housing element updates. Keeping on track with the Planning Collaborative is especially

important for Milpitas due to the need to coordinate Housing Element planning with the Metro and the Midtown Specific Plan update processes between fall 2020 and spring 2021. In addition, Milpitas also needs to begin work on an Assessment of Fair Housing which is now a required part of the Housing Element.

Staff recommends Council adopt the Resolution and appropriate funding to continue membership in the Cities Association Planning Collaborative. If all 16 jurisdictions in Santa Clara County (15 cities/towns and the County itself) continue in the Planning Collaborative, Milpitas will need to contribute $10,000. A detailed breakdown of jurisdiction contribution is included in **Attachment B**. An appropriation of $10,000 from the Affordable Housing Community Benefit Fund can fulfill the Milpitas contribution.

Policy Alternative:
Alternative: The City does not continue in the Santa Clara County Planning Collaborative.
Pros: There will be no cost or staff time.
Cons: The City will lose opportunities to save money, staff time, resources, and to develop stronger relationships and collaboration with staff from other cities.
Reason for Not Recommending: It is beneficial and more efficient for cities to work collaboratively to respond to the region's housing needs, to provide a collective response to ABAG/MTC on the RHNA process, and to prepare high quality housing plans that comply with state regulations.

Fiscal Impact:
If all jurisdictions in Santa Clara County continue in the collaborative, the funding that Milpitas will contribute to the Cities Association will be $10,000. If the City Council approves the recommendation of appropriating $10,000 from the Affordable Housing Community Benefit Fund, the fiscal impact would be a $10,000 reduction to the ending fund balance.

California Environmental Quality Act:
The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendations:
1. Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative.
2. Approve a budget amendment to appropriate $10,000 from the Affordable Housing Community Benefit Fund to the FY 2020-21 Building Safety and Housing Operating Budget.

Attachments:
A. Resolution to continue participation in the Santa Clara County Planning Collaborative and to provide funding to continue consultant services to support the Collaborative.
B. Santa Clara County Planning Collaborative scope of services and budget.
C. Budget Change Form.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY TO CONTINUE PARTICIPATION IN THE CITIES ASSOCIATION OF SANTA CLARA COUNTY PLANNING COLLABORATIVE AND TO PROVIDE FUNDING TO CONTINUE CONSULTANT SERVICES TO SUPPORT THE PLANNING COLLABORATIVE

WHEREAS, the City of Milpitas is a member of the Cities Association of Santa Clara County; and

WHEREAS, the members of the Cities Association of Santa Clara County will benefit from technical consultant services to assist in the evaluation of the Regional Housing Needs Allocation (RHNA) methodology, proposed or pending housing legislation, and other related housing matters; and

WHEREAS, the members of the Cities Association of Santa Clara County recognize that each jurisdiction has a responsibility to plan for its fair share of housing; and

WHEREAS, the members have agreed to work collaboratively to produce more housing in the region; and

WHEREAS, technical assistance will help staff prepare high quality housing planning documents, implement process improvements to accelerate housing production, and facilitate compliance with the sixth cycle of the housing element; and

WHEREAS, the members have agreed that having a unified voice regarding the upcoming RHNA process, proposed or pending housing legislation, and other housing implementation could result in greater effectiveness on housing issues.

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

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

2. The City Council supports a regional housing collaborative and authorizes the City to continue participation in the Cities Association of Santa Clara County Planning Collaborative.

3. The City Council approves the appropriation of funds as set forth below to contribute toward continued consultant services to support the Planning Collaborative.

4. The City Council agrees to provide to the Cities Association of Santa Clara County a funding amount of $10,000 if all sixteen jurisdictions (fifteen member jurisdictions and the County) continue in the Planning Collaborative, for the purpose of funding continued consultant services to Planning Collaborative members regarding the RHNA process, RHNA methodology, recently enacted State housing laws, proposed or pending housing legislation, and other affordable housing matters.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

DRAFT Scope of Services

Santa Clara County Planning Collaborative RHNA 6

October 4, 2020

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I. Project Purpose and Goals

Supported by the Cities Association, the Santa Clara County Planning Collaborative is a shared effort among the county's jurisdictions to help address the region's housing challenges. By working together collaboratively, the 16 jurisdictions of Santa Clara County will: 1) save money, time and resources by sharing information and capacity; 2) maintain & facilitate relationships with non-profits, affordable housing advocates, and key governmental organizations; and, 3) receive additional staffing support from Baird + Driskell Community Planning.

The proposed scope of services for Baird + Driskell outlined below will help participating jurisdictions effectively and efficiently update their Housing Elements to meet State law requirements within the State-mandated schedule. Consistent with this purpose, the project will advance more effective pro-housing policies and programs to facilitate the creation of new and diverse housing choices that meet the needs of a growing and changing population, and affirmatively advance fair housing in a manner that supports the health and well-being of Santa Clara County communities.

Housing Element requirements are described in detail in State law (Govt. Code Sec. 65580 et. seq.). This Scope of Services is structured around those requirements to provide a combination of templates, methodologies, baseline data, comparative information, key findings, write-ups, best practices, and process materials. It is important to note that the specific services outlined below may change or be supplemented with additional services based on feedback from Collaborative members and their ongoing needs, in line with the following overarching project goals:

- **Provide a Forum for Jurisdictions to Share Resources, Best Practices and Strategies for Upcoming RHNA 6 Housing Element Planning.** Building on the ongoing collaboration of Santa Clara County cities, this effort will provide a forum, structure and process for sharing resources and strategies that can be applied successfully across jurisdictions.
- **Give Jurisdictions a Head Start on Planning to Meet the January 2023 Deadline.** Experience from past housing element cycles and other regions suggest that starting early is a best practice for equipping jurisdictions to successfully meet their deadlines.
- **Achieve High Quality Housing Elements While Saving Money, Time and Resources.** The services are designed to save money by minimizing duplication of effort, including collaboration on early analysis of available sites and potential strategies for expanding site inventories as well as shared work around countywide analyses, data templates and model practices. These services make it easier to complete key tasks while improving the quality of outcomes.
- **Develop a Constructive Working Relationship with HCD for Santa Clara County.** Feedback from the 21 elements Organization in San Mateo County from previous update cycles underscored that

collaboration with HCD was extremely helpful in achieving housing element certification. HCD also reports that early collaboration facilitated their review and made for higher quality housing elements in Santa Clara County.

- **Tailor a Range of Choices to Best Fit Jurisdiction Needs.** Building off of this base package of services shared by all jurisdictions, each jurisdiction can choose an additional set of services that best fit their needs while leveraging the benefits of ongoing collaboration. To the extent possible, the Collaborative will support jurisdictions part or all of their housing elements "in-house" or with less support from consultants than they would otherwise need.

II. Scope of Services

General Support for RHNA 6 and Housing Element Updates

Overview Support cross-jurisdictional learning, coordination, collaboration and problem-solving for the duration of the housing element process through regular meetings, countywide analyses, best practice research, and shared data and communications tools.

Timing *October 2020 through January 2023*

Cost *$160,000 (assumes full participation)*

Core Tasks

- **a** Facilitate sharing and collaboration, including special work sessions and regular meetings
- **b** Focused research and dialogue on issues of special concern, including strategies to affirmatively further fair housing
- **c** Provide educational materials and outreach support
- **d** Engage with HCD on overall process, tours and technical assistance
- **e** Develop countywide analyses with jurisdiction-level data for housing needs, etc.
- **f** Create templates and best practice tools, including support for property owner surveys
- **g** Conduct ADU affordability survey
- **h** Educate Sacramento lawmakers about jurisdiction experience

Products

- ✓ Website updates, including tools, outreach materials, etc.
- ✓ Regular meetings and discussion summaries
- ✓ Countywide and jurisdiction-specific need tables
- ✓ Countywide analyses, data templates, best practice reports and similar based on group needs
- ✓ ADU affordability survey
- ✓ Shared educational tools for the general public and decisionmakers

Jurisdiction Roles

- ▶ Fully participate in regular meetings and special work sessions.
- ▶ Review and provide feedback on draft work products, including data tools, research papers, educational materials, etc.
- ▶ Serve as a conduit to others in city organizations and communities on issues of shared concern.
- ▶ Actively share local challenges, best practices, resources and housing knowledge.

III. Budget Summary

The budget for each service package, tiered by city size, is summarized below.

Jurisdiction	***Contribution***
Campbell	*$ 8,500*
Cupertino	*$ 10,000*
Gilroy	*$ 8,500*
Los Altos	*$ 8,500*
Los Altos Hills	*$ 6,500*
Los Gatos	*$ 8,500*
Milpitas	*$ 10,000*
Monte Sereno	*$ 6,500*
Morgan Hill	*$ 8,500*
Mountain View	*$ 10,000*
Palo Alto	*$ 10,000*
San Jose	*$ 18,000*
Santa Clara (city)	*$ 13,500*
Santa Clara (county)	*$ 10,000*
Saratoga	*$ 8,500*
Sunnyvale	*$ 14,500*
Total	***$ 160,000***

IV. Detailed Task Descriptions

1a Facilitate Sharing and Collaboration. Schedule, facilitate and document regular cross-jurisdictional meetings to engage city staff and directors in discussions of issues, opportunities, approaches, strategies and ideas pertinent to the housing element updates. Meetings may include guest participants to discuss technical topics, "how to" sessions, and focused work sessions to collaboratively problem-solve. We anticipate one meeting per month, with others added as needed, supplemented by ongoing project coordination and communications.

1b Conduct Focused Research. To support shared learning about best practices, and dialogue on issues of special concern, the Baird and Driskell team will conduct research on topics of special interest based on input and requests from member jurisdictions. Work products may take the form of white papers, fact sheets, PowerPoint presentations and/or webinars depending on the type, extent and format of information. This work will include exploration of best practices and strategies to affirmatively further fair housing.

1c Create Shared Outreach Materials. The Baird and Driskell team will develop materials to support education and outreach efforts by member jurisdictions and county partners. The purpose of these materials will be to support community understanding and dialog about housing needs, the role and purpose of the housing element, and strategies being used locally and elsewhere to create and sustain diverse housing choices, affordability and healthy communities. Production of materials will be coordinated with key steps in the update process, with most being produced in the first year when community discussions are getting underway. To the extent possible, materials will be designed so that they can be easily customized by each jurisdiction to tailor them to localized information and circumstances.

1d Engage with HCD. The Baird and Driskell team will help ensure early and ongoing engagement with HCD staff in order to help them understand the unique challenges and opportunities of Santa Clara County jurisdictions, and to help all member jurisdictions better understand HCD's expectations, perspectives and priorities. By building and maintaining a collaborative and respectful working relationship, Baird and Driskell will help ensure that the update process goes as smoothly as possible—highlighting and addressing issues *before* updated elements get submitted to HCD—and bringing situational awareness and technical assistance to bear in a timely manner, facilitating more efficient reviews by HCD with fewer surprises, and helping ensure higher quality housing elements.

1e Conduct Countywide Analyses of Housing Needs and Market Conditions. Develop countywide analyses of housing needs, including population, employment and household characteristics; general housing stock characteristics; the incidence of overpayment and overcrowding; and special housing needs (e.g., people experiencing homelessness, people with disabilities, seniors, etc.). Data will be reported at the County level and in comparative tables and graphics detailing each

jurisdiction's data as well. Analysis will also be provided related to the countywide and regional housing market conditions and trends.

1f **Create Templates and Other Tools.** Data templates, methodologies and related tools will be developed to support each jurisdiction's work. These include but are not limited to: template and instructions for evaluating existing elements; tools for assessing and comparing governmental and non-governmental constraints; and tools for evaluating and improving fair housing practices. This work will also support development of a property owner survey for substantiating properties included in site inventories.

1g **Conduct ADU Affordability Survey.** The Baird and Driskell team will develop and implement a survey of ADU property owners (using lists provided by participating jurisdictions) to better understand how they are being used, who is being served by them, and the levels of affordability being met. This will help inform how jurisdictions incorporate ADUs within their overall housing strategy, including how to apply them to RHNA targets, and support development of more effective ADU policies and programs in the housing element update.

1h **Educate Lawmakers.** Much of the housing element process is driven by State legislation. To help support a more responsive and effective legislative framework for future updates, it is important to communicate back to lawmakers about the experience of local jurisdictions working to translate State law into local action.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: **X Budget Appropriation** **☐ Budget Transfer**	**216-2909**	**$10,000**	**216-5364237**	**$10,000**

Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Housing/Planning Collaborative and to provide $10,000 to continue consultant services to support the Collaborative; and Approve a related budget amendment.

Background:

The process for determining each jurisdiction's projected housing need is called the Regional Housing Needs Allocation (RHNA). The process begins with the State – the California Department of Housing and Community Development (HCD) – which estimates the existing housing need and determines the projected statewide growth in households. Through the RHNA process, HCD allocates housing demand by region to the regional council of governments (COG). In turn, each regional COG allocates the projected regional growth to local jurisdictions within the region. The nine-county Bay Area's COG is the Association of Bay Area Governments (ABAG), which works closely with the Metropolitan Transportation Commission (MTC) to assign housing allocations and distribute RHNA objectives to each local jurisdiction in the Bay Area. Each jurisdiction produces a Housing Element that demonstrates the jurisdiction's ability to accommodate the housing need identified in its RHNA during each eight-year planning cycle. The Bay Area's next RHNA cycle will cover the period from 2023-2031.

On December 3, 2019, the Milpitas City Council adopted Resolution No. 8927 authorizing the City to join the Cities Association in forming a Planning Collaborative and to contribute an amount between $3,125 and $5,000 (depending on the number of jurisdictions joining the Collaborative) for consultant services relating to the RHNA Process, RHNA methodology, the implications of recent state housing laws, proposed legislation, and other affordable housing matters. This relatively small $50,000 Cities Association contract was intended as a pilot to see if the Planning Collaborative would improve staff productivity. The Cities Association contracted with Baird + Driskell Community Planning, the firm that facilitated the San Mateo County's 21 Elements housing collaborative for over ten years.

By September–October 2020, the hours funded by the Santa Clara County Planning Collaborative contract were depleted. The Cities Association surveyed jurisdiction staff and received positive feedback about the Planning Collaborative and the consultant. Based on this feedback, the Cities Association requested an updated scope of work from Baird + Driskell to continue facilitating the group, planning special work sessions, conducting focused research, providing educational materials, serving as a liaison with HCD, creating templates and best practice tools, conducting focused countywide data analysis, conducting an accessory dwelling unit (ADU) survey, and educating Sacramento lawmakers on experience in our region. Additional services are available at extra cost for jurisdictions that need assistance with performing analysis or writing sections of the Housing Element. A detailed scope of services for the Planning Collaborative is included as Attachment B.

On October 8, 2020, the Cities Association Board of Directors voted to extend the Baird + Driskell contract, which supports the Planning Collaborative. The overall contract extension would be for $160,000 and would run from August 2020 – January 2023 (30 months). The cost for Milpitas would be $10,000 and was based proportionally on population size using the same formula that determines dues for the Cities Association.

Analysis:

The City of Milpitas has been an active member of the Planning Collaborative since it began in April 2020. The Collaborative has been well-attended by housing staff and planners from Santa Clara County jurisdictions. Below is a summary of the technical assistance Baird + Driskell has provided to the group over the last six months:

- Conducted a survey on the topics that would be most useful for the Planning Collaborative and created a website to post meeting materials and resources.
- Shared updates on the ABAG/MTC Local Early Action Planning (LEAP) and Regional Early Action Planning (REAP) grant programs along with a brainstorming session for project ideas.
- Discussed ADU codes and requested data to complete a regional ADU production survey.
- Prepared a briefing on Housing Element timelines, new rules for conducting housing site inventories, and new HCD draft guidance.
- Provided updates on state housing legislation and the Governor's budget.
- Facilitated a discussion on how to integrate an Assessment of Fair Housing into the Housing Element, as required by new state laws.
- Provided regular updates on the ABAG/MTC Housing Methodology Committee (HMC) process, which has made a recommendation on how future housing growth should be distributed throughout the Bay Area.
- Convened a small working group to discuss the feasibility of the initial baseline proposal, which would have allocated an extremely large housing goal to Santa Clara County jurisdictions. The Cities Association Executive Board submitted a letter for the public record as part of the Housing Methodology Committee process. The final HMC recommendation called for a more moderate amount of growth in Santa Clara County.

The technical assistance provided by the Planning Collaborative comes at an important time as ABAG/MTC move to finalize the housing allocation for Bay Area jurisdictions over the coming months and as jurisdictions begin work on their housing element updates. Keeping on track with the Planning Collaborative is especially important for Milpitas due to the need to coordinate Housing Element planning with the Metro and the Midtown Specific Plan update processes between fall 2020 and spring 2021. In addition, Milpitas also needs to begin work on an Assessment of Fair Housing which is now a required part of the Housing Element.

Staff recommends Council adopt the Resolution and appropriate funding to continue membership in the Cities Association Planning Collaborative. If all 16 jurisdictions in Santa Clara County (15 cities/towns and the County itself) continue in the Planning Collaborative, Milpitas will need to contribute $10,000. A detailed breakdown of jurisdiction contribution is included in **Attachment B**. An appropriation of $10,000 from the Affordable Housing Community Benefit Fund can fulfill the Milpitas contribution.

Policy Alternative:
The City does not continue in the Santa Clara County Planning Collaborative.
Pros: There will be no cost or staff time.
Cons: The City will lose opportunities to save money, staff time, resources, and to develop stronger relationships and collaboration with staff from other cities.
Reason for Not Recommending: It is beneficial and more efficient for cities to work collaboratively to respond to the region's housing needs and to prepare high quality housing plans that comply with state regulations.

Fiscal Impact:
If all jurisdictions in Santa Clara County continue in the collaborative, the funding that Milpitas will contribute to the Cities Association will be $10,000. If the City Council approves the recommendation of appropriating $10,000 from the Affordable Housing Community Benefit Fund, the fiscal impact would be a $10,000 reduction to the ending fund balance.

California Environmental Quality Act
N/A

Recommendations:
1. Adopt a Resolution authorizing the City to continue participation in the Cities Association of Santa Clara County Planning Collaborative and to provide $10,000 to continue consultant services to support the Planning Collaborative.
2. Approve a budget amendment to appropriate $10,000 from the Affordable Housing Community Benefit Fund to the FY 2020-21 Building Safety and Housing Operating Budget.

Attachments:
A. Resolution to continue participation in the Santa Clara County Planning Collaborative and to provide funding to continue consultant services to support the Collaborative.
B. Santa Clara County Planning Collaborative scope of services and budget.
C. Budget Change Form.

☐ **Check if City Council Approval required.** **Meeting Date**: November 03, 2020

Requested by:	**Department Head:** Sharon Goei	**Date:** November 03, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** November 03, 2020
Date approved by City Council, if required:		**Confirmed by:**

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Granting Acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, Authorizing the City Engineer to File a Notice of Completion, and Authorize Him to Issue a Notice of Final Acceptance**
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	11/10/2020
Staff Contact:	**Steve Erickson, City Engineer, 408-586-3301**
Recommendation:	Adopt a resolution granting acceptance of Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406, authorizing the City Engineer to file a Notice of Completion, and authorize him to issue a Notice of Final Acceptance after the one-year warranty.

Background:
The City's Sal Cracolice community center building, located at 791 Garden Street, was constructed with a subgrade and foundation ventilation system to mitigate build-up of soil vapor gases below the foundation that are considered harmful. In May of 2019, the Regional Water Quality Control Board (RWQCB) requested the City modify the existing "passive" foundation ventilation system with the addition of an electric fan. The addition of the fan provides continuous positive ventilation of the system.

Project No. 3406, Building Improvements was used to fund the necessary changes to the Sal Cracolice foundation venting system ("Project"). The City contracted with the original designer of the building's foundation ventilation system to design the Project. On May 15, 2020, the City contracted with Ron Paris Construction, Inc., for $35,984 to perform the Project including installing the foundation depressurization system fan, air sampling port, alarm, electrical connection, and battery backup system. The new equipment that was installed as part of the Project is in the building's southeast storage room.

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

Policy Alternative:

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

Pros: None

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

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

Fiscal Impact:
The Project was completed on time and within budget and no additional funding is required.

California Environmental Quality Act:
The Project has an approved Mitigated Negative Declaration.

Recommendation:
Adopt a resolution granting acceptance of the Project, authorizing the City Engineer to file a Notice of Completion, and to authorize him to issue a Notice of Final Acceptance after the one-year warranty.

Attachment:
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING ACCEPTANCE OF SOIL VAPOR INTRUSION MITIGATION MEASURES FOR SAL CRACOLICE BUILDING, PROJECT NO. 3406

WHEREAS, the City of Milpitas has heretofore entered into a contract with Ron Paris Construction, Inc., for the Soil Vapor Intrusion Mitigation Measures for Sal Cracolice Building, Project No. 3406 in the amount $35,984 ("Project"), and the City Engineer of the City of Milpitas has recommended acceptance of said Project as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

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

2. The City of Milpitas does hereby accept said Project as completed on this 10th day of November, 2020, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account.

3. The City Council authorizes the City Engineer to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

Recording Requested by and
When Recorded Mail to:

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

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

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about May 15, 2020, the City Manager of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Soil Vapor Intrusion Mitigation Measures for the Sal Cracolice Building, Project No. 3406**.

2. A description of the site of which the City is co-owner for said work of improvement is: **791 Garden Street** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.

3. The name and address of the direct contractor is **Ron Paris Construction, Inc., 1155 Memorex Drive, Santa Clara, CA 95050.**

4. A general statement of the kind of work done or materials furnished to the City is as follows: **The improvements include, installation of an active sub slab vapor mitigation system including, fan, sampling port, alarm, electrical connection, and battery backup) to the existing vent riser.**

5. Said work of improvement was accepted by the Milpitas City Council as complete on November 10, 2020.

****

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on November 10, 2020 at Milpitas, California.

_____
Steve Erickson,
Engineering Director/City Engineer
City of Milpitas

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

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services Agreement and Authorizing the City Manager to Execute the Agreement**
Category:	Consent Calendar-Public Safety
Meeting Date:	11/17/2020
Staff Contact:	**Rick Frawley, Deputy Fire Chief, 408-586-2824**
Recommendation:	Adopt a Resolution approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services Agreement and authorizing the City Manager to execute the agreement.

Background:

The Milpitas Fire Department is responsible for providing fire, medical, rescue, and emergency services within the City of Milpitas. As part of mutual aid partnerships, the Milpitas Fire Department provides fire response to jurisdictions outside of the City of Milpitas when requested through the California Fire Service and Rescue Emergency Mutual Aid System. The reimbursement of the costs associated with this assistance is defined through the Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies, referred to as the "California Fire Assistance Agreement" (CFAA). The CFAA is the negotiated reimbursement mechanism for local government fire agency response through the California Fire Service and Rescue Emergency Mutual Aid System as coordinated by the California Office of Emergency Services (Cal OES). On June 2, 2015, the Milpitas City Council adopted Resolution No. 8486 identifying the terms and conditions for Fire Department response away from their official duty station and assigned to an emergency incident under the CFAA. The CFAA ensures reimbursement for local agencies, including the City of Milpitas, by gathering employee cost information and associated vehicle data on an annual basis. This is known as the "salary survey." The CFAA is revised and updated from time to time and was last updated on May 1, 2020 (Attachment #2).

Analysis:

In addition to the above-mentioned mutual aid response, the Cal Fire Santa Clara Unit may also request assistance in fire response and station coverage. The reimbursement for these assignments is often outside of the CFAA and is reimbursed directly from the Santa Clara Cal Fire Unit. Examples of reimbursement for these types of incidents would include short duration incidents lasting less than 72 hours in length as well as long term fire station coverage by local fire agency personnel to replace depleted Cal Fire resources. Cal Fire reimbursement for this type of response is known as "Assistance by Hire" (ABH). ABH has been utilized by various local government fire agencies in the past several years. Examples include the Santa Clara County FD, the Mountain View FD, and the Spring Valley Volunteer FD. For ABH reimbursement to local fire agencies, Cal Fire utilizes a contractor services agreement titled Department of Forestry and Fire Protection Contractor Certification Clauses for Services" (the "Contractor Certification Clauses for Services Agreement, which requires execution by the City of Milpitas (Attachment #3). In support of this Contractor Certification Clauses for Services Agreement, the Cal Fire Santa Clara Unit also provides a Santa Clara Unit ABH Procedure that explains the reimbursement guidelines not listed in the Contractor Certification Clauses for Services Agreement (Attachment #4). Cost recovery for fire units working under ABH contracts is based upon the annual salary survey provided by the City for the CFAA as outlined in the above paragraph.

With the approval and execution of the Contractor Certification Clauses for Services Agreement with Cal Fire, the City can continue to ensure cost neutrality for mutual response in the region and statewide. It should be noted that elements of the CFAA are embedded in the Contractor Certification Clauses for Services Agreement and procedures relative to reimbursement rates and employee safety.

Staff recommends that City Council adopt a resolution approving the Contractor Certification Clauses for Services Agreement and authorizing the City Manager to execute the Agreement.

