



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA
TUESDAY, DECEMBER 15, 2020
MILPITAS, CA
6:30 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

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

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

Meeting shall be livestreamed - Go to:

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

PUBLIC COMMENT INSTRUCTIONS

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

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_N8k1A99KRuuXqYyTabS76Q

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

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items. 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

ADJOURN TO CLOSED SESSION (6:30 PM)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to CA Government Code § 54956.9(d)(2)

City as Defendant

Award of Contract Regarding Fire Station No. 2 Replacement Project No. 3447

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

PLEDGE OF ALLEGIANCE (7:00 PM)

INVOCATION (assigned to Councilmember Phan)

PUBLIC FORUM

Those interested are invited to address City Council on any subject not on tonight's agenda, orally via zoom webinar (instructions on page 1). Speakers may provide their name and city of residence for the Clerk's record, and comments may be limited to three minutes or less. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:15 PM)

City Councilmembers may make brief announcements or suggest future agenda items at this time. For future agenda items, the 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 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 (7:30 PM)

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

C1. Receive City Council Calendars of Meetings for December 2020 and January 2021 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council meeting minutes of the December 1, 2020 Regular City Council Meeting (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve meeting minutes of the December 1, 2020 Regular City Council meeting, as drafted by the City Clerk.

C3. Adopt a Resolution Granting Acceptance of Creighton Park Renovation, Project No. 5109, Authorizing the City Engineer to File a Notice of Completion, and Authorize the City Engineer to Issue a Notice of Final Acceptance (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution granting acceptance of Creighton Park Renovation, Project No. 5109, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance.

- C4. Adopt a Resolution Approving and Authorizing the City Manager to Purchase (3) Caterpillar XQ230 200kW and (1) Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems Through a Sourcewell Cooperative Contract in the Amount of \$609,118.03 (Staff Contacts: Walter C. Rossmann, 408-586-3111 and Tony Ndah, 408-586-2602)**

Recommendation: Adopt a Resolution approving and authorizing the City Manager to purchase three Caterpillar XQ230 200kW and one Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems through a Sourcewell Cooperative Contract in the amount of \$609,118.03.

- C5. Adopt a Resolution Updating the Conflict of Interest Code in 2020 and Amending List of Designated Disclosure Positions for the City of Milpitas (Staff Contacts: Mary Lavelle, 408-586-3001 and Pam Caronongan, 408-586-3003)**

Recommendation: Adopt a resolution updating the City of Milpitas Conflict of Interest Code in 2020, including the list of employee classifications required to file annually the FPPC Form 700/Statement of Economic Interests.

- C6. Adopt Two Resolutions Authorizing the Finance Director to Execute Agreements and other Documents with the California Department of Tax and Fee Administration for Implementation of Measure F (Staff Contact: Walter C. Rossmann, 408-586-3111)**

Recommendation: Adopt two Resolutions authorizing the Finance Director to execute agreements and other documents with the California Department of Tax and Fee Administration for implementation of Measure F.

- C7. Approve and Authorize the City Manager to Execute an Agreement with Raimi & Associates to Provide Consulting Services related to the Preparation of Objective Design Standards for Residential Development in accordance with California Senate Bill 35 (Staff Contact: Jay Lee, 408-586-3077)**

Recommendation: Approve and authorize the City Manager to execute the Agreement with Raimi & Associates to provide consulting services related to the preparation of Objective Design Standards in accordance with California Senate Bill 35.

- C8. Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and the Milpitas Police Officers Association (MPOA) (Staff Contact: Jeannine Seher, 408-586-3086)**

Recommendation: Approve and authorize the City Manager to enter into a side letter agreement with the Milpitas Police Officers Association (MPOA) to extend the existing labor agreement through December 31, 2023; eliminate a 5% salary increase scheduled for January 2021; and provide for salary increases of 2.5% each for July 2022 and July 2023.

- C9. Approve and Accept a \$50,000 Donation to the Barbara Lee Senior Center from the Andrea Dorey Estate (Staff Contact: Renee Lorentzen, 408-586-3409)**

Recommendation: Approve and accept a \$50,000 donation to the Barbara Lee Senior Center from the Andrea Dorey Estate.

- C10. Receive Report on Bids and Award Five-Year General Services Agreement to BMI Imaging, Inc. for Document Digitization and Microfiche Services in the Amount of \$380,000 (Staff Contacts: Mike Luu, 408-586-2706 and Walter C. Rossmann, 408-586-3111)**

Recommendation: Receive a report on bids, and award and authorize the City Manager to execute a five-year General Services Agreement to the lowest responsible bidder submitting a responsive bid, BMI Imaging Inc., in the amount of \$380,000 for document digitization and microfiche services for various City departments, subject to annual appropriation of funds.

C11. Appoint Milpitas Resident Kristal Caidoy as the Milpitas Representative to the Santa Clara Valley Transportation Authority's Bicycle and Pedestrian Advisory Commission (BPAC) for a Two-Year Term (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Appoint Milpitas resident Kristal Caidoy to the Santa Clara Valley Transportation Authority's Bicycle and Pedestrian Advisory Commission (BPAC) for a two-year term retroactively from July 1, 2020 to July 1, 2022.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (7:45 PM)

12. Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co., Waive Immaterial Bid Deviations and Award the Construction Contract to Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; Authorize the City Manager to Execute the Construction Contract; Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders; Approve and Authorize the City Manager to Execute Amendment No. 1 to the Design Service Agreement with Shah Kawasaki Architects; and Approve a Related Budget Amendment (Staff Contact: Steve Erickson, 408-586-3301)

Recommendations:

- a) Adopt a Resolution to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations and award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; authorize the City Manager to execute the construction contract with Sausal Corporation; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000
- b) Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with Shah Kawasaki Architects to increase compensation by \$75,000
- c) Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

PUBLIC SAFETY (8:00 PM)

13. Receive Report on the Status of COVID19 Testing in the City of Milpitas; Authorize Additional \$278,000 to Fund the City's Mobile Testing Unit and the County Testing Sites through March 31, 2021; and Approve and Authorize the City Manager to execute Amendment No. 2 to Agreement with IGeneX (Staff Contact; Geoffrey Maloon, 408-586-2818)

Recommendations:

- a) Receive an update regarding the status of COVID-19 testing in Milpitas.
- b) Authorize \$278,000 to fund the City's mobile testing unit and the County testing sites through March 31, 2021.
- c) Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with IGeneX extending the term from October 31, 2020 to December 31, 2021.

REPORTS OF MAYOR & COUNCILMEMBERS (8:15 PM)

14. Engage in Discussion on Councilmembers' Ideas to Economically Assist the Milpitas Community During the Pandemic (Contact: Councilmember Phan, 408-586-3032)

15. **Discuss Hosting a "Safety First" Community Event, Planned with/by the Milpitas Community Advisory Commission (Contact: Councilmember Phan, 408-586-3032)**
- 16. 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 (9:00 PM)

- 17. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on January 5, 2021 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Receive list of anticipated agenda items for the January 5, 2021 regular City Council meeting.

ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

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

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

November 2020						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
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29	30					

Milpitas City Council Calendar

December 2020

January 2021						
S	M	T	W	T	F	S
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24	25	26	27	28	29	30
31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	 7:00 PM-Virtual Tree Lighting Ceremony (online)	7:00 PM-City Council	2:00 PM-Santa Clara VTA Briefing - Northeast Group (BN) 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (BN)	5:30 PM-Milpitas Chamber of Commerce Board (CM) 5:30 PM-Santa Clara VTA Board of Directors (BN)	3:00 PM-City Council Transportation Subcommittee (RT/CM) 5:30 PM-Cities Association Annual Membership Meeting	
6	7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)		9:30 AM-COVID-19 Business Webinar 7:00 PM-Silicon Valley Clean Energy Board of Directors (CM) 7:00 PM-Planning Commission	9:00 AM-Special City Council 4:00 PM-Treatment Plant Advisory Committee (CM) 4:00 PM-Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM-Youth Advisory Commission (AP) 7:00 PM-Cities Assoc of SCC (CM)		
13	5:30 PM-General Plan Advisory Committee	5:00 PM Special meeting - Swearing-in new City Council 6:30 PM Closed Session 7:00 PM-City Council	6:00 PM-Energy and Environmental Sustainability Commission			
20				 CHRISTMAS EVE AND CHRISTMAS HOLIDAY CITY OFFICES CLOSED		
27	 CITY OFFICES CLOSED					

December 2020						
S	M	T	W	T	F	S
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February 2021						
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28						

Milpitas City Council Calendar

January 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					 CITY HALL CLOSED NEW YEAR'S DAY	
3	7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	?:00 PM -Closed Session 7:00 PM -City Council	2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group 7:00 PM -Community Advisory Commission	5:30 PM -Santa Clara VTA Board of Directors 5:30 PM -Milpitas Chamber of Commerce Board (CM)		
10	4:30 PM -Economic Development and Trade Commission (KD) 7:00 PM -Library and Education Commission (CM)	4:00 PM -Milpitas HOPE Suicide Prevention Task Force	12:00 PM -Santa Clara Valley Water District - Water Commission (CM) 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM)	4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 4:00 PM -Treatment Plant Advisory Committee (CM) 7:00 PM -Cities Assoc of SCC (CM) 7:00 PM -Youth Advisory Commission (AP)	*4:30 PM -City Council Finance Subcommittee (RT/CM)	
17	 MARTIN LUTHER KING JR. BIRTHDAY CITY HALL CLOSED	?:00 PM -Closed Session 7:00 PM -City Council	6:00 PM -Energy and Environmental Sustainability Commission	6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)		
24	7:00 PM -Science, Technology and Innovation Commission 7:30 PM -Arts Commission (CM)		7:00 PM -Planning Commission			
31						

**Finance Subcommittee will only meet as needed*

Draft CITY OF MILPITAS MEETING MINUTES

Minutes of: Regular Meeting of the Milpitas City Council
Date: Tuesday, December 1, 2020
Time: 7:00 PM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

CALL TO ORDER

Mayor Tran called the regular meeting to order at 7:03 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference/zoom webinar.

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

ABSENT: None

PLEDGE

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

INVOCATION

Councilmember Phan asked Vice Mayor Nuñez to give the invocation prayer.

PUBLIC FORUM

Six residents provided oral comments (in the zoom webinar): Voltaire Montemayor, Urvishkumar Mehta, Lupe Ruvalcaba (on item no.14), Rosie Walker, Jenina Fernandez, and Jade Dang.

ANNOUNCEMENTS & FUTURE AGENDA ITEMS

City Manager Steve McHarris reported a key to the City was recently presented to Ms. Tiny Rosales, a member of the native community, and showed a video with her thanks to City officials. He updated all on Covid 19 status related to the latest County directive. A virtual holiday tree lighting was available to view online, prepared by Recreation Services for residents and viewers at any time.

Mayor Tran announced the annual Jack Emory canned goods food drive going on at Milpitas schools, with additional donations welcome. He also made an announcement explaining why the field lights were not on at night at the Milpitas Sports Center play fields. He was pleased to view success at the new skatepark.

Councilmember Montano asked staff about work occurring at Penitencia Creek near Curtis. City Manager and Public Works Director Tony Ndah responded that the work was most likely related to annual maintenance work but that they would provide a follow up response.

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 of interest were reported.

Reporting out of an abundance of caution, Councilmember Phan and Vice Mayor Nuñez both said they had received campaign contributions from the Santa Clara & San Benito Counties Building Trades Council, relative to agenda item no. 14 (Project Labor Agreement).

CODE OF CONDUCT

City Attorney Diaz read aloud the City Council Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the December 1, 2020 meeting agenda, as presented

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

CONSENT CALENDAR

City Clerk Mary Lavelle announced election results related to agenda items no. C3 and C4, resolutions approving parcels to be added into Community Facilities Districts No. 2005-1 and 2008-1. Parcel owners (voters) for both developments submitted ballots with result for each 1 Yes and 0 No votes. Thus, the City Council was able to go ahead with its vote on the Resolutions on consent.

Councilmember Phan and Vice Mayor Nuñez requested to remove items no. 13 (Responsible Construction Ordinance) and no. 14 (Project Labor Agreement) from this agenda, and to postpone both items.

(1) Motion: to reconsider the vote above to approve the agenda

Motion/Second: Mayor Tran/Councilmember Phan

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

(2) Motion: to approve the December 1, 2020 City Council agenda, including deferral of items no. 13 and no. 14

Motion/Second: Mayor Tran/Councilmember Montano

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

(3) Motion: to approve the consent calendar, including items no. C1 – C8

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

- | | |
|----------------------|---|
| C1. Council Calendar | Received the City Council calendars of upcoming meetings for November and December 2020. |
| C2. Meeting Minutes | Approved the meeting minutes of the November 4 and 10, 2020 Special City Council meetings. |
| C3. Adopt Resolution | <ul style="list-style-type: none">a) Following receipt of election results from the City Clerk, adopted Resolution No. 9019 certifying election results and adding Tract No. 10533 to Community Facilities District 2005-1 (Annexation No. 21); andb) Approved Final Tract Map No. 10533, including approval of street names and accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; andc) Approved and authorized the City Manager to execute a Subdivision Improvement Agreement between City of Milpitas and Robson Homes, LLC. |
| C4. Adopt Resolution | Following receipt of election results from the City Clerk, adopted Resolution No. 9020 certifying election results and adding Parcel 5 to Community Facilities District No. 2008-1 (Annexation No. 20) for 355 Sango Ct. |

C5. Adopt Resolution	Adopted Resolution No. 9021 eliminating pay raise (salary increase) for unrepresented miscellaneous employees effective in 2021, previously authorized on June 18, 2019, as specified in Resolution No. 8888, and eliminating a 2021 raise for unrepresented Police Management classifications and unrepresented Fire Management classifications.
C6. Amend Grant Agreement	Approved and authorized the City Manager to execute the First Amendment to the 2019 State Homeland Security Grant Program Agreement.
C7. Accept CAFR	Accepted the City's Comprehensive Annual Financial Report (CAFR) and other Related Annual Audited Reports for the Fiscal Year ended June 30, 2020.
C8. Reappoint 1 EESC Commissioner	Re-appointed Commissioner Patti Sexton to a new 3-year term on the Energy and Environmental Sustainability Commission, a term that would expire in October 2023.

COMMUNITY DEVELOPMENT

9. Assistance to Homeless in Milpitas	Building Housing and Safety Director Sharon Goei presented a request for City Council to approve two proposed actions: (1) a pilot program to provide mobile shower and laundry service for homeless and at risk residents; and (2) a resolution to endorse Santa Clara County's 2020-2030 Plan to end homelessness. Housing Manager Adam Marcus provided information on the recommendation for the mobile service - Dignity on Wheels by Project WeHOPE. Director Mr. TJ Clark from Dignity on Wheels (DOW) gave more details and answered Council questions on how DOW mobile units operated in the communities served. Mayor Tran invited public comments and heard six speakers Voltaire Montemayor, Lisa – Hope for the Unhoused, Allysson McDonald, Urvishkumar Mehta, Jackie Romero, and Tom Valore, <u>Motion:</u> to accept the staff report, and to direct staff to proceed with an agreement with Dignity on Wheels by Project WeHope as a pilot program in Milpitas for six months, and include collaboration with the Milpitas Unified School District to provide assistance to MUSD students/families for laundry service and detergent Mayor Tran allowed for one more resident speaker and heard Norma Morales. Motion/Second: Mayor Tran/Councilmember Montano Motion carried by a vote of: AYES: 5 NOES: 0 Vice Mayor Nuñez departed the meeting at 9:20 PM.
10. Adopt Resolution on County 5 Year Plan to End Homelessness	Ms. Goei introduced the Council-directed request to adopt a resolution in support of the County plan. The Mayor invited public speakers and heard from: Allysson McDonald, Urvishkumar Mehta, Voltaire Montemayor, Matthew Reed of Silicon Valley at Home, Tom Valore, Jackie Romero. Mayor Tran stated he would propose a Homelessness Task Force in January. <u>Motion:</u> to adopt Resolution No. 9022 endorsing the 2020-2025 Santa Clara County Community Plan to End Homelessness Motion/Second: Councilmember Montano/Mayor Tran

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

11. Railroad Quiet Zone

Transportation Engineer Steve Chan gave a report on railroad noise and efforts to establish a Railroad Quiet Zone in Milpitas, as regulated by the Federal Railroad Administration.

Mayor Tran invited speakers and heard from: Urvishkumar Mehta, Jackie Romero, and Voltaire Montemayor.

Mayor Tran would like this project added into the Capital Improvement Program..

Motion: to receive the staff report and to add the Railroad Quiet Zone study into the City's Capital Improvement Program (CIP) in year 5, with no expenditure at this time

Motion/Second: Councilmember Phan/Councilmember Dominguez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

LEADERSHIP

**12. Introduce Ordinance –
on Purchasing**

Deputy City Manager/Finance Director Walter Rossmann presented the new ordinance for an update to city regulations on purchasing, including an increase in bidding thresholds and in contract amendment authority.

Mayor Tran asked for public comments: Voltaire Montemayor and Urvishkumar Mehta.

The City Attorney read aloud the title of Ordinance No. 23.15 "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."

Motion: to waive the first reading beyond the title and introduce Ordinance No. 23.15 to update the Milpitas Municipal Code section on purchasing

Motion/Second: Councilmember Phan/Mayor Tran

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Nuñez)

**13. Responsible
Construction Ordinance**

Item was removed from this agenda.

14. Project Labor Agreement

Item was removed from this agenda.

REPORTS

**15. Council Sponsored
Events, and US Census**

Councilmember Dominguez requested to skip this item, and to move ahead to item no. 16, and Mayor Tran agreed upon hearing no objections from the City Council.

Mayor Tran returned to the item at 11:40 PM, and requested staff to remove the part about the US Census, since that was over. Ms. Dominguez agreed. She suggested the

events topic be discussed at a City Council retreat, after the addition of one new City Councilmember, and related to City Council Handbook. Council agreed.

16. Cap on Business Rents

This item was discussed prior to item no. 15. Councilmember Dominguez expressed need in the Milpitas small business community for financial and other resource assistance, during the pandemic. City Attorney Diaz described what might be legally possible with regard to business rent restrictions.

Mayor Tran invited comments and heard from: Jackie Romero, Voltaire Montemayor and Urvishkumar Mehta.

Following further discussion, the following motion was voted upon.

Motion: to bring the topic of an emergency cap on business tenants rent at a future City Council meeting

Motion/Second: Councilmember Dominguez/Councilmember Phan

Motion failed by a vote of:

AYES: 2 (Dominguez, Phan)
NOES: 2 (Montano, Tran)
ABSENT: 1 (Nuñez)

17. Council Ideas to Assist

Item was not heard.

18. Safety Event

Item was not heard.

19. City Council Housing Subcommittee

Mayor Tran did not want to dismantle the Housing Subcommittee and to continue on with important current topics.

Councilmember Dominguez expressed her goal to eliminate the Housing Subcommittee and for the full City Council/Housing Authority to discuss major housing items.

Mayor Tran invited comments and heard from: Jackie Romero, Voltaire Montemayor and Urvishkumar Mehta.

Councilmember Dominguez made a motion to bring all housing discussion of the City of Milpitas to the body of five elected officials representing the Housing Authority (City Council) rather than to the Housing Subcommittee, starting in January.

No second to her motion was offered, so the motion died. No vote was taken.

20. List of Council requested Agenda Items

Mayor Tran stated that this item (list of future agenda items) was okay.

Councilmember Phan asked that on those items listed for Vice Mayor Nuñez, to change those to his own name upon Mr. Nuñez' departure from the City Council.

NEXT AGENDA PREVIEW

21. Preview Agenda Items

Received list of anticipated agenda Items for the next regular City Council meeting scheduled for December 15, 2020.

ADJOURNMENT

Mayor Tran adjourned the regular City Council meeting at 12:10 AM on Wednesday, December 2, 2020.

Draft meeting minutes submitted by City Clerk Mary Lavelle



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Granting Acceptance of Creighton Park Renovation, Project No. 5109, Authorizing the City Engineer to File a Notice of Completion, and Authorize the City Engineer to Issue a Notice of Final Acceptance
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/15/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendations:	Adopt a Resolution granting acceptance of Creighton Park Renovation, Project No. 5109, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance.

Background:

On June 18, 2019, the City Council awarded a construction contract to Marina Landscape, Inc. for the Creighton Park Renovation, Project No. 5109 ("Project") in the amount of \$ 2,389,435. Creighton Park is located at 1173 Olympic Drive and is approximately 5 acres with picnic areas, walking path, turf area, site lighting, and playground equipment. The park was originally constructed in 1968 with subsequent renovations were completed in 1981 and 1991. The current renovation Project includes replacement of the walking pathway, site lighting, picnic areas, fitness station, dog park, playground area with new equipment with resilient surfacing and fencing; improvement to accessibility and pedestrian access, landscape and irrigation improvements, improved site access and entry points; and installation of new restroom facility, water meters, back backflow preventors, storm drain and electrical utilities.

Analysis:

The Project has been successfully completed on-time and within budget, and the park will re-open toward the end of December 2020. Staff recommends the City Council adopt a resolution granting acceptance of the Project and authorize 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 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:

Adequate funds were available in the Project budget to complete construction of the Project. Annual park maintenance costs for the new restroom facility is estimated at \$34,648 and sufficient funding is available in the Public Works Department.

California Environmental Quality Act:

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

Recommendations:

Adopt a Resolution granting acceptance of Creighton Park Renovation, Project No. 5109, authorizing the City Engineer to file a Notice of Completion, and authorize the City Engineer to issue a Notice of Final Acceptance.

Attachment:

Resolution + Notice of Completion

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING
ACCEPTANCE OF THE CREIGHTON PARK RENOVATION, PROJECT NO. 5109**

WHEREAS, the City of Milpitas has heretofore entered into a contract with Marina Landscape, Inc., for the Creighton Park Renovation Project, Project No. 5109, in the amount \$ 2,389,435 (“Project”), and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 15th day of December, 2020, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account.
3. The City Council authorizes the City Engineer to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Recording Requested by and
When Recorded Mail to:

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

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

CITY OF MILPITAS
NOTICE OF COMPLETION
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about June 18, 2019, the City Council of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Creighton Park Renovation, Project No. 5109.**
2. A description of the site of which the City is owner for said work of improvement is: **1173 Olympic Drive** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The name and address of the direct contractor is: **Marina Landscape, Inc., 3707 W. Garden Grove Blvd, Orange, CA 92868.**
4. A general statement of the kind of work done or materials furnished to the City is as follows: **The improvements include new picnic areas; shade structure; play equipment and surface; vehicle and pedestrian pathway; Americans with Disabilities (ADA) accessibility improvements; security lighting; restroom structure; and enhancements to entry points, landscaping, drainage, and park furniture.**
5. Said work of improvement was accepted by the Milpitas City Council as complete on Dec. 15, 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 December ____, 2020 at Milpitas, California.

Steve P. Erickson,
City Engineer/Director of Engineering
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 and Authorizing the City Manager to Purchase (3) Caterpillar XQ230 200kW and (1) Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems Through a Sourcewell Cooperative Contract in the Amount of \$609,118.03
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/15/2020
Staff Contacts:	Walter C. Rossmann, 408-586-3111 Tony Ndah, 408-586-2602
Recommendation:	Adopt a Resolution approving and authorizing the City Manager to purchase three Caterpillar XQ230 200kW and one Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems through a Sourcewell Cooperative Contract in the amount of \$609,118.03.

Background:

In the spring of 2019, Pacific Gas and Electric (PG&E) announced that it would expand its planned Public Safety Power Shutoff (PSPS) program in order to prevent wildfires across the state. In addition to PSPS events, the Bay Area is vulnerable to natural disasters, including floods, wildfires, and earthquakes, which can all threaten safety and access to power. Power loss can have devastating impacts on drinking water and wastewater utilities and the residents they serve. Inoperable pumps at a drinking water utility can make firefighting difficult and pressure loss can allow contaminants to enter the drinking water distribution system from surrounding soil and groundwater. For wastewater utilities, pump failure may lead to direct discharge of untreated sewage to the environment or sewage backups into homes and businesses.

On June 2, 2020, as part of the adoption of the FY 2020-21 Budget, the City Council approved a total of \$700,000.00 in one-time funding for the acquisition of four portable generators, which will be assigned to water and sewer pump stations. In preparation for catastrophic power failure events such as PSPS, earthquakes, and other events that could trigger a power failure, portable backup generators are necessary to ensure power continues at the City's critical pump stations. Specifically, the City has hillside communities that have drinking water pumped up hill. The pumping facilities are operated by electric pumps and would not be able to function without power. Hillside water storage tanks at Tularcitos and Minnis Ranch could provide water for one to two days, while PSPS events could shut down power for up to seven days. The acquisition of a portable generator for Venus Pump Station will improve the City's ability to continue to pump sewage out of the Pines neighborhood in the event of a power failure.

Analysis:

Staff recommends the purchase of (3) Caterpillar XQ230 200kW and (1) Caterpillar XQ425 375kW Portable Generators for the Public Works Department from Peterson Power Systems. The use of portable, trailer mounted, diesel-fueled generators is to supply emergency electricity for hillside water pump stations and for the Venus Sewer Pump Station during catastrophic events or planned outages. During power outages, these generators will ensure adequate water flow and pressure to the affected hillside service areas and sewage removal from the Pines.

Public Works has completed the facility improvements to standardize connection points with the emergency portable generators. Transfer switches have been installed at Country Club and Tularcitos Water Pump Stations as well as Venus Sewer Pump Station.

Staff recommends a cooperative purchase through Sourcewell for the Caterpillar Model XQ230 and the Caterpillar Model XQ425 portable generators from Peterson Power Systems. Cooperative purchasing through Sourcewell is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the Sourcewell NJPA Contract No. 120617-CAT and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas' Purchasing Division. Contracts No. 120617-CAT is current through January 29, 2022. Sourcewell contracts provide nationally bid volume pricing not otherwise available for a single purchase. The purchase will be completed by issuing a purchase order with the City's standard terms and conditions for equipment and materials.

Policy Alternative:

Alternative: City Council does not adopt resolution approving the purchase of generators.

Pros: The City does not spend approved funding to purchase the portable backup generators for water and sewer pump stations.

Cons: Critical pump stations will be at risk, potentially causing devastating impacts on drinking water and wastewater utilities and the residents they serve.

Reason not recommended: If the portable generators are not funded, in the event of extended loss of power, such as those resulting from PG&E PSPS events, hillside customers could be without water for multiple days and the Venus Pump Station will not function, potentially causing sewage backup.

Fiscal Impact:

The total cost for the purchase of (3) Caterpillar XQ230 200kW and (1) Caterpillar XQ425 375kW Portable Generators is \$609,118.03. The funding to cover the purchase of the portable generators has been included in the FY 2020-21 Public Works operating budget.

California Environmental Quality Act:

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

Recommendation:

Adopt a Resolution approving and authorizing the City Manager to purchase (3) Caterpillar XQ230 200kW and (1) Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems through a Sourcewell cooperative contract in the amount of \$609,118.03.

Attachment:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF FOUR CATERPILLAR PORTABLE GENERATORS FROM PETERSON POWER SYSTEMS, THROUGH A COOPERATIVE PROCUREMENT CONTRACT

WHEREAS, in spring 2019, Pacific Gas and Electric (PG&E) announced that it would expand its planned Public Safety Power Shutoff (PSPS) program in order to prevent wildfires across the State of California; and

WHEREAS, in addition to PSPS events, the San Francisco Bay Area is vulnerable to natural disasters, including floods, wildfires, and earthquakes, which can all threaten safety and access to power; and

WHEREAS, power loss can have devastating impacts on drinking water and wastewater utilities and the residents they serve, and inoperable pumps at a drinking water utility can make firefighting difficult and pressure loss can allow contaminants to enter the drinking water distribution system from surrounding soil and groundwater; and

WHEREAS, for wastewater utilities, pump failure may lead to direct discharge of untreated sewage to the environment or sewage backups into homes and businesses; and

WHEREAS, on June 2, 2020, as part of the adoption of the FY 2020-21 budget, the City Council approved a total of \$700,000.00 in one-time funding for the acquisition of four portable generators, which will be assigned to water and sewer pump stations to increase the City's preparedness for catastrophic power failure events such as PSPS, earthquakes, and other events that could trigger a power failure; and

WHEREAS, Municipal Code Section I-2-3.08 ("Cooperative Procurement") specifically authorizes the Purchasing Agent to purchase supplies and general services without complying with the quotation or bidding requirements of that Chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by a public agency, as defined by Government Code Section 6500, regardless of whether the City is a named party to the agreement or an actual participant in such a program, provided that the underlying purchase was made using competitive negotiation or bidding procedures at least as restrictive as the City's, and that the supplies or general services purchased must be the same and be offered at the same price as the supplies and general services subject to the agreement or program; and

WHEREAS, the City of Milpitas has been a member of National Joint Powers Alliance (NJPA) since 2008. On June 6, 2018, NJPA changed its organization name to Sourcewell and all prior agreements entered into with NJPA have and will continue without impact. Sourcewell is a local government unit, public corporation and public agency pursuant to the Minnesota Constitution and enabling law Minn. Stat. § 123A.21. Sourcewell cooperative purchasing contracts are made available through the joint exercise of powers law Minn. Stat. § 471.59 to all member agencies; and

WHEREAS, on January 29, 2018, the NJPA issued on behalf of itself, other government agencies, non-profits, and all members of NJPA, Request for Proposal (RFP) No. 120617 titled "Electrical Energy Power Generation and Related Parts, Supplies and Services." As a result of that solicitation, NJPA awarded to Caterpillar, Inc., contract No. 120617-CAT, which includes portable generators; and

WHEREAS, Sourcewell has contract No. 120617-CAT available through its cooperative purchasing organization to all of its public agency members; and

WHEREAS, pursuant to the contract between the NJPA and Caterpillar Inc., the City may purchase the four portable generators for the cost of \$609,118.03; and

WHEREAS, the Purchasing Agent has reviewed all of the documentation related to RFP No. 120617 and contract No. 120617-CAT awarded to Caterpillar, Inc., by the NJPA, and has determined that the contract is current through January 29, 2022, and that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas, and that the list price for the equipment is the same as that offered in the original contract.