Policy Alternative:
Alternative: Elect to not support mutual aid requests made through the Contractor Certification Clauses for Services Agreement. As a result, City would not respond to local Cal Fire emergencies with mutual aid requests that fall under ABH and/or would not be eligible for reimbursement should these responses occur in a state of emergency.

Pros: There are none.

Cons: The City would not respond to local Cal Fire emergencies and would not be eligible for reimbursement.

Reason not recommended: Mutual Aid is necessary for wildfire protection at times of severe wildfire conditions and other severe emergencies.

Fiscal Impact: Approval of the Agreement ensures timely reimbursement for costs related to wildfire deployments.

California Environmental Quality Act: By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendation: Adopt a Resolution approving the Department of Forestry and Fire Protection Contractor Certification Clauses for Services Agreement and authorizing the City Manager to execute the Agreement.

Attachments:
1) Resolution
2) California Fire Assistance Agreement (CFAA) dated May 1, 2020
3) Contractor Certification Clauses for Services Agreement (CAL FIRE-20 Rev. 05/15)
4) Santa Clara Unit Assistance by Hire (ABH) Procedure

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE DEPARTMENT OF FORESTRY AND FIRE PROTECTION CONTRACTOR CERTIFICATION CLAUSES FOR SERVICES AGREEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Milpitas Fire Department responds to emergency incidents in our community and supports requests for mutual aid assistance to Fire Departments in the County of Santa Clara; and

WHEREAS, the CAL FIRE Santa Clara Unit supports the reimbursement of outside agency costs when resources are committed for extended emergent incidents and in support of fire resource draw-down in the CAL FIRE Santa Clara Unit; and

WHEREAS, the mechanism for reimbursement of local fire agencies for the cost of committing to extended fire operations in the CAL FIRE Santa Clara Unit is the Department of Forestry Contractor Certification Clause for Services Agreement, a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Contractor Certification Clauses for Services Agreement provides that CAL FIRE will reimburse the costs of fire personnel and equipment for emergency response under assistance by hire for incidents greater than 12 hours in duration.

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

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

2. The City Council hereby approves the Department of Forestry Contractor Certification Clauses for Services Agreement attached hereto as **Exhibit A** and authorizes and directs the City Manager to execute said Agreement for and on behalf of the City of Milpitas.

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

Cal OES# 6143-2019
CAL FIRE# 7CA004953
USFS# 20-FI-11052012-147
NPS# P20AC00506
BLM# BLM CFPA CA915-2004
F&WS# FFo8F00000-D-Joo1
BIA# A20ACPRO01

AGREEMENT FOR LOCAL GOVERNMENT FIRE AND EMERGENCY ASSISTANCE TO THE STATE OF CALIFORNIA AND FEDERAL FIRE AGENCIES

Between

STATE OF CALIFORNIA, GOVERNOR'S OFFICE OF EMERGENCY SERVICES;
STATE OF CALIFORNIA, DEPARTMENT OF FORESTRY AND FIRE PROTECTION;
USDA FOREST SERVICE, PACIFIC SOUTHWEST REGION;
USDI BUREAU OF LAND MANAGEMENT, CALIFORNIA STATE OFFICE, INTERIOR REGIONS 8 and 10;
USDI NATIONAL PARK SERVICE, INTERIOR REGIONS 8, 9, 10, and 12;
USDI FISH AND WILDLIFE SERVICE, INTERIOR REGIONS 8 and 10; and
USDI BUREAU OF INDIAN AFFAIRS, PACIFIC REGION

THIS AGREEMENT made and entered into on last date signed by and between the State of California, Governor's Office of Emergency Services, hereinafter referred to as **Cal OES**; the State of California, Department of Forestry and Fire Protection, hereinafter referred to as **CAL FIRE**; the USDA Forest Service, Pacific Southwest Region; the USDI Bureau of Land Management (BLM), California State Office, Interior Regions 8 and 10; the USDI National Park Service (NPS), Interior Regions 8, 9, 10, and 12; USDI Fish and Wildlife Service (FWS), Regions 8 and 10, and USDI Bureau of Indian Affairs (BIA), Pacific Region, hereinafter referred to as the **Federal Fire Agencies**; all parties hereinafter referred to as **Cal OES, CAL FIRE, and the Federal Fire Agencies**, under the provisions of the Reciprocal Fire Protection Act, 42 USC 1856 and 1856a, the Disaster Relief Act of 1974, PL 93-288, as amended, and The Federal Land Policy and Management Act of 1996, (PL 94-579, Sec, 307(b)).

NAME

This Agreement shall be entitled "Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies", hereinafter referred to as the **California Fire Assistance Agreement**, **CFAA,** or **The Agreement.**

RECITALS

1. The Federal Fire Agencies are responsible for providing a level of wildland fire protection for federal lands, as designated by Congressional action and Federal policy; and

2. CAL FIRE is responsible for providing a level of wildland fire protection for State Responsibility Area lands, as designated by the State Board of Forestry and Fire Protection; and

3. For efficiency and effectiveness, CAL FIRE and the Federal Fire Agencies may exchange wildland fire protection areas responsibilities with the understanding that Local Responsibility Area lands are not part of this Agreement or included in the exchange; and

4. Cal OES is responsible to provide for systematic mobilization, organization, and operation of necessary fire and rescue resources through the California Fire and Rescue Mutual Aid System in mitigating the effects of disasters and to ensure that the responding agencies understand and comply with the terms and conditions of the Agreement applicable to their response; and

5. Cal OES, CAL FIRE, the Federal Fire Agencies, and local agencies, at times of severe wildfire conditions and other emergencies, often have need of emergency apparatus and/or personnel to provide fire protection or perform other tasks during control actions; and

6. Cal OES, through the California Fire and Rescue Mutual Aid System, has such emergency apparatus and personnel, which may be available in the spirit of cooperation for dispatch and use; and

7. It is desirable that Cal OES, CAL FIRE, and the Federal Fire Agencies establish and enter into an Agreement for the prudent use of such emergency apparatus and personnel; and

8. Cal OES, CAL FIRE, and the Federal Fire Agencies will generally use the Agreement for engines, water tenders, and overhead to address incidents once local agreement resources are exhausted, or where a local agreement is not in place; and

9. Cal OES may use the Agreement to mobilize all-hazard resources when warranted by its authority; and

10. Cal OES and the Federal Fire Agencies will use the Agreement to order the appropriate aviation resources when a mobilization cannot be executed through a local unit agreement; and

11. The Agreement may be used to reimburse rostered California Interagency Incident Management Team members (CIIMT); and

12. Cal OES, CAL FIRE, and the Federal Fire Agencies shall use this Agreement for reimbursing local government agencies for the use of their resources. Annual operating plans may be utilized at the local level to facilitate administrative and operational issues; and

13. When this Agreement is exercised to obtain Cal OES resources and/or resources through the California Fire and Rescue Mutual Aid System, those resources will be reimbursed pursuant to this Agreement; and

14. When ordering local agency apparatus and personnel in Recital 5 of this Agreement from other local agencies through the California Fire and Rescue Mutual Aid System, a local agency may utilize this Agreement as the fiscal authority for reimbursing other local agencies; and

15. Responsibility for determining the basis for requesting assistance through this Agreement rests with the Incident Commander or through the Emergency Command Center. The Incident Commander is responsible for all assignments and tactical decisions for resources obtained through this Agreement.

16. Agreement Committee

16.1 **California Fire Assistance Agreement Committee.** A California Fire Assistance Agreement Committee (the 'Committee') shall be formed by Cal OES for the purpose of negotiating the terms of the CFAA, and for maintenance of the Agreement. For the purposes of coordination, Cal OES Fire and Rescue Division's State Fire and Rescue Chief, or the Chief's designee, shall serve as the Chairperson.

16.2 **Composition of the Committee.** The Committee shall consist of representatives from Cal OES, CAL FIRE, the Federal Fire Agencies, and three advisory representatives from local government fire agencies in California: one from Northern California, one from Southern California, and one representing volunteer fire departments. The local government agency representatives shall be appointed by the Chairperson of the State of California Fire and Rescue Advisory Committee/FIRESCOPE, Board of Directors.

16.3 **Committee Meetings.** The Committee will meet quarterly via conference call, video conferencing, or in person.

16.4 **Rate Letter.** The Committee will meet at a minimum in person once a year (January) to establish the Base Administrative Rate, Personnel Base Rates, and Equipment Rates to become effective upon publication of the "Agreement for Local Government Fire and Emergency Assistance to the State of California and Federal Fire Agencies Rate Letter" (Rate Letter) each year. These rates will be published annually by Cal OES Fire and Rescue Division in a Rate Letter.

The Committee will review the Salary Rates and Administrative Rates on file with Cal OES Fire and Rescue Division, as well as negotiate procedural changes. The Salary Rates and Administrative Rates, are subject to change throughout the year due to labor negotiations, cost of living increases, etc.

After the annual or emergency exhibit review by the Committee, Cal OES will publish annually rates, formulas, and methodologies in the Rate Letter. Rates will become effective on the date(s) provided in the Rate Letter. In addition, Cal OES will provide a copy of the Rate Letter directly to each signatory agency's point of contact.

16.5 **Changes to Equipment Rates.** Cal OES will monitor and track the Federal Emergency Management Agency (FEMA) Schedule of Equipment Rates. If a change in schedule occurs after the publication of the most recent Rate Letter, the Committee will conduct a meeting to formally discuss the new rates, and determine if they are valid for a revised Rate Letter publication. Cal OES will forward the revised rates to the signatory agencies for a two-week review. Once the

review process is complete, and the rates approved by the Committee, Cal OES will publish a revised Rate Letter to the California Fire and Rescue Mutual Aid System Agencies.

16.6 **Meetings to re-negotiate the Agreement.** It is recommended the Committee schedule meetings to begin no later than fifteen (15) months before the expiration date of the CFAA for the purpose of re-negotiation, as well as produce the final document for signatures no later than six months before the expiration date of the Agreement.

The Committee will meet as necessary to make adjustments or changes to the Agreement.

THEREFORE, it is agreed as follows:

TERMS AND CONDITIONS

CFAA Exhibits and Amendments to Exhibits

17. The parties agree the Committee will, by no later than March 30th of each year, recommend amendments to the incorporated exhibits. The parties agree to cooperate in good faith to consider and agree to any amendments by April 15th of each year.

A party requesting to amend the exhibit(s) to the CFAA after March 30th will notify Cal OES. The Committee will meet as soon as practicable to discuss the request and make any recommendation to the parties regarding the requested amendment. The Committee will notify the parties of any recommended amendments, and if agreeable to the parties, the parties will amend the exhibits to reflect the changes no later than fifteen (15) days after the Committee's recommendation.

Subject to the requirements in Recital 18, the parties acknowledge that amendments may be required under emergency circumstances, and that the parties may make any required amendments using any reasonable means of negotiating and agreeing to amendments under emergency circumstances.

The Committee will provide recommended amendments in two formats:

1. A copy of the proposed amended exhibit(s) reflecting additions, and proposed deletions in track changes or similar format so that additions are displayed in underline and deletions are displayed with strikethrough.

2. A copy of the proposed amended exhibit(s) without track changes or similar format, which will represent the final version of the amended exhibit if the parties agree to the changes.

Incorporation of Exhibits and Amended Exhibits

18. All exhibits to the CFAA are incorporated into the CFAA. Amendments to exhibits will be made by addendum to the CFAA. The addendum will be signed by each party, and will include a list of exhibit(s) and revision date of the exhibit(s), a statement that the parties agree to adopt the changes reflected in the proposed amended exhibit(s) attached to the addendum, and an effective date. The addendum will also include, as attachments to the addendum, the proposed amended exhibit(s) in track changes or similar format.

    Amendments to exhibits will be adopted upon all parties signing the addendum and immediately incorporated into the CFAA. The exhibits to the CFAA will thereafter be updated to reflect any changes effectuated by the approved addendum.

Requests for and Release of Emergency Apparatus and Personnel

19. Under this Agreement, Cal OES, CAL FIRE, the Federal Fire Agencies, and local agencies may request emergency apparatus and personnel from the California Fire and Rescue Mutual Aid System. Resources ordered pursuant to this Agreement will be processed through the California Fire and Rescue Mutual Aid System. Cal OES will fill these orders by following the procedures set forth in the California Fire Service and Rescue Emergency Mutual Aid Plan.

20. Cal OES, CAL FIRE, and the Federal Fire Agencies will use the current resource order form of record for all requests. Cal OES, CAL FIRE, and the Federal Fire Agencies shall not be responsible for any emergency apparatus and personnel not confirmed by their respective order and request number(s). Cal OES, CAL FIRE, and the Federal Fire Agencies are responsible for documenting within the request that the resources are being ordered under this Agreement.

21. Cal OES, CAL FIRE, the Federal Fire Agencies, and local agencies' release or reassignment of emergency apparatus used pursuant to this Agreement will be coordinated through the on-scene Cal OES Fire and Rescue Chief Officer, the local jurisdiction agency representative, or their authorized representative. The Cal OES Chief Officer, or representative, will ensure the inspection and inventory of such emergency apparatus prior to the release to its home base in accordance with incident-established inspection and demobilization procedures.

Protective Clothing and Equipment

22. It shall be the responsibility of the jurisdiction sending emergency personnel to ensure that such personnel are provided protective clothing and equipment as required by the most current version of the rules found in California Code of Regulations, Title 8, Section 3410, Article 10.1, Section 3401, et seq.

Emergency Apparatus

23. Emergency apparatus shall meet minimum FIRESCOPE ICS type standards, when applicable.

Communications Capabilities

24. **Operational Equipment and Operational Personnel.** It shall be the responsibility of the jurisdiction sending resources to ensure adequate communications capability. Adequate communications capability is identified and defined in the Statewide FIRESCOPE Frequency Plan.

Reimbursement Procedures

25. Provisions and procedures for reimbursement by Cal OES, CAL FIRE, and the Federal Fire Agencies for fire and emergency assistance are defined in Exhibit "A", Reimbursement Policy and Procedures. CAL FIRE and the Federal Fire Agencies will provide Cal OES Fire and Rescue Division with current billing addresses. Reimbursement for personnel on Cal OES-owned emergency apparatus shall be to local jurisdictions that provide such personnel by apparatus assignee Agreement with Cal OES.

26. It is the goal of Cal OES, CAL FIRE, and the Federal Fire Agencies to establish a system that supports the electronic processing of salary surveys, invoices, and other pertinent documents.

Reimbursement for Emergency Apparatus Loss or Damage

27. Cal OES, CAL FIRE, and the Federal Fire Agencies will reimburse California Fire and Rescue Mutual Aid System Agencies providing resources through the California Fire and Rescue Mutual Aid System for the cost of emergency apparatus or equipment loss or damage where the loss or damage is determined to be directly attributable to the incident, and where the local agency, its employees, and/or operational failures in the emergency apparatus or support equipment are not a contributing factor to such damage or loss. Loss or damage to local agency emergency apparatus or support equipment while traveling from the home unit to the incident or from an incident to the home unit, and repairs due to normal wear and tear or due to negligent or unlawful operation by the operator, shall be the responsibility of the local agency providing the emergency apparatus or support equipment.

    Loss or damage to local agency emergency apparatus or support equipment occurring on an incident is to be reported to the incident finance section to ensure proper documentation and investigation.

Limitation of Liability

28. Each party waives claims against every other party pursuant to the requirements of United States Code, title 42, section 1856a, subdivision (a), which provides: "Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such

agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party."

The parties agree the waivers provided in this provision do not apply to any reimbursement provisions pursuant to the terms and conditions of the CFAA, including invoice reimbursement disputes and reimbursement for emergency apparatus loss or damage pursuant to Recital 27 of the CFAA.

Third Party Tort Claims

29. Nothing in this Agreement shall be deemed to create an employee/employer relationship between the parties. All third-party claims against the parties shall be adjudicated pursuant to the applicable tort claims acts and should be referred to the agency or agencies whose employees were involved in the incident. Agency points of contact for third-party claims are as follows:

State of California claims:	Victim Compensation and Government Claims Board 630 "K" Street Sacramento, CA 95814
U.S. Forest Service claims:	U.S. Forest Service Albuquerque Service Center Claims Management 101B Sun Ave. NE Albuquerque, NM 87109
National Park Service claims:	National Park Service Fire Management Office 333 Bush St., Suite 500 San Francisco, CA 94104
Bureau of Land Management claims:	Bureau of Land Management Fire and Aviation Office 2800 Cottage Way, Room W-1623 Sacramento, CA 95825
Fish and Wildlife Service claims:	Fish and Wildlife Service Pacific Southwest Region 2800 Cottage Way, Room W-1834 Sacramento, CA 95825

Bureau of Indian Affairs claims: Bureau of Indian Affairs
Branch of Fire and Aviation Management
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

Reimbursement Dispute Resolution

30. Paying entities shall provide written notice of reimbursement denials to the CFAA Chairperson, or their designee, within thirty (30) business days of receipt of the invoice. The CFAA Chairperson, or their designee, shall notify the local agency of the denial within ten (10) business days. All parties shall work with the CFAA Chairperson, or their designee, to attempt to informally resolve reimbursement disputes in good faith. If the dispute cannot be resolved, the local agency shall have thirty (30) business days from the date of the notice of denial to provide a written appeal to the CFAA Chairperson, or their designee. The CFAA chairperson, or their designee, will evaluate the appeal and make a determination regarding whether to present the appeal to the Committee within thirty (30) business days.

    The written appeal shall include all facts and documentation supporting the disputing party's position and dollar amount claimed, the reason for denial by the signatory agency, and the provision(s) of the Agreement the local agency believes supports their position in the dispute. The Committee shall review the appeal and make a recommendation to the paying entity within thirty (30) business days of receiving the appeal. The CFAA Chairperson, or their designee, shall provide written notice of the paying entities determination to all parties.

Other Disputes

31. The parties acknowledge that disputes may arise in the interpretation or application of the provisions of the CFAA.

    The parties agree to cooperate in good faith to resolve disputes informally. If a dispute is not resolved informally, a party may submit a written notice of dispute to the CFAA Chairperson, or their designee, and the responding party designated contact. The written notice must include:

    1. An explanation of the reasons for the dispute, including relevant facts; and

    2. Citation to the relevant provision(s) of the Agreement; and

    3. Copies of supporting documents, if any; and

    4. The desired outcome or remedy sought from the responding party.

    The Committee will meet with the parties within thirty (30) business days of the date the responding party receives the dispute from the CFAA Chairperson, or their designee, at which time the responding party will have the opportunity to present counter arguments. The Committee

will provide a written response to both parties within thirty (30) business days of the date upon which the meeting is held. The written response will either grant the requested remedy or outcome, or deny part or all of the requested outcome.

Performance under this Agreement shall continue during each phase of this dispute resolution process.

Examination and Audit

32. California Fire and Rescue Mutual Aid System Agencies and Cal OES shall be subject to examination and audit for five (5) years after the final payment under the terms of this Agreement. Examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited, to the cost of administration.

All source documentation related to rates and methodologies must be kept for five (5) years after the final payment and will be made available upon request of an examination or audit.

Appropriated Fund Limitation

33. Nothing herein shall be interpreted as obligating any parties herein to expend funds, or as involving the United States or the State of California in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the work contemplated in this Agreement.

Officials Not To Benefit

34. No member of, or Delegate to, Congress or Resident Commission shall be admitted to any share or part of this Agreement or to any benefit to arise therefore, unless it is made with a corporation for its general benefit.

Civil Rights and Nondiscrimination

35. All activities pursuant to this Agreement shall be in compliance with all Federal laws and regulations relating to nondiscrimination. These include, but are not limited to: Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.).

Previous Agreements Cancelled

36. This Agreement supersedes the Agreement entered into on January 1, 2015, and as extended (Cal EMA# 6022-9, CAL FIRE# 7CA00236, USFS# 09-FI-11052012-150, NPS# H807507003, BLM# BAA081002, F&WS# 802233-9-J001, BIA# AGP000768), between the State of California,

Emergency Management Agency; State of California, Department of Forestry and Fire Protection; USDA Forest Service, Pacific Southwest Region; USDI Bureau of Land Management, California State Office; USDI National Park Service, Interior Regions 8, 9, 10, and 12; USDI Fish and Wildlife Service, Pacific Southwest Region; and USDI Bureau of Indian Affairs, Pacific Region.

Amendments

37. The Agreement may only be amended by written mutual consent of the parties hereto.

Effective Date and Termination

38. The parties herein agree to honor the terms and conditions commencing on the date of the last signature and is effective through December 31, 2024. The expiration date is the final date for completion of all work activities under this Agreement. Any party may withdraw from the Agreement upon thirty (30) day written notice to all other parties.

Delegations of Authority

39. Each party may provide Cal OES a delegation of authority, signed by the party, that designates each person authorized to act on the party's behalf. The designation will include the effective date, name, title, contact information, and scope of delegated authority to act on behalf of the party. Unless otherwise stated in the delegation of authority, a person designated by a party has the same authority as a principal of a party, including the power to enter into contracts on behalf of the party and to bind the party.

    The parties authorize Cal OES to make any necessary updates to the contact information in the CFAA to reflect current delegations of authority, and that such nonmaterial changes to the CFAA are authorized without amendment.

Multiple Signature Pages

40. The parties agree to accept multiple signature pages.

Electronic Signatures and Counterparts

41. Parties may submit executed documents electronically, and electronically-delivered signatures of the parties are deemed to constitute duplicate originals. The CFAA and any amendments may be executed in two or more counterparts, each of which will be an original and all of which will constitute a part of the CFAA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

DIRECTOR
STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF
EMERGENCY SERVICES

By: Mark S. Ghilarducci
Director

Date: APRIL 29 2020

DIRECTOR
STATE OF CALIFORNIA
DEPARTMENT OF FORESTRY AND
FIRE PROTECTION

By: Thomas W. Porter
Director

Date: 4/29/2020

REGIONAL FORESTER
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION

By: Randy Moore
Regional Forester

Date: 4/29/20

CALIFORNIA STATE DIRECTOR
USDI BUREAU OF LAND
MANAGEMENT
CALIFORNIA STATE OFFICE

KAREN MOURITSEN Digitally signed by KAREN MOURITSEN Date: 2020.04.29 11:56:00 -07'00'

By: Karen E. Mouritsen
California State Director

Date: _____

DEPUTY REGIONAL DIRECTOR
USDI NATIONAL PARK SERVICE
INTERIOR REGIONS 8, 9, 10, and 12

RANDOLPH LAVASSEUR Digitally signed by RANDOLPH LAVASSEUR Date: 2020.04.29 10:41:00 -07'00'

By: Randolph Lavasseur
Deputy Regional Director

Date: 04.29.2020

REGIONAL DIRECTOR
USDI BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE

AMY DUTSCHKE Digitally signed by AMY DUTSCHKE Date: 2020.04.30 14:55:24 -07'00'

By: Amy Dutschke
Regional Director

Date: _____

REGIONAL DIRECTOR
USDI FISH AND WILDLIFE
SERVICE
PACIFIC SOUTHWEST REGION

By: Paul Souza
Regional Director

Date: 4-29-20

REVIEW:
The authority and format of this instrument has been reviewed and approved for signature by the following individuals:

CONTRACTING OFFICER
USDI BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE

TRACI THALER
Digitally signed by TRACI THALER
Date: 2020.04.28 08:40:24 -07'00'
By: Traci D. Thaler
Contracting Officer

Date: April 28, 2020

CONTRACTING OFFICER
USDI BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE

JODI ZACHARY
Digitally signed by JODI ZACHARY
Date: 2020.04.30 14:59:46 -07'00'
By: Jodi Zachary
Contracting Officer

Date: 4/30/2020

CONTRACTING OFFICER
USDI NATIONAL PARK SERVICE

LILETTE BALTODANO
Digitally signed by LILETTE BALTODANO
Date: 2020.04.28 10:33:07 -07'00'
By: Lilette J. Baltodano
Contracting Officer

Date: 4/28/2020

CONTRACTING OFFICER
USDI FISH AND WILDLIFE SERVICE
PACIFIC SOUTHWEST REGION

4/29/20
By: Frank Lee
Contracting Officer

Date:

EXHIBIT "A"
REIMBURSEMENT POLICY AND PROCEDURES

GENERAL

A-1 It is the intent of the signatories to the CFAA to reimburse California Fire and Rescue Mutual Aid System Agencies, including accrued financial liability for the cost of assisting the State of California and the Federal Fire Agencies. The rates, methodologies, and formulas in the Agreement are intended to provide for such costs. The reimbursement shall be consistent with the California Fire and Rescue Mutual Aid System Agency's normal internal business practices and any existing Memorandum of Understanding (MOU)/Memorandum of Agreement (MOA), Governing Body Resolution (GBR), or equivalent, which supports those business practices.

A-2 The California Fire and Rescue Mutual Aid System Agencies shall use the following procedures to secure reimbursement for the provision of personnel and local government-owned emergency apparatus. Terms established in this section shall be made binding upon California Fire and Rescue Mutual Aid System Agencies by Cal OES and shall not be subject to interpretation or rejection by the jurisdiction providing assistance. See Clause A-41 for procedures that do not apply or are applicable to State Agency Fire Departments, Department of Defense Fire Departments (DOD), or Tribal Fire Departments.