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

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves the purchase three (3) Caterpillar XQ230 200kW and one (1) Caterpillar XQ425 375kW Portable Generators from Peterson Power Systems pursuant to a cooperative procurement.
3. The City Manager is authorized to execute the purchase order with the City's standard terms and conditions based on the cooperative procurement through Sourcewell's contract portfolio and the solicitation conducted by the NJPA.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Updating the Conflict of Interest Code in 2020 and Amending List of Designated Disclosure Positions for the City of Milpitas
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/15/2020
Staff Contacts:	Mary Lavelle, City Clerk, 408-586-3001 Pam Caronongan, Deputy City Clerk, 408-586-3003
Recommendation:	Adopt a resolution updating the City of Milpitas Conflict of Interest Code in 2020, including the list of employee classifications required to file annually the FPPC Form 700/Statement of Economic Interests.

Background:

California's Political Reform Act requires that the City Council review the City's Conflict of Interest Code biennially in even-numbered years to determine if it is up to date or if changes are necessary.

The City's Conflict of Interest Code was last amended on December 18, 2018 with City Council's adoption of Resolution No. 8833. Presently, new employee classifications need to be added to the list of designated filers as well as deletions and updates to the list of positions must be appropriately made. Those on the list are required annually by April 1 to file the Fair Political Practices Commission (FPPC) Form 700 / Statement of Economic Interests with the City Clerk.

Additionally, Form 700 is filed when designated employees are newly hired or depart from City employment. The code and list were reviewed by the City Attorney's office and appropriate disclosure categories, per state law, have been indicated on the Designated Positions list.

The list for consideration does not include City officers covered by California Government Code section 87200. Those officials file directly with the FPPC electronically for on paper format with the City Clerk who forwards those original forms to the agency in Sacramento, as required. These include City Councilmembers, Planning Commissioners, City Manager, City Attorney and City Treasurer (Finance Director).

Since January 2020, the City's designated employees as well as "87200 filers" have been given two methods to file their Form 700. The first method is to submit an original or "wet signature" hard copy form turned in to the City Clerk's Office. The second method is to file electronically via Netfile – an online platform approved by the Secretary of State for accepting electronic filings of Statements of Economic Interests as well as campaign statements.

Analysis:

Appropriate City of Milpitas employee classifications have been added to the Appendix to the Code of Conflict of Interest, and appear in redline form (in document included in the agenda packet). New classifications have been added and several title of job classifications have been amended, e.g. adding "Safety" to the Building and Housing Director. The list of filers additionally includes Council-appointed volunteer Commissioners and Alternate Members of seven City Commissions.

The City Council is requested to adopt a resolution (included in agenda packet) to approve the updated Code and Appendix (list of filers). Upon adoption of the resolution, the City Clerk is required to file a copy of the

updated Code and list of filers with the Fair Political Practices Commission office in Sacramento by the of the year 2020.

Policy Alternative:

Alternative: Failure to adopt a resolution to update the list of employee classifications required to file FPPC Form 700 / Statement of Economic Interests, resulting in not updating the City of Milpitas Conflict of Interest Code.

Pros: None

Cons: Not adopting the resolution would result in not having the City of Milpitas Conflict of Interest Code up to date, as required by state law.

Reason not recommended: Failure to adopt a resolution to update the City of Milpitas Conflict of Interest Code will result in not only having an outdated Conflict of Interest Code but will also result in the City falling out of compliance with the FPPC.

Fiscal Impact:

None

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt a resolution updating the City of Milpitas Conflict of Interest Code in 2020, including the list of employee classifications required to file annually the FPPC Form 700/Statement of Economic Interests.

Attachments:

- a) Resolution
- b) Exhibit: Conflict of Interest Code with Appendix

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE
CITY OF MILPITAS CONFLICT OF INTEREST CODE, AS REQUIRED BY THE
POLITICAL REFORM ACT**

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 *et seq.* (the “Act”), which contains provisions relating to conflicts of interest which partially affect all officers, employees and consultants of the City and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, on August 4, 1992, the Milpitas City Council adopted a Conflict of Interest Code (the “Code”) by Resolution No. 6114, which was last amended on December 18, 2018 by Resolution No. 8833, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the City have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update the City’s Conflict of Interest Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the City Council of the proposed amended Code was provided each affected designated position and publicly posted for review at the City Clerk’s office and on the City of Milpitas website; and

WHEREAS, a public meeting was held upon the proposed Amended Code at a regular meeting of the City Council on December 15, 2020, at which all present were given an opportunity to be heard on the proposed amended Code.

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 does hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto as **Exhibit A** and shall be on file with the City Clerk and available to the public for inspection and copying.
3. The amended Conflict of Interest Code of the City of Milpitas shall become effective at the time of its adoption and approval.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT A

CONFLICT OF INTEREST CODE OF THE CITY OF MILPITAS

California's Political Reform Act (Government Code section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. The incorporation page, Regulation 18730 and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the City of Milpitas.

The Mayor, City Councilmembers, Planning Commissioners, City Manager, City Attorney and the City Treasurer (Director of Finance) may file their annual statements of economic interests directly with the Fair Political Practices Commission, via electronic submission online. They may alternately choose to file electronically or on paper with the Milpitas City Clerk. All other officials and designated positions required to submit a statement of economic interests shall file their statements with the City Clerk as the City's Filing Officer. The City Clerk shall make and retain a copy of all statements filed by the Mayor, ~~Members of the City Councilmembers~~ and ~~the Planning Commissioners~~, the City Manager, City Attorney and City Treasurer ~~(Finance Director)~~, and shall forward the originals of ~~paper filed original such~~ statements to the Fair Political Practices Commission, per Government Code section 87200. The City Clerk shall ~~the~~ retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours, per Government Code section 81008.

~~THIS FORMALLY ADOPTS FPPC STANDARD CODE~~

Adopted by Milpitas City Council on _____, 2020

APPENDIX

CONFLICT OF INTEREST CODE OF THE CITY OF MILPITAS

Adopted _____, 2020

PART A

The Mayor, ~~Members of the~~ City Council ~~members~~, ~~Members of the~~ Planning Commission ~~ers~~, the City Manager, the City Attorney and the City Treasurer (Director of Finance) and all other City Officials who manage public investments as defined by 2 California Code of Regulations Section 18700.3 are NOT subject to the City's Code but must file disclosure statements under California- Government Code Section 87200 et seq.

Those holding one of the positions above may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Section 87200 or not.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below are Other City Officials who manage public investments. Individuals holding one of the listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Section 87200.

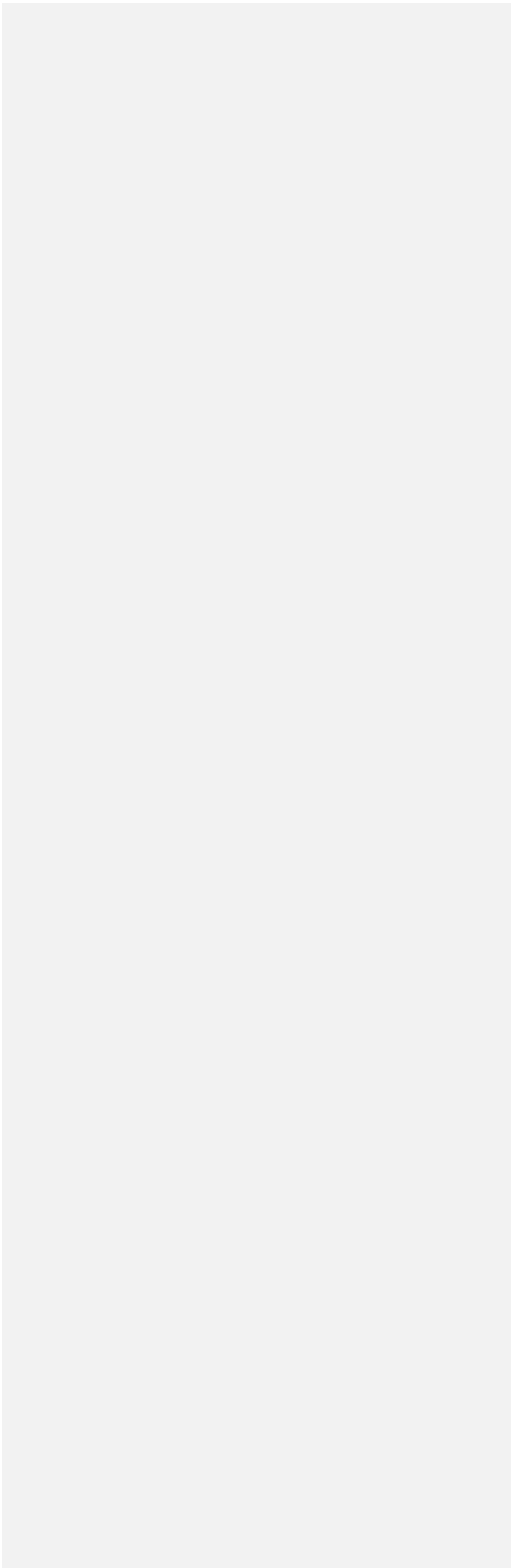
These positions are listed here for informational purposes:

Director of Financial Services
Investment Consultants

City of Milpitas Conflict of Interest Code

Adopted _____

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DESIGNATED POSITIONS GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS	DISCLOSURE CATEGORIES
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Administrative Analyst II	5
Assistant City Engineer	2, 3, 5
Assistant City Manager	1, 2
Assistant Finance Director	1, 2
Assistant Fire Marshal	2, 3
Assistant Police Chief of Police	5
Associate Civil Engineer	2, 3, 5
Associate Planner	2, 3, 5, 6
Battalion Chief, Fire Dept.	5
Budget Manager	4
Building Inspection Manager	2, 3, 5, 6
Building Safety and Housing Director	1, 2
Building/ Neighborhood Preservation Inspector	2, 3, 5, 6
Building Inspector – Electrical	2, 3, 6
Building Official	2, 3, 5, 6
Buyer	4
Capital Improvement Projects Manager	2, 3, 5, 6
City Clerk	5, 6
Community Services Engagement & Inclusion Administrator	1, 2, 7
Deputy City Manager	1, 2
Deputy Fire Chief	5
Deputy Public Works Director	1, 2
Economic Development Director	1, 2
Employee Relations Officer	5
Engineering Director/City Engineer	1, 2
Fire Battalion Chief	5
Fire Chief	5, 6
Fire Captain, Prevention/ Hazmat Inspector	3, 5 , 6
Fire Captain, Hazmat Inspector	5
Fire Marshal	2, 3, 5, 6
Housing Authority Administrator	1, 2, 7
Housing and Neighborhood Services Manager	1, 2, 7
Human Resources Director	5
Information Services Technology Director	5
Information Services Technology Manager	5

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Permit Center Manager	5
Plan Review Manager	5
Plan Check Engineer	5
Plan Checker	5
Planning Director	1, 2
Planning Manager	2, 3, 5
Police Captain	5
Police Chief	5
Principal Civil Engineer	1, 2
Principal Planner	1, 2
Public Information Officer	5
Public Works Manager	1, 2
Public Works Director	1, 2
Public Works Inspector	6
Purchasing Manager	4
Recreation and Community Services Director	5
Recreation Services Supervisor	5
Senior Administrative Analyst	5
Senior Accountant	4
Senior Building Inspector	5, 6
Senior Code Enforcement Officer	6
Senior Human Resources Analyst	5
Senior Information Analyst/Developer	5
Senior Plan Check Engineer	5
Senior Planner	1, 2
Senior Public Works Inspector	2, 5, 6
Transportation and Traffic Engineer	2, 3, 5

CITY OF MILPITAS COMMISSIONS

Arts Commission	5, 7
Community Advisory Commission	1, 2
Economic Development & Trade Commission	1, 2
Energy and Environmental Sustainability Commission	1, 2
Parks, Recreation & Cultural Resources Commission	1, 2
Science, Technology & Innovation Commission	1, 2

CONSULTANTS and NEW POSITIONS

Individuals serving as a consultant as defined in FPPC Regulation 18700.3 or in a new position as defined in Regulation 18734 created since this Code was last approved who make or participate in making decisions must file under the broadest disclosure category set forth in theis Code, subject to the following limitation: The City Manager may determine, that due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be a written document. (Gov. Code §, FPPC Regulations 18219 and 18734.) The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code (Gov. Code §81008).

PART B - DISCLOSURE CATEGORIES

Disclosure categories identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business in during the previous two years in the jurisdiction of the City of Milpitas.

This Conflict of Interest Code does not require the reporting of gifts from outside this City's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position, per Regulation 18730.1.

Following is the list of seven disclosure categories, defined:

Category 1: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, doing business in, or that own real property within the City of Milpitas.

Category 2: all interests in real property which is located in whole or in part within, or not more than two miles outside the boundaries of the City of Milpitas, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the City of Milpitas.

Category 4: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the City of Milpitas.

Category 5: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated positions' department, unit or division.

Category 6: all investments and business positions in business entities, and sources of income, from, business entities subject to the regulatory, permit, or licensing authority of the designated positions' department, unit or division.

Category 7: all investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, and income from a nonprofit or other organization, if the source is of the type to receive grants or other monies from or through the City of Milpitas or its subdivisions.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Two Resolutions Authorizing the Finance Director to Execute Agreements and other Documents with the California Department of Tax and Fee Administration for Implementation of Measure F
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/15/2020
Staff Contact:	Walter C. Rossmann, 408-586-3111
Recommendation:	Adopt two Resolutions authorizing the Finance Director to execute agreements and other documents with the California Department of Tax and Fee Administration for implementation of Measure F.

Background:

On August 4, 2020 the Milpitas City Council unanimously placed Measure F – the City of Milpitas Public Services Measure – on the November ballot for voter consideration. Measure F enacts a $\frac{1}{4}$ cent sales tax for 8 years. As part of the General Election on November 3, 2020, Milpitas voters approved the measure with 60.36% of ballots cast supporting the local sales tax. Measure F funds will help maintain the City's finances and prevent reductions to vital City public safety, youth, senior and other services.

On December 3, 2020, the Santa Clara County Registrar of Voters certified the election results and on December 10, the City Council certified the passage of Measure F.

The City has an agreement with MuniServices, LLC, doing business as Avenu/MuniServices, to provide financial consultant services that consist of sales and use tax audit, quarterly sales tax analysis and reporting, and property tax audit. In order to perform these services, it is necessary for the consultant to examine the sales or transactions and use tax records administered and maintained by the California Department of Sales Tax and Fee Administration ("CDTFA"). On Sept. 1, 2015, the City Council adopted Resolution No. 8500 authorizing the Director of Finance to examine all of the sales, transactions, and use tax records pertaining to sales, transactions, and use taxes collected for the City consistent with the Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law and Muni Services, LLC, was designated to examine the City's sales, transactions, and use tax records.