A-3 California Fire and Rescue Mutual Aid System Agencies that provide their personnel and equipment to the State of California or the Federal Fire Agencies through the California Fire and Rescue Mutual Aid System and this Agreement, do so on a voluntary basis, and accept the following provisions for reimbursement.

A-4 It is understood and agreed that a California Fire and Rescue Mutual Aid System Agency providing personnel or California Fire and Rescue Mutual Aid System Agency-owned emergency apparatus shall obtain reimbursement for such response by billing the ordering entity (either the State of California or Federal Fire Agency) through the Cal OES invoicing process in accordance with this Exhibit.

A-5 Reimbursement for personnel and emergency apparatus will begin after the 12th hour, with the exception of aircraft which will be billed from the time of dispatch. There shall be no reimbursement for responses of 12 hours duration or less with the exception of the Department of Interior (DOI) fire agencies (BLM, NPS, FWS, and BIA). DOI reimbursement for personnel and emergency apparatus will begin after the 4th hour. If the duration of the response exceeds 12 hours (4 hours for DOI) and local agencies have an existing MOU/MOA, GBR, or equivalent that indicates compensation for all hours worked, reimbursement for personnel and emergency apparatus shall cover the entire time of commitment, beginning at the time of initial dispatch from

home base, to the time of return to home base (portal to portal). If local agencies do not have an existing MOU/MOA, GBR, or equivalent that indicates compensation for all hours worked, local agencies will be reimbursed for actual hours worked. Should personnel or emergency apparatus be requested for assignment to a Mobilization Center for standby duty, the reimbursement period shall begin with the time of initial dispatch of said personnel or emergency apparatus from its home base. Additionally, as the 12 hour period (4 hours for DOI) stated above is cumulative, responding personnel and/or emergency apparatus shall only be subject to one 12 hour period (4 hours for DOI) from the original time of dispatch, regardless of the number of re-assignments that may occur prior to returning to their home base.

A-6 In some cases on a single incident, the State of California and the Federal Fire Agencies may need to convert resources that were ordered under Statewide Master Mutual Aid (MMA) to reimburse resources under the California Fire Assistance Agreement. In these cases, MMA resources will be released by the responsible agency and reordered by the State of California and/or the Federal Fire Agencies through the CFAA. For resources that have been on the same incident for more than 12 hours (4 hours for DOI), reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. Resources that have been on the same incident under MMA for 12 hours (4 hours for DOI) or less will have their time applied to the California Fire Assistance Agreement 12-hour (4 hours for DOI) minimum. After the 12 hours (4 hours for DOI) are completed, reimbursement will begin at the time the order under the California Fire Assistance Agreement was initiated. The 12 hour (4 hours for DOI) period shall be subject to annual review and monitoring by the California Fire Assistance Agreement Committee.

A-7 Invoices will include an administrative rate as negotiated by the Committee. The Administrative Rate will be added to the total of the personnel, fire apparatus, support equipment, aircraft, and other approved reimbursements for local government. The de minimis Administrative Rate is set annually by the Committee per the rate letter published at the time of dispatch, unless the California Fire and Rescue Mutual Aid System Agency submits an agency-specific administrative rate in accordance with the Instructions for Completing Administrative Rate Calculations. Cal OES will issue these instructions annually along with the salary survey instructions. California Fire and Rescue Mutual Aid System Agencies that develop an Administrative Rate must review and update their rate by July 1 of each year.

REIMBURSEMENT - PERSONNEL

A-8 The Committee will establish a standard reimbursement formula for local agency personnel with Base Rates applicable to all jurisdictions. The default reimbursement will be at the Base Rate for actual hours worked on the incident. Agencies can be reimbursed at a rate that is higher than the Base Rate, and/or for more than actual hours worked (up to 24 hours per day), as follows:

A-8.1 All agencies seeking reimbursement for its personnel must complete and sign the annual salary survey and file it with the Cal OES Fire and Rescue Division. The Authorized Representative will

provide certification through signature under penalty and perjury that the personnel wages are accurate and correct for each requested position.

A-8.2 Any agency seeking reimbursement for its personnel for more than actual hours worked on the incident (portal-to-portal) must file an MOU/MOA, GBR, or equivalent with Cal OES Fire and Rescue Division. The MOU/MOA, GBR, or equivalent shall indicate how personnel will be compensated. Personnel must be physically present on the incident in order to receive portal to portal compensation, unless documented and approved by the paying agency.

A-8.3 Any agency seeking reimbursement for its supplemental personnel will accept rates as outlined in NWCG#004-2009, Attachment D, https://www.nwcg.gov/sites/default/files/memos/eb-m-09-004d_0.pdf, which states that supplemental personnel will be reimbursed using General Schedule tables with locality pay applied for actual hours worked. **Reimbursement shall be in accordance with Clause A-17 through December 31st, 2020.**

A-9 The above required documentation for rates and hours shall be based on actual costs to the responding agency, and not contingent upon reimbursement from the State of California or Federal Fire Agencies at a rate that exceeds what the agency will pay its personnel. Reimbursements will be based on the salary survey and any applicable MOU/MOA, GBR, or equivalent that is on file at the time of the initial dispatch.

Any MOU/MOA, GBR, or equivalent is reviewed by Cal OES and the Committee upon request. Local government will be formally notified of the determination.

A-10 These formulas and rates of payment shall constitute full reimbursement for direct costs, including back fill to local jurisdictions relative to personnel provided. Liability for workers compensation claims and/or payment of unemployment benefits shall remain the responsibility of the responding local, state, federal, and tribal agencies that directly employ the personnel. All calculations shall be subject to audit by the State of California or the Federal Fire Agencies in accordance with Recital 32, Examination and Audit.

A-10.1 California Fire and Rescue Mutual Aid System Agencies will be required upon request to provide Cal OES supportive documentation used to establish rates and method of pay. Cal OES will request yearly samples from selected agencies for review by Cal OES and the Committee. Upon request, the California Fire and Rescue Mutual Aid System Agencies will have thirty (30) calendar days to provide Cal OES with required information. This process does not supersede the Examination and Audit process as outlined in this Agreement.

A-11 Reimbursement for the total hours worked shall be calculated up to the next quarter hour when total hours are fractional.

A-12 Reimbursement shall be made only for such personnel that have been specifically requested or approved by the State of California or the Federal Fire Agencies. Any personnel not given an

Order/Request number shall be considered a voluntary contribution from the responding agency and not subject to reimbursement.

Formula for Personnel Reimbursement Using Base Rates

A-13 California Fire and Rescue Mutual Aid System Agencies will submit a salary survey to be reimbursed at the established Engine Company Base Rate for personnel responding on emergency apparatus or as overhead personnel at or below the Strike Team/Task Force Leader Trainee level. Strike Team/Task Force/Unit Leader level or above personnel will be reimbursed at the established Overhead Base Rate.

A-14 California Fire and Rescue Mutual Aid System Agencies that have not submitted a Salary Survey for rates above the established Base Rates will submit a salary survey to be reimbursed using one of the following formulas:

The formula for the total invoice amount with an MOU/MOA, GBR, or equivalent for all hours (portal-to-portal) is:
$(B \times H^1)$ = Total Personnel Reimbursement

The formula for the total invoice amount without an MOU/MOA, GBR, or equivalent for all hours (actual hours) is:
$(B \times H^2)$ = Total Personnel Reimbursement

B = Base Rate
H^1 = All Hours (portal-to-portal)
H^2 = Actual Hours Worked

The Established Base Rate (**B**) is based on the average of the CAL FIRE Fire Captain or Fire Apparatus Engineer base rates and the USDA Forest Service emergency hire rates for these positions applied to a 168 hour week, with 40 hours at straight-time and 128 hours at overtime. The total amount is then divided by 168 hours resulting in a blended rate.

Formula for Establishing the Base Rates

The following base rate formulas include an overtime component.

Base Rate formula for Engine Company Personnel and Overhead at or below Strike Team/Task Force Leader Trainee
(AD-F + CAL FIRE Fire Apparatus Engineer base rate) / 2 = Combined Rate,
((Combined Rate x 40 Hours Straight Time) + (Combined Rate x 128 Hours Overtime)) / 168 = Overtime Base Rate x .6667 = Straight Time Base Rate

Numerical Calculation: 25.72 + 23.34 = 49.06 / 2 =24.53, ((24.53 x 40) + (24.53 x 1.5 x 128)) = 5690.96/ 168 = $33.08 x .6667 = $22.58

Base Rate formula for Overhead at or above Strike Team Leader/Task Force Leader
(AD-H + CAL FIRE Fire Captain base rate) / 2 = Combined Rate,
((Combined Rate x 40 Hours Straight Time) + (Combined Rate x 128 Hours Overtime)) / 168 = Overtime Base Rate x .6667 = Straight Time Base Rate

Numerical Calculation: 31.44 + 27.52 = 58.96/ 2 =29.48, ((29.48 x 40) + (29.48 x 1.5 x 128)) = 6839.36 / 168 = $40.71 x .6667 = $27.14

Definitions for abbreviations used in Base Rate Formula

AD - Administratively Determined Pay Plan for Emergency Workers. Pay rates for emergency (casual) employees of the Federal Fire Agencies.
AD F - The classification is Engine Boss.
AD H - The classification is Strike Team Leader.
CAL FIRE base Fire Captain and Fire Apparatus Engineer salary rates are converted to hourly rates.

Formula for Suppression Personnel Reimbursement Using Salary Rates

A-15 The California Fire and Rescue Mutual Aid System Agencies may submit a salary survey with the agency's established salary rates to Cal OES Fire and Rescue Division for any personnel dispatched to an incident. The personnel who are dispatched to an incident will first be classified and reimbursed as described in Clauses A-15.1 through A-15.3. The submission of salary rates shall be on file with Cal OES Fire and Rescue Division prior to the time of personnel dispatch.

A-15.1 California Fire and Rescue Mutual Aid System Agencies that have submitted salary rates to Cal OES Fire and Rescue Division at or below the Battalion Chief level shall be reimbursed using one of the following formulas:

The formula for the total invoice amount with an MOU/MOA, GBR, or equivalent for all hours (portal-to-portal) is:
$[(S \times H^1 \times 1.5) + (S \times H^1 \times 1.5) + (S \times H^1 \times 1.5)]$ = Total Personnel Reimbursement

The formula for the total invoice amount without an MOU/MOA, GBR, or equivalent for all hours (actual hours) is:
$[(S \times H^2 \times 1.5) + (S \times H^2 \times 1.5) + (S \times H^2 \times 1.5)]$ = Total Personnel Reimbursement

S = Salary Rate
H^1 = All Hours (portal-to-portal)
H^2 = Actual Hours Worked

The Salary Hourly Rate (S) is the average hourly rate of all personnel in the specific rank (e.g., Captain, Engineer, Firefighter) within each individual jurisdiction.

A-15.2 California Fire and Rescue Mutual Aid System Agencies that have submitted Salary Rates to Cal OES Fire and Rescue Division above the Battalion Chief level shall be reimbursed using the following formulas:

The formula for the total invoice amount with an MOU/MOA, GBR, or equivalent for all hours (portal-to-portal) is:
$[(S \times H^1) + (S \times H^1) + (S \times H^1)]$ = Total Personnel Reimbursement

The formula for the total invoice amount without an MOU/MOA, GBR, or equivalent for all hours (actual hours) is:
$[(S \times H^2) + (S \times H^2) + (S \times H^2)]$ = Total Personnel Reimbursement

S = Salary Rate
H^1 = All Hours (portal-to-portal)
H^2 = Actual Hours Worked

A-15.3 If personnel above the Battalion Chief level have an MOU/MOA, GBR, or equivalent that indicates they are to be paid above straight time, the reimbursement will be calculated using one of the following formulas. The MOU/MOA, GBR, or equivalent is subject to the provisions in Clause A-9, and must not be contingent on this Agreement or executed on the sole basis that there is reimbursement from Cal OES, CAL FIRE, or the Federal Fire Agencies.

The formula for the total invoice claim with an MOU/MOA, GBR, or equivalent for all hours (portal-to-portal) and MOU/MOA, GBR, or equivalent for above straight-time is:
$[(S \times H^1 \times 1.5) + (S \times H^1 \times 1.5) + (S \times H^1 \times 1.5)]$ = Total Personnel Reimbursement

The formula for the total invoice claim without an MOU/MOA, GBR, or equivalent for all hours (actual hours) and with an MOU/MOA, GBR, or equivalent for above straight-time is:
$[(S \times H^2 \times 1.5) + (S \times H^2 \times 1.5) + (S \times H^2 \times 1.5)]$ = Total Personnel Reimbursement

S = Salary Rate
H^1 = All Hours (portal-to-portal)
H^2 = Actual Hours Worked

Formula for Non-Suppression Personnel Reimbursement Using Salary Rates

A-16 California Fire and Rescue Mutual Aid System Agencies that have submitted Salary Rates to Cal OES Fire and Rescue Division for Non-Suppression Personnel shall be reimbursed for actual hours worked using the following formula:

The formula for the total invoice claim without an MOU/MOA, GBR, or equivalent for all hours (actual hours) is:
$[(S \times 1.5 \times H^2) + (S \times 1.5 \times H^2) + (S \times 1.5 \times H^2)]$ = Total Personnel Reimbursement

S = Salary Rate
H^2 = Actual Hours Worked

The Salary Rate (S) is the average hourly rate of all personnel in the specific rank (e.g., Dispatcher, Heavy Equipment Mechanic, and Inspector) within each individual fire agency.

Non-Suppression Personnel, who have an MOU/MOA, GBR, or equivalent that indicates they are to be paid portal-to-portal according to Clause A-8.2, will be reimbursed in accordance with the following Formula for Personnel Using Salary Rates:

The formula for the total invoice claim with an MOU/MOA, GBR, or equivalent for all hours (portal-to-portal) is:
$[(S \times H^1 \times 1.5) + (S \times H^1 \times 1.5) + (S \times H^1 \times 1.5)]$ = Total Personnel Reimbursement

S = Salary Rate
H^1 = All Hours (portal-to-portal)

The Salary Hourly Rate (S) is the average hourly rate of all personnel in the specific rank (e.g., Dispatcher, Mechanic, and Inspector) within each individual jurisdiction.

The 1.5 multiplier in the formula represents an hourly rate, which includes benefits for straight time, and an overtime rate for overtime hours.

Supplemental Fire Department Resource Reimbursement Using NWCG#004-2009

A-17 California Fire and Rescue Mutual Aid System Agencies seeking reimbursement for Supplemental Fire Department Resources will accept rates as outlined in NWCG#004-2009, Attachment D, https://www.nwcg.gov/sites/default/files/memos/eb-m-09-004d_0.pdf, which states that Supplemental Fire Department Resources will be reimbursed using General Schedule tables with locality pay applied for actual hours worked. California Fire and Rescue Mutual Aid System Agencies that roster or sponsor Supplemental Fire Department Resources shall be reimbursed at the rate of the position being filled on the incident.

A-18 California Fire and Rescue Mutual Aid System Agencies shall identify their Supplemental Fire Department Resources separately on the Supplemental Fire Department Resource section of the Cal OES Salary Survey and not include them under the Suppression responder categories. They are not a permanent part of the local fire organization. They are mobilized primarily for response to incidents/wildland fires outside of the fire agency's jurisdiction. Supplemental Fire Department Resources shall be paid a regular compensation rate for all hours worked plus an overtime

compensation rate for actual overtime hours worked, including travel. Base hourly rate shall be no more than step 5 of the appropriate GS wage adjusted for locality pay at the location of the fire department's jurisdiction. Rates can be found on the Office of Personnel Management website, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/general-schedule/. Reimbursement costs shall not include portal-to-portal pay or the employee portion of benefits. Backfill is not reimbursable for personnel hired as Supplemental Fire Department Resource. Approved travel costs will be in accordance with Clause A-37.

Effective January 1, 2021, no supplemental resources will be hired through the CFAA.

California Interagency Incident Management Team (CIIMT) Participation

A-19 Personnel responding under this Agreement, including those who apply for participation on a Federal California Interagency Incident Management Team (CIIMT), must be employed with a federal, state or local agency in a full time, seasonal, part-time or retired-annuitant position for a purpose other than participation on a CIIMT. The CWCG coordinates the application and selection process for IMT rosters and may request proof of employment documentation as part of that process. Applicants who do not meet the criteria can apply under the casual hiring authority as outlined in the Standards for Interagency Incident Business Management.

Engine Company and Tactical Water Tender Staffing

A-20 Engine company staffing shall not be less than three (3) or a reimbursable maximum of four (4). The State of California or the Federal Fire Agencies will reimburse based on the actual classifications responding, not to exceed one Company Officer, one Apparatus Operator, and one or two Firefighters. Tactical water tender staffing shall be reimbursed based upon the actual classifications responding, not to exceed two Apparatus Operators or one Company Officer and one Firefighter. Personnel filling engine company or tactical water tender positions shall be certified at the appropriate level per Wildland Fire Qualification NWCG 310-1 Sub System Guide, or the California Incident Command Certification System (CICCS).

Strike Team/Task Force Leader Trainee

A-21 The State of California or the Federal Fire Agencies shall provide reimbursement for personnel requested by the State of California or the Federal Fire Agencies to coordinate (Strike Team/Task Force Leaders) or otherwise support the California Fire and Rescue Mutual Aid System resources, or Cal OES-owned emergency apparatus used on incidents. A strike team/task force may, at the discretion of the local jurisdiction, include a Strike Team/Task Force Leader Trainee as a reimbursable member of the unit. The Trainee will be covered under a strike team/task force order-request number and will be identified on a separate *Emergency Activity Record* (OES F-42), unless the Trainee is from the same California Fire and Rescue Mutual Aid System Agency as the Strike Team Leader. The Strike Team/Task Force Leader Trainee shall travel with the strike team/task force in a vehicle from the existing strike team/task force and will not be reimbursed for

the use of a second vehicle. The Trainee may provide the vehicle for the assignment, but no more than one vehicle will be reimbursed. Personnel filling Strike Team/Task Force Leader Trainee positions shall be certified at the Strike Team/Task Force Leader Trainee level per Wildland Fire Qualification NWCG 310-1 Sub System Guide, or CICCS.

A-22 All Trainees are required to check in with the Training Specialist at the incident when one is present. Trainees will follow the qualification process in place at the incident.

Overhead Personnel

A-23 Personnel responding to a State of California or Federal Fire Agency's request for overhead positions shall meet the training and experience requirements established for the ICS position to be filled (Reference: NWCG 310-1 Sub System Guide or CICCS).

Transfer/Reassignment to Other Operational Areas/Incident

A-24 California Fire and Rescue Mutual Aid System emergency apparatus and personnel requested through this Agreement may not be reassigned without the responding agency's approval. The host State of California or Federal Fire Agency shall secure approval for such reassignment through the California Fire and Rescue Mutual Aid System.

Cal OES Support

A-25 Cal OES Fire Agency Representatives assigned to major incidents may need to have a Cal OES Support/Communications Unit to facilitate coordinating the mutual aid resources assigned to the incident. Local Government Fire Agency Personnel assigned to this resource shall be limited to and reimbursed at a maximum of two (2) persons.

A-26 The State of California or the Federal Fire Agencies shall reimburse the local government fire agency for the use of one agency support equipment. Reimbursement shall be calculated on a daily basis for such equipment at the rate established by the Committee for the approved type or category of vehicle used.

REIMBURSEMENT – EMERGENCY APPARATUS

A-27 The formulas and rates of payment for emergency apparatus shall be considered as covering all reimbursement related to the use of such vehicles except as provided in the Reimbursement of Emergency Apparatus Loss or Damage section in the Recitals of this Agreement, Recital 27.

A-28 Reimbursement for emergency apparatus refurbishment and rehab may be approved by the Incident Command, up to a maximum of 2 hours, as appropriate.

California Fire and Rescue Mutual Aid System Agency Emergency Apparatus

A-29 Engines and tactical water tenders shall be reimbursed in accordance with the current FEMA Schedule of Equipment Rates established in the Annual Rate Letter. Engines and tactical water Tenders rates are based on a 16-hour maximum allowable charge, per 24-hour period.

Reimbursement of other emergency response equipment shall be in accordance with 44 CFR 206.228 allowable costs.

A-30 California Fire and Rescue Mutual Aid System Agencies shall assume operational costs, including necessary motor fuels and lubricants used in its emergency apparatus while responding from their home base and returning to their home base from the State of California or Federal Fire Agency incidents. It shall be the responsibility of the responding agency to provide the necessary means of payment for such costs.

A-31 Once at the incident and until released or reassigned, the State of California or the Federal Fire Agencies will provide for motor fuel and lubricants, normal servicing costs, and minor repairs incidental to operation of emergency apparatus including California Fire and Rescue Mutual Aid System Agency support equipment. Minor Repair is defined as any repair necessary to keep the equipment in operation on the fire, which requires not more than two hours (labor time only) for one mechanic for any one job, exclusive of obtaining parts.

Support Equipment, Privately-Owned Vehicles, and Rental Vehicles

A-32 The State of California or the Federal Fire Agencies shall reimburse California Fire and Rescue Mutual Aid System Agencies for use of agency support equipment and private vehicles provided in conjunction with requested personnel. Reimbursement shall be calculated on a daily basis for local jurisdiction support equipment at the rate established by the Committee for the type or category of vehicle used. Privately-owned vehicle rates will be reimbursed on a per mile basis according to the current Internal Revenue Service (IRS) standard rate for business miles.

A-33 Reimbursement for mileage or other transportation to and from rental agency will be allowed.

A-34 The use and reimbursement of rental vehicles, mileage or other transportation requires authorization either at the time of the initial request in the Resource Ordering System of Record, or documented by written approval at the incident. Rental vehicles from an airport are discouraged, and the use of economy cars are encouraged. Rental vehicles and the fuel expense while responding to, during, or returning from a State of California or Federal Fire Agency incident will be reimbursed for the actual costs incurred by the California Fire and Rescue Mutual

Aid System Agencies. The process to obtain reimbursement for rental vehicle expenses is outlined in Exhibit “H”.

Aircraft

A-35 Aircraft will be reimbursement based on rates submitted annually on the Salary Survey to Cal OES.

Other Equipment Rates

A-36 All equipment in this exhibit will be reimbursed using the FEMA Schedule of Equipment rates. If a FEMA equipment rate is not identified for the type of equipment being used, a rate may be developed using the FEMA equipment rate formula in Exhibit "F".

REIMBURSEMENT – TRAVEL EXPENSES

A-37 At no time will the California Fire and Rescue Mutual Aid System Agencies seek reimbursement for travel expenses such as fuel, food, and lodging responding to, during, or returning from a State of California or Federal Fire Agency incident unless formally documented and approved in writing at the incident. The reimbursement of meals to and from the incident will be subject to the U.S. General Services Administration per diem and lodging rates specified in Exhibit "H".

Travel arrangements and reimbursement, including travel for relieving personnel and backfill, will only be made from the Fire Department/Agency location or residence whichever is closest to the incident or reporting location (such as staging).

If formally documented and approved in writing at the incident, the process to obtain reimbursement for in state travel and incident-related expenses is outlined in Exhibit "H".

REIMBURSEMENT – PERSONNEL ROTATION

A-38 When California Fire and Rescue Mutual Aid System Agency personnel are committed to extended assignments under this Agreement, there may be a need to rotate and replace personnel. Personnel under this Agreement are expected to be available a minimum of seven (7) days (elapsed time) excluding travel, before needing replacement, regardless of the number of assignments from original dispatch.

A-39 Expenses that are reimbursable are limited to personnel costs and transportation costs. Reimbursement for personnel will be in accordance with general personnel reimbursement provisions of this Agreement. Please reference Exhibit "C" for specific personnel rotation procedures.

INCIDENT OFF-SHIFT REST AND SLEEPING ACCOMODATIONS

A-40 The responsible State of California or Federal Fire Agency will provide, when practical, sanitary, shaded and/or climatically maintained accommodations for off shift sleeping, rest, and recuperation for local jurisdiction resources confined to the incident base. If the incident command finds it operationally feasible (e.g., strike team remains available) to place local jurisdiction resources in a commercial sleeping accommodation, it may be provided.

REIMBURSEMENT – STATE OF CALIFORNIA, FEDERAL, DOD, AND TRIBAL FIRE DEPARTMENTS

A-41 State Agency Fire Departments, Federal Fire Departments, DOD Fire Departments, and Tribal Fire Departments may respond through the California Fire and Rescue Mutual Aid System.

Tribal Fire Department's that have a compacted or contracted wildland fire program from BIA will respond through the Federal Dispatching System and not through the California Fire and Rescue Mutual Aid System.

Reimbursement of Federal Fire Departments, DOD, and Tribal Fire Departments that respond to CAL FIRE, local government, and Cal OES incidents will be in accordance with the Agreement reimbursement provisions.