Analysis:

In preparation for the implementation of Measure F, staff recommends that the City Council adopt a resolution authorizing the Finance Director to execute agreements and other documents with the California Department of Tax and Fee Administration (CDTFA), which administers the collection and distribution of the sales tax receipts. The agreements (in agenda packet) include the Preparatory agreement, which is necessary for the City and CDTFA to prepare, administer and operate a transactions and use tax, and the Administrative agreement, which is necessary for the CDTFA to perform exclusively all functions related to the administration and operation of the local $\frac{1}{4}$ Cent Sales Tax. Additionally, the resolution will authorize the Finance Director to sign administrative forms such as the local revenue branch contact form for all communications, designation letter to authorize City employees to receive and review sales or transactions and use tax records, jurisdiction contact form for notifications and appeals, EFT authorization agreement, and media and registration request.

In order for CDTFA to start collecting the $\frac{1}{4}$ cent sales tax, all required documents need to be submitted by January 4, 2021.

Consistent with Resolution No. 8500, staff recommends that the City Council adopt a resolution authorizing the Finance Director or other officer or employee of the City of Milpitas designated in writing by the Finance Director to the CDTFA, for examination of sales or use tax records. The resolution also designates MuniServices, LLC, doing business as Avenu/MuniServices, as the representative of the City specifically to examine these records.

Policy Alternatives:

Alternative 1: Do not adopt the resolution authorizing the Finance Director to execute agreements with the CDTFA to implement Measure F.

Pros: None.

Cons: Without approval, staff will not be able to submit all required documents to CDFTA by January 4, 2021 to ensure implementation of the ¼ cent sales tax by April 1, 2021.

Reason not recommended: Adopting the resolution will facilitate implementation of Measure F by April 1, 2021 and help alleviate the impacts on the City's budget from the effects of COVID-19.

Alternative 2: Do not adopt the resolution authorizing the examination of sales or transactions and use tax records.

Pros: None.

Cons: Without approval, staff and MuniServices, LLC, the City's sales tax consultant, will not be able to review sales tax records.

Reason not recommended: MuniServices, LLC, audits the CDFTA for properly allocating sales and use tax receipts to the City of Milpitas. In FY 2019-20, MuniServices' audits generated net \$387,429 in additional sales tax revenue for the City.

Fiscal Impact:

Measure F is expected to raise an estimated \$6.5 million annually, that will help sustain City services.

Additionally, in FY 2019-20, MuniServices' audits generated net \$387,429 in additional sales tax revenue for the City.

California Environmental Quality Act:

Not applicable

Recommendation:

Adopt two Resolutions authorizing the Finance Director to execute agreements and other documents with the California Department of Tax and Fee Administration for implementation of Measure F.

Attachments:

1. Resolution to Execute Agreements
2. Preparatory Agreement
3. Administrative Agreement
4. Resolution for Examination of Confidential Records

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE
FINANCE DIRECTOR TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND
USE TAX**

WHEREAS, on November 3, 2020, the City of Milpitas' voters approved Ordinance No. 308 amending the City Municipal Code and providing for a local transactions and use tax; and

WHEREAS, the California Department of Tax and Fee Administration ("Department") administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Department will be responsible to administer and collect the transactions and use tax for the City of Milpitas ("City"); and

WHEREAS, the Department requires that the City enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes; and

WHEREAS, the Department requires that the City Council authorize the agreements.

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

The "Preparatory Agreement" attached hereto as **Exhibit A** and the "Administrative Agreement" attached hereto as **Exhibit B** are hereby approved and the Finance Director is hereby authorized to execute each agreement.

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

AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE CITY'S TRANSACTIONS AND USE TAX ORDINANCE

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Milpitas, hereinafter called *City*, and the CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called *Department*, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Department at the times and in the amounts hereinafter specified all of the Department's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Department's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Department. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Department the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Department's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration
P.O. Box 942879 MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

Finance Director

455 East Calaveras Boulevard

Milpitas, CA 95035

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Department has received all payments due from City under the terms of this agreement.

CITY OF MILPITAS

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator

Walter C. Rossmann

Local Revenue Branch

(Typed Name)

Director of Finance/Deputy City Manager
(Title)

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of Milpitas has adopted, and the voters of the City of Milpitas (hereafter called “City” or “District”) have approved by the required majority vote, the City of Milpitas Transactions and Use Tax Ordinance (hereafter called “Ordinance”), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California State Department of Tax and Fee Administration, (hereinafter called the “Department”) and the City do agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.
2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No.308, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II
ADMINISTRATION AND COLLECTION
OF CITY TAXES**

A. Administration. The Department and City agree that the Department shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the Department Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Department.

G. Records of the Department.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the City to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Department's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

H. Annexation. City agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the

Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

ARTICLE IV

COMPENSATION

The City agrees to pay to the Department as the State's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the City.

ARTICLE V

MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Department shall be addressed to:

California State Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

Finance Director

455 East Calaveras Boulevard

Milpitas, CA 95035

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2021. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Department written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by City to Department to prepare to administer the City Ordinance.

2. City will pay to Department and allow Department to retain Department's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and

developing instructions for Department's staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Department shall bill City on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. City shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

CITY OF Milpitas

CALIFORNIA STATE DEPARTMENT OF
TAX AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Walter C. Rossmann
(Typed Name)

Director of Finance / Deputy City Manager
(Title)

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE
EXAMINATION OF TRANSACTIONS (SALES) AND USE TAX RECORDS**

WHEREAS, pursuant to Ordinance No. 308 of the City of Milpitas (hereinafter referred to as “City”), and to Section 7270 of the Revenue and Taxation Code, the City entered into a contract with the California Department of Tax and Fee Administration (hereinafter referred to as “CDTFA”) to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

WHEREAS, the City deems it desirable and necessary for authorized representatives of the City to examine confidential transactions and use tax records of the CDTFA pertaining to transactions and use taxes collected by the CDTFA for the City pursuant to that contract; and

WHEREAS, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of CDTFA records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the transactions and use tax records of the City.

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

Section 1. The Finance Director or other officer or employee of the City designated in writing by the Finance Director to the CDTFA is hereby appointed to represent the City with authority to examine transactions and use tax records of the CDTFA pertaining to transactions and use taxes collected for the City by the CDTFA pursuant to the contract between the City and the CDTFA. The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of the City’s transactions and use taxes by the CDTFA pursuant to the contract.

Section 2. The Finance Director or other officer or employee of the City designated in writing by the Finance Director to the CDTFA is hereby appointed to represent the City with authority to examine those transactions and use tax records of the City for purposes related to the following governmental functions of the City:

- a) functions related to sales, transaction, and/or use tax collection or administration; and
- b) functions related to budgeting and forecasting of revenue; and
- c) functions related to the detection of misallocations and deficiencies

The information obtained by examination of CDTFA records shall be used only for those governmental functions of the City listed above.

Section 3. MuniServices, LLC, dba Avenu/MuniServices, is hereby designated to examine the transactions and use tax records of the CDTFA pertaining to transactions and use taxes collected for the City by the CDTFA. The person or entity designated by this section meets all of the following conditions:

- a) has an existing contract with the City to examine those transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those transactions and use tax records only to the officer or employee authorized under Section 1 (or Section 2) of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;

d) is prohibited by that contract from retaining the information contained in or derived from those transactions and use tax records after that contract has expired.

The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of City's transactions and use taxes by the City pursuant to the contracts between the City and CDTFA.

Section 4. This Resolution supersedes all prior transactions and use tax resolutions of the City of Milpitas adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Agreement with Raimi & Associates to Provide Consulting Services related to the Preparation of Objective Design Standards for Residential Development in accordance with California Senate Bill 35
Category:	Consent Calendar-Community Development
Meeting Date:	12/15/2020
Staff Contacts:	Jay Lee, Principal Planner, 408-586-3077 Chris Schroeder, Purchasing Agent, 408-586-3161
Recommendation:	Approve and authorize the City Manager to execute the Agreement with Raimi & Associates to provide consulting services related to the preparation of Objective Design Standards in accordance with California Senate Bill 35.

Background:

On June 16, 2020, the City Council authorized acceptance of a grant in the amount of \$310,000.00 from the California Department of Housing and Community Development (HCD) through the State's Planning Grant Program, which is funded by Senate Bill 2 (SB 2), also known as the Building Homes and Jobs Act. SB 2 established a \$75.00 recording fee on real estate documents as a permanent, ongoing source of funding dedicated to affordable housing development. The Planning Grant Program is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments to prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production. Grantees may submit reimbursement requests for approved and eligible costs incurred for work completed during the grant term, which ends on June 30, 2022. City Planning staff will use the grant funding to create land use and zoning tools to streamline housing approvals, comply with State legislation, and support the state's goal of addressing critical housing needs. Developing a comprehensive set of Objective Design Standards for residential and mixed-use development across the city is one of three key tasks being funded as part of this effort. Refer to the Info Memo on SB 2 Grant-Funded Projects for additional detail on the other related efforts.

Although there are design guidelines for the Metro and Midtown Specific Plan areas, broader citywide design guidelines for new development currently do not exist. Furthermore, recent state legislation requires design guidelines to be objective and quantifiable for residential projects and mixed-use projects with at least two-thirds of the square footage designated for residential use. The intent of Objective Design Standards is to streamline housing approvals and accelerate housing production by providing clarity and certainty in design decisions and to eliminate unnecessarily burdensome review in the permitting process.

Planning staff will develop Objective Design Standards for all new residential and applicable mixed-use developments in the City to meet the new requirements. The Objective Design Standards will also help ensure compliance with SB 35, which stipulates that qualifying multi-family residential projects meeting certain criteria may request a streamlined ministerial approval process.

Analysis:

On August 7, 2020, the City's Purchasing Division released Request for Qualifications (RFQa) No.2465 for "Objective Design Standards for Residential and Mixed-Use Development" on ProcureNow.com, the City's eProcurementsite, in coordination with the Planning Department. The RFQa was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, and email notifications were sent

to companies that had expressed interest in similar past projects. Eight firms supplied proposals in response to the RFQ by August 28, 2020 submittal deadline. The City staff evaluation committee reviewed proposals based on the merits of the following: 1) Organization, 2) Staff, 3) Experience, 4) Specific Management Approach, 5) Professional Standing, 6) Familiarity with Location, and 7) Quality Control and Assurance. After an initial review by the evaluation committee, three firms: Ascent Environmental, RRM Design Group, and Raimi & Associates were invited to attend a Zoom interview to clarify various parts of the proposals prior to final scoring. Interviews were held on October 8, 2020 and scoring was finalized on October 13, 2020. The table below shows the final evaluation scores with the recommended firm highlighted in green.

Company	Score
Raimi & Associates	88.83
Ascent Environmental	84.83
RRM Design Group	84.17
M-Group	83.33
Lisa Wise Consulting, Inc	81.50
PlaceWorks	81.33
Mintier Harnish	76.33
MVE Partners	67.50

Raimi & Associates was selected based on depth of experience in the Silicon Valley, strong familiarity with Milpitas' development and policy contexts, innovative yet technical approach, and quality of work samples. Founded in 2006, Raimi & Associates provides a range of consulting services that support healthy, sustainable, and equitable communities. With a main office in Berkeley, CA, Raimi & Associates has significant experience on the range of planning and design projects that make up the core components of this project. Their portfolio includes numerous general plans, specific plans, zoning codes, and design guidelines for local jurisdictions throughout the Silicon Valley, San Francisco Bay Area, and elsewhere. Simran Malhotra will serve as the Principal-in-Charge and Chris Sensenig will be the Project Manager. Therefore, Staff recommends that the City Council authorize the City Manager to execute the attached agreement with Raimi & Associates, as the most qualified firm providing the best value to the City.

Staff prepared an agreement that establishes a professional services agreement between the City and Raimi & Associates for services that include a scope of work to cover approximately 12 months at a budgeted amount of up to \$145,000.00. Raimi & Associates will invoice the City on a monthly cycle, and each invoice will include a detailed progress report that indicates the amount of budget spent on each task. In turn, the City can submit for reimbursement from the HCD on a quarterly basis upon completion of deliverables. Per the grant program provisions, project funds must be expended by June 30, 2022.

In developing the Objective Design Standards, the project team will analyze relevant plans and development standards, Milpitas' existing development pattern, and best practices. Extensive community engagement, including stakeholder workshops and informal study sessions with the City Council and Planning Commission will be a key part of the development of the proposed design standards. The Objective Design Standards will be comprehensive, context-sensitive, and utilize effective visuals to clearly demonstrate the desired architectural outcomes. The Objective Design Standards will enhance community design while recognizing the unique characteristics of district neighborhoods and maintaining housing affordability.

Other Planning Efforts

Preparation of Objective Design Standards is one component of a larger effort to streamline land use and zoning tools to comply with State legislation and facilitate housing production. Other components funded by the SB 2 grant include: 1) preparation of a Development Handbook and Accessory Dwelling Unit (ADU) Toolkit to clarify the City's development review process and ADU regulations; and 2) implementation of a visual ADU web tool that will allow homeowners to visualize where an ADU can be located on their property based on the size and location of their property and Milpitas' development standards.

The Development Handbook will function as both an internal City tool to help train new staff and elected/appointed officials and as a public-facing guide to inform applicants/ developers and the community about the development review process. The ADU Toolkit will accompany the Development Handbook to inform, inspire, and guide homeowners through a full-service review process. As a distinct but related effort, the visual ADU web tool will allow homeowners to design their own ADUs by selecting pre-approved designs and locating them in compliance with applicable zoning and development standards.

These land use and zoning tools will establish clear expectations for all participants in the development review process, improve customer service, educate the public, and help Milpitas respond to the current housing crisis. Additionally, these implementation projects will support and complement ongoing long-range planning and policy efforts aimed at accommodating growth, which are necessitated by increasing development interest in Milpitas and the upcoming Regional Housing Needs Allocation (RHNA). Long-range planning and policy efforts include the General Plan Update, Milpitas Metro Specific Plan, upcoming Gateway-Main St. Specific Plan, upcoming Housing Opportunity Zones through the Local Early Action Planning (LEAP) Grant, and Citywide Vehicle Miles Traveled (VMT) Policy. The Objective Design Standards along with all of these efforts will help Milpitas accommodate development in an appropriate and sustainable manner and remain competitive in the Silicon Valley.

Policy Alternative:

Alternative: Do not authorize the City Manager to execute an agreement with Raimi & Associates to complete the Objective Design Standards.

Pros: This action would avoid expending City staff time and resources to manage the Objective Design Standards and consultant team.

Cons: In failing to complete the Objective Design Standards, the City would forgo \$145,000.00 in approved SB 2 grant funds, which need to be expended by June 30, 2022. The City would still need to develop objective design standards to comply with State law. Without Objective Design Standards, new residential and mixed-use developments may be eligible for streamlining without having to meet design criteria intended to enhance community design and protect existing neighborhoods.

Reason not recommended: In light of recent State legislation, the Objective Design Standards are necessary to streamline housing approvals and support the State's goal of addressing critical housing needs while upholding a high standard for building design and community character. The Objective Design Standards will improve customer service and minimize project costs by establishing clear design criteria for new development projects and consistent expectations for developers and applicants, City staff, and decision-makers.

Fiscal Impact:

The cost to provide planning services for the Objective Design Standards will be fully covered by funds received from the HCD through the SB 2 Planning Grant Program. On June 16, the City Council approved a budget amendment to appropriate the grant amount of \$310,000 to the FY 2020-21 Planning Department Operating Budget.

Environmental Review:

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

Recommendation:

Approve and authorize the City Manager to execute the Professional Services Agreement with Raimi & Associates to provide consulting services related to the preparation of Objective Design Standards in accordance with California Senate Bill 35.

Attachments:

1. Professional Services Agreement with Raimi & Associates
2. Info Memo to City Council on SB 2 Grant-Funded Projects 12/15/2020

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND RAIMI & ASSOCIATES**

This Agreement is made and entered into as of _____ (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Raimi & Associates**, a California corporation with its principal place of business at **1900 Addison Street, Berkeley, CA 94704** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

OBJECTIVE DESIGN STANDARDS FOR RESIDENTIAL MIXED-USE DEVELOPMENT
(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Forty-Five Thousand Dollars and Zero Cents (\$145,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes

in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **December 15, 2020** to **December 14, 2021**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers. Notwithstanding anything to the contrary, the Consultant shall not be obligated to indemnify the City for City's sole negligence or willful misconduct.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall

defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for

which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign **Chris Sensenig** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Ned Thomas, Planning Director

CONSULTANT:

Raimi & Associates

1900 Addison Street, Suite 200

Berkeley, Ca 94704

Attn: Simran Malhotra, Principal and Vice President

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

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

27. Time of Essence

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

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

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

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

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

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor

Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND RAIMI & ASSOCIATES**

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

Approved As To Content:

Ned Thomas, Planning Director

RAIMI & ASSOCIATES

Signature

Name

Title

Date

EXHIBIT A

Scope of Services

OVERVIEW AND OBJECTIVES

Although the City has design guidelines for specific plan areas, there are no broader citywide design guidelines. Furthermore, recent State legislation requires design guidelines to be objective and quantifiable for residential projects and mixed-use projects with at least two-thirds of the square footage designated for residential use. R+A will create objective design standards for all new residential and applicable mixed-use developments in the City to meet the new requirements.

The intent of the Objective Design Standards is to streamline housing approvals and accelerate housing production by providing clarity and certainty in design decisions and to eliminate unnecessarily burdensome review in the permitting process. The Objective Design Standards will apply to all projects seeking mandatory streamlining pursuant to State law unless the applicant requests exceptions or modifications to these standards through the Design Review process.

SCOPE OF SERVICES

The Scope of Services is based on R+A's understanding of the City's expectations, existing conditions, current law and best practices, and our experience with similar projects. R+A will revise the Scope of Services and associated budget as necessary to meet the City's needs or changes in project objectives.

Task 1. Project Initiation

1.1 Kick Off Meeting + Tour: R+A will prepare for and participate in a virtual kick-off meeting with City Staff and attend a socially distanced tour of the city projects.

1.2 Project Management Plan: R+A will work with Staff to refine scope and allocation of budget and prepare a final schedule, budget allocation and engagement plan to be summarized in the Project Management Plan.

1.3 Monthly Conference Calls: R+A will prepare for and attend monthly conference calls with Staff for the duration of the project (12 months). R+A will keep an online journal of notes from the meetings.

TASK 1 DELIVERABLES

- Kick-off Meeting (+ Driving tour of key projects)
- Project Management Plan
- Project Management – Monthly meetings with staff

Task 2. Background and Existing Conditions

2.1 Technical Memo: Existing Policy/Development Context/Objective Standards Best Practices:

R+A will review existing multifamily and mixed-use zoning regulations and specific plan design guidelines. R+A will develop a summary spreadsheet of standards and guidelines. R+A will write a technical memo on existing policy, development context and objective standards best practices. This memo will be used to outline the Objective Standards Framework Plan in Task 5.1.

TASK 2 DELIVERABLES

- Technical Memo: Existing Policy/Development Context/Objective Standards Best Practices

Task 3. Public Engagement

All meetings are assumed to be virtual with an option to move critical meetings to in-person sessions as pandemic precautions change.

3.1 Project Fact Sheet: R+A will prepare a public-facing fact sheet (2-page max) that simply describes State regulations, the need to create objective standards, and establishing a streamlined process for ministerial review. This document will be clearly written for the public, contain graphics describing the issues, challenges and outcomes.

3.2 Project Website Support and Online Engagement: R+A will support the City in developing and uploading content to the project webpage as a part of the City's website.

3.3 Staff Working Sessions: R+A will prepare for, attend, and present at up to six meetings with Staff and City departments. R+A will provide summary notes of each meeting. Estimated meetings include working sessions with planning staff, and meetings with the fire department. and the Development Review Committee.

3.4 Stakeholder Meetings: R+A will prepare for, attend, and participate in up to 8 meetings/interviews with stakeholders. City Staff will identify stakeholders and set up meetings. At the end of each round of stakeholder engagement, R+A will provide summary notes of the meetings. Estimated meetings include up to six 1-hour interviews with stakeholders or groups of stakeholders and up to two 2-hour round table discussions. R+A will conduct stakeholder outreach during the following phases of the plan: 1) Background Analysis/Best Practices 2) Draft Objective Standards (additional stakeholder engagement identified in Task 7 Adoption and Launch)

3.5 Planning Commission Study Sessions: R+A will prepare for, attend, and present at two planning commission study sessions in addition to those during Task 7 Adoption and Launch. The objective of these meetings will be to present the following 1) Existing Policy/Development Context/Objective Standards Best Practices and Precedents Study, and 2) Framework Plan, and Design Intent.

TASK 3 DELIVERABLES

- Project Fact Sheet
- Provide Materials for Project Website
- Working Sessions with City/Staff, Fire Department, & Development Review Committee (total 6)
- Stakeholder Interviews (6)
- Round Table Discussions (2)
- Planning Commission Study Sessions (2)

Task 4. Coordination with Metro Specific Plan

Task 4.1 Team Working Sessions: R+A will attend and participate in up to two working sessions with the Metro Specific Plan team to discuss and coordinate how the Objective Design Standards may apply to new residential and mixed-use construction within the Specific Plan area.

TASK 4 DELIVERABLES

- Working Sessions with Metro Team (2)

Task 5. Draft Objective Design Standards

5.1 Framework Plan: R+A will develop a Framework Plan that will identify the structure, topics, and strategy for Objective Standards in Milpitas. The Plan will also contain a working draft set of standards for key topic areas and a full outline of the Objective Standards document. The draft standards in the Framework Plan will be used for site testing and engagement with Stakeholders. The draft standards will also be shared with the Metro Team for their review and input. Comments on the Framework Plan will be incorporated in the Admin Draft (Task 5.3).

5.2 Site Tests: R+A will work with Staff to identify up to five typical sites to test standards and develop 3D massing diagrams that meet key zoning and objective standards.

5.3 Admin Draft: R+A will develop an Admin Draft of the Objective Standards including all code sections outlined in the Framework Plan, draft diagrams, intent statements, and objective standards. The Admin Draft may outline in the preamble sections of the zoning code that may need to change to meet the design intent of the objective standards. Site Tests and summary of stakeholder comments will be provided as an appendix to Admin Draft. City Staff will provide one set of consolidated comments.

TASK 5 DELIVERABLES

- Framework Plan (PDF)

- Site Test Fits (PDF)
- Admin Draft

Task 6. Final Objective Design Standards

Task 6.1 Site Test Refinements: R+A will refine Site Tests according to the consolidated comments from the City Staff on Admin Draft.

Task 6.2 Public Draft: R+A will revise the Admin Draft per consolidated comments from Staff. Public Draft will be laid out per the final web-friendly format.

TASK 6 DELIVERABLES

- Site Test Refinements
- Public Draft

Task 7. Adoption and Launch

Task 7.1 PC/CC Adoption Hearings: R+A will prepare for, attend, and present at one Planning Commission and one City Council adoption hearing.

Task 7.2 Final Objective Standards: R+A will refine the Public Draft per consolidated comments from staff following the adoption hearings. Final Objective Standards will be provided in a web-friendly format.

Task 7.3 Launch Event: R+A will prepare for, attend, and present at a Round Table Discussion with City Staff and Stakeholders to walk through the Objective Standards, Checklist, and development review process.

TASK 7 DELIVERABLES

- PC/CC Adoption Hearings (2)
- Final Objective Standards (web friendly format)
- Round Table on Objective Standards

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

The Consultant will be compensated **One Hundred Forty-Five Thousand Dollars and Zero Cents (\$145,000.00)** for consultant services to complete the Objective Design Standards.

	Raimi + Associates			Labor Cost Per Task
	Simran Malhotra (Principal)	Chris Sensenig (Associate)	Alessandra Lundin (Senior Planner)	
Hours per Task				
Task 1: Project Initiation				
1.1 Kick Off Meeting + Tour	4	12	8	4,480
1.2 Project Management Plan	4	12		3,160
1.3 Bi-weekly Conference Calls	6	18	12	6,720
1.4 Ongoing Project Management	4	12		3,160
Subtotal Task 1	18	54	20	17,520
Task 2: Background and Existing Conditions				
2.1 Technical Memo: Existing Policy/Development Context/Objective Standards Best Practices	4	16	32	9,180
Subtotal Task 2	4	16	32	9,180
Task 3: Public and Stakeholder Engagement				
3.1 Project Fact Sheet	2	2	8	2,160
3.2 Project Website Support, Online Engagement		4	24	4,700
3.3 Staff Working Sessions (up to 6)	6	18	18	7,710
3.4 Stakeholder Meetings - Interviews (6)		20	32	8,980
- Round Table Discussions (2)				
3.5 PC Study Sessions(2 total)	4	16	8	5,220
Subtotal Task 3	12	60	90	28,770
Task 4: Coordination with Metro Specific Plan				
4.1 Team Working Sessions (2)	4	8	10	4,070
Subtotal Task 4	4	8	10	4,070
Task 5: Draft Objective Standards				
5.1 Framework Plan	8	36	64	19,100
5.2 Site Tests	4	40	50	16,590
5.3 Admin Draft	2	32	72	18,270
Subtotal Task 5	14	108	186	53,960
Task 6: Final Objective Standards				
6.1 Site Test Refinements	2	6	24	5,540
6.2 Public Draft	2	20	40	10,770
Subtotal Task 6	4	26	64	16,310
Task 7: Adoption and Launch				
7.1 PC/CC Adoption Hearings		12	8	3,540
7.2 Final Objective Standards	2	4	16	3,850
7.3 Launch Event: Stakeholder Round Table		6	16	3,750
Subtotal Task 7	2	22	40	11,140
Total Hours	58	294	442	
Billing Rate	\$235	\$185	\$165	
Labor Cost	\$13,630	\$54,390	\$72,930	
Total Firm Labor Cost			\$140,950	
EXPENSES				
Reimbursables (printing, mileage, other direct costs, etc.)			\$ 525	
Office Expenses (Phone, Copies, etc.)			\$ 3,524	
Total Expenses			\$ 4,049	
GRAND TOTAL			\$144,999	

EXHIBIT C

Activity Schedule

The City anticipates completing the Objective Design Standards per the following schedule.

Milpitas Objective Standards Schedule	December	January	February	March	April	May	June	July	August	September	October	November
Task 1: Project Initiation												
1.1 Kick Off Meeting + Tour												
1.2 Project Management Plan												
1.3 Monthly Conference Calls												
1.4 Ongoing Project Management												
Task 2: Background and Existing Conditions												
2.1 Technical Memo: Existing Policy/Development Context/Objective Standards Best Practices												
Task 3: Public and Stakeholder Engagement												
3.1 Project Fact Sheet												
3.2 Project Website Support, Online Engagement												
3.3 Staff Working Sessions (up to 6)												
3.4 Stakeholder Meetings - Interviews (6) - Round Table Discussions (2)												
3.5 PC Study Sessions(2 total)												
Task 4: Coordination with Metro Specific Plan												
4.1 Team Working Sessions (2)												
Task 5: Draft Objective Standards												
5.1 Framework Plan												
5.2 Site Tests												
5.3 Admin Draft												
Task 6: Final Objective Standards												
6.1 Site Test Refinements												
6.2 Public Draft												
Task 7: Adoption and Launch												
7.1 PC/CC Adoption Hearings												
7.2 Final Objective Standards												
7.3 Launch Event: Stakeholder Round Table												

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

X Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than ___ per occurrence or claim, ___ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

___ Bid Bond
___ Performance Bond
___ Payment Bond

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

Other Insurance Provisions:

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

X Additional Insured Status and Primary/Non-Contributory Language:

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

MEMORANDUM

Planning Department



DATE: December 15, 2020
TO: Mayor and Council
THROUGH: Steve McHarris, City Manager
FROM: Ned Thomas, Planning Director
SUBJECT: SB 2 Grant-Funded Projects

The Planning Department is working on several grant-funded projects to improve Milpitas' land use and zoning tools and facilitate housing production in support of the State's goal of addressing critical housing needs. An overview of these projects and their alignment with the City's long-range planning and policy efforts is below.

Background

On May 26, 2020, the California Department of Housing and Community Development (HCD) notified staff that the City of Milpitas would receive \$310,000 in grant funding through the State's Planning Grant Program, which is funded by the Building Homes and Jobs Act (SB 2). SB 2 established a \$75 recording fee on real estate documents as a permanent, ongoing source of funding dedicated to affordable housing development. The Planning Grant Program is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments to prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production.

City Planning staff will use the grant funding to create land use and zoning tools to streamline housing approvals, comply with State legislation, and support the State's goal of addressing critical housing needs. Staff has identified three projects as part of this effort:

1. Development Handbook and Accessory Dwelling Unit (ADU) Toolkit;
2. Web-based ADU Visualization Tool; and
3. Objective Design Standards.

Development Handbook & ADU Toolkit

The Planning Department is preparing a Development Handbook and ADU Toolkit to clarify the City's development review process and ADU regulations and improve customer service and streamline ADU production. In September 2020, the City contracted with Metta Urban Design for consultant services to complete the Development Handbook and ADU Toolkit. Staff anticipates completing the project by Summer 2021.

The Development Handbook will provide a comprehensive and step-by-step explanation of the development review process from beginning to end, including an overview of the roles and responsibilities of all parties involved, the City's various development fees, an in-depth breakdown of the City's Affordable Housing Ordinance, and other relevant topics. The Handbook will be used as an internal operations manual to train new staff and provide elected/appointed officials with a detailed overview of the City's development review process. It will also function as a public-facing guide to inform applicants/developers and Milpitas residents about the same process.

Staff will also work with the consultant to develop an ADU Toolkit to facilitate ADU production and inform, inspire, and guide homeowners through a full-service review process. In July 2020, the City Council adopted an ordinance to amend the City's ADU regulations to comply with new State legislation, which aims to streamline the permitting process of ADUs and facilitate ADU production. The ADU Toolkit will provide user guides and illustrations to simplify the ADU process and requirements to help homeowners navigate these recent changes to State and local ADU regulations.