Reimbursement of Federal Fire Departments, DOD, and Tribal Fire Departments that respond to Federal Fire Agency fires are governed by other federal agreements. In these cases, Cal OES will not produce or process reimbursement invoices for Federal Fire Departments, DOD and Tribal Fire Departments. Federal Fire Departments and DOD Fire Departments ordered through other agreements will invoice the supported Federal Fire Agency directly in accordance with existing federal and local agreements. Tribal Fire Departments that have a current Cooperative Agreement with BIA will invoice BIA directly in accordance with existing federal or local Agreements.

Federal Fire Agencies will not reimburse Federal Fire Departments, DOD or Tribal Fire Departments under this Agreement.

REQUESTING REIMBURSEMENT

A-42 California Fire and Rescue Mutual Aid System Agencies will prepare an OES F-42, and supporting documentation at the incident, which is the basis for reimbursement due and invoice preparation. These forms are provided by Cal OES Fire and Rescue Division. The OES F-42 must be signed by a responsible officer of the jurisdiction seeking reimbursement and by the State of California or Federal Fire Agency Incident Command to verify that the resources requested on the OES F-42 were authorized by the ordering agency and is the initial step for invoice processing. The completed OES F-42 is forwarded to Cal OES Fire and Rescue Division Headquarters for

processing. **The OES F-42 should be submitted to the Cal OES Fire Agency Representative at the incident. In the absence of a Cal OES Fire Agency Representative, OES F-42 should be SUBMITTED TO Cal OES FIRE AND RESCUE DIVISION BY THE CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM AGENCY WITHIN THIRTY (30) CALENDAR DAYS OF RELEASE FROM THE INCIDENT OR PAYMENT WILL BE DELAYED.**

A-43 Within sixty (60) calendar days of receipt of the OES F-42, Cal OES Fire and Rescue Division will process the OES F-42 data into invoices (F-142) and return to the California Fire and Rescue Mutual Aid System Agency for verification of billing amounts and signature. **THERE WILL BE A DELAY IN PAYMENT FOR INVOICES (F-142) NOT RETURNED TO Cal OES FIRE AND RESCUE DIVISION WITHIN THIRTY (30) CALENDAR DAYS OF RECEIPT FOR VERIFICATION OF BILLING AMOUNTS AND SIGNATURE.**

A-44 Upon return receipt and verification of the invoice (F-142) by the California Fire and Rescue Mutual Aid System Agency, Cal OES Fire and Rescue Division will forward the *CFAA Reimbursement Invoice* (OES F-142) to the appropriate State of California or Federal Fire Agency within thirty (30) calendar days along with a copy of the OES F-42 as the source document. Inquiries from the State of California and Federal Fire Agencies regarding amounts billed will first be addressed to Cal OES Fire and Rescue Division as soon as possible, as the first step in a joint resolution process.

A-45 The State of California or Federal Fire Agency will remit payment to the California Fire and Rescue Mutual Aid System Agency within sixty (60) calendar days of receipt of the OES F-142 from Cal OES.

A-46 In the event that CAL FIRE or a Federal Fire Agency identifies a discrepancy with an OES F-142, Cal OES will provide the California Fire and Rescue Mutual Aid System Agency a new invoice with the corrected invoice amount and the reason for the change. Cal OES has thirty (30) calendar days to make the change and provide a corrected invoice to the California Fire and Rescue Mutual Aid System Agency and either CAL FIRE or the appropriate Federal Fire Agency.

A-47 CAL FIRE or the Federal Fire Agencies will provide copies of payment schedules to Cal OES every thirty (30) days for invoices to the California Fire and Rescue Mutual Aid System Agencies. Cal OES Fire and Rescue Division will reconcile the payment schedules against outstanding OES F-142(s) on a monthly basis.

A-48 Cal OES will form and chair working groups with membership from the Committee to develop methodologies to streamline the reimbursement process.

The State of California and Federal Fire Agencies will work on procedures to improve the reimbursement efficiencies and timelines. These activities will be documented and shared with the California Fire and Rescue Mutual Aid System Agencies.

A-49 The Terms and Conditions and Exhibits in this Agreement may necessitate new methods of reporting and invoicing. All proposed changes to this Agreement, or associated business processes shall be approved by the State of California and Federal Fire Agencies that are parties to this Agreement.

A-50 Reimbursement for emergency apparatus and personnel shall be made directly to the California Fire and Rescue Mutual Aid Agency providing the resource, and **NOT** to individuals.

A-51 The OES F-42, shall be used as the basis for personnel and equipment calculations. The resource order form of record shall not be used for reimbursing personnel and equipment costs.

Federal Fire Agency Electronic Fund Transfer

A-52 Federal Fire Agencies require the following for reimbursement to California Fire and Rescue Mutual Aid System Agencies:

1. Taxpayer Identification Number (TIN) – This number is applied for and issued by the Internal Revenue Service (IRS). Contact the IRS @ www.irs.gov or (800) 772-1213.

2. Electronic Funds Transfer (EFT) – The cooperator shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with US Treasury Regulations, Money and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible. A waiver may be requested and payments received by check by certifying in writing that one of the following situations apply:

    a. The payment recipient does not have an account at a financial institution.

    b. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving the check.

    c. The payment recipient has a physical or mental disability, or a geographic language or literacy barrier.

    In order to receive EFT payments, the recipient/cooperator shall register in the System for Award Management (SAM).

3. DUNS Number. The cooperator shall obtain a Dun and Bradstreet Data Universal Numbering System (DUNS). This is a requirement for registering in SAM. The DUNS number does not replace existing numbers, such as Employer Identification Number (EIN), the Tax Identification Number (TIN), and State Application Identifier (SAI) numbers that are required by statute, Executive Order, or regulation. You may obtain a free DUNS number by contacting Dun & Bradstreet via the web at https://fedgov.dnb.com/. A new DUNS number

can be created within one (1) business day. For assistance by phone, call (866) 705-5711 or SAMhelp@dnb.com.

4. System for Award Management (SAM) Registration Requirement. The cooperator shall maintain current information in SAM until receipt of final payment. This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or agreement term(s). For purposes of the Agreement, *SAM* means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site (currently at www.sam.gov). For assistance, contact the SAM Assistance Center at (800) 606-8220.

EXHIBIT "B"
ICS Type 1 through 7 ENGINE, ICS TACTICAL WATER TENDER, PERSONAL PROTECTIVE EQUIPMENT, & TRAINING STANDARDS FOR FIRE AND EMERGENCY ASSISTANCE

B-1 The purpose of this Exhibit is to identify the minimum standards that California Fire and Rescue Mutual Aid System Agencies should follow with regard to their use of Type 1 through 7 engines, Tactical Water Tender, Personal Protective Equipment (PPE) and training standards for mutual aid and/or CFAA-reimbursable responses.

B-2 The State of California and the Federal Fire Agencies Type 3 through 7 engines and tactical water tenders have a number of features that enhance their capability to operate on narrow, steep or unimproved roads and to allow the efficient application of water or other agents. The minimum features of the engines are:

1. Short wheel base
2. High ground clearance
3. High angle of approach and departure
4. Lower Gross Vehicle Weight (GVW) than Type 1 or 2 engine
5. Unit # on roof

B-3 The main fire pump and water tank shall meet minimum capabilities for the FIRESCOPE ICS Type engine or tactical water tender as designated in the current edition of the ICS Field Operations Guide ICS-420-1. The pump, as mounted, shall be capable of drafting water from a water source located 10 feet vertical distance below the pump through the required suction hose.

For Type 3 through 7 engines:

1. 1.5-inch hose will be configured to facilitate progressive hose deployment providing for a l00 foot lateral of 1-inch hose every 200 feet of 1.5-inch trunk line once the fire's edge is encountered.
2. All hose utilized must meet or exceed USDA Specification. One-inch hoses and nozzles will have NPSH threads; 1inch hose with NH threads shall be provided with a sufficient number of NPSH adapters. 1.5-inch hoses and nozzles will have NH threads.

RESOURCE	RADIO CALL	COMPONENTS	TYPES 1	2	3	4	5	6	7
Engine Company	Engine Telesquirt*	Pump minimum flow GPM	1,000	500	150	50	50	50	10
		Tank minimum capacity (gal)	300	300	500	750	400	150	50
		At rated pressure (psi)	150	150	250	100	100	100	100
		Hose 2.5”	1,200	1,000	N/A	N/A	N/A	N/A	N/A
		Hose 1.5”	500	500	1,000	300	300	300	N/A
		Hose 1”	N/A	N/A	500	300	300	300	200
		Ladder per NFPA 1901	Yes	Yes	N/A	N/A	N/A	N/A	N/A
		Master Stream 500 Min. GPM	Yes	N/A	N/A	N/A	N/A	N/A	N/A
		Pump and Roll	N/A	N/A	Yes	Yes	Yes	Yes	Yes
		Maximum GVWR (lbs.)	N/A	N/A	N/A	N/A	26,000	19,500	14,000
		Personnel minimum	4(#)	3	3	3(@)	3(@)	3(@)	3(@)

*Engine with elevated stream capability, specify when requested

(#) 3 or 4-person staffing is acceptable for purposes of reimbursement.

(@) Differs from NWCG Guidelines. Per CFAA A-17 and FIRESCOPE BOD direction January 2020.

N/A = Not Applicable
NFPA =National Fire Protection Association
GVWR = Gross Vehicle Weight Rating

Notes:

1. All types shall meet federal, state and agency requirements for motor vehicle safety standards, including all gross vehicle weight ratings when fully loaded.
2. Type 3 engines and tactical water tenders shall be equipped with a foam proportioner system.
3. All water tenders and engine types 3 through 6 shall be able to prime and pump water from a 10-foot lift.
4. See A-17 for staffing levels.

RESOURCE	RADIO CALL	COMPONENTS	TYPES 1	2					
Tactical Water Tender	Water Tender	Pump minimum flow GPM	250	250					
		Tank minimum capacity (gal)	2,000	1,000					
		At rated pressure (psi)	150	150					
		Pump and Roll	Yes	Yes					
		Personnel minimum	2	2					

Notes:

1. All types shall meet federal, state and agency requirements for motor vehicle safety standards, including all gross vehicle weight ratings when fully loaded.
2. Type 3 engines and tactical water tenders shall be equipped with a foam proportioner system.
3. All water tenders and engine types 3 through 6 shall be able to prime and pump water from a 10-foot lift.

Common Additional Needs – Request as Needed:

- All Wheel Drive (Includes four-wheel drive).
- High Pressure Pump (250 psi at one half flow of Type). NFPA 1901 compliant Type 1 and 2 engines will produce one half of rated flow at 250 psi. Type 3 engines are already required to produce rated flow (150 GPM) at 250 psi. If Type 4 through 6 are ordered as high pressure it is recommended that they be required to produce rated flow at 250 psi (50 GPM).
- Foam proportioner.
- Compressed Air Foam System (CAFS) 40 cfm minimum.
- Additional personnel.

Personal Protective Equipment (PPE)

B-4 Each employee responding to or engaged in fire suppression activities will use the appropriate safety clothing and equipment. Each agency is responsible for seeing that Cal OSHA standards for safety clothing and equipment are provided and used for wildland firefighting. Wildland fire suppression safety clothing and equipment includes:

1. Head Protection meeting the requirements of CCR, Title 8, Section 3410
2. Eye and Face Protection meeting the requirements of CCR, Title 8, Sections 3382 and 3404
3. Ear and Neck Protection meeting the requirements of CCR, Title 8, Sections 3405 and 3410(c)
4. Body Protection meeting the requirements of CCR, Title 8, Section 3406(c)
5. Gloves, meeting the requirements of CCR, Title 8, Section 3410
6. Foot Protection meeting the requirements of CCR, Title 8, Section 3408
7. Wildland fire shelter meeting Forest Service specification 5100-606
8. Recommended disposable filtering face piece respiratory protection

Training

B-5 The State of California and Federal Fire Agencies have the expectation that when a local jurisdiction resource arrives at an incident it can perform all of the missions that would be expected of the State of California and Federal Fire Agencies' resource.

B-6 All responding personnel shall be in compliance with the current NWCG 310-1 Sub System Guide or CICCS. Training topics include but are not limited to:

Wildland strategy and tactics	Backfiring/firing-out
Wildland fire behavior	Handline construction
Wildland hose lays	Structure triage
Wildland fire safety	Structure defense preparation
Fireground communications	Fire weather

EXHIBIT "C"
REIMBURSEMENT FOR PERSONNEL ROTATION

Clauses A-38 and A-39 authorizes the reimbursement of personnel and transportation costs incurred to replace California Fire and Rescue Mutual Aid System Agency personnel committed to extended assignments under this Agreement. Personnel under this Agreement are to be available a minimum of seven (7) days excluding travel (portal-to-portal) before needing replacement, regardless of the number of assignments. This exhibit lists the procedures necessary for a local jurisdiction to follow before reimbursement for their costs will be processed for rotation of their personnel. These procedures only apply when the emergency apparatus remains assigned to the incident but the personnel are rotated. The procedures are:

C-1 The incident commander (IC) or Mobilization (MOB) center manager to which the resources are assigned must approve the personnel rotation and method of transportation. Such approval should not be denied without substantial cause, (e.g., imminent planned release (24 – 36 hours)) of the resources, or a negotiated extension through the Cal OES Fire Agency Representative. The personnel rotation and transportation plan must be coordinated through the incident, the ordering point, agency representative, and/or the overhead responsible for the personnel to be rotated.

C-2 The approved personnel rotation will be documented in:

C-2.1 **The approved automated resource ordering system of record.** The resource order will be annotated in the documentation section by the incident indicating the date and time of personnel rotation approval. Subsequently the home unit/filling command center will add documentation to include the following information:

C-2.1.1 Method/Mode, date and time of transportation.

C-2.1.2 An ICS General Message Form-213/Rotation Job Aid Template designed specific for personnel rotation must be signed by the IC or MOB center manager approving the rotation. This form shall be attached to the respective OES F-42 associated with the rotation vehicle and overlapping time of personnel.

C-2.2 OES F-42

C-2.2.1 Box 12 of the original OES F-42 will document any personnel rotation with the date and time of the rotation for all individuals whether or not the personnel rotation will be reimbursed.

C-2.2.2 **ONLY** when a fire agency is requesting reimbursement for an approved personnel rotation that includes transportation cost will a new OES F-42 be required (Check the Aprvd. Personnel Rotation Box, Personnel Information, Box 11 & Support Vehicle Information, Box 8 on OES F-42 and referenced to the original "E" number, Box 12).

C-2.2.2.1 For approved personnel rotation documented only in the documentation section.

C-2.2.3 OES F-142(s) will identify personnel involved in any rotation and will itemize the costs of transportation for personnel rotations with support documentation.

C-2.3 **ICS-214 Unit Log**

C-2.3.1 Details of personnel rotation need to be documented (Unit Logs to be retained on file by individual fire agency).

If both the emergency apparatus and the personnel need replacement, the resources will be released and a new resource will be ordered.

EXHIBIT "D"
COMMUNICATIONS CAPABILITIES

D-1 It shall be the responsibility of the agency sending mutual aid resources to ensure that those resources have adequate communications capabilities. Adequate communications capability is defined as VHF Highband radios with a minimum of 240 channels and pre-programmed with the most current FIRESCOPE STATEWIDE FREQUENCY CHANNEL PLAN. Effective January 1, 2024, radios will be required to have a minimum capacity of 400 channels with a recommended minimum of 500 channels.

D-2 Emergency apparatus used for mutual aid will have a mobile VHF Highband radio (powered by the emergency apparatus battery and connected to an external antenna) and a minimum of one portable VHF Highband radio. The VHF Highband portable radio should be capable of being operated by alkaline batteries.

D-3 Strike Team/Task Force Leaders: In addition to the communications capability required for emergency apparatus, line personnel are encouraged to respond with a conventional 800 MHz radio pre-programmed with the 800 MHz mutual aid channels as identified in FIRESCOPE STATEWIDE FREQUENCY CHANNEL PLAN.

D-4 For Narrowband Radios: On January 1, 2013, all public safety and business industrial land mobile radio systems operating in the 150-512 MHz radio bands must cease operating using 25 kHz efficiency technology, and begin operating using at least 12.5 kHz efficiency technology. This deadline is the result of an FCC effort that began almost two decades ago to ensure more efficient use of the spectrum and greater spectrum access for public safety and non-public safety users. Migration to 12.5 kHz efficiency technology (once referred to as Refarming, but now referred to as Narrowbanding) will allow the creation of additional channel capacity within the same radio spectrum, and support more users.

D-5 After January 1, 2013, licensees not operating at 12.5 KHz efficiency will be in violation of the Commission's rules and could be subject to FCC enforcement action, which may include admonishment, monetary fines, or loss of license. Agencies shall ensure that local radio channels are not utilized outside of the agency's licensed area of operation.

D-6 Agencies should provide a minimum of 4 hours of annual basic radio training for Division Supervisors, Strike Team Leaders, and single resource leader positions.

EXHIBIT "E"

Intentionally Left Blank. The Committee combined two exhibits into one, which left Exhibit E open for a new subject. Instead of changing reference to lettering of all exhibits, this will be a place holder for a newly added exhibit.

EXHIBIT "F"
FEMA EQUIPMENT RATE FORMULA

Hourly Rate= Depreciation + Overhead + Overhaul Labor + Overhaul Parts + Field Labor +Field Parts + Fuel + Lube + Tires

Where:
Depreciation= (Acquisition Cost – Salvage Value) / Economic Life
Generally Acquisition Cost = (1 – [Discount % / 100]) * (List Price + Sales Tax + Freight Cost)

Hourly Overhead = Overhead / 2112 hours
Where Overhead represents annual equipment overhead costs resulting directly from equipment ownership, the costs include such things as normal risk insurance, storage and security, inspection, and licenses. Profit, project overhead, and general overhead costs are not included in this number. 2112 hours is an annual equipment ownership baseline.

Overhaul Labor = (Annual Overhaul Labor Hours * Mechanic's Wage) / 2112

Overhaul Parts = Annual Overhaul Parts Cost / 2112

Field Labor = (Annual Field Repair Labor Hours * Mechanic's Wage) / Average Annual Use Hours

Field Parts = (Annual Field Repair Parts Cost + Miscellaneous Supply Parts Cost) / Average Annual Use Hours

Fuel = Average Annual Fuel Cost / Average Annual Use Hours or
Fuel = Hourly Fuel Consumption Rate * Unit Cost of Fuel

Lube = Annual Lube Cost / Average Annual Use Hours **Tires** = Tire Cost / Tire Life

** You may also use FEMA's Special Use Equipment Formula at https://www.caloes.ca.gov/cal-oes-divisions/fire-rescue/administration-reimbursement**

EXHIBIT "G"
REIMBURSEMENT POLICY AND PROCEDURES FOR OUTSIDE THE STATE OF CALIFORNIA ASSIGNMENTS

This Exhibit applies to Cal OES and the Federal Fire Agency requests.

G-1 The California Fire and Rescue Mutual Aid System Agencies shall use the following procedures to secure reimbursement for the provision of personnel and local government-owned emergency apparatus ordered for use on Federal incidents outside the State of California.

G-2 Reimbursement of personnel, emergency apparatus, and support equipment will be consistent with Exhibit "A" Reimbursement Policy and Procedures with the following exceptions:

1. Travel costs for lodging, per diem and rental vehicles for personnel shall be reimbursed at the GSA travel rates.

2. Reimbursement for Cal OES-owned communications equipment (e.g., cell and satellite phones or air and phone credit cards) will be at the total actual cost to the State of California.

3. Reimbursement invoices for Cal OES personnel, travel, and equipment will be on an actual cost basis, supported by accounting records, payroll records, and/or activity cards. Invoices for Cal OES resources should be submitted no later than 5 months after the end of the incident.

4. Invoices for Cal OES resources will include an administrative rate as determined by the State of California under, Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 200.

5. Length of assignments for resources responding to incidents outside the State of California will be consistent with the appropriate Federal Fire Agency's policy. Conditions in Clauses A-38 and A-39 of Exhibit "A" concerning minimum of seven (7) days (elapsed time), excluding travel, will not apply to resources responding to requests outside the State of California. Federal Fire Agency policy on the length of an assignment outside the state is defined as the time period (days) between the first full operational period at the first incident or reporting location on the original resource order and commencement of return travel to the home unit. Standard assignment length is fourteen (14) days, exclusive of travel from and to home unit. Time spent in staging and preposition status counts toward the 14-day limit, regardless of pay status, for all personnel, including Incident Management Teams.

EXHIBIT "H"
IN-STATE TRAVEL AND INCIDENT RELATED EXPENSES

The purpose of this exhibit is to identify allowable costs and the process for submitting such cost for in-state travel and incident related expenses. This exhibit primarily pertains to costs associated with fuel, food, vehicle and lodging costs as stated in Clauses A-37 and A-39 of Exhibit "A", as well as attributable incident expenses such as loss or damage to local agency emergency apparatus or support equipment identified in Recital 27 of this Agreement.

In some cases, miscellaneous expenses outside of the above mentioned may be approved if the incident finds that the expense(s) is also attributable to the incident.

1. In order for local agencies to be eligible for reimbursement of expenses related to this exhibit for lodging and per diem, the approval MUST be formally documented in writing by the approving State of California or Federal Fire Agency responsible for an incident by using a General Message Form ICS-213 and/or provide the associated "S#" validating the expense(s) on both the General Message Form ICS-213 and the OES F-42.

2. In order for local agencies to be eligible for reimbursement of expenses related to this exhibit for all other expenses such as loss or damage, the approval MUST be formally documented in writing by the approving State of California or Federal Fire Agency responsible for an incident by using a General Message Form ICS-213 AND provide the associated "S#" validating the expense(s) on both the General Message Form ICS-213 and the OES F-42.

In both cases, when the General Message Form ICS-213 is used, it must be signed by one of these three positions: Incident Commander, Finance Section Chief or Incident Business Advisor.

NOTE: S#'s and approved General Message Form ICS-213's should ONLY be issued when the incident cannot accommodate the expense in need, and all other options to provide the expense(s) have been exhausted.

Approved out of pocket expense(s) must accompany the OES F-42 along with the formal approval on the General Message Form ICS-213 documenting the S#, the itemized receipt(s), and the *Expense Claim Reimbursement Log* (OES F-142A). Receipts for meals and incidentals are not required. All other receipts must be taped to an 8 ½ x 11 sheet of paper in date order. All sides of the receipts must be taped and legible; photo copies are preferred.

Rental Vehicles

This section of Exhibit "H" is to identify both allowable and non-allowable expenses when renting a vehicle. Items listed adhere to the state rental agreement.

Items listed below are NOT allowable expenses:

1. Personal accident insurance, personal effects coverage, or other optional coverage
2. No pre-payment of fuel or refueling
3. No payment of extension costs or late return
4. Airport pickups are discouraged
5. Airport parking feeds
6. GPS unit
7. Satellite radio services (e.g. Sirius XM)
8. Roadside service
9. Damage attributable to the incident may be local government fire agency responsibility

Items listed below are REQUIRED to secure reimbursement:

1. Vehicle returned with a full tank
2. Exit invoice
3. Use of economy vehicle recommended
4. Vehicle determination should be based on your incident position
5. At time of rental, you may need to make remarks on your contact that this vehicle is going to an incident base camp and may be driven off pavement
6. If your agency provides a travel/expense car, rental and fuel must be paid by agency card

All other considerations must have prior approval from the incident

Rental vehicle reimbursement will use the state rates listed below as the maximum allowable charge:

STATE OF CALIFORNIA SHORT TERM PROGRAM RENTAL RATES TABLE EFFECTIVE, MARCH 3, 2020, WILL BE USED FOR A MAXIMUM AMOUNT ALLOWABLE FOR REIMBURSEMENT.

Class Type	Sample Vehicle	Daily Rates	Weekly Rates
Compact	Nissan Versa	$36.06	$144.24
Mid-Size/Intermediate	Hyundai Elantra	$36.06	$144.24
Standard	Buick Verano	$38.25	$152.98
Full Size	Nissan Altima	$38.25	$152.98
Hybrid Electric/Plug-In Zero Emission Vehicle	Toyota Prius	$45.89	$183.58
Compact SUV	Jeep Renegade	$61.19	$244.77
Medium SUV	Hyundai Santa Fe	$96.16	$573.68
Pick Up Truck	Ram 1500	$76.49	$305.96
3/4-Ton/ 1-Ton Pick Up Truck	Chevy Silverado	$98.35	$491.73
Mini Van	Dodge Grand Caravan	$61.19	$244.77
Large Van	Ford Transit Wagon	$132.22	$793.32
Mini-Cargo Van	Ram Promaster City	$72.12	$360.60
15’ Cutaway Box Van w/ramp	Transit Connect	$76.49	$382.45
16’ Box Truck		$92.88	$464.41
24’ Box Truck		$109.27	$546.36
26’ Box Truck		$109.27	$546.36
14’ Stake Bed		$92.88	$464.41
24’ Stake Bed		$109.24	$546.36

When renting a vehicle beyond four (4) days, assigned personnel will utilize the weekly rate through the seventh (7) day. Any days thereafter that do not constitute a week (seven (7) days) will be considered a daily rate.

Included in State of California Program Rates-Short Term:

1. Unlimited mileage, Collision Damage Waiver (CDW)
2. $300,000 Supplemental Liability Protection (SLP)
3. Drop Charges: There will be no drop charges for any vehicles that are picked up and returned at an alternative Rental Branch location within the US with the exception of New York.
4. CDW for Business Rentals: Rates include full CDW (Collision Damage Waiver) with no deductible. CDW will cover any physical damage to the vehicle that may occur during a rental and is subject to the terms and limitations set forth in Enterprise's standard rental contract. See additional slide for exclusions.
5. SLP for Business Rentals: Rates include SLP (Supplemental Liability Protection). SLP will cover up to $300,000 in liability claims that may occur during a rental, as the result of an accident, and is subject to the terms and limitations set forth in Enterprise's standard rental contract.

Damage Waiver Exclusion – Off-road use:

1. Operation of any vehicle that was not properly designed for the intended use
2. Excessive vehicle wear and tear, due to off-road operation, that may include:
    a. Tire punctures or missing chunks of tread
    b. Impact damage (body panels or undercarriage) defined as follows:
        i. Scratches larger than 2" or multiple scratches per panel penetrating the paint
        ii. Dents larger than 2" or multiple dents per panel
        iii. Impact to undercarriage that will require repair in order to maintain the drivability of the vehicle
        iv. Rips in upholstery, missing or broken interior components
3. Soot, smoke, or stain damage requiring professional cleaning

There are several options available to your agency and/or personnel for payment under the State of California Contract:

1. Direct bill account set up by your agency
2. Agency corporate credit card
3. Agencies can use account number XZCPFIR, and renters can choose to use their own payment method.

Rental vehicles authorized on the resource order do not need additional incident approval. The cost of the rental vehicle, if incurred by the local agency, and the fuel purchased to operate the rental vehicle must be submitted on the OES F-142A with receipts taped or photo copied. Rental vehicles that are not authorized on the resource order must receive the formal written approval from the incident as identified on page H-1 of this Exhibit.

Documentation Requirements for Reimbursement of Expenses

Check List:

- ☐ *General Message Form* (ICS-213) signed by the Incident Commander, Finance Section Chief, or Incident Business Advisor
- ☐ S# documented on forms ICS-213 and OES F-42
- ☐ Completed OES F-42
- ☐ Completed and signed OES F-142A with expense documented in date order
- ☐ Receipt(s)* taped on all sides to an 8 ½ x 11 sheet of paper in date order (photocopies preferred)
- ☐ If renting a vehicle, must submit exit invoice

For loss or damage reimbursement to a local agency emergency apparatus or support equipment, additional documentation also required:

- ☐ Investigation/incident report
- ☐ Photos

If costs are associated with food or lodging*, the reimbursement will be limited to the GSA Per Diem Rates in effect at the time of the response. Rates are available at https://www.gsa.gov/travel/plan-book/per-diem-rates. The first and last calendar day of travel is calculated and reimbursed at 75%.

*Double occupancy is preferred as appropriate.

Save Print Reset

California Governor's Office of Emergency Services (Cal OES) - Fire and Rescue Division

EXPENSE CLAIM REIMBURSEMENT LOG

Incident Name: _____ **Crew Relief:** Yes ☐ No ☐

AGENCY DESGN.	
State	3-Letter ID

STRIKE TEAM #		
3-Letter ID	Number	Ltr

INCIDENT ORDER NUMBER		
State	3-Letter ID	Number

INCIDENT REQUEST NUMBER		
3-Letter ID	ID	Number

DATE	MEALS $	LODGING $	MISC $	DESCRIPTION	AMOUNT
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
					$ 0.00
SUB-TOTALS →	$0.00	$ 0.00	$ 0.00	TOTAL AMOUNT →	$0.00

Comments:

DEPARTMENTAL APPROVAL

Print Name: _____ Signature: _____ Date: _____

Cal OES - Fire and Rescue Division - Expense Claim Reimbursement Log (OES F-142A)

OES F-142A (Rev. May 2020)

OES F-142A at https://www.caloes.ca.gov/cal-oes-divisions/fire-rescue/administration-reimbursement

EXHIBIT "I"
DEFINITIONS

I-1 **ACCRUAL ACCOUNTING** is a method whereby revenue or expenses are recorded when a transaction occurs rather than when a payment is received or made.

I-2 **ACTUAL HOURS** shall mean on shift time which includes a specific start and ending time and is recorded as clock hours. On shift time includes actual work, ordered standby and compensable travel. Individuals are required to report to their designated work site as scheduled, ready and willing to perform work safely.

I-3 **ADMINISTRATIVE RATE** shall mean a pre-established percentage charge that may be applied by the billing agency as determined by the CFAA Committee.

I-4 **AGENCY AIRCRAFT** shall mean any firefighting fixed or rotary-winged aircraft (including Unmanned Aerial Vehicles) owned by Local, State, or Federal Fire Agencies.

I-5 **AGENCY REPRESENTATIVE** shall mean the ICS position that serves as the point of contact for an assisting or cooperating agency that has been delegated authority to make decisions on matters affecting that agency's participation at the incident and reports to the Liaison Officer.

I-6 **ANNUAL OPERATING PLAN** shall mean a plan developed at the State, Geographic, or local levels for the implementation of administrative or operational practices or concerns.

I-7 **ASSISTANCE BY HIRE** shall mean fire suppression resources needed to fill the incident order that are to be paid for by the protecting agency.

I-8 **BASE RATE** shall mean the de minimis rate developed by the Committee.

I-9 **BUREAU OF INDIAN AFFAIRS** shall mean a federal bureau under the Department of the Interior charged with the responsibility to provide wildland fire protection and suppression for trust lands of federally recognized Native American Tribes.

I-10 **CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM AGENCIES** shall mean agencies, departments, or institutions to which Cal OES has, through agreement, assigned Cal OES-owned emergency apparatus; or who provide locally owned resources under provisions of the California Fire and Rescue Mutual Aid System. These agencies may also be referenced as, however, not be limited to, "local government" or "local agency".

I-11 **CALIFORNIA MOBILIZATION GUIDE** shall mean the interagency procedures for requesting, documenting, and sending resources to incidents within the State of California.

I-12 **CALIFORNIA WILDLAND COORDINATING GROUP** shall mean the executive level interagency committee made up of representatives from the USDA Forest Service, California Department of Forestry and Fire Protection, USDI Bureau of Land Management, USDI National Park Service, USDI Bureau of Indian Affairs, USDI Fish and Wildlife Services, Association of Contract Counties representative, and the California Governor's Office of Emergency Services.

I-13 **COMPENSATE** shall mean to give money in return for something such as work or payment for something lost or damaged.

I-14 **DEMOBILIZATION CENTER/FACILITY** shall mean that location or facility established at or near an incident for the processing of emergency apparatus and personnel prior to release to its home base.

I-15 **DEPARTMENT OF DEFENSE FIRE DEPARTMENT** shall mean any organization managed by the Department of Defense for preventing and putting out fires principally on military installations.

I-16 **EMERGENCY ACTIVITY RECORD (OES F-42)** shall mean the personnel and equipment time record required for reimbursement through the CFAA. Referred to as OES F-42.

I-17 **EMERGENCY APPARATUS** shall mean any emergency response equipment or apparatus provided through the California Fire and Rescue Mutual Aid System.

I-18 **EMERGENCY PERSONNEL** shall mean any personnel responding on or with emergency apparatus and requested overhead personnel.

I-19 **FEDERAL FIRE AGENCIES** shall mean the USDA Forest Service, Pacific Southwest Region; the USDI Bureau of Land Management, California Office, Regions 8 and 10; the USDI National Park Service, Interior Regions 8, 9, 10, and 12; USDI Fish and Wildlife Service, Interior Regions 8 and 10, and USDI Bureau of Indian Affairs, Pacific Region.

I-20 **FEDERALLY RECOGNIZED TRIBE** shall mean an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and are eligible for funding and services from the Bureau of Indian Affairs.

I-21 **GOVERNING BODY RESOLUTION (GBR)** shall mean a formal declaration of the governing body concerning a certain subject which it either cannot or does not wish to control by ordinance.

I-22 **HOME UNIT** shall mean the geographical location an individual is normally assigned to work. Also referred to as home base.

I-23 **INCIDENT** shall mean an occurrence or event, either human-caused or natural phenomena, that requires action by emergency service personnel to prevent or minimize loss of life or damage to property and/or natural resources.

I-24 **INCIDENT COMMAND SYSTEM (ICS)** shall mean a standardized on-scene emergency management concept specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

I-25 **INCIDENT COMMANDER** shall mean the ICS position responsible for overall management of the incident and reports to the agency administrator for the agency having incident jurisdiction. This position may have one or more deputies assigned from the same agency or from an assisting agency(s).

I-26 **INCIDENT MANAGEMENT TEAM (IMT)** shall mean the incident commander and appropriate command and general staff assigned to an incident.

I-27 **INTERAGENCY** shall mean involvement of two or more agencies to an agreement.

I-28 **LOCAL AGENCY** shall mean any city, city and county, county, or special district.

I-29 **LOCAL AGREEMENT** shall mean a pre-defined area agreement that includes that portion of the geographical jurisdictions of both the local reciprocal agreement signatories on which they have historically, frequently and continuously cooperated in initial and extended attack.

I-30 **LOCAL JURISDICTION** shall mean any political subdivision of government.

I-31 **MOBILIZATION CENTER** shall mean an off-incident location at which emergency apparatus and personnel are temporarily located pending assignment, release or reassignment.

I-32 **MOU/MOA** shall mean a memorandum of understanding or memorandum of agreement, which is a formal business document used to outline an agreement made between two separate entities, groups, or individuals.

I-33 **MUTUAL AID** shall mean an agreement in which two or more parties agree to furnish resources and facilities and to render services to each party of the agreement to prevent and combat any type of disaster or emergency.

I-34 **NON SUPPRESSION PERSONNEL** shall mean personnel who occupy a civilian position within a fire agency.

I-35 **POLITICAL SUBDIVISION** shall mean any city, city and county, county, district, or other local governmental agency or public agency authorized by law.

I-36 **PORTAL-TO-PORTAL** shall mean the time of initial dispatch from home base to the time of return to home base.

I-37 **REIMBURSEMENT** shall mean to pay someone/agency an amount equal to an amount that agency has spent or where the agency has accrued a financial liability.

I-38 **SALARY RATES** shall mean the sum of the hourly rates for each personnel in a classification including worker's compensation and unemployment insurance divided by the number of employees in that classification. The hourly rate should not include overtime. Benefit pay, specialty pay, and/or incentive pay should also be excluded unless the pay is directly tied to each hour of overtime worked.

I-39 **SALARY SURVEY** refers to the form used to establish rates for reimbursement filed with Cal OES Fire and Rescue Division.

I-40 **STAGING AREA** shall mean the location where emergency apparatus and personnel are assigned to an incident for deployment on a three-minute availability status.

I-41 **STRUCTURAL FIRE PROTECTION** shall mean fire suppression within a structure.

I-42 **STRUCTURE DEFENSE** shall mean the protection of homes or other structures from wildland fire before the fire reaches the structure; exterior fire protection measures.

I-43 **SUPPLEMENTAL PERSONNEL** shall mean overhead tied to a local fire department generally by agreement who are mobilized primarily for response to incidents/wildland fires outside of their district or mutual aid zone. They are not a permanent part of the local fire organization and are not required to attend scheduled trainings, meetings, etc., of the department staff.

I-44 **SUPPRESSION PERSONNEL** shall mean personnel who routinely respond to emergencies.

I-45 **TRIBAL FIRE DEPARTMENT** shall mean a federally-recognized tribe with suppression and/or all-risk response capabilities.

STATE OF CALIFORNIA
Department of Forestry and Fire Protection

Contractor Certification Clauses for Services

CAL FIRE-20 (Rev. 05/15) (Page 1 of 3)

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

ATTENTION CONTRACTOR: Please be sure to initial clauses, where required.

1. DARFUR CONTRACTING ACT VENDOR CERTIFICATION FORM CAL FIRE-720: Under the Darfur Contracting Act (Public Contract Code Sections 10475-10481), if a company that currently, or within the previous three years, has had business activities or other operations outside of the United States submits a bid or proposal for a State of California contract for goods or services, the State agency must require the company to certify that it is not a *scrutinized* company as defined in Public Contract Code Section 10476, or that it is a scrutinized company that has been granted permission by the California Department of General Services to submit a bid or proposal for the contract.

CONTRACTOR: You MUST INITIAL either line (a) or (b) below, to indicate your company's current certification requirement:

_____ (a) We currently have, or have had within the previous three years, business activities or other operations outside of the United States, and, therefore, are REQUIRED to and shall complete and submit a form CAL FIRE-720 (Darfur Contracting Act Vendor Certification) with our bid or proposal for this contract for goods or services.

OR

_____ (b) We currently do not have, and have not had within the previous three years, business activities or other operations outside of the United States, and, therefore, are NOT REQUIRED to complete and submit a form CAL FIRE-720 (Darfur Contracting Act Vendor Certification) with our bid or proposal for this contract for goods or services.

2. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

3. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
b. Establish a Drug-Free Awareness Program to inform employees about:
   1) the dangers of drug abuse in the workplace;
   2) the person's or organization's policy of maintaining a drug-free workplace;
   3) any available counseling, rehabilitation and employee assistance programs; and,
   4) penalties that may be imposed upon employees for drug abuse violations.
c. Every employee who works on the proposed Agreement will:
   1) receive a copy of the company's drug-free workplace policy statement; and,
   2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

4. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

5. CONTRACTS FOR LEGAL SERVICES $50,000 OR MORE-PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003. Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

6. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

7. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

8. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California:

1. PROMPT PAYMENT CLAUSE: Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. In the event of an emergency, as defined in section 927.11, late payment penalties may not apply. Specific to the California Department of Forestry and Fire Protection (CAL FIRE), if an invoice from a business under contract with CAL FIRE becomes subject to late payment penalties during the annually declared fire season, then the required payment approval date shall extend thirty (30) calendar days beyond the initial forty-five (45)-day period, except in the case of a contract with a certified small business, a certified Disabled Veteran Business Enterprise, a non-profit organization, or a non-profit public benefit corporation.

2. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

3. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

4. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

5. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

6. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

7. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

8. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

9. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

10. PREVAILING WAGES: (Rates can be viewed at www.dir.ca.gov/DLSR)

1) In accordance with the provisions of Section 1770 and 1773 of the Labor Code, contractor and any subcontractor shall conform to the general prevailing wages as determined by the Director of Industrial Relations. Copies of these wage rate determinations or amendments may be reviewed at the principal office of the contracting agency.
2) In accordance with Labor Code section 1813, contractor shall forfeit to the State a penalty of twenty-five dollars ($25) for each calendar day or portion thereof for any of contractor's workers or subcontractors paid less than the stipulated prevailing wage.
3) Contractor further agrees to pay each worker the difference between the actual amount paid for each calendar day or portion thereof, and the stipulated prevailing wage rate. This provision does not apply to properly registered apprentices.
4) In accordance with Labor Code sections 1810, 1811, and 1814, the maximum hours a worker will be employed is limited to eight (8) hours a day and 40 hours a week, except as permitted below. Contractor shall forfeit twenty-five dollars ($25) per day as a penalty to the State for each worker employed under the contract in violation of this law.
5) In accordance with Labor Code section 1815, contractor is permitted to employ workers more than eight (8) hours a day and 40 hours a week at not less than 1 1/2 times the basic rate of pay.

11. CHILD SUPPORT WITHHOLDING DISCLAIMER: Payment for services provided under this contract may be subject to withholding pursuant to a child support income withholding order. California FC 5206, 5246, and 17512.

SANTA CLARA UNIT		
SECTION: 3500	**PROCEDURE #: 2**	**SUBJECT: Assistance By Hire**
EFFECTIVE DATE: June 1, 2020		**SUPERCEDES POLICY: N / A**
AUTHORIZATION SIGNATURE:		

ASSISTANCE BY HIRE

I. INTENT

The Santa Clara Unit in cooperation with local government agencies utilizes Assistance by Hire (ABH) to allow for the immediate utilization of local government firefighting resources to augment State resources. The procedure is intended to provide direction for CAL FIRE Incident Commanders and cooperating agencies for utilization of local resources on CAL FIRE incidents within the Santa Clara Unit. This procedure does not cover mutual aid requests placed through the State Office of Emergency Services under the California Fire Assistance Agreement (CFAA).

II. DEFINITIONS

WET HIRED ENGINES - herein referred to as “WET”- A local government engine that is staffed consistent with ICS standards by local agency personnel. Wet engines will be used to supplement state resources on incidents and for station coverage and are considered available for state response when hired.

DRY HIRED ENGINES - herein referred to as "DRY" - A local government engine that is hired by CAL FIRE and staffed with a CAL FIRE crew. Dry engines are used to supplement state resources on incidents and for station coverage and are considered available for state response when hired dry. Dry engines have specific equipment requirements that are identified in this policy.

OVERHEAD - Personnel from local agencies that are qualified for assignment. Any overhead assignments that may travel to the fireline will require full PPE and fireline qualifications.

CAL FIRE OFFICIAL - A CAL FIRE Chief Officer from the Santa Clara Unit.

REQUIRED TRAINING - All personnel hired under ABH shall be certified for the position they were hired for by CAL OES/CICCS (red card) standards, as a minimum. All apparatus operators shall have the appropriate California driver’s license for the apparatus they are operating. It is the sending agencies responsibility to maintain records of the required training and licensing.

III. REQUIREMENTS

APPARATUS

Must be in good mechanical condition and be able to sustain arduous fireline assignments.
Apparatus hired DRY will also require a safety compliance inspection (DOT standards) by a qualified CAL FIRE inspector at time of hire.

PERSONNEL

When hired under ABH shall comply with the following:

- Meet the required training for the position they were hired for by CAL OES/CICCS standards.
- Shall have all mandated personnel protective equipment for all risk incident response.
- Shall be in their respective agencies uniform when under hire.

STAFFING

Engine staffing shall not be less than three or a reimbursable maximum of four people. One company officer, one operator and one or two firefighters.

Water tender minimum staffing shall be one apparatus operator for each operational period. For extended operations (exceeding 16 hours) a relief operator is required. An additional firefighter is authorized for each operational period.

COMMUNICATIONS

It is the responsibility of the sending agency to ensure the apparatus has adequate communications capability. All radios will be narrow band capable and programmable.

ORDER

A CAL FIRE official shall be responsible for determining when ABH will be utilized. Until that determination had been made by a CAL FIRE official, local resources will be considered mutual aid. The CAL FIRE official will be responsible for providing the ECC with the resources identifier, time of hire and obtaining a request number from the ECC for each resource hired.

IV. RATES AND REIMBURSEMENT

Timeframes for payment for equipment and personnel will be portal to portal once the designated thresholds have been met. **The Administrative Rate, Workers Compensation Rate, and Unemployment Insurance Rate shall not be reimbursable.**

ENGINES

- INCIDENTS - After 12 hours of service on an incident, payable back to the time of assignment. This includes travel time to return to the station and up to one hour to place the apparatus back into service.
- STATION COVERAGE - If apparatus is ordered/requested through ABH for station coverage payment will begin when the engine is staffed and available for assignment. Request for station coverage utilization ABH are generated by the Santa Clara Unit Duty Chief.
- DRY hired engines are paid from the time of acceptance.

OVERHEAD

- After 12 hours of service on an incident, payable back to the time of assignment.

WATER TENDERS

- After 4 hours of service on an incident, payable back to the time of assignment. This includes travel time to return to the station and up to one hour to place the apparatus back into service.

PERSONNEL RATES: Personnel rates will be based on the current CAL OES Salary Survey on file. If a department does not have an established CAL OES Salary Survey, their personnel will be reimbursed based on the established rates on the CAL OES Rate Letter. All personnel rates will be reimbursed at time and a half. Personnel will be reimbursed for the total hours documented on the FC-33 and the CAL FIRE dispatch record up to a maximum of 24 hours per calendar day

FIRE ENGINE & WATER TENDER RATES: An hourly rate will be calculated for each engine utilizing the current CAL OES Rate Letter based on the apparatus GPM. The apparatus will be reimbursed for the total hours documented on the FC-33 and the CAL FIRE dispatch record up to a maximum of 24 hours per calendar day. These rates apply to any ICS engine type.

UTILITY RATES: All utilities used will be paid the current CAL OES daily rate per size and or type of utility. Mileage will not be reimbursed.

OTHER EQUIPMENT: For equipment not listed in the CAL OES Rate letter, a CAL FIRE 294 (Emergency Equipment Rental Agreement) will be utilized with the negotiated equipment rates.

V. GENERAL

APPARATUS LIABILITY: CAL FIRE assumes no liability for any damage to any local government equipment. No local government official or fire department may obligate the state to financial liability.

For **WET** hired equipment, any loss or damage to local agency apparatus or support equipment while traveling to or from and incident, and repairs due to normal wear and tear or due to negligent or unlawful operation by the operator, shall be the responsibility of the local agency. Minor damage caused by the incident or operating conditions may be reimbursed by CAL FIRE and documented on a ME-107. Major damage will be addresses through the Department of General Services Government Claims Program.

For **DRY** hired equipment in the event of accident or mechanical breakdown caused by CAL FIRE to the apparatus under hire, CAL FIRE will repair the apparatus to the condition at the initial time of hire. For mechanical or routine maintenance repairs, mechanic's services and/or parts are the responsibility of the local agency, to be made at the local agency's expense. The State may, at its option, elect to make such repairs when necessary to keep the equipment operating. Every attempt will be made to contact the local agency prior to initiating any mechanical service.

CONSUMABLES: CAL FIRE will replace consumable items such as fusees, rations, drinking water, radio and headlamp batteries, chainsaw fuel, portable pump fuel, drip torch fuel, and Class A foam. The items consumed will be documented on a Material Requisition or Transfer (F-72) and Incident Replacement Requisition (OF-315).

FUEL: Apparatus may obtain fuel at no charge from a CAL FIRE facility or incident base, documented on form AO-78a with the incident number, for fuel used while under CAL FIRE's control. If there is no fuel available, the local government agency will be reimbursed for fuel purchased by agencies fuel card. A copy of the receipt will be turned into CAL FIRE.

MEALS: Personnel on apparatus assigned to station coverage may obtain meals at the CAL FIRE facility, documented on the meal sheet with names, dates and incident numbers at no cost to the personnel.

VI. DOCUMENTATION

DOCUMENTATION: Local government agencies hired under ABH will need to submit the following documentation to Santa Clara Unit Headquarters:

- SCU ABH Personnel and Equipment Report (CAL FIRE FC-33) documenting personnel times, apparatus (ICS Type, year make and model, license, vin, and GPM)
- Current CAL OES Salary Survey (if not on file)
- CAL FIRE 20 (if not on file)
- Fuel receipts if fuel was purchased by agency fuel card.

The documentation shall be submitted to:

CAL FIRE- Santa Clara Unit
15670 Monterey St.
Morgan Hill, CA 95037
Attn: ABH Billing

OR

Electronic submittals:

scu.abh@fire.ca.gov

If a Finance Section is assigned to an incident with ABH resources, the local agency shall bring the completed documents to the Finance Section for processing.

Updated May 1, 2020

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Accept the Racing Hearts Foundation Grant and Approve a Related Budget Amendment**
Category:	Consent Calendar-Public Safety
Meeting Date:	11/10/2020
Staff Contact:	**Jared Hernandez, 408-586-2406**
Recommendation:	Accept the Racing Hearts Foundation Grant in the amount of $29,777.44 for the purchase of Automated External Defibrillators (AEDs) and approve a budget appropriation to the Police Department's FY 2020-21 operating budget.

Background:
Racing Hearts is a non-profit organization based out of the San Francisco Bay Area whose mission is to raise the success rate of sudden cardiac arrest recovery by bringing awareness of and access to Automated External Defibrillators (AEDs). Racing Hearts works proactively with public and private entities to increase the number of AEDs in public places throughout the greater Bay Area. Past and current partnerships have included law enforcement, schools, and underserved / at-risk communities.

The Milpitas Police Department (MPD) currently does not outfit any patrol vehicles with AEDs. In calendar year 2019, MPD maintained an average response time to in-progress emergency calls for service of two (2) minutes and thirty-eight (38) seconds. As officers are constantly in the field and predominantly in their vehicles, the deployment of AEDs coupled with rapid response times to critical medical incidents will increase the chances of a successful outcome in sudden cardiac arrest medical calls.

The Racing Hearts Foundation's award to the Milpitas Police Department is $29,777.44, which is the total cost of fifteen AEDs and 5 replacement pads. This Grant award is being presented to council as required by City of Milpitas Grant SOP 26-2a.

Analysis:
The acceptance of the Racing Hearts Grant award is contingent upon purchasing AEDs and associated AED equipment. The City of Milpitas is not required to provide matching funds. The AED model selected for purchase is based on compatibility with the Milpitas Fire Department's cardiac equipment and with AED equipment in other City of Milpitas facilities. Having AEDs more readily available, such as in our police patrol vehicles, is in line with Racing Hearts' mission of increasing access to AEDs and positively impacting the successful recovery of sudden cardiac arrest incidents.