The Development Handbook and ADU Toolkit will establish clear expectations for City staff, project applicants/developers, and the community to improve customer service, educate the public, and streamline ADU production to help Milpitas respond to the current housing crisis.

Web-based ADU Visualization Tool

Staff is also implementing a visual ADU web tool to complement the ADU Toolkit. While the Toolkit will provide a user guide with illustrations to educate the public regarding the approval process and applicable regulations in a user-friendly format, the web-based ADU visualization tool will allow homeowners to determine where an ADU can be located on their property. In October 2020, the City contracted with a tech-law firm called Symbium to utilize and implement their proprietary software program. Staff anticipates launching Symbium's web-based ADU Visualization Tool in Summer 2021 in conjunction with release of the Development Review Handbook and ADU Toolkit.

Symbium's Web Tool will allow homeowners to visualize where an ADU can be located on their property in real-time based on the size and location of their property and Milpitas' development standards. Homeowners can also design their own ADUs by selecting or customizing pre-approved designs and locating them in compliance with applicable zoning and development standards. The publicly-accessible portal will also enable users to visualize and analyze existing conditions and perform searches and produce parcel reports with a summary of applicable regulations and development constraints (e.g., easements, flood zone boundaries, etc.). Additionally, the tool can generate reports and data on ADU development to provide a resource to City staff.

Along with the ADU Toolkit, Symbium's Web Tool is expected to significantly reduce permit processing times and increase ADU production, which will aid Milpitas in its effort to meet the increasing demand for affordable housing and satisfy its Regional Housing Needs Allocation (RHNA) obligations.

Objective Design Standards

Although there are design guidelines for the Metro and Midtown Specific Plan areas, broader citywide design guidelines currently do not exist. Furthermore, recent state legislation requires design guidelines to be objective and quantifiable for residential projects and mixed-use projects with at least two-thirds of the square footage designated for residential use. Staff will develop the Objective Design Standards to streamline housing approvals and accelerate housing production by providing clarity and certainty in design decisions and to eliminate unnecessarily burdensome review in the permitting process.

The Objective Design Standards will provide clear and implementable design criteria for all new residential and applicable mixed-use developments throughout the City to meet the new state requirements. The Objective Design Standards will also ensure compliance with SB 35, which stipulates that qualifying multi-family residential projects meeting certain criteria may request a streamlined ministerial approval process. In October 2020, following a competitive Request for Qualifications (RFQ) process, the City selected Raimi + Associates to complete the Objective Design Standards. Staff anticipates kicking off the project in early 2021 and completing the Objective Design Standards by early 2022.

Raimi + Associates will analyze relevant plans and development standards, Milpitas' existing development pattern, and best practices. Extensive community engagement, including stakeholder workshops and informal study sessions with the City Council and Planning Commission, will be a key part of the development of the proposed design standards. The Standards will be comprehensive, context-sensitive, and utilize effective visuals to clearly demonstrate the desired architectural outcomes. The Objective Design Standards will enhance community design while recognizing the unique characteristics of neighborhoods and maintaining housing affordability.

Summary

These three grant-funded projects will complement each other and jointly improve Milpitas' land use and zoning tools to comply with State legislation and facilitate housing production. The Development Handbook and ADU Toolkit will clarify and streamline the development review process for ADUs and all development projects. Symbium's web-based ADU Visualization Tool will complement the Toolkit and further facilitate ADU production by making it easier for homeowners to design their own ADUs and comply with applicable development standards. The Objective Design Guidelines will establish clear design criteria to further streamline the development review process for residential and mixed-use projects. Each project will establish clear expectations for all participants in the development review process, improve customer service, educate the public, and help Milpitas respond to the current housing crisis.

Furthermore, these implementation projects support and complement ongoing long-range planning and policy efforts aimed at accommodating growth, which are necessitated by increasing development interest in Milpitas and the upcoming RHNA cycle. Long-range planning and policy efforts include the General Plan Update, Milpitas Metro Specific Plan, upcoming Gateway-Main St. Specific Plan, upcoming Housing Opportunity Zones through the Local Early Action Planning (LEAP) Grant, and Citywide Vehicle Miles Traveled (VMT) Policy. Cumulatively, these efforts will help Milpitas accommodate development in an appropriate and sustainable manner and remain competitive in the Silicon Valley.

Next Steps

Work on the Development Handbook and ADU Toolkit is underway. The project team has finished reviewing existing background documents including the previously unfinished development handbook and is soliciting feedback from internal staff, developers, and decision-makers on the strengths and weaknesses of the current development review process. The project team will continue to work with internal staff and engage stakeholders through the Development Review Committee, Community Development Roundtable, and Planning Commission study sessions.

Following a kick-off meeting in October, the project team for Symbium's web-based ADU Visualization Tool is in the early stages of reviewing and analyzing relevant background documents and resources. Staff is also in the process of executing a contract with Raimi + Associates for the Objective Design Standards. Work on the Objective Design Guidelines is expected to begin in early 2021.

As these projects progress, the Planning Department will continue to coordinate with internal staff, solicit feedback from decision-makers and the community, and provide periodic updates to the City Manager's Office.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Enter into a Side Letter to Amend the Memorandum of Understanding between the City and the Milpitas Police Officers Association (MPOA)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/15/2020
Staff Contact:	Jeannine Seher, Director of Human Resources, 408-586-3086
Recommendation:	Approve and authorize the City Manager to enter into a side letter agreement with the MPOA to extend the existing labor agreement through December 31, 2023; eliminate a 5% salary increase scheduled for January 2021; and provide for salary increases of 2.5% each for July 2022 and July 2023.

Background:

In 2016, the City and the Milpitas Police Officers Association (MPOA), through good faith labor negotiations, negotiated a successor Memorandum of Understanding (MOU), which delineated the wages, hours terms and conditions of employment for all employees of the bargaining unit, effective January 1, 2017 through December 31, 2021. The provisions of this labor agreement included salary increases during the term of the agreement, including a provision for a 5% base salary increase effective with the beginning of the first full pay period in January 2021. The MOU is a binding agreement and absent agreement between the City and MPOA to do otherwise, the City is obligated to adhere to the previously negotiated provisions, despite the current fiscal constraints brought about by the Pandemic.

When the City adopted the terms of the 2017-2021 MOU, it did so under extremely different circumstances than that which the City faces today. Today, the City of Milpitas faces a structural deficit due to the global pandemic of COVID-19. Significant revenue shortfalls from the loss of both Sales and Transient Occupancy Tax (TOT) have been realized and are expected to continue per the Initial Preliminary FY 2022-31 Ten-Year General Fund Financial Forecast previously scheduled for the November 17, 2020 City Council meeting.

Analysis:

To address the impact of these challenges, the parties, sharing a mutual philosophy that working together is the best way to successfully maneuver through these challenging times, came together to explore cost saving alternatives. As a result of those discussions, a tentative agreement has been reached and the membership of the MPOA has voted to ratify changes to their existing MOU.

The agreement reached in the side letter makes the following changes:

Terms of Agreement: The term of the MOU shall be extended through December 31, 2023.

Salaries: The 5% base salary increase effective the first full pay period in January 2021 is eliminated. A 2.5% base salary increase shall be provided effective the first full pay period in July 2022 and a 2.5% base salary increase shall be provided effective the first full pay period in July 2023.

The MPOA further agrees to engage in successor negotiations no later than November 1, 2023.

Policy Alternative:

Alternative: Maintain the existing 5% salary increase as specified in the MOU.

Pros: Will provide a previously committed benefit to City employees in the MPOA bargaining unit.

Cons: The City is facing a structural deficit. The elimination of the pay raise specified above is an action that assists in the effort to bridge that gap.

Reason for Not Recommending: Providing a 5% salary increase is not a prudent course of action in light of the pandemic and resulting impacts on the economy and the City's fiscal situation. The MPOA bargaining unit is willing and has voted to ratify the changes to their MOU, which is a significant gesture to addressing the City's structural deficit. Additionally, elimination of the raises provides cost savings that will mitigate the impact of the structural budget deficit without reducing services to the community.

Fiscal Impact:

The current year budget for the Police Department assumes a 5% salary increase effective January 1, 2021. The Initial Preliminary FY 2022-31 Ten-Year General Fund Financial Forecast assumes a 5% salary increase for MPOA annualized for FY 2021-22 and 3% annually effective January 1 starting with 2022. Therefore, the recommended action is estimated to reduce anticipated expenditures by approximately \$4.0 million between January 1, 2021 until December 31, 2023 in comparison to Forecast assumptions and current year budget. The budget action to amend the Police Department's Budget equivalent to the savings of approximately \$535,000 will be brought forward as part of Fiscal Year 2020-21 Mid-Year Budget Review. The savings for FY 2021-22 and thereafter will be incorporated into the Preliminary FY 2022-31 Ten-Year General Fund Financial Forecast scheduled to be presented on January 26 as part of the Preliminary City Council FY 2021-22 Budget Study Session and the development of the FY 2021-22 Proposed Budget scheduled for release early May 2021.

California Environmental Quality Act:

Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:

Approve and Authorize the City Manager to enter into a side letter agreement with the MPOA to extend the existing labor agreement through December 31, 2023; eliminate a 5% salary increase scheduled for January 2021; and provide for salary increases of 2.5% each for July 2022 and July 2023.

Attachment:

Side Letter to MOU with MPOA

**Side Letter Agreement
Between
Milpitas Police Officers Association (MPOA)
And
The City of Milpitas
Regarding MOU Extension and Elimination of January 2021 Salary Increase**

The City of Milpitas is facing a structural deficit; and due to the global pandemic of COVID-19, faces a significant revenue shortfall from the loss of both Sales and Transient Occupancy Tax (TOT). To help mitigate the impact of these challenges, the parties share a mutual philosophy that working together is the best way to successfully maneuver through these challenging times.

The MPOA's existing labor agreement, which expires on December 31, 2021, includes a salary increase of a 5% salary increase in January 2021. Given the City's current economic condition, the parties recognize the fiscal problems associated with timing and amount of this raise, and hereby agree as follows:

Terms of Agreement

This side letter shall be effective upon ratification and approval by the members of the MPOA and upon approval by the City of Milpitas.

The term of this MOU shall be extended from the effective date through December 31, 2023.

Salaries

The 5% base salary increase effective the first full pay period in January 2021 is eliminated. MOU Appendix A - Salary Schedule Section 1.01 is replaced with the following:

1.01.1 A 2.5% base salary increase effective the first full pay period in July 2022.

1.01.1 A 2.5% base salary increase effective the first full pay period in July 2023.

Existing MOU

All of the other terms of the Memorandum of Understanding remain in full force and effect. The MPOA agrees to begin negotiations for a successor Memorandum of Understanding no later than November 1, 2023.

For the City of Milpitas:

Jeannine M. Seher
Human Resources Director

Date

For the MPOA:

Jason Speckenheuer

Jason Speckenheuer

11/30/2020

Date

Steven McHarris
City Manager

Date

Alex Prince

Alexander Prince, MPOA
President

11/30/2020

Date



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Accept a \$50,000 Donation to the Barbara Lee Senior Center from the Andrea Dorey Estate
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/15/2020
Staff Contact:	Renee Lorentzen, Recreation and Community Services Director, 408-586-3409
Recommendation:	Approve and accept a \$50,000 donation to the Barbara Lee Senior Center from the Andrea Dorey Estate.

Background:

Andrea Dorey was a longtime Milpitas resident and volunteer at the Barbara Lee Senior Center. Ms. Dorey's volunteer service was to primarily support case management services provided at the Senior Center. Prior to her passing, Ms. Dorey indicated her wishes that a portion of her estate be used to augment case management and social services for Milpitas Seniors. Ms. Dorey's Estate recently informed Recreation and Community Services staff that the amount to be donated is \$50,000 and the Estate wishes to complete the donation to the City of Milpitas prior to the end of the 2020 calendar year.

Analysis:

Staff worked with the Dorey Family to identify how the donated funds might enhance social services for seniors in accordance with Ms. Dorey's wishes. The Dorey Family has identified three program areas they wish to be funded by the Andrea Dorey Estate. The programs this donation would support if approved and accepted are:

- **Dementia Programs/Services:** currently the Dementia Friends program works to raise community awareness and understanding of dementia as well as provide resources and education for those affected by or caring for someone with dementia.
- **Social Isolation Programs/Services:** currently the Friendly Visitors program works to combat social isolation in seniors. Due to COVID-19 current efforts provide regularly scheduled check-ins by phone to Milpitas seniors. Previously planned outreach and programs, prior to COVID-19 will be instituted after the pandemic.
- **Mental Health Programs/Services:** Milpitas HOPE (suicide prevention task force) work includes serving Milpitas seniors who may be at risk of suicide, depression, stress and anxiety. Milpitas HOPE has several planned events dealing with senior mental health topics, as well as establishing support groups serving the senior demographic.

Ms. Dorey's family requested that the donation be recognized as "In Loving Memory of Andrea Dorey."

Fiscal Impact:

The Dementia Friends, Friendly Visitors, and Milpitas HOPE (senior) Programs are 100% funded by the City's General Fund and are included in the Recreation and Community Services Department operating budget. This donation would fund the aforementioned programs' direct costs over the next five (5) years. Donated funds

would be deposited into the Senior Center Holding account and transferred into the Recreation and Community Services budget annually as part of the annual development of the proposed budget.

Recommendation:

Approve and accept a \$50,000 donation to the Barbara Lee Senior Center from the Andrea Dorey Estate.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report on Bids and Award Five-Year General Services Agreement to BMI Imaging, Inc. for Document Digitization and Microfiche Services in the Amount of \$380,000
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/15/2020
Staff Contacts:	Mike Luu, 408-586-2706; Walter C. Rossmann, 408-586-3111
Recommendation:	Receive a report on bids and award and authorize the City Manager to execute a five-year General Services Agreement to the lowest responsible bidder submitting a responsive bid, BMI Imaging Inc., in the amount of \$380,000 for document digitization and microfiche services for various city departments subject to annual appropriation of funds.

Background:

Since September 2016, the City of Milpitas utilized a piggyback agreement which utilized an ongoing contract between BMI Imaging and the City of Saratoga for document digitization services. As staff extended these services via a bridge agreement in July 2020, an invitation for bids (IFB) was released by staff to secure an agreement for the continuation of those services.

The City uses ApplicationXtender from OpenText to store electronic records of development drawings and building plans for archival storage. By awarding this agreement, staff can continue to work to scan paper drawings and plans into electronic records to be imported into ApplicationXtender. This centralized system of records will allow for easy searching by staff and the public.

In January 2019, the City went live with an Electronic Plans Submittal and Review system (ProjectDox). ProjectDox will allow developers, contractors, and residents to submit development plans and drawings to the City electronically. Once submitted, it allows staff to review and approve them digitally. Therefore, overtime, the need to scan paper plans and records to electronic records will be reduced or eliminated. Additionally, as staff continues to work from home and more city documents are needed in shared or cloud-based locations for the continuation of services, these services will become more important as the City modernizes and digitizes its documents and workflows.