Furthermore, adding this piece of equipment to patrol vehicles expands and improves the service the Police Department (PD) in conjunction with the Fire Department provides to the community depending which public safety department arrives first on scene in response to a call for service. Having the equipment available allows an officer to initiate CPR in conjunction with an AED prior to the arrival of firefighters/paramedics in response to cardiac incidents.

Policy Alternative:

Alternative: Refuse the Racing Hearts Foundation Grant of $29,777.44.

Pros: There are no identified benefits to this alternative.
Cons: The Police Department would not have the opportunity to purchase needed equipment or City general funds would be required to purchase the equipment.

Reason not recommended: The Racing Hearts Foundation Grant award does not require matching funds nor are there any requirements that result in a negative impact.

Fiscal Impact:
The grant does not require any matching funds. Staff recommends approval of a budget appropriation of $29,777.44 to the Police Department's FY 2020-21 operating budget offset with the receipt of grant funds. The Racing Hearts Foundation Grant award of $29,777.44 is sufficient to purchase fifteen (15) AEDs and accessories. There are sufficient funds in the Police Department budget to maintain the equipment, which has an expected useful life between 5 to 8 years; however, future replacement may require a budget appropriation.

California Environmental Quality Act:
N/A

Recommendations:
1) Accept the Racing Hearts Foundation Grant in the amount of $29,777.44.
2) Approve a budget appropriation in the amount of $29,777.44 to the Police Department's FY 2020-21 operating budget.

Attachment:
Budget Change Form

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ **Budget Appropriation** ❒ **Budget Transfer**	**267-3557**	**$29,777.44**	**267-7214223**	**$29,777.44**

Accept the Racing Hearts Foundation Grant in the amount of $29,777.44 for the purchase of Automated External Defibrillators (AEDs) and approve a budget appropriation to the Police Department's FY 2020-21 operating budget.

Background:
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Policy Alternatives:

Alternative 1: Refuse the Racing Hearts Foundation Grant of $29,777.44.

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Reason not recommended: The Racing Hearts Foundation Grant award does not require matching funds nor are there any requirements that result in a negative impact.

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The grant does not require any matching funds. Staff recommends approval of a budget appropriation of $29,777.44 to the Police Department's FY 2020-21 operating budget offset with the receipt of grant funds. The Racing Hearts Foundation Grant award of $29,777.44 is sufficient to purchase fifteen (15) AEDs and accessories. There are sufficient funds in the Police Department budget to maintain the equipment, which has an expected useful life between 5 to 8 years; however, future replacement may require a budget appropriation.

California Environmental Quality Act: N/A
N/A

Recommendations:
1) Accept the Racing Hearts Foundation Grant in the amount of $29,777.44.
2) Approve a budget appropriation in the amount of $29,777.44 to the Police Department's FY 2020-21 operating budget.

☐ **Check if City Council Approval required.** **Meeting Date**: November 03, 2020

Requested by:	**Department Head:** Armando Corpuz	**Date:** November 03, 2020
Reviewed by:	**Finance Director:** Walter C. Rossmann	**Date:** November 03, 2020
Date approved by City Council, if required:		**Confirmed by:**

FI/24786/V **Form 30-222 (Rev. 1/92)**

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Discuss and Provide Direction on a Milpitas Unhoused Response and Prevention Plan; Approve and Authorize the City Manager to Execute an Agreement with the County of Santa Clara for Homeless Outreach, Assessment, and Case Management Services**
Category:	Community Development
Meeting Date:	11/10/2020
Staff Contacts:	Sharon Goei, 408-586-3260 Adam Marcus, 408-586-3244
Recommendations:	1. Receive staff presentation; discuss and provide direction on a Milpitas Unhoused Response and Prevention Plan. 2. Approve and authorize the City Manager to execute an agreement with the County of Santa Clara for homeless outreach, assessment, and street-based case management services, in a form approved by the City Attorney.

Executive Summary:

An executive summary has been prepared in acknowledgement that this staff report covers an extensive amount of material regarding homelessness, support programs, the relationship of evolving local and regional partnerships, and exploring potential solutions. In addition, staff will provide a PowerPoint presentation to aid in understanding of the material and needed Council direction for development of a plan.

In response to City Council direction to propose strategies for a Milpitas plan that prevents and responds to homelessness, in this report, staff explores options and programs that could be evaluated and implemented in the short term or over the next few years. The report describes the two basic vulnerable populations, the unhoused Milpitas residents and Milpitas residents at risk of homelessness, the corresponding Countywide systems of support for each population, and proposes approaches to increase services and strengthen assistance. Staff proposes a potential framework for a Milpitas plan, along with providing analysis of programs that could be evaluated and implemented, including homeless outreach, assessment, and street-based case management for unhoused Milpitas residents; homelessness prevention system access enhancement for at-risk Milpitas residents; basic sanitation and hygiene services, meal delivery, safe parking or safe places for sleeping for unhoused Milpitas residents; and securing supportive housing units for unhoused Milpitas residents. Staff also reviews community engagement and outreach, potential funding sources, and possible next steps in this report. Overall, staff is seeking City Council direction on the programs and services to explore further for a Milpitas Unhoused Response and Prevention Plan.

Specifically for homeless outreach, assessment, and street-based case management, staff is following up on the discussion of the Housing Subcommittee, and with the conclusion of the County Unhoused Task Force, with a proposal for City Council consideration to approve and authorize the City Manager to execute an agreement with the County of Santa Clara to contract for homeless outreach, assessment, and street-based case management services in an amount of $200,000 funded from the Housing Authority Fund. This proposal addresses Council discussion and support for expanding outreach and assessment to enable more unhoused Milpitas residents to be enrolled and qualified for placement into supportive housing.

Background:

On September 9, 2020, Santa Clara County convened the Unhoused Task Force. The purpose of this 30-member task force was to educate members about the County's services, about different models for interim housing, and to look for opportunities to implement projects that improve the quality of life for unhoused

individuals. The Task Force focused on strategy three of the County's 2020-2025 regional Community Plan to End Homelessness. Vice Mayor Bob Nuñez and Councilmember Karina Dominguez served on this Task Force.

On September 17, 2020, an Information Memorandum was sent to Council to report on the City's progress on homelessness responses and affordable housing initiatives. The report showed that Milpitas has actively addressed a myriad of homeless and housing issues and it recognized that more needs to be done, especially given the continuing impacts of the COVID-19 pandemic.

On September 22, 2020, staff presented the above-mentioned progress report and on potential homelessness outreach, assessment, and case management service options to the Housing Subcommittee. The service options included:

1. Revenue agreement with Santa Clara County for street outreach and assessment;
2. Revenue agreement with Santa Clara County for intensive project-based case management to secure supportive housing units for Milpitas residents; or
3. Contract with a nonprofit service provider for outreach, assessment, and case management.

The Housing Subcommittee directed staff to gather additional information and indicated they would like to consider the recommendations of the Unhoused Task Force first before moving forward.

On October 6, 2020, staff from Santa Clara County and Destination: Home presented the 2020-2025 regional Community Plan to End Homelessness, which is an update to the original 2015-2020 plan, previously adopted by the City Council The plan was developed with extensive Countywide input from persons with lived experience, homeless service providers, local government staff, the nonprofit and private sectors, philanthropy, and more. The plan includes three main strategies:

> *Strategy 1: Address the root causes of homelessness through system and policy change;*
> *Strategy 2: Expand homelessness prevention and housing programs to meet the need; and*
> *Strategy 3: Improve quality of life for unsheltered individuals and create healthy neighborhoods for all.*

The Milpitas City Council heard presentations about the plan and directed Milpitas staff to conduct outreach to draft a local unhoused response plan. Councilmembers indicated that once a local strategy was developed, they would revisit a possible endorsement of the Countywide plan.

On October 15, 2020 at a special meeting, the Milpitas City Council amended their direction and asked staff to return on October 20, 2020 with a proposal for a comprehensive Milpitas strategy that prevents and responds to homelessness in Milpitas. Council direction stated that the strategy should explore street outreach and assessment, safe parking, deployment of a shower and laundry trailer, toilets, handwashing stations, and other items discussed.

On October 20, 2020, the City Council deferred this item to November 10, 2020.

On October 22, 2020, the County's Unhoused Task Force concluded and recommended the following measures:

1. Endorse the County's 2020-2025 Community Plan to End Homelessness by March 31, 2021;
2. Develop a local implementation guide based on local needs and resources;
3. Identify surplus land that can be prioritized for interim housing solutions;
4. Analyze the feasibility of building new interim housing; and
5. Consider updating local ordinances, regulations, or local laws to reduce barriers to building new shelter and declaring a shelter crisis to facilitate flexible models like tiny homes.

The County Office of Supportive Housing (OSH) will continue to work with cities to implement these recommendations and report progress to the County's Housing, Land Use, Environment and Transportation (HLUET) committee on a monthly basis. Additionally, the OSH produces an annual Supportive Housing Report that includes progress toward all the goals of the Community Plan to End Homelessness.

This staff report explores and provides initial analysis of options for a homelessness response and prevention plan in Milpitas and programs that could be implemented quickly and over the next few years.

Analysis:

Homelessness in Milpitas

Every two years, the County employs a research firm to conduct a count of the local homeless population. Known as a point-in-time count, the survey is performed using HUD's definition of homelessness and consists of the following primary components: 1) General street count, which is a count of unsheltered homeless individuals and families that are living outdoors on the streets, at bus and train stations, in parks and tents, and in vehicles and abandoned properties; and 2) general shelter count, which is a count of individuals and families temporarily housed in shelters, including emergency shelters, transitional housing, and safe havens. For Milpitas, the point-in-time homeless count was 95 in 2013, 122 in 2015, 66 in 2017, and 125 in 2019.

At-Risk of Homelessness in Milpitas

The point-in-time count does not account for persons who live in overcrowded conditions, in inadequate or unstable housing, or who are at risk of becoming homeless. At-risk residents may include a variety of household structures such as families, couples, individuals, and unrelated roommates. This group can be difficult to count. One significant at-risk group is students in the Milpitas Unified School District's (MUSD) McKinney-Vento program. Most of these families are housed but considered homeless under the Federal McKinney-Vento Homeless Assistance Act. This Act has a broader definition of homelessness and defines homeless children and youths as individuals who lack a fixed, regular, and adequate nighttime residence. These include children and youths who are sharing the housing of other persons, living in motels, hotels, trailer parks, emergency or transitional shelters, cars, parks, public spaces, abandoned buildings, substandard housing, and bus or train stations.

In September 2020, the Milpitas Unified School District reported 397 students who qualified as homeless under McKinney-Vento. The McKinney-Vento data is updated whenever a new student is verified. In October, MUSD reported 405 students, where approximately 87% of them were sharing housing with other persons. While there is some overlap between HUD's definition of homeless for the point-in-time count and the McKinney-Vento definition, MUSD cites there is little duplicate count.

Staff interviewed the MUSD McKinney-Vento coordinator and a case manager from LifeMoves to learn about the specific issues that at-risk households are facing in Milpitas. Staff learned about a range of challenges including job loss, wage or benefit reductions, inability to pay rent and utility bills, lack of food and meals, fear of accessing assistance due to immigration status, inability to document hardship due to not being on a lease or being able to show loss of employment, lack of daycare, lack of quiet space for children to attend remote learning, necessity to leave overcrowded living situation, and fleeing domestic and family violence.

Two Homelessness Support Systems

As identified above, there are two basic vulnerable populations to be supported in planning for unhoused response and prevention with corresponding support systems. While there is overlap, these systems are funded and organized differently, as follows:

1. **Supportive Housing System**: This system assesses unhoused residents who are living on the street or in a vehicle or temporary shelter. Clients are assessed by outreach teams or at access points like shelters and food pantries. Once assessed, clients are ranked by need and are placed in emergency shelter, rapid rehousing, transitional housing, interim housing, or permanent supportive housing with wrap-around services. Clients may receive case management services at access points while waiting to be placed into a housing program, and also receive on-site case management once they are housed to ensure they have support to remain housed. McKinney-Vento families who are unhoused may qualify

for rapid rehousing, interim housing and other programs. This system is managed by the County's Office of Supportive Housing (OSH).

2. **Homelessness Prevention System (HPS)**: The Santa Clara County HPS is a Countywide network of agencies working together to prevent homelessness for households across the County. The HPS assesses housed residents who are at risk of homelessness and checks eligibility for emergency rent and deposit assistance programs. In addition to direct financial assistance, HPS providers also provide case management and referrals to legal services, domestic violence services, and other resources. Milpitas clients need to visit access points such as LifeMoves in San Jose to fill out paperwork and to apply for help. Most of the McKinney-Vento families in Milpitas are housed, but many could benefit from convenient access to an HPS provider. This system is managed by Destination: Home and Sacred Heart Community Service.

Potential Framework for a Local Milpitas Plan

The County's 2020-2025 Community Plan to End Homelessness and the County's Unhoused Task Force provide a framework for crafting a local plan that is informed by community and stakeholder input. Over the past several months, staff has conducted interviews with Santa Clara County, City of Morgan Hill, City of San Jose, HomeFirst, People Assisting the Homeless (PATH), Abode Services, Bill Wilson Center, LifeMoves, Destination: Home, Sacred Heart Community Service, and the Valley Homeless Healthcare Program (VHHP). In addition to this research, staff has received input from the City Council and Housing Subcommittee, and input from some community members and faith-based organizations. While more outreach is needed, below are some emerging themes:

- Conduct a transparent and inclusive process;
- Focus on Milpitas while accessing regional Supportive Housing & Prevention systems;
- Assess needs and connect unhoused Milpitas residents to services;
- Provide basic sanitation and hygiene services;
- Leverage City's limited resources through partnerships with agencies and volunteer groups;
- Make prevention services easier for at-risk Milpitas residents to access; and
- Secure new affordable housing opportunities for unhoused and at-risk Milpitas residents.

Analysis of Homeless Response and Prevention Programs

Below is an analysis of programs that could be evaluated and implemented in Milpitas. They are organized into three sections. Some items could be established quickly while others could take 9 months to a year or more.

<u>Outreach, Assessment, Case Management, and Supportive Housing Placement for Unhoused Milpitas Residents</u>

1. <u>Street Homelessness: Outreach, Assessment, and Street-Based Case Management</u>: This item addresses Council support for expanding outreach and assessment to enable more unhoused Milpitas residents to be enrolled and qualified for placement into supportive housing. This service is for residents who are temporarily or chronically unhoused. It includes street outreach to locate clients, to build trust, and to help them complete or update assessments. This ensures that client's data accurately describes their situation and maximizes their chances of being placed in a supportive housing program. This is a critical first step towards accessing the County's housing programs. Outreach can also be conducted at fixed access points like shelters, food pantries or other locations. Cupertino, Gilroy, Morgan Hill, Mountain View, Palo Alto, San Jose, and Sunnyvale are partnering with the County or nonprofit agencies for this service.

   Street outreach is conducted by an outreach specialist and a case manager to ensure safety when visiting isolated areas. Over repeated visits, the team builds trust and rapport with clients, conducts a voluntary assessment, and offers on-going case management and housing problem-solving while the client awaits a referral and placement in rapid rehousing, transitional housing, or supportive housing.

For unhoused clients with chronic health issues, outreach workers can request a visit from the Valley Homeless Healthcare Program (VHHP) team.

To achieve this program, staff have identified two outsourcing options, each with different advantages:

- Revenue Agreement with the County: For $200,000 per year, Santa Clara County could provide street outreach, assessment, and case management services for unhoused residents in Milpitas. The County's Homeless Engagement and Assessment Team (HEAT) was created in 2019 and specializes in connecting with unhoused residents who are not engaging with shelters and other services. The HEAT team focuses first on connecting clients with mental health service providers to stabilize them before assisting with a housing plan. The team currently includes 4.5 contracted outreach workers and two licensed mental health clinicians, and is directly integrated with the County's Office of Supportive Housing, the Behavioral Health Services Department, the Valley Homeless Healthcare Program (VHHP), and other County services. With the additional funding, the HEAT team could be expanded by approximately two outreach team members and increase the number of outreach contacts, the number of assessments conducted, as well as the number of clients enrolled in outreach and/or working with the clinical team. The team is available to assist Police Officers with mental health crisis situations. The service can begin immediately. After a one-year period of assessing and enrolling Milpitas residents into the County database for supportive housing, the Council could consider shifting funding to a new agreement for intensive project-based case management services that secure supportive housing units for Milpitas residents (see item 2 below). The primary advantage of this option is that the HEAT team is equipped to address mental illness directly and it is integrated within the County's health and human services system.

- Direct Agreement with Nonprofit Service Provider: For approximately $200,000 a year, a nonprofit service provider could provide full-time street outreach, assessment, and case management services for unhoused residents. Staff interviewed representatives from HomeFirst, People Assisting the Homeless (PATH), Abode Services, and Bill Wilson Center. Because two full-time employees are required, approximately $200,000 is the minimum cost for this option. A two-person team connects with clients in the field, conducts assessments and case management, and in some instances offers transportation to appointments. The primary advantage of this option is faster response times and more time to provide housing problem-solving services and case management while the client waits for a housing referral and placement.

Considering the specialized nature of homeless outreach, assessment, and street-based case management services and the ability to leverage behavioral health support or other services coordinated through the County, staff recommends moving forward with a revenue agreement with the County, as this option would be more efficient in connecting with a Countywide network of homeless services. If the City Council pursues a revenue agreement with the County, staff would work with the County Office of Supportive Housing to develop a program that responds to Milpitas' needs by determining service levels, target response times, deliverables, performance measures, and outcome metrics. There are sufficient funds in the Housing Authority Fund to fund this agreement.

2. Intensive Project-Based Case Management Services and Supportive Housing Placement: This item addresses Council support for securing supportive housing units for unhoused Milpitas residents. San Jose, Santa Clara, and Mountain View have executed revenue agreements with the County's Office of Supportive Housing to secure supportive housing units for local residents on the condition that the City pays for project-based case management services for that client/unit. The approximate cost is $11,000 per client per year. As an example, the affordable housing development at 355 Sango Court will offer 101 total affordable units where 40 units will be for permanent supportive housing. Construction is anticipated to begin in spring 2021 and tenant placement is estimated to occur in fall 2022. This option could be considered in 2021 to prepare for units becoming ready for occupancy in 2022.

	Estimated Cost
• Example: Supportive housing units for 20 Milpitas residents	$220,000 per year

Homelessness Prevention for at-risk Milpitas Residents

3. Homelessness Prevention: The County's Homelessness Prevention System includes thirteen community-based service providers that support the following two programs:

    - Emergency Assistance Network (EAN): EAN agencies provide housing assessment, emergency rental and deposit assistance, utility assistance, financial literacy classes, support for enrollment in Cal Fresh, Medi-Cal, general assistance and other support programs, case management, and referrals to other services as needed. In FY 2019-2020, the average rental assistance provided Countywide was $1,721 per household. Milpitas residents are assigned to LifeMoves in San Jose for screening and assistance. LifeMoves fields approximately 200 calls per year from Milpitas and assisted 148 singles and families in FY 2019-2020. If space and equipment can be provided, after the pandemic, LifeMoves has indicated a case manager could come to Milpitas regularly to screen clients for emergency assistance eligibility.

    - Homelessness Prevention System (HPS): This is a pilot program coordinated through Sacred Heart Community Service on behalf of Destination: Home. In addition to providing assistance for rent, security deposit, and utility assistance, the HPS is flexible and can help fund transportation, temporary motel stays, and assistance over several weeks rather than one-time support. In FY 2019-2020, the average rental assistance provided Countywide was $4,009 per household. HPS services follow a "no wrong door" policy so clients can be screened at a number of agencies including LifeMoves in San José.

    In August 2020, Destination: Home released a Request for Qualifications (RFQ) to address current gaps in the HPS network and to increase HPS access to underserved populations and geographies including Milpitas, East San Jose, Morgan Hill, and Gilroy. The RFQ seeks to identify qualified agencies to provide HPS services to households. If an organization is funded, this could leverage outside dollars to expand assessment and case management for at-risk Milpitas residents, including but not limited to McKinney-Vento families. Announcements for agencies qualified to provide HPS services to expand the HPS network are anticipated beginning 2021.

    After the pandemic, the City could potentially host meeting space with basic equipment such as a scanner and printer so a LifeMoves case manager can visit Milpitas on a regular interval to screen clients for eligibility and complete documentation for emergency assistance. The City could work with MUSD and other organizations to promote this "pop-up" access point. In the short term, staff could work with LifeMoves, MUSD, and others to enhance awareness of the homelessness prevention system through outreach via flyers, virtual workshops, and connections with landlord and tenant communities.

Basic Needs Services and Temporary Housing for Unhoused Milpitas Residents

4. Hygiene Services**:** Basic needs services include access to toilets, handwashing stations, mobile shower and laundry service, garbage receptacles, and sanitation service. Dignity on Wheels operates a mobile trailer with showers, laundry, and offers on-site case management services. Considerations for this program include locations that are convenient for unhoused residents, conducting neighborhood outreach to address concerns, infrastructure and utility access, assigning City staff to be present during the mobile shower/laundry operations and assisting with setup and breakdown, following COVID-19 protocols, and servicing non-mobile facilities like toilets and handwashing stations. The approximate costs for these services are as follows:

	Estimated Cost
• Garbage Service (1 dumpster)	$4,000 per year
• ADA/Accessible Toilet and Handwashing Station (1 of each)	$6,000 per year

- Mobile Laundry and Shower Services (1 – 2 times/week) $42,800 – $85,500 per year
- Mobile Laundry and Shower Services City Staff Time (5 – 10 hours/week at fully-burdened rate) $30,000 – $60,000 per year

5. Meal Delivery: This could include contracting for delivery of hot meals to a drop-off location. Considerations for this service include food safety measures, COVID-19 health protocols, delivery logistics, convenience of the pick-up location for unhoused residents, demand, and outreach to understand any neighborhood concerns. From Loaves and Fishes, the approximate cost for this service is $2.50 per meal. Below is an example of annual cost:

	Estimated Cost
• 110 meals per day	$100,000 per year

6. Drop-in Resource Center**:** This includes fixed locations that offer a variety of daytime and/or shelter services including assessment, food, bathrooms, showers, clothing closets, employment counseling, case management, and more. The Bill Wilson Center is one example and focuses on youth services. Key considerations are finding a location that is convenient for unhoused residents, understanding any neighborhood concerns with proposed uses, identifying nonprofit service provider(s) for operation, understanding demand for the center, acquisition, set up and on-going costs, and assurances that COVID-19 protocol are followed.

7. Safe Parking**:** This includes a parking area where vehicles can legally park overnight without being ticketed and residents can sleep in their car or recreational vehicle. The site could include overnight security, bathrooms, handwashing stations, garbage receptacles, food distribution, and case management to facilitate placement in permanent housing**.** Some programs are limited to nighttime parking while Mountain View recently piloted a 24-7 safe parking program. Considerations for such a program include target population and needs, high start-up costs, ongoing operations costs, available sites that are convenient and meet zoning regulations, finding a qualified service provider, solid and sanitary waste disposal, COVID-19 safety protocol, operations (security and program rules), citywide overnight parking enforcement, and outreach to understand any neighborhood concerns. In **Attachment A**, the County estimates that safe parking programs can cost $4,000-$18,000 per household per year to operate. For example, operating a safe parking program for 20 households can cost $80,000 to $360,000 per year. This cost varies based on many factors including the level and type of services that are offered.

8. Safe Places for Sleeping**:** This includes a variety of temporary and permanent housing types including conventional shelters, motel rooms and master leasing, rotating faith-based shelters, micro homes, sanctioned encampments, rapid rehousing, permanent supportive housing, and conventional affordable housing for extremely-low and very-low income residents. The County's Office of Supportive Housing created a matrix summarizing the upfront and ongoing cost of each housing type and it is included as **Attachment A**. Key considerations include the target population and needs, high start-up and on-going operating costs, available sites convenient to unhoused residents, zoning regulations, neighborhood concerns, finding a qualified service provider, disposal of solid and sanitary waste, COVID-19 safety protocols, an operations plan (security, program rules), and parking enforcement. **Attachment B** is a list of safe parking and other temporary housing locations along with the target population that is served. The list was developed for the County Unhoused Task Force and provided by the County Office of Supportive Housing.

Community Engagement and Stakeholder Outreach

Many of the above homelessness strategies will require ample time for community and stakeholder input. Such outreach could include the following primary groups:

- Unhoused and at-risk residents: This outreach could determine specific needs, target populations, demand for different types of programs and resources, service gaps, convenient and accessible locations for service delivery, and ways to share information about new resources.

- Agencies and potential partners: This outreach could help identify organizational gaps and overlaps and improve coordination with a wide variety of institutions and service providers.

- Neighbors and local businesses: This outreach will help identify community concerns associated with current conditions and proposed programs that respond to homelessness in Milpitas. This outreach would provide ample time for community members to learn and comment on proposed program locations such as proximity to housing, businesses, schools, parks, and trails, as well as program operations.