Analysis:

On October 20, 2020, the Purchasing Division released an Invitation for Bid (IFB) 2482 for document digitization and microfiche services. The IFB was publicly noticed in accordance with the City's municipal code and advertised on the City's website. Email notifications were sent to companies registered with the City via ProcureNow.com, the City's eProcurement system and a bid notification placed on PublicPurchase.com. Upon release, 175 firms received the solicitation notification, thirteen (13) firms downloaded the IFB documents. The Purchasing Division received four (4) bids by the November 10, 2020 deadline in response to the IFB. BMI Imaging Systems, Inc. (BMI), was the lowest responsible and responsive bidder. The bid submitted was within the City's estimate for these services.

The table below shows the bids received with the lowest responsible and responsive bid highlighted in green:

BIDDER	BASE BID
1. BMI Imaging Systems, Inc.	\$8,025.13
2. ARC Document Solutions LLC	\$11,760.28
3. Hines EDM, Inc.	\$17,561.22
4. ECS Imaging Inc.	\$24,627.47

The bid amounts are based on a small sample of documents included in the IFB, for the purpose of obtaining bids. The recommended contract amount in the amount of \$380,000 over a five-year term, or an average annual cost of \$76,000, is based on the costs of similar services in prior years.

Fiscal Impact:

There is sufficient funding in departments' FY 2020-21 operating budgets. Any expenditures for future fiscal years are subject to the annual appropriation of funds.

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:

Receive a report on bids and award and authorize the City Manager to execute a five-year General Services Agreement to the lowest responsible bidder submitting a responsive bid, BMI Imaging Inc., in the amount of \$380,000 for document digitization and microfiche services for various city departments subject to annual appropriation of funds.

Attachment:

General Services Agreement with BMI Imaging Systems Inc.

AGREEMENT FOR DOCUMENT DIGITIZATION AND MICROFICHE SERVICES

1. PARTIES AND DATE.

This Agreement for Document Digitization and Microfiche Services ("Agreement") is made and entered into as of _____ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City") and **BMI Imaging Systems Inc.**, a corporation with its principal place of business at **1115 East Arques Ave. Sunnyvale, CA 94085** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain Document Digitization and Microfiche Services required by City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in Document Digitization and Microfiche Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the Document Digitization and Microfiche Services – IFB No. 2482 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of City regarding the Project and on other programs and matters affecting City ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term.

The term of this Agreement shall be from **January 1, 2021** to **December 31, 2025**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee of City. Contractor retains the right to perform similar or different services for others during the

term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to City, or who are determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of City. The key personnel for performance of this Agreement are as follows: [***INSERT NAME(S)***].

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

3.2.6 Contractor's Representative. Contractor hereby designates **the Director of Information Technology**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from City, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to City, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Eighty Thousand Dollars and Zero Cents (\$380,000.00)** without written approval of City's City Manager or their designee. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

(a) Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000.00 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(b) If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1

shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

(c) This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

(a) Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to City through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

BMI Imaging Systems Inc.
1115 East Arques Avenue
Sunnyvale CA 94085
Attn: Jim Detrick

City:

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

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.5.5 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, employees, agents or volunteers. This Section 3.5.5 shall survive any expiration or termination of this Agreement.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

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

3.5.9 City's Right to Employ Other Contractors. City reserves the right to employ other Contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.22 Employment Adverse to City. Contractor shall notify City, and shall obtain City's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against City during the term of this Agreement.

3.5.23 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of City shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on City's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with City, is prohibited.

3.5.24 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.5.25 Subcontracting. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.5.26 Wage Theft Prevention

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

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

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

(d) For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

(f) Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

**SIGNATURE PAGE FOR AGREEMENT
FOR DOCUMENT DIGITIZATION AND MICROFICHE SERVICES
BETWEEN THE CITY OF MILPITAS
AND BMI IMAGING SYSEMS INC.**

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved:

Walter C. Rossmann,
Risk Manager/Director of Finance

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved As To Content:

Mike Luu
Director of Information Technology

BMI IMAGING SYSEMS INC.

Signature

Name

Title

Date

EXHIBIT "A"
SCOPE OF SERVICES

Scope of Work

Upon the request of the Contract Administrator or their designee, the City shall require the contractor to perform service which shall include, but not be limited to, the following:

Retrieve and transport records, papers, documents, plans or other materials identified by the City to the Contractor's facility and convert the material(s) to a laser fiche at a minimum of 300 dots per inch (dpi) for documents, papers, projects or materials and 400dpi for plans.

This will include at a minimum the following:

- A. Document Preparation
- B. Special handling of older or degraded documents, records, papers, plan and/or other material(s).
- C. Document scanning at optimal dpi and settings for letter and legal size, large and extra large formats, microfilm in sixteen (16) and thirty-five (35) millimeter formats, microfiche (generally 4" x 6" but other sizes may be requested), color and grayscale formats, etc.
- D. Document Indexing: the City will provide explicit index criteria for the images
- E. Performing all services to include optical character recognition (OCR) technology for all documents and tagging searchable information onto non OCR documents as directed.
- F. Creation of CD or flash drive masters and duplicates and delivery of these media to the City
- G. Emergency and/or urgent retrieval of documents on request by the City
- H. Return all documents to the City in their original state.
- I. Contractor affirms that the City shall receive credit for documents not properly scanned and rescanned at no cost to the City.

Invoices

Contractor shall submit invoices not more than once per calendar month during the term of the agreement based on the cost of the work performed prior to the invoice date. Invoices shall be mailed to the City no later than the 15th of the month following the month term being invoiced for. Invoices shall contain the following information:

- A. Serial identification of bills for each City Department, i.e. Invoice No. 1 on each individual invoice sheet.
- B. Reference the pertinent City Department and invoice number on each individual invoice sheet.
- C. The beginning and ending dates of the billing period on each individual invoice sheet.
- D. A summary cover sheet clearly showing the total contract amount, the amount prior to billings, the total due this period, the contract number, the purchase order number, and the remaining balance available for all billing periods.

Payment

City shall pay Contractor at the rates set forth in the Pricing Table. These costs shall include all equipment, supply, transportation and any other expense necessary for the completion of the work to the satisfaction of the Contract Administrator or their designee.

Monthly Payments: City shall make monthly payments based on correctly submitted invoices for the satisfactory progress in completion of the Scope of Work.

Reimbursable Expenses: There shall be no right to reimbursement for expenses incurred by Contractor except as specified in the Pricing Table.

EXHIBIT "B"
SCHEDULE OF SERVICES

City and contractor shall mutually agree upon scheduling of both routing and Emergency/Urgent document scanning and retrieval services as outlined in Exhibit A. Contractor will coordinate with the requesting department as soon as practical for the performance of these services.

EXHIBIT "C"
COMPENSATION

<u>Description</u>	<u>Unit of Measure</u>	<u>Unit Cost</u>
Document Preparation	per hour	\$25.00
Document Scanning - Letter and Legal sized documents in 300dpi in either black and white or color as directed	each	\$.07
Document Scanning - (11" X 17" to 24" X 36" or larger) Large format documents in Color at 300dpi	each	\$1.25
Document Scanning - (11" X 17" to 24" X 36" or larger) Large format documents in Black and White at 300dpi	each	\$1.25
Microfilm Scanning (300dpi) - 16mm frame format (5-channel jackets)	each	\$1.25
Microfilm Scanning (300dpi) - 35mm frame format (2-channel jackets)	each	\$1.25
Microfiche (Size 4" x 6")	each	\$1.25
Special Handling (if necessary)	per hour	\$18.00
Flash Drive Recording/Labeling (masters and duplicates)	each	\$25.00
CD Recording/Labeling (masters and duplicates)	each	\$10.00
Transportation (pick-up and delivery via Contractor)	per Round Trip	\$35.00
Emergency/urgent retrieval (scan and email on demand)	each	\$10.00
Document Indexing	each	\$.25
Optical Character Recognition Scanning (If required, OCR will be performed following the AX import.)	each	\$0.00
Document Storage (3 month Minimum)	per box, per month	\$0.00
Document Destruction (Per standard 15" storage box equivalent)	per box, per month	\$8.00

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

 X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single liit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

 X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

___ Bid Bond
___ Performance Bond
___ Payment Bond

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

Other Insurance Provisions:

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

X Additional Insured Status and Primary/Non-Contributory Language:

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Appoint Milpitas Resident Kristal Caidoy as the Milpitas Representative to the Santa Clara Valley Transportation Authority's Bicycle and Pedestrian Advisory Commission (BPAC) for a Two-Year Term
Category:	Consent Calendar-Community Development
Meeting Date:	12/15/2020
Staff Contact:	Steve Chan, 408-586-3324
Recommendation:	Appoint Milpitas resident Kristal Caidoy to the Santa Clara Valley Transportation Authority's Bicycle and Pedestrian Advisory Commission (BPAC) for a Two-Year Term retroactively from July 1, 2020 to July 1, 2022.

Background:

The Santa Clara Valley Transportation Authority (VTA) Bicycle and Pedestrian Advisory Commission (BPAC) provides expertise and guidance to the Board of Directors on promoting and enhancing non-motorized transportation opportunities throughout Santa Clara County and serves as liaison between VTA and the Member Agency. As a VTA Member Agency, the City of Milpitas has one voting position on this committee.

Ms. Kristal Caidoy, a Milpitas resident and former Milpitas BPAC member, had served as Milpitas representative to VTA BPAC from July 1, 2018 through July 1, 2020. The term of Milpitas's current VTA BPAC representative, Kristal Caidoy, has expired.

Analysis:

To continue provide Milpitas representation in VTA BPAC, an appointment from City of Milpitas is needed. Ms. Kristal Caidoy, an avid cyclist residing in Milpitas, has provided outstanding advocacy for Milpitas through her past tenure to VTA BPAC. Staff recommends re-appointment of Kristal Caidoy to VTA BPAC for a two-year term retroactively from July 1, 2020 to July 1, 2022.

Policy Alternative:

Alternative:

Do not appoint a Milpitas representative to VTA BPAC

Pros: None

Cons: The City would not have representation in VTA BPAC to provide advocacy for Milpitas.

Fiscal Impact:

None

California Environmental Quality Act:

Not applicable

Recommendation:

Appoint Kristal Caidoy to Valley Transportation Authority Bicycle and Pedestrian Advisory Commission for a Two-Year Term retroactively from July 1, 2020 to July 1, 2022.

Attachment(s):

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co., Waive Immaterial Bid Deviations and Award the Construction Contract to Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; Authorize the City Manager to Execute the Construction Contract; Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders; Approve and Authorize the City Manager to Execute Amendment No. 1 to the Design Service Agreement with Shah Kawasaki Architects; and Approve a Related Budget Amendment
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	12/15/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	1. Adopt a Resolution to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations and award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; authorize the City Manager to execute the construction contract with Sausal Corporation; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000 2. Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with Shah Kawasaki Architects to increase compensation by \$75,000 3. Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Background:

On November 17, 2020, the City Engineer presented the bid results for the Fire Station No. 2 Replacement Project, Project No. 3447 ("Project"), and recommended the City Council adopt a resolution to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations, and award the construction contract to the lowest responsible bidder, Sausal Corporation.

During the presentation, staff analyzed the allegations made in the bid protest from C. Overaa & Co. as well as a bid advisory letter submitted by the Carpenters Local 405 Union (Union Letter). As mentioned during the presentation, City Staff and the Attorney's Office have reviewed the bid protest and the Union Letter and determined the claims made have no merit. The recommendation was for the Council to reject the bid protest and to award the construction contract to the lowest bidder, which is Sausal Corporation. The November 17, 2020 City Council Agenda Report is attached for reference. **(Attachment 2).**

During the presentation, several Council Members stated they had received additional information regarding the safety and labor relations record of Sausal Corporation, and suggested the construction contract should be awarded to the next bidder, C. Overaa & Company for a price that is \$861,800 higher than the low bid submitted by Sausal.

The direction from the City Council was for staff further investigate the background of Sausal Corporation as well as C. Overaa & Company and the third low bidder DL Falk Construction Inc. and present these findings at the December 15, 2020 Council Meeting for further discussion.

Analysis:

As requested by the City Council, City staff, with the assistance of the City Attorney's Office, researched the history of violations and claims for all three contractors (Sausal Corporation, C. Overaa & Co., DF Faulk Construction Inc.) dating back 10 years. Staff also contacted several public agencies to hear their experience in working with two of these contractors. The following is a summary of staff's findings:

1. Concern Over Sausal's Qualification in Performing Bituminous Membrane Roofing Work

Several Council members mentioned concerns that Sausal Corporation may not be licensed to perform the roofing work specified for the City's Fire Station Replacement Project.

As discussed during the November 17th Council Meeting, the bid submitted by Sausal Corporation did not list a subcontractor for the bituminous membrane roofing work specified for the City's project. Sausal Corporation has submitted a letter to the City stating they intend to self-perform the roofing work and not use a subcontractor, which conforms to the requirements of the State Contracting Code.

Sausal Corporation is a licensed contractor within the State of California holding a General Building Contractor License B. Per the California Contractor License Board, a License B Contractor is allowed to perform any building construction work including roofing work. The only work that a License B Contractor is prohibited from performing is Fire Protection and Well Drilling.

Sausal will be hiring new employees with experience in roofing work and will contract with a company to supervise and oversee Sausal's roofing work. The cost for the contractor Sausal will hire to supervise the roofing work is less than one-half of 1% of the bid amount to perform the work, and this is compliant with the requirements of the State Public Contracting Code.

Staff has reviewed the background of the employees Sausal intends to hire as well as their contract roofing work supervisor (**Attachment 3**) and has confirmed they have the background and experience to complete the roofing work as specified in the City's Fire Station Project.

To help ensure a quality final product for the City, the roofing material manufacturer's representative will be onsite for inspection and observation of the roofing work to be completed by Sausal. In addition, the City Building Department inspectors, project construction management team and a third-party waterproofing consultant will inspect the roofing work to ensure it is being installed in accordance with the City's project specifications and the manufacturer's requirements.

The City's roofing contract documents require the Contractor to provide the City with a 20-year manufacturer warranty for the installed roofing including and a 2-year workmanship warranty to correct any failures of the roofing system and to pay for or replace any damaged materials and surfaces, without any additional costs to the City.

In review of this plan, staff is comfortable that Sausal Corporation will be able to complete the required roofing work and there will be sufficient safeguards in place to protect the City and provide a quality product for the City.

2. Alleged Sausal Bid Shopping History with Redwood City School District Project

During the November 17 presentation, Council Member Phan stated he has concerns over information he received that Sausal Corporation has a history of bid shopping and allegedly did this with a recent bid with the Redwood City School District (RCSD).

Staff reached out and discussed this allegation with the Redwood City School District (RCSD) bond program director, Mr. Donald Dias, who oversees the Orion Alternative School construction project. Mr. Dias mentioned the construction contract was awarded to Sausal Corporation on May 20, 2020 and the Notice to Proceed with construction was issued to Sausal on June 16, 2020. He also mentioned there was apparently an error with Sausal's scanner and the last page of the sub-contractor list to be submitted did not get scanned and included with the Sausal's bid. This sub-contractor list contained only one subcontractor (Glazing work). This clerical error was found after RCSD had awarded the contract to Sausal.

RCSD Board of Education conducted a public hearing on the matter. The Board concurred that this clerical error was not an attempt to violate the Public Contract Code with regards to bid shopping, however, the Board did assess a penalty against Sausal as required by Public Contract Code. The amount of the penalty assessed was only half (50%) of the maximum that is allowed by Public Contract Code.

Mr. Dias further indicated that the School District had received a bid advisory letter from Local 405 Carpenters Union questioning Sausal's qualifications for the school project. The Board reviewed the claims made by the Union and concluded the issues brought up in the letter were either minor or without merit. He confirmed that Sausal was the lowest responsible bidder for the project and provided a confirmation letter. **(Attachment 4)**

3. C. Overaa & Co. Project History

As requested by Council, staff reviewed the recent project history for the 2nd low bidder, C. Overaa & Co. It was found that on May 19, 2020, Overaa had submitted the low bid (\$21,717,000) to the City of Pleasant Hill for their Library Project. The City of Pleasant Hill found "abnormalities" in Overaa's bid that were determined to be more than just clerical or typographical errors. The Pleasant Hill City Attorney made the recommendation for the City Council to reject all bids pursuant to contract and case law and for the City to re-bid the Project. On June 8, 2020 Council Meeting, the Pleasant Hill City Council rejected all bids. **(Attachment 5)**

In a separate case, in 2007, C. Overaa & Co. was awarded a \$29.49M construction contract to complete the City of Lafayette's Library and Learning Center project. Unfortunately, the Lafayette project had significant problems resulting in a 600 working day delay, \$3.8M in construction change orders, including multiple construction claims and litigation between the City and C. Overaa & Co. A copy of the settlement agreement between the City of Lafayette and C. Overaa & Co. is included in **(Attachment 13)**

4. OSHA Safety Violation History

Staff reviewed the safety violation history for Sausal Corporation, C. Overaa & Co. and DL Faulk Construction Inc., which are the 1st, 2nd, and 3rd bidders for the Milpitas Fire Station 2 Project.

Staff found that C. Overaa & Co. is the only one of the three construction companies that has been assessed penalties for "serious", "willful", or "repeat" violations by OSHA over last 10 years. Since March of 2019, C. Overaa & Co. has been assessed five "serious" violations and three "other" violations. Overaa has accumulated a total of 11 violations with total of \$112,880 in penalties assessed over the last 10 years.

In contrast, Sausal Corporation and DL Faulk were only assessed for "other" violations over the last 10 years with total violations of 5 and 3 respectively. **(Attachment 6)**

	Serious	Willful	Repeat	Other	Un-class	Total	Total Penalty Assessed
Sausal	0	0	0	5	0	5	\$ 3,960
C Overaa & Co	6	0	0	5	0	11	\$112,880
DL Falk	0	0	0	3	0	3	\$1,185

In review of the safety violation history for the last 10 years, the data does not support the claim that Sausal Corporation is an unsafe contractor.

5. Litigation History

Staff reviewed the litigation history for all three contractors over the last 10 years. With assistance from the City Attorney's Office, staff determined that all three contractors have been involved in several lawsuits and litigation in both State and Federal Court, and most of the litigation is related to "Civil" and "Breach of Contract" matters. **(Attachment 7)**

C. Overaa was involved in a total of 62 lawsuits over the last 10 years, the highest of the three contractors. DL Faulk had the second highest total having been involved in 54 lawsuits. Sausal Corporation has been involved in the least number of litigations over the last 10 years with a total of 32.

6. Department of Industrial Relations (DIR) Violation History (Labor Compliance)

Between 2010-2015, California Department of Industrial Relations (DIR) records show that each of the three contractors was indirectly involved in one Labor Compliance related violation assessed by DIR. **(Attachment 8)**. Civil Wage and Penalty Assessments (CWPA) were issued against the subcontractors, and not directly against these contractors.

In conclusion, the litigation history, safety, and labor compliance violation history does not support the accusations that Sausal Corporation has a reputation as an unsafe and non-responsible contractor. Therefore, staff recommends the City Council adopt a Resolution **(Attachment 1)** to reject the bid protest from C. Overaa & Co., waive immaterial bid deviations, and award a construction contract to Sausal Corporation for a total contract amount of \$7,638,200. There is enough funding available in the Project budget to award this contract and no additional funding appropriation is required.

7. Construction Contingency

- It is a best construction practice to include a 10%-20% additional contingency budget to address unforeseen construction conditions and/or design errors that are not the fault of the Contractor. The City has an existing change order policy that was approved by the City Council in 2007. This policy is used for all City Capital Improvement Projects and caps the individual change order maximum at \$25,000, and the cumulative change order total is capped at \$100,000 for projects with a bid prices \$50,000. The contingency budget is managed and controlled by the City and is only authorized when it is determined that a construction change is required to address a design problem or construction condition not identified in the bid documents that is not the fault of the contractor.

Since the adoption of the policy in 2007, staff has requested an enhanced or modified change order policy with higher limits that are in better alignment with the higher cost of the project. The modified policy minimizes potential contractor delays costs and allows for decision making related to project design and construction matters in a timely manner to ensure potential health and safety issues are prevented. The modified policy approved by the City Council for various projects has provided contingencies ranging in the 10%-20% range. Staff has never exceeded the amount of the modified contingency amounts approved by Council, and in most cases the value of contingency used has been

below 50%. A list of completed City Projects with previously approved construction contingency budgets is attached. **(Attachment 9)**

As has been previously approved for the successful completion of recent high-profile projects with tight completion schedules, staff is requesting the use of the same change order policy. **(Attachment 10)** This policy allows for the timely completion of the Project, while addressing the need to respond swiftly to unforeseen construction conditions and to approve necessary change orders in order to limit construction delay claims and risks to the City. The construction contingency recommended for the Fire Station Project is \$1,200,000, which is approximately 15% of the total contract value. The change order authority will not exceed this amount unless authorized by the City Council and the Project is not anticipated to require an additional appropriation.

Regardless of the total bid amount or whom the contract will be awarded to, the construction contingency for this project is recommended at the same 15% amount in order to address potential design errors and unforeseen conditions during the construction phase.

Staff also recommends the approval of Amendment No. 1 to the Design Services Agreement with SKA **(Attachment 11)** to provide additional compensation for construction support services. Construction support services would include assistance in reviewing the contractor's schedule, responding to questions from the contractor, and to address minor design changes required to complete construction to allow the station to operate as intended. Staff has negotiated a scope and fee for Amendment No. 1 for a price not to exceed \$75,000 **(Attachment 12)**, which is considered reasonable for the scope of services. No additional funding appropriation is required for Amendment No. 1 to the Design Services Agreement with SKA.

Policy Alternative:

Alternative: Do not reject the bid protest and do not award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation.

Pros: None

Cons: The Project is on schedule to start construction in early 2021, which will allow completion of the building enclosure by Fall 2021 and avoid potential weather delays. Not awarding the contract will delay the Project for up to nine months and will likely increase Project costs by an estimated amount approaching \$1,000,000, which would have to be funded from reserves.

Reason not recommended: It is recommended the Project be awarded to Sausal Corporation to ensure the Project remains on schedule and within budget.

Fiscal Impact:

The FY 2020-21 Adopted Budget assumed the construction cost for the improvements to be \$15.7 million financed with the issuance of \$13 million in general fund lease revenue bonds for the replacement of Fire Station No.2. Based on the competitive bidding environment primarily for the construction contract, on October 20, 2020, the City Council approved the sale and issuance of \$9.6 million bond, a decrease of \$3.4 million. Therefore, staff recommends reducing the financing source and project budget by \$3.4 million.

Even with the recommended budget adjustment, there is enough funding available to award the construction contract and authorize Amendment No. 1 to the Design Services Agreement with SKA. As of October 31, 2020, the available Project funding is as follows:

2020 Lease Revenue Bonds	\$9,600,000
General Government CIP Fund	\$2,439,552
Available Project Budget	\$ 12,039,552

Summary of Estimated Construction Cost

Construction Contract	\$ 7,638,200.00
15% Construction Contingency	\$ 1,200,000.00
Administration and Inspection	\$ 600,000.00
Design Services Agreement - Amendment No.1	\$ 75,000.00
Total Estimated Cost	\$ 9,513,200.00

The remaining funds in the Project of about \$2.5 million are needed to cover other Project costs such as lease payments and demobilization for the temporary fire station, moving costs from the temporary to the permanent facility, as well as staff and soft costs.

California Environmental Quality Act:

The Project qualifies for categorical exemption under Class 2 "Replacement or Reconstruction" as defined in CEQA Guidelines Section 15302.

Recommendation:

1. Adopt a Resolution to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations and award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; authorize the City Manager to execute the construction contract with Sausal Corporation; and authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000
2. Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with Shah Kawasaki Architects to increase compensation by \$75,000
3. Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Attachments:

- 1: Resolution
- 2: November 17, 2020 City Council Agenda Report and attachments
- 3: Roofing personnel qualifications/resume
- 4: Notice of Active RCSD Construction Contract
- 5: City of Pleasant Hill City Council meeting minutes
- 6: OSHA Violations History
- 7: Litigations History
- 8: DIR Violations History
- 9: List of Past Project Construction Contingency
- 10: Change Order Policy
- 11: Design Service Agreement with SKA
- 12: Amendment No. 1 to Design Service Agreement with SKA
- 13: Settlement Agreement Between City of Lafayette and C. Overaa & Co.
- 14: Budget Change Form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REJECTING A BID PROTEST FROM C. OVERAA & CO., WAIVING IMMATERIAL BID DEVIATIONS AND AWARDING A CONSTRUCTION CONTRACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER SUBMITTING A RESPONSIVE BID, SAUSAL CORPORATION, IN THE AMOUNT OF \$7,638,200 FOR THE FIRE STATION NO. 2 REPLACEMENT, PROJECT NO. 3447, AND AUTHORIZING THE ENGINEERING DIRECTOR/CITY ENGINEER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000 FOR THE PROJECT, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE DESIGN SERVICES AGREEMENT WITH SHAH KAWASAKI ARCHITECTS

WHEREAS, Project No. 3447, Fire Station No. 2 Replacement (“Project”) is in the approved 2020-2025 Capital Improvement Program; and

WHEREAS, on December 4, 2018, the City Council authorized the City Manager to execute a Design Services Agreement with Shah Kawasaki Architects (“SKA”) in an amount not to exceed \$913,494.00 for the Project; and

WHEREAS, on January 7, 2020, the City Council approved the Project plans and specifications and authorized the advertisement of the bidder prequalification package; and

WHEREAS, on March 3, 2020, the City Council approved the list of four pre-qualified bidders for the Project; and

WHEREAS, the Engineer’s Estimate for the Project Base Bid items is \$10,830,000; and

WHEREAS, the Project was bid in accordance with the bidding requirements under the Uniform Public Construction Cost Accounting Act; and

WHEREAS, on September 10, 2020, four sealed bid proposal were received. The base bid pricing varies between 4% to 29% under the Engineer’s Estimate; and

WHEREAS, one bid protest from C. Overaa & Co. was filed with the City within five (5) days of the bid opening; and

WHEREAS, the bid protest from C. Overaa & Co., was deemed meritless and a notice of intent to reject the bid protest was delivered to C. Overaa & Co. (“Notice”); and

WHEREAS, the lowest responsible bidder submitting a responsive bid is Sausal Corporation, in the base bid amount of \$7,638,200; and

WHEREAS, sufficient funds are available in the Project budget to award the base bid item under Sausal Corporation’s bid in the amount of \$7,638,200; and

WHEREAS, staff recommends the City Council reject the bid protest from C. Overaa & Co., as meritless for the reasons specified in the Notice, waive the missing notary acknowledgment for the person signing on behalf of Sausal Corporation as an immaterial deviation in the bid, and award a construction contract for the Base Bid items to Sausal Corporation, the lowest responsible bidder submitting a responsive bid, and authorize the City Manager to execute a contract in the total amount of \$7,638,200 in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed \$1,200,000; fifteen percent (15%) of the total contract value, due to the Project’s tight completion schedule and staff’s capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City; and

WHEREAS, staff recommends the City Council approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project.

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 rejects the bid protest from C. Overaa & Co., as meritless for the reasons specified in the Notice.
3. The City Council waives immaterial bid deviations in Sausal Corporation's bid.
4. The City Council hereby awards the construction contract to and authorizes the City Manager to execute the contract and related documents with the lowest responsible bidder submitting a responsive bid, Sausal Corporation, for the Base Bid scope of work in the amount of \$7,638,200 for the Project.
5. The Engineering Director/City Engineer is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$1,200,000 for the Project.
6. The City Council approves and authorizes the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

ATTACHMENT 2



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co., Waive Immaterial Bid Deviations and Award the Construction Contract to Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; Authorize the City Manager to Execute the Construction Contract; Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders; Approve and Authorize the City Manager to Execute Amendment No. 1 to the Design Service Agreement with Shah Kawasaki Architects; and Approve a Related Budget Amendment
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	11/17/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendation:	Adopt a resolution to: 1. Reject a bid protest from C. Overaa & Co.; 2. Waive immaterial bid deviations in Sausal Corporation's bid; 3. Award a construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200; 4. Authorize the City Manager to execute the construction contract with Sausal Corporation; 5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000; 6. Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project; 7. Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Background:

Project No. 3447 - Fire Station No. 2 Replacement ("Project") is in the approved 2020-2025 Capital Improvement Program. Fire Station No. 2 was constructed in 1968 and the building and site have reached the end of their service life and need replacement.

On August 17, 2018, the City issued a Request for Proposals (RFP) seeking proposals from qualified design firms for the design of the Project. The RFP process followed the City's Standard Operating Procedure and the Municipal Code with respect to hiring professional consultants.

Six proposals were received. Proposals were ranked based on the project team, project understanding, management approach, and similar past project experiences. Shah Kawasaki Architects (SKA) was determined to be the highest ranked firm based on the evaluation criteria under the RFP. On December 4, 2018, the City Council authorized the City Manager to execute a Design Services Agreement (**Attachment 10**) with SKA in an amount not-to-exceed \$913,494.00 for the Project.

In preparation for construction of the Project, fire staff were relocated into a temporary facility and Fire Station No. 2 was demolished. The Project includes a new 10,300 square foot single story wood frame fire station that

will be constructed at 1263 Yosemite Drive, the location of the old station. The new station building will be constructed using sustainable elements and has been designed with operation efficiencies to improve response times and meet current building and fire codes for an essential facility. The Project will have three apparatus equipment bays; dorm rooms; day room, kitchen, landscape and site improvements, and a community meeting room for public use.

The City Council approved the Project plans and specifications and authorized the advertisement of the bidder prequalification package on January 7, 2020. Subsequently, the City Council approved the list of four pre-qualified bidders on March 3, 2020. The Project plans and specifications were advertised for bid on digital construction trade publications and in the Milpitas Post on July 24 and 31, 2020, in accordance with the bidding requirements of the Uniform Public Construction Cost Accounting Act. Bid opening was held on September 10, 2020, and four sealed