- Other jurisdictions: This outreach will help obtain input from other cities on best practices on program operations, efficiency, cost effectiveness, and lessons learned.

Potential Funding and Resources

The above programs would require a mix of staff time from City, County, and nonprofit service providers. Local funding sources such as the Housing Authority Fund, Affordable Housing Community Benefit Fund, Affordable Housing Unrestricted Fund, or General Fund should be considered as part of the annual budget process. Nonprofit partnerships and philanthropic donations could be explored, too. Community Development Block Grant CARES Act funding could be allocated for COVID-19 response. It is imperative that sustainable and ongoing funding sources need to be identified for any program operation. Providing funding to temporary programs is not likely to significantly improve outcomes for unhoused residents without associated permanent housing units.

Potential Next Steps

Below are some potential next steps based on this staff report analysis:

Year 1:

- Procure a contractor for homeless street outreach, assessment, and street-based case management.
- Formalize coordination with key stakeholders with regular meetings and communication, including the Building Safety and Housing Department, Police Department, Recreation and Community Services Department, Milpitas Unified School District, Santa Clara County, Silicon Valley Independent Living Center, LifeMoves, Sacred Heart Community Service, Project Sentinel, faith-based and volunteer organizations, and others.
- Conduct community engagement and stakeholder outreach.
- If directed, procure basic needs services such as hygiene and sanitation.
- Explore ways to enhance homelessness prevention services in Milpitas.
- Continue Rent Relief Program to prevent tenant displacement and short-term homelessness.

  [The following items were suggested by the Unhoused Task Force]

- Endorse the County's 2020-2025 Community Plan to End Homelessness by March 31, 2021.
- Develop a local implementation guide based on local needs and resources.
- Identify surplus land that can be prioritized for interim housing solutions.
- Analyze the feasibility of building new interim housing.
- Consider updating local ordinances, regulations, or local laws to reduce barriers to building new shelter and declaring a shelter crisis to facilitate flexible models like tiny homes.

Year 2:

- Explore a revenue agreement with the County to secure supportive housing units for Milpitas residents in upcoming projects such as the Sango Court development.

Additional ideas for Strategy 3 implementation under the Community Plan to End Homelessness are included in **Attachment C**, which was provided by the County Office of Supportive Housing by way of the Unhoused Task Force.

Overall, staff is seeking City Council direction on the programs and services to explore further for a Milpitas Unhoused Response and Prevention Plan. Specifically for homeless outreach, assessment, and street-based case management services, staff recommends City Council approve and authorize the City Manager to execute an agreement with the County of Santa Clara to contract for such services in an amount of $200,000 funded from the Housing Authority Fund.

Fiscal Impact:

While this report provides some estimated costs, there is no fiscal impact in Council providing staff direction on the programs and services to explore. Depending on the final programs and services Council directs staff to implement, fiscal impact will be identified at that time. Specifically for homeless outreach, assessment, and street-based case management services, there are sufficient funds in the Housing Authority Fund to fund an agreement with the County of Santa Clara in the amount of $200,000.

California Environmental Quality Act:

The recommendations have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendation:

1. Receive staff presentation; discuss and provide direction on a Milpitas Unhoused Response and Prevention Plan.
2. Approve and authorize the City Manager to execute an agreement with the County of Santa Clara for homeless outreach, assessment, and street-based case management services, in a form approved by the City Attorney.

Attachments:

A. County of Santa Clara Unhoused Task Force – Framework Matrix of Temporary and Permanent Housing Options
B. County of Santa Clara Unhoused Task Force – List of Temporary Housing
C. County of Santa Clara Unhoused Task Force – Implementation Worksheet

Matrix Summary By the Numbers

Temporary Interventions	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)
Congregate Shelter	$100,000	2 to 5 years	$16,000 to $32,000	$420,000 to $740,000
Non-congregate Shelter	$25,000 to $70,000	1 to 2 years	$31,000 to $49,000	$645,000 to $1,050,000
Motels/Hotels	$0	3 to 9 months	$45,000 to $65,000	$900,000 to $1,300,000
Rotating Faith-based Shelters	$0 to $1,000	6 months to 1 year	$7,000 to $15,000	$140,000 to $300,000
Safe Parking	$0 to $5,000	3 months to 1 year	$4,000 to $18,000	$80,000 to $365,000
Micro Homes like Pallet Shelter	$50,000 to $65,000	6 to 18 months	$40,000 to $65,000	$850,000 to $1,365,000
Structues on Wheels (incl. trailers, driveable RVs, tiny houses on wheels)	$20,000 to $80,000	2 months to 18 months	$47,000 to $65,000	$960,000 to $1,380,000
Tiny Homes like Shipping Containers or Tuff Sheds	$65,000 to $155,000	6 months to 2 years	$38,000 to $65,000	$825,000 to $1,455,000

Permanent Interventions	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)
Permanent Supportive Housing - Site Based	$500,000 to $900,000	3 to 5 years	$22,000 to $40,000	$940,000 to $1,700,000
Permanent Supportive Housing - Scattered Site	$0	3 to 9 months	$32,000 to $40,000	$640,000 to $800,000
Rapid Rehousing - Site Based	$500,000 to $900,000	3 to 5 years	$22,000 to $40,000	$940,000 to $1,700,000
Rapid Rehouing - Scattered Site	$0	3 to 9 months	$25,000 to $40,000	$500,000 to $800,000
Transitional Housing	$300,000 to $400,000	6 months to 5 years	$21,000 to $30,000	$420,000 to $1,000,000
Homelessness Prevention	$0	1 to 6 months	$5,000 to $8,000	$100,000 to $160,000
Affordable Housing w/o Supportive Services	$500,000 to $900,000	3 to 5 years	$0 to $5,000	$500,000 to $1,000,000

**See end of framework for considerations that impact all/most program types*

Attachment A

County of Santa Clara Unhoused Task Force -- Framework Matrix

	Program Type	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)	Rate of Exit to Permanent Housing	Rate of Returns to Homelessness 1 year After Program Exit	Considerations to Scale this Program Type*
Temporary Interventions	Congregate Shelter	$100,000	2 to 5 years	$16,000 to $32,000	$420,000 to $740,000	24%	24%	-These are difficult beds to fill. Reasons include: lack of privacy, feeling safe, nowhere to store personal belongings, rules and curfews.
		-Assumes purchase -Based on $15 million in acquisition, rehab, and FFE for a 150-person adult shelter (approx. 30k square feet) -Start up costs could be interchangable with Non-congregate Shelter, which offers a lease scenario	-Assumes purchase and rehab Timeframe could be interchangable with Non-congregate Shelter, which offers a lease scenario	-Dependent on household size and composition, as well as lease payments -If purchased facility, assumes cash purchase or forgivable loans, and no mortgage cost is included.		-Systemwide performance for emergency shelter programs	-Systemwide performance for emergency shelter programs	
	Non-congregate Shelter	$25,000 to $70,000	1 to 2 years	$31,000 to $49,000	$645,000 to $1,050,000	24%	24%	
		-Assumes lease -Based on Pedro Street Interim Housing -Low end of range assumes low level of rehab/tenant improvements required -Start up costs could be interchangable with Congregate Shelter, which offers a purchase scenario	-Assumes lease and rehab -Timeframe could be interchangable with Congregate Shelter, which offers a purchase scenario	-Dependent on household size and composition, as well as lease payments -If purchased facility, assumes cash purchase or forgivable loans, and no mortgage cost is included.		-Systemwide performance for emergency shelter programs	-Systemwide performance for emergency shelter programs	

**See end of framework for considerations that impact all/most program types*

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

County of Santa Clara Unhoused Task Force -- Framework Matrix

Program Type	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)	Rate of Exit to Permanent Housing	Rate of Returns to Homelessness 1 year After Program Exit	Considerations to Scale this Program Type*
Motels/Hotels	$0	3 to 9 months	$45,000 to $65,000	$900,000 to $1,300,000	Unknown	Unknown	-Securing motel rooms on a traditional nightly basis typically requires participants to change motels every 4 weeks. -Since COVID, motels under leases with County have allowed continuous stays and lower rates.
		-Notable time determinants include identifying an operator and operator hiring time	-Motel nightly rate is a significant variable; range assumes nightly rate range of $90 to $150		-Staff assume this would be similar to Emergency Shelter	-Staff assume this would be similar to Emergency Shelter	
Rotating Faith-based Shelters	$0 to $1,000	6 months to 1 year	$7,000 to $15,000	$140,000 to $300,000	24%	24%	-Requires significant, ongoing commitment from participating faith communities, so a strong level of buy-in is necessary.
	-Assumes significant in-kind contributions from participating faith communities		-Assumes significant in-kind contributions from participating faith communities, including facility-related expenses		-Systemwide performance for emergency shelter programs	-Systemwide performance for emergency shelter programs	
Safe Parking	$0 to $5,000	3 months to 1 year	$4,000 to $18,000	$80,000 to $365,000	5% to 30%	Unknown	-People participating in Safe Parking are still unsheltered -There are notable differences in serving peopl sleeping in passenger vehicles and people sleepin
	-Minimal start up costs, but some lots require site prep (striping, fencing, lighting, etc.) or special equiment		-Services include case management, toilets, and garbage service		-Depends on model and resources		
Sanctioned Encampments	$0 to $500	3 months to 1 year	$4,000 to $18,000	$80,000 to 360,500	Unknown	Unknown	-There is a wide range of Sanctioned Encampments, an approved property wher people can safely sleep in tents without worry of abatement. These costs assume that basic services (toilets and garbage services) and case management would be provided.
	-Minimal start up costs, but may require site prep (fencing, lighting, etc.) and supplies like tents		-Services include case management, toilets, and garbage service				

**See end of framework for considerations that impact all/most program types*

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County of Santa Clara Unhoused Task Force -- Framework Matrix

Program Type	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)	Rate of Exit to Permanent Housing	Rate of Returns to Homelessness 1 year After Program Exit	Considerations to Scale this Program Type*
Micro Homes like Pallet Shelter	$50,000 to $65,000	6 to 18 months	$40,000 to $65,000	$850,000 to $1,365,000	Unknown	Unknown	-The County's Shelter Crisis Declaration and corresponding ordinance have facilitated exceptions that may not have been permitted under building code.
	-Based on Civic Center Temp Housing program for 25 households -Assumes housing unit cost of approximately $10,000	-Assumes viable site is available; site identification would add time to the process	-Dependent on household size and composition, as well as site model		-Staff assume this would be similar to Emergency Shelter	-Staff assume this would be similar to Emergency Shelter	
Structues on Wheels (incl. trailers, driveable RVs, tiny houses on wheels)	$20,000 to $80,000	2 months to 18 months	$47,000 to $65,000	$960,000 to $1,380,000	Unknown	Unknown	-Standard trailers and RVs are not very accessible for people with mobility issues.
	-Based on CSJ BHC and CalOES Trailers programs -Assumes trailer cost of $15,000	-Short timeframe assumes temporary emergency set up			-Staff assume this would be similar to Emergency Shelter	-Staff assume this would be similar to Emergency Shelter	
Tiny Homes like Shipping Containers or Tuff Sheds	$65,000 to $155,000	6 months to 2 years	$38,000 to $65,000	$825,000 to $1,455,000	Unknown	Unknown	-Tuff Sheds and other structures made for storage are often built with materials that are unsafe fo human habitation. Shipping containers should be new and the manufacturer should provide the container's history.
	-Based on Civic Center Temp Housing planning and CSJ EIH program -Assumes housing unit cost range of $25,000 to $45,000 for Civic Center	-Assumes viable site is available; site identification would add time to the process	-Dependent on household size and composition, as well as site model		-Staff assume this would be similar to Emergency Shelter	-Staff assume this would be similar to Emergency Shelter	

**See end of framework for considerations that impact all/most program types*

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

County of Santa Clara Unhoused Task Force -- Framework Matrix

	Program Type	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)	Rate of Exit to Permanent Housing	Rate of Returns to Homelessness 1 year After Program Exit	Considerations to Scale this Program Type*
Permanent Interventions	Permanent Supportive Housing - Site Based	$500,000 to $900,000 -Variables include development size, unit size, land cost, etc. -Land cost per unit range is $50,000 to $205,000	3 to 5 years	$22,000 to $40,000 -Dependent on household type and model -Assumes annual services cost range from $11,000 to $18,000 -Assumens annual rental subsidy cost range from $11,000 to $22,000	$940,000 to $1,700,000	n/a -Not measured for PSH since an entry to PSH is permanent housing	2% -Systemwide performance for PSH programs	-Site property manager needs to have experience working with this populatio and being accommodating to its needs.
	Permanent Supportive Housing - Scattered Site	$0	3 to 9 months -Notable time determinants include identifying an operator and operator hiring time	$32,000 to $40,000 -Dependent on household type and model -Assumens annual servies cost range from $11,000 to $18,000 -Assumes annual subsidy of $22,000 (based on recent average)	$640,000 to $800,000	n/a -Not measured for PSH since an entry to PSH is permanent housing	2% -Systemwide performance for PSH programs	-This relies on finding units in the market rate rental inventory that meets Fair Market Rent thresholds or Reasonable Rent tests. -Over time, as market rents increase, the subsidy costs for this program type are also likely to increase.
	Rapid Rehousing - Site Based	$500,000 to $900,000 -Variables include development size, unit size, land cost, etc. -Land cost per unit range is $50,000 to $205,000	3 to 5 years	$22,000 to $40,000 -Dependent on household type and model -Assumes annual services cost range from $11,000 to $18,000 -Assumens annual rental subsidy cost range from $11,000 to $22,000	$940,000 to $1,700,000	74% -Systemwide performance for RRH programs	10% -Systemwide performance for RRH programs	Because Rapid Rehousing's goal is that program participants continue living in their housing unit after they exit the program, the supportive housing system needs to continually build units to keep up with the need for this program type.

**See end of framework for considerations that impact all/most program types*

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

County of Santa Clara Unhoused Task Force -- Framework Matrix

Program Type	One-time Start-Up Cost per household	Development Timeframe (site identified, concept to opening)	Annual Operating Cost per household	20-year Cost for 1 household (start up + 20 years of operating costs)	Rate of Exit to Permanent Housing	Rate of Returns to Homelessness 1 year After Program Exit	Considerations to Scale this Program Type*
Rapid Rehouing - Scattered Site	$0	3 to 9 months	$25,000 to $40,000	$500,000 to $800,000	74%	10%	-This relies on finding units in the market rate rental inventory that meets Fair Market Rent thresholds or Reasonable Rent tests. -Over time, as market rents increase, the subsidy costs for this program type are also likely to increase.
		-Notable time determinants include identifying an operator and operator hiring time	-Dependent on household type and model		-Systemwide performance for RRH programs	-Systemwide performance for RRH programs	
Transitional Housing	$300,000 to $400,000	6 months to 5 years	$21,000 to $30,000	$420,000 to $1,000,000	41%	23%	This is best for certain subpopulations, including people fleeting IPV, youth and young adults, and people in substance use recovery who want a more structured SLE.
	-Based on Western Motel acquisition and rehab costs and assumptions of purchase of a single family home for this purpose	-Dependent on purchase vs. lease, rehab vs. new build, etc.			-Systemwide performance for TH programs	-Systemwide performance for TH programs	
Homelessness Prevention	$0	1 to 6 months	$5,000 to $8,000	$100,000 to $160,000	95%	6%	
		-Assumes additional resources contributed to the existing Homelessness Prevention System	-Includes financial assistance and supportive services		-Homelessness Prevention System pilot performance	-Homelessness Prevention System pilot performance	
Affordable Housing w/o Supportive Services	$500,000 to $900,000	3 to 5 years	$0 to $5,000	$500,000 to $1,000,000	n/a	n/a	
	-Variables include development size, unit size, land cost, etc. -Land cost per unit range is $50,000 to $205,000		-Ranges from no resident services to more robust resident services		Data not collected	Data not collected	

**See end of framework for considerations that impact all/most program types*

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

Appendix A – Temporary Housing List

Emergency Shelter

Site or Program	Agency	City	Target Population	Nightly Beds
Asian Women's Home	AACI	San Jose	People fleeing DV	10
Boccardo Reception Center (BRC)	HomeFirst	San Jose	Adults	210
Drop-in Center Shelter	Bill Wilson Center	San Jose	Young Adults	10
Emmanuel House	Salvation Army	San Jose	Adult Males	22
Georgia Travis House	LifeMoves	San Jose	Adults Women and Families with children	38
Healthcare for Homeless Veterans	HVEHF	San Jose	Veterans	15
Host Homes	Bill Wilson Center	San Jose	Young Adults	6
Hotel de Zink	LifeMoves	North County	Adults	20
Julian Street Inn	LifeMoves	San Jose	Adults	21
La Isla Pacifica	Community Solutions	North County	People fleeing DV	18
Montgomery Street inn	LifeMoves	San Jose	Adults	32
New Haven Inn	LifeMoves	San Jose	Adults identifying as LGBTQ+	20
Next Door Solutions	Next Door Solutions	San Jose	People fleeing DV	19
Project WeHope	Project WeHope	East Palo Alto	Adults	5
Rescue Mission	City Team	San Jose	Adults	50
Safety Net Shelter	Bill Wilson Center	San Jose	Unaccompanied Minors	10
San Jose Family Shelter	Family Supportive Housing	San Jose	Families with children	105
Sunnyvale Shelter	HomeFirst	Sunnyvale	Adults and Families with children	75
Villa	LifeMoves	San Jose	Adults Women and Families with children	60
Youth Shelter - North	Bill Wilson Center	Mountain View	Young Adults	8
Youth Shelter - South	Bill Wilson Center	San Jose	Young Adults	4
YWCA	YWCA	San Jose	People fleeing DV	16
			Total Emergency Shelter	**774**

Attachment: 03 - Responses to UTF Questions (103375 : Unhoused Task Force)

Appendix A – Temporary Housing List

Emergency Shelter

Site or Program	Agency	City	Target Population	Nightly Beds
Asian Women's Home	AACI	San Jose	People fleeing DV	10
Boccardo Reception Center (BRC)	HomeFirst	San Jose	Adults	210
Drop-in Center Shelter	Bill Wilson Center	San Jose	Young Adults	10
Emmanuel House	Salvation Army	San Jose	Adult Males	22
Georgia Travis House	LifeMoves	San Jose	Adults Women and Families with children	38
Healthcare for Homeless Veterans	HVEHF	San Jose	Veterans	15
Host Homes	Bill Wilson Center	San Jose	Young Adults	6
Hotel de Zink	LifeMoves	North County	Adults	20
Julian Street Inn	LifeMoves	San Jose	Adults	21
La Isla Pacifica	Community Solutions	North County	People fleeing DV	18
Montgomery Street inn	LifeMoves	San Jose	Adults	32
New Haven Inn	LifeMoves	San Jose	Adults identifying as LGBTQ+	20
Next Door Solutions	Next Door Solutions	San Jose	People fleeing DV	19
Project WeHope	Project WeHope	East Palo Alto	Adults	5
Rescue Mission	City Team	San Jose	Adults	50
Safety Net Shelter	Bill Wilson Center	San Jose	Unaccompanied Minors	10
San Jose Family Shelter	Family Supportive Housing	San Jose	Families with children	105
Sunnyvale Shelter	HomeFirst	Sunnyvale	Adults and Families with children	75
Villa	LifeMoves	San Jose	Adults Women and Families with children	60
Youth Shelter - North	Bill Wilson Center	Mountain View	Young Adults	8
Youth Shelter - South	Bill Wilson Center	San Jose	Young Adults	4
YWCA	YWCA	San Jose	People fleeing DV	16
			Total Emergency Shelter	**774**

Attachment: 03 - Responses to UTF Questions (103375 : Unhoused Task Force)

Appendix A – Temporary Housing List

Interim Housing

Site or Program	Agency	City	Target Population	Nightly Beds
8th Street	Bill Wilson Center	San Jose	Adults	10
BRC Interim Shelter	HomeFirst	San Jose	Adults	20
Sunnyvale Shelter	HomeFirst	Sunnyvale	Adults and Families with children	100
Bridge Housing	HVEHF	San Jose	Veterans	25
Julian Street Inn	LifeMoves	San Jose	Adults	66
Montgomery Street inn	LifeMoves	San Jose	Adults	43
Georgia Travis House	LifeMoves	San Jose	Adults Women and Families with children	10
The Plaza	The Health Trust	San Jose	Adults and Families with children	46
			Total Interim Housing	**320**

Safe Parking

Site or Program	Agency	City	Target Population	Nightly Beds
Posada Safe Parking Program	Amigos De Guadalupe	San Jose & Santa Clara	Adults and Families with children	60
Focus Safe Parking Program	Gilroy Compassion Center	Morgan Hill	Adults and Families with children	12
LifeMoves Safe Parking	LifeMoves	San Jose	Adults and Families with children	72
Lots of Love	Move Mt. View	Mountain View	Adults and Families with children	57
Rotating Safe Car Park	n/a - volunteer run	Cupertino & Saratoga	Adults and Families with children	30
Silicon Valley Safe Parking	n/a - volunteer run	Campbell & San Jose	Adults and Families with children	23
			Total Safe Parking	**254**

Attachment: 03 - Responses to UTF Questions (103375 : Unhoused Task Force)

Strategy 3: Improve quality of life for unsheltered individuals and create healthy neighborhoods for all				
No.	**Strategy**	**Implementation Plan (Target/Outcome)**	**Estimated Completion Date**	**Resources**
3.1	Double the number of year-round temporary housing beds and offer a variety of welcoming temporary housing options throughout the county.			
3.1A	Build new partnerships to host emergency shelter, safe places to park and access services, and sanctioned encampments that are not swept and include hygiene and supportive services.			
3.1B	Reduce barriers to shelter such as allowing for pets, storage of personal items, greater privacy, longer stays, and provide higher levels of safety for residents.			
3.1C	Expand hours at new and existing shelters to remain open during the day.			
3.1D	Ensure that all families with children under 18 years old who are unhoused have access to emergency shelter or temporary housing.			
3.1E	Provide more public services in neighborhoods hosting emergency shelter or temporary housing programs.			

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

Implementation Worksheet

No.	Strategy	Implementation Plan (Target/Outcome)	Estimated Completion Date	Resources
3.2	Increase street outreach, hygiene services, and transportation options to match the needs of unsheltered residents.			
3.2A	Increase access to basic hygiene resources, including bathrooms, showers, and laundry			
3.2B	Increase the number of free public transit passes and other transportation options for people who are unhoused to access services.			
3.2C	Increase the number of street outreach staff and case managers working in encampments.			
3.2D	Provide opportunities for people who have lived experience of homelessness to provide peer-to-peer support.			
3.3	Increase mental health and substance use services			
3.3A	Increase the number of mobile crisis teams with clinical staff, and expand their hours to support individuals experiencing severe mental health and substance use crises.			
3.3B	Increase the number of beds available for substance use treatment and provide the follow-up supportive services needed to prevent relapses.			

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

Implementation Worksheet

No.	Strategy	Implementation Plan (Target/Outcome)	Estimated Completion Date	Resources
3.3C	Increase access to mental health treatment for people who are unhoused and struggling with mental illness.			
3.3D	Develop a plan to eliminate service access and treatment gaps for unsheltered people struggling with chronic and severe mental illness.			
3.4	Engage a cross-section of community partners to address the needs of unsheltered residents.			
3.4A	Increase outreach to city and County staff and business and neighborhood associations about available resources to assist people who are unhoused.			
3.4B	Engage the private sector to contribute funding to support health and safety services and shelter for people who are unhoused.			
3.4C	Increase coordination between agencies engaging people living in encampments to ensure consistent and humane approaches to encampment resolution.			
3.4D	Create a referral system where unhoused residents can access information and services, such as available temporary housing and homeless services.			
3.5	Ensure that community spaces are safe and welcoming for housed and unhoused residents.			

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

Implementation Worksheet

No.	Strategy	Implementation Plan (Target/Outcome)	Estimated Completion Date	Resources
3.5A	Partner with new private sector, community-based, and faith-based organizations to create safe and welcoming community spaces in every community for unhoused people to access services during the day.			
3.5B	Work with community organizations, cities, County agencies, and neighborhood associations to ensure that public spaces such as parks, libraries and community centers remain clean, well-maintained, and welcoming to all.			

Attachment: 01 - Unhoused Task Force Recommendations Memo (103375 : Unhoused Task Force)

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:	11/10/2020
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

<u>Annual reporting requirements and deadlines for sole source purchases and standardization of supplies, material or equipment</u>

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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
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 Cehapter.

(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~~c~~hapter 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 ~~c~~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.

~~4~~3. CITY. The City of Milpitas~~.~~ and City affiliated agency.

~~5~~4. CONTRACT. All types of City contracts ~~or~~, agreements, or purchase orders with the exception of public works contracts ~~which shall be governed by I-2-3.20~~, for the procurement of supplies and services or the disposal of surplus supplies.

~~6~~5. 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.~~ .

~~7~~6. CONTRACTOR. Any person having a contract with ~~a governmental body~~the City.

~~8~~7. DATA. Any recorded information, regardless of form or characteristic.

~~9~~8. ELECTRONIC. Any electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

~~10~~9. 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.

~~12~~11. 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.~~

~~13~~12. 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.~~

~~15~~13. 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.

~~16~~14. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.

~~17~~15. 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.

~~18~~16. 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.

~~19~~17. 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).

~~20~~18. 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.

~~21~~19. 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.

~~22~~20. 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.

~~23~~21. 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~~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;
~~4~~5. Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies and services;
~~5~~6. 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;
~~7~~8. Establish and maintain a central vendor database categorized by goods and services;
~~8~~9. Provide management of the Procurement Card and Single Merchant Credit Card Programs;
~~9~~10. 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.~~06~~09-2 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.~~06~~09-3 Evaluation Factors.

The request for proposals shall state evaluation factors, which shall be considered the primary basis for evaluating the proposals.

3.~~06~~09-4 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.~~06~~09-5 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.~~06~~09-6 Rejection.

Without limitation to the applicability of any other provisions of this C~~c~~hapter, 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~~ 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.~~

~~I-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. ~~(c) 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-~~2~~3 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.

(c(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.

(fc) 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) AllTo 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.

(he) The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 TheWhere the use of recycled products is designated, the Purchasing Agent sShall:

(a) Maintain a list of designated recycled products that contain the maximuma 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) GrantWhere 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 bidderor highest ranked bidder depending upon procurement process used.

(eb) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.

(dc) 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 BidsResponses

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 s~~S~~ection.

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 ~~less~~no more than ~~Twenty~~Fifty Thousand Dollars ($~~20~~50,000) shall be final.

3.~~19-5~~18-3 For procurements having a value of ~~Twenty~~more than Fifty Thousand Dollars ($~~20~~50,000~~) 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.~~20~~19 - Public Works Contract Purchasing Procedures

3.~~20~~19-1 Definitions.

For the purposes of this Section I-2-3.~~20~~19 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.~~20~~19-2 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.~~20~~19-3 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.~~20~~19-4 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.~~20~~19-5 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.~~20~~19-6 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.~~20~~19-7 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.~~20~~19-8 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:

Contract Amount	Individual Change Order Authority	Cumulative Change Order Authority
Under $100,000	10% of Award or $10,000 whichever is less	15% of Award or $15,000 whichever is less
Over $100,000	10% of Award or $20,000 whichever is less	15% of Award or $40,000 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.

Section 4 - Purchases 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-~~8~~7.01 - 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-~~8~~7.02 – 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-~~8~~7.03 - 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-~~8~~7.04 - 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 ~~9~~8 – Claims

I-2-~~9~~8.01 - 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 ~~10~~9 - Ethics in Public Purchasing

I-2-~~10~~9.01 - 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 ~~11~~10 - Severability

I-2-~~11~~10.01 ~~–~~ Severability.

If any provisions of this C~~c~~hapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this C~~c~~hapter that can be given effect without the invalid provisions or application, and to this end, the provisions of this C~~c~~hapter are declared to be severable.

Section ~~12~~11 - Exclusions from Chapter

I-2-~~12~~11.01 - 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;

~~12~~11.01-~~3~~2 Where State or Federal law requires a different procedure;

~~12~~11.01-~~4~~3 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;

~~12~~11.01-4 To the purchase of insurance;

11.01-5 To the purchase of ~~insurance~~art;

~~12~~11.01-6 To the ~~purchase of art;~~
~~12.01-7 To the~~ leasing, purchase or sale of land or any interest therein;

~~12~~11.01-~~8~~7 To the hiring of or contracting for personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);

~~12~~11.01-~~9~~8 To the purchase of utilities, including, but not limited to telephone service, gas, electricity or water;

~~12~~11.01-~~10~~9 To the purchase of securities for the City's investment portfolio subject to the City's investment policy.

~~12~~11.01-~~11~~10 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:	**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:	11/10/2020
Staff Contact:	**Christopher J. Diaz, 408-586-3040** **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.

Background:

At the August 4, 2020 City Council meeting, the City Council directed the City Attorney to return to Council with more information on a Project Labor Agreement or Community Workforce Agreement. Specifically, the City Attorney was asked to come back with more information on where such an agreement would work, either on one project or for a list of potential projects, as determined by staff. The City Attorney was to develop a draft agreement and begin negotiations with construction labor organizations.

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.)

Benchmarking Analysis
Staff reached out to other cities, counties, and school districts with current PLAs or CWAs and gathered information about agreement terms, eligible projects, administrative and construction costs, construction bids, and availability of labor. Detailed information is included in Attachment C.

1. Term of Agreement – Although this varied across jurisdictions, several cities and districts had 3 year terms, some had 5 year terms and only one entity that has a ten-year term with a five-year off-ramp. Some agreements were specific to projects and thus lasted through the completion of each specific project.
2. Eligible projects – All agreements included exclusions for certain types of projects. Several agreements have a dollar threshold of $1 million for eligible projects, the County of Santa Clara has a threshold of $2 million, while San Jose and certain projects in the County of Alameda have a dollar threshold of $3 million.
3. Costs – Almost all jurisdictions indicated that they have incurred additional administrative costs. These ranged from 3%-15% of the project construction costs. The County of Alameda has a consultant contract of $1.2 million for 3 years while the City of Anaheim has two on-call consultants with administrative costs being about 2%-3% of the engineer's estimate for each project. Some jurisdictions use in-house staff however, they were unable to quantify the additional costs. There was no specific information about any changes to the construction costs.
4. Construction bids – Most entities did not notice a significant impact in the number of bids; however, some did note that the smaller construction firms were not submitting bids.
5. Labor- In tight labor markets the availability of labor through union halls was noted as a common issue. With regards to meeting goals of local labor, many jurisdictions were unable to meet their goals, however the City of Anaheim has been able to meet and exceed their 35% local hire goal.

Stakeholder Outreach
Staff has been working with the Executive Director of the Santa Clara and San Benito Building and Construction Trades Council on the draft agreement. The Executive Director had provided the City with their preferred template agreement. Staff has made some revisions to the template agreement and is seeking Council feedback on the agreement terms. The Executive Director has asked expressed concerns about three key areas – term of agreement, dollar threshold of eligible projects, and project exclusions. Although staff understand the concerns from the Executive Director, since this is the City's first citywide PLA, staff recommendations are based on input from other agencies with experience in implementing PLAs, the City's prior experience in implementing a PLA for the Library project, as well as on the analysis of the types of projects in the City's CIP and existing staff capacity and expertise.

Staff has shared the draft PLA with the developer and construction community; however, additional outreach is envisioned to occur after preliminary feedback from the Council.

Key Terms of draft PLA
Staff is seeking input from the City Council 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 brakes.
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. It is important to note that not all of these projects are currently fully funded.

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.

Referral

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 to the PLA.

a. Core Workers
Core Workers are defined as a worker who the Contractor proposes to use for Project work who the Contractor has employed for at least ninety (90) out of the one hundred and twenty (120) working days prior to award of a construction contract and meets the minimum experience and licensure requirements to do the work in question. Core Workers will be dispatched in the following manner: 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.

b. 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 the need for additional resources and staff training to implement and enforce the PLA as well as potential additional construction and project administration costs to account for the additional time, consultants, and effort required from contractors, staff is unable to accurately determine the potential fiscal impacts of this policy at this time. If Council provides direction to move forward with the policy, staff will need to evaluate the impact of the policy on staff and/or consultant 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
Benchmarking Data

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 "Core Worker" means a worker who the Contractor proposes to use for Project Work pursuant to Section 8.5 below, who has been employed by the Contractor for at least ninety (90) out of the one hundred and twenty (120) working days prior to award of a Construction Contract and meets the minimum experience and licensure requirements described in Section 8.5(a)-(c).

1.8 "Council" means the Santa Clara & San Benito Counties Building and Construction Trades Council.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "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.

DRAFT

(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.

1.11 "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.

1.12 "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

1.13 "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.

DRAFT

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.

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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.

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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.

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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.

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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

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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: _____

DRAFT

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: _____

DRAFT

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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Rich Tran, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

	City of Alameda	County of Alameda	City of Anaheim	City of Berkeley	City of Hayward	City of San Leandro	San Leandro Unified School District	City of San Jose	County of Santa Clara
1. Term of the Agreement	3 years between the trades and the city. Each contractor entering the PSA is bound for the duration of the project.	10 years with a 5 year off-ramp. At the 5 year mark, either party (County or Trades) may choose to renegotiate a new agreement.	Adopted last Dec., 5 year Term	The previous Community Workforce Agreement (CWA) which is our PLA, had a two year term and went from July 1, 2018 to June 30, 2020. During COVID and due to my predecessor and the PW Director retiring in June of 2020, we are a bit delayed in renewing the agreement, but it is scheduled to go to our Council in Dec. and we are proposing a three year extension through June 30, 2023. The Alameda County Building trades Council is in agreement with the term extension.	For our library project, it has been the term of the construction contract. For our other general projects, it has been three years.	3 yeas with an additional 3 year extension.	3 years	5 year term	Initial term of five years including a provision for automatic rollover of the Agreement if neither party requests to change the Agreement at the end of the five-year term.
2. Project Thresholds: Cost value of projects under PLA	$1M for construction contracts	Ours is a countywide agreement, across multiple agencies. Our Project Stabilization/Community Benefits Agreement (PS/CBA) covers projects $1M+, with the exception of projects lead by the Public Works Agency (PWA) whose projects are covered for all trades at the $3M+ threshold and projects $1M+ are covered for Trucking (Teamsters) ONLY.	$1M	$500,000	Any project over $1M	Community Workforce Agreement (CWA) applies to City construction projects whose value meets or exceeeds $1,000,000.	The way we arranged this agreement is by project. We listed our major projects as subject to the PLA. Not by threshold. Our past one here had a threshold of 500k. In my previous district is was 1M.	Applies to public works projects with engineer estimates of $3M or more.	Projects with an engineer's estimate of $2 million or more.
3. Project Cost Implications: Increased bid prices? Staff costs?	Hard to measure, as we include the PSA requirements in the bid documents for projects expected to meet the $1 million threshold, so only contractors that will agree to be bound to the agreement will bid.	Project costs implications: Hard to ascertain with market fluctuations. Our sense is that project costs, particularly for PWA (most of their prime contractors are signatory), have not been significantly impacted. Staff costs: There are additional costs for staff time to implement the agreement. Alameda County has not done a full analysis on this.	Not seeing a bid increase at this time, but project costs are 2.5% to 3% higher due to cost of consultant assistance required to manage the many requirements of the PLA.	Unknown	Typically we anticipate increases of 5% minimum. City had hired a Sr. Management Analyst to help with coordination. He left for outside opportunities and hasn't been rehired yet. There are some early project coordination efforts and follow up quarterly meetings if other labor issues arise.	Yes, there has been a slight project cost implication with the main portion being staff time to monitor compliance. (Regarding bid prices) this is difficult to judge. It is possible that non-union bidders may not be bidding on our projects and we may have less competition and subsequently higher cost.	There is about a 15% increase in cost associated with our past PLA. There is a lot more paperwork. There are some associated staff costs as there will be more meetings to attend and track.		We have no evidence of bid price increases and no staff costs.
4. Reduction in number of contractors bidding since PLA?	The City of Alameda has longstanding relationships with contractors who bid on our major recurring projects, such as street resurfacing and sewer rehabilitation; these have continued after the PSA was approved.	Not that we can see. We are concerned about small and diverse subcontractor participation, and have built in a tool to assess the impacts on these contractors at the 3 year mark. At that time, parties will meet and confer to make any mutually agreed upon adjustments.	Not seeing a lack of bidders on projects since PLA adoption, however the PLA does have restrictions on how many of the contractors in house staff can be used on a project, which requires the contractor to obtain labor from Union Halls.	Unknown	This is hard to prove, but we believe so. For a private development RFP, it has affected the number of developers willing to respond.	There is the potential that we may have less bidders. We suspect that we have less bidders for our street slurry seal projects.	There certainly was when we were bidding out our modular buildings. Only two contractors could comply with the PLA.		We don't think there has been a significant change but have not analyzed the data.
5. Labor shortage problems?	I have heard ancedotal evidence of problems finding local labor, especially apprentices and specialty subcontractors. Many contractors for major projects already employ union labor.	This may have been the case during full employment, but Alameda is experiencing upwards of 14% unemployment right now, so we don't see this as a problem.	Contractors are restricted in using the number internals staff	Maybe at times, but is is also common for contractors to have their own employee pool and these people would join the local craft union for the duration that they are working on the project.	Yes, there has been no special benefit to our contractors to hire out of local union halls.	In general there is difficulty finding City local labor at the Union Hall; however, there is sufficient labor within the County.	Yes, there has been a labor shortage in the past few years.		Not as of yet, and actually the Santa Clara and San Benito Counties Building and Construction Trades Council (SBTC) has facilitated our general contractors with introductions to union subs.
6. Does PLA establish local hiring goals and have they been met?	Local workforce development requirements are on pages 17-18 (goal of up to 25% by trade). I do not have data on the actual percentages overall.	Yes and yes.		Yes, the local hire goal is 20% Berkeley residents for each craft based on the total number of hours that each craft works.	Yes, there are goals. Those goals are not often met.	Yes, however, the local hiring goals have never been met.	Not in the past PLA.	Provision for employers not currently working under a Master Agreement to hire five core workers. Includes a Targeted Hire Agreement	No
7. Who manages requirements of PLA? Agency staff or consultant? If consultant, can they share costs?	Agency staff manage the requirements, mostly ensuring that the PSA is included in the bid documents for projects that meet the threshold, and that the selected contractor signs the agreement to be bound. At that point, the contractor is responsible for meeting the requirements. Agency staff also meet about once per quarter to review upcoming projects.	Both (agency staff and consultant manage the PLA requirements). Consultant cost sharing: Current is $1.2M for 3 years of service. This includes PS/CBA coordination, as well as labor compliance services.	Consultant is used to help manage the PLA projects, consultant cost is 2.5-3% of the project engineers estimate. The PLA requires a large amount of paperwork and other tasks to be completed ahead of the project start of work. Coordinating the preconstruction conferences has been time consuming and the consultant has helped in this area. The amount of work required additional city staff, and the consultants also assist with required labor compliance items.	Community Development Project Coordinator administers the CWA as part of his role administering Berkeley Labor Standards and Employee programs.	Agency staff	Kurry Foley of our staff manages the requirements of the PLA in conjunction with our Project Managers.	This has been done in house with the aid of our Construction Management Team.		The SBTC Compliance manager meets with the construction contractor and our project management team at the beginning of the project. SBTC also offers training to the team. The Targeted Hiring Agreement portion of the PLA is supported by Louise Auerhahn - Community Workforce Coordinator for Working Partnershhips USA
8. Covered work?	Section 2.3 Covered work: "Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement painting or repair of buildings, structures and other works, and related activities for the Project, including geotechnical and exploratory drilling, temporary HVAC, and landscaping and temporary fencing that is within the craft jurisdiction of one of the Union(s) and which is directly or indirectly part of the Project, including, without limitation to the following examples, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, start-up, and modular furniture installation. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all on-site soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published."	Section 3.6 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for the Covered Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of the Covered Project, including, without limitation to the following examples, landscaping and temporary fencing, temporary HVAC, geotechnical and exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve the Covered Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for the Covered Project in temporary yards, dedicated sites, or areas adjacent to the Covered Project, and at any on-site or off-site batch plant constructed to supply materials to the Covered Project.	Section 2.4 Applicability: This Agreement shall not apply to any work of any Contractor other than that on Project Work specifically covered by this Agreement.		Section 2.3.1 "This Agreement covers without limitation, all construction Projects with a construction cost estimate of more than one million dollars ($1,000,000). For these Projects, the Agreement covers all Contractor performed on-site site preparation, on-site surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activites for the Project that is within the craft jurisdiction of one of the Unions and which is directly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary and permanent HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and installation of modular furniture that is covered by the State of California Prevailing Wage determinations. On-site work includes 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 solely to supply materials to the Project. The scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published. This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, and ooperational revisions to systems and/or subsystems performed for the Project after completion unless it is performed by City employees.	All on-site construction, demolition, alternation, painting or repair of buildings, structures, landscaping, temporary fencing and other related activities for the projects that is within the craft jurisdictions of one of the signatory unions and that is part of the projects, including, pipelines, site preparations, survey work, and demolition.		Design/build and design/bid public works projects are covered;	Covers without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activites for the Project that is within the craft jurisdiction of one of the Unions and which is directly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary and permanent HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and installation of modular furniture. On-site work includes 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 solely to supply materials to the Project. The scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published. This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, and ooperational revisions to systems and/or subsystems performed for the Project after completion unless it is performed by County employees.
	Section 2.4.2: This agreement covers all on-site fabrication work over which the City, Contractor/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, it is agreed hereby that this Agreement covers any off-site work, including fabrication work necessary for the Project defined herein, that is covered by a current MLA or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.	Section 3.9 This Agreement covers all on-site fabrication work over the County or Contractors possess the right of control (including work done for Covered Projects in any temporary yard or area established for a Covered Project). Additionally, any offsite work, including fabrication, necessary for Covered Projects defined herein, that is lawfully covered by a current MLA or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution of this Agreement shall be considered covered work under this Agreement.			Section 2.3.2 excerpt "This Agreement covers all on-site fabrication work over which the City or Contractor(s) possesses the right of control (including work done for the Projects in any temporary yard or area established for the Project(s). Additionally, it is agreed hereby that off-site work, including fabrication work necessary for the projects defined herein that is covered by a provision of a current Master Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the Effective Date of this Agreement shall be considered covered work under this Agreement.				
		Section 3.19.3 Excerpt "All electrical utility, voice-data-voice 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 that provides the access to the building via a conduit or series of conduits shall be Covered Work.							

8. Work not covered?	Not covered: Any private development project, furnishing of supplies, equipment or materials which are stockpiled for later use, public work contracts by the City which are not included in the project, no contractor/employee(s) non-construction craft employees, work performed on or near leading to the Site of work, off-site maintenance of leased equipment and on-site supervision of such work.	Not covered: factory built modular construction, operation of equipment and machinery owned or controlled by the County and its subcontractors and not directly related to construction of Covered Projects, all employees of any Contractor or any other consultant of the County not performing Covered Work, any work performed on or near or leading to or on the site of work covered by this Agreement and undertaken by state, country, city or other governmental bodies, or their contractors, or by public utilities or their contractors, and/or by the County or its contractors, in each case for work that is not Covered Work, work performed by public or private utilities, off-site maintenance of leased equipment and on-site supervision of such work, non-construction support services contracted by the County or any Contractors in connection with Covered Projects, all work by employees of the County, all warranty functions/work, corrective work, repair and maintenance work on purchase equipment performed by manufacturers' representatives or vendors after Accceptance of any Covered Projects by the County pursuant to a contract for Covered Work on a Covered Project, All Post-Disaster and Emergency Work and work privately contracted by owners of property that the County is leasing.	Excludes speciality utility work, high voltage work, or work requiring special contactor licenses. It also excludes commissioning, inspection, and maintenance work where use of manufacturer personnel is required so as not to void equipment warranties.		Not covered: public works contracts, any work performed on, near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors, or by public or private utilities or their contractors, or by the City or its contractors for work not part of the scope of the Projects, off-site maintenance of leased equipment or the on-site supervision of such work.	Agreement does not apply to projects for which there is a prohibition, exclusion or other limitation imposed because of a grant requirement, funding source agreement, or other agreement that creates a risk to the City of any repayment or return to source of any funds received.			Furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, city or other governmental bodies or their contractors; or by public or private utilities or their contractors. Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

MEMORANDUM

City Manager's Office

DATE: September 9, 2020

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager

FROM: Ashwini Kantak, Assistant City Manager

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-RESONSE 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

FROM: Ashwini Kantak, Assistant City Manager

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

M E M O R A N D U M

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 agendized for a future City Council meeting for approval.

The revocation of an approval to a City Councilmember could occur if the use of the City facility violates state law of 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.

Attachment 1

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.

Attachment 2

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

M E M O R A N D U M

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

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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					
10	Discuss a "safety first" or other event in lieu of National Night Out (per CAC)	Nuñez	A	10/20/2020	11/10/2020
9	Bring back update report & discuss status of playing fields for girls' softball in Milpitas	Dominguez	A	10/20/2020	To City/Schools subcommittee, then to City Council
8	Consider naming "Milpitas Hills"	Dominguez	A	10/20/2020	to Econ. Dev. Commission 1st. Return later to City Council
7	Emergency request to cap rents on small businesses (tenants) in Milpitas	Dominguez	A	10/6/2020	Resched from 10/20 to 11/10/2020
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, to 11/10
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**				
	Discuss budget reductions in next FY with input from residents, employees	Nuñez	A	10/6/2020	on 10/20/2020 agenda (not heard @mtg)
	Discuss potential litigation - re: govts' action on Jamboree-Project Homekey	Tran	A	10/6/2020	multiple Closed Sessions - Oct. 2020
	Resolution on financial status of the City, steps to be taken	Nuñez	A	8/18/2020	Resolution adopted 9/01/2020

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

	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
	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
	Emergency item for next agenda: extend tenant eviction protections	Dominguez	A	6/16/2020		withdrawn, covered by other govt
	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
	(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 in support of elimination of discrimination v. women	Dominguez	A	1/7/2020		5/19/20 Reso. adopted. 8/04/20 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

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

	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
	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**	
	Establish Railroad quiet zone	Tran, Montano	F	9/17/2019	report from City Engineer on 11/17/2020	
	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

MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS

F: on a Form

CM: to/from City Manager

PREVIEW LIST OF ITEMS
MILPITAS CITY COUNCIL AGENDA

NOVEMBER 17, 2020

CONSENT CALENDAR

1) Receive City Council calendars for November and December 2020 (City Clerk)
2) Approve City Council special meeting minutes of November 4, 10, 2020 (City Clerk)
3) Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co, Award Contract to Sausal Corp, in the amount of $7,638,200 for Fire Station No. 2 Replacement Project No. 3447 (Steve Erickson)
4) Adopt a Resolution to accept Santa Clara County Emergency Medical Services Agency Trust Funds of $18,290.37; and approve a budget adjustment to the Fire Department's FY 2020-21 operating budget (Geoff Maloon)
5) Adopt a Resolution Approving 3-year agreement with Cayenta for Finance Software (Mike Luu, Walter Rossmann)
6) Authorize City Manager to Execute Amendment to Fee Reimbursement Agreement for TASP Public Improvements at 730-750 E. Capitol Avenue by Anton Milpitas (Steve Erickson)
7) Authorize City Manager to Execute Stormwater Ops & Maint Agreement for Siena Project at 600 Amalfi Loop (Steve Erickson)
8) Approve and Authorize City Manager to Execute an Agreement with Raimi + Associates to Provide Consulting Services for Objective Design Standards for Residential Development per SB 35 (Jay Lee)
9) Approve Reprogramming and Advancement of $6.7 million in CIP funding and Approve Budget Appropriations in the amount of $100,000 from Water Fund, and $11.3 million from General Fund Lease Revenue Bonds to Fund Construction of Energy and Water Conservation Measures (Tony Ndah)
10) Accept Additional FY 2020 Citizens' Option for Public Safety (COPS) Grant funding of $65,536 to Milpitas Police Dept. and Approve related Budget Appropriation (Jared Hernandez)
11) Accept the 2020 Bulletproof Vest Partnership Grant and Approve a Related Budget Amendment (John Torrez)
12) Approve City Holiday Closing Schedule for 2020 (Jeannine Seher)
13) Approve Side Letter for Updated Compassionate Leave Policy (Jeannine Seher)
14) Approve Schedule of City Council meetings for 2021 (City Clerk)
15) Approve Mayor's recommendation to appoint 2 students to Youth Advisory Commission, 1 new resident to Veterans Commission, and re-appoint 1 Arts Commissioner to a new term (Mayor/City Clerk)
16) Approve City of Milpitas Commission Annual Workplans (Renee Lorentzen)

PUBLIC HEARING

17) Actions for approval of new 44-apartment unit development project at Sunnyhills (Ned Thomas)

COMMUNITY SERVICES

18) Receive Staff Report on Railroad Quiet Zone Process and Provide Direction to Staff (Steve Erickson)

PUBLIC SAFETY

19) Receive Staff Report. Accept City of Milpitas Emergency Management Program Assessment and Implementation by Witt O'Brien's (Rick Frawley, Geoff Maloon)

LEADERSHIP

20) 1st reading/Introduce Ordinance No. 65.150 re: Responsible Construction (Chris Diaz)
21) Receive Report on 1st Quarter FY 2020-21 Financial Status and rebalance budget (Walter Rossmann)
22) 1st reading/Introduce Ordinance for general updates to MMC (Ashwini Kantak, Chris Diaz)

REPORT

23) Review list of Future Agenda Items Requested by City Councilmembers (Mayor & CC/City Clerk)

PREVIEW NEXT AGENDA

24) Preview list of items for December 1, 2020 (City Clerk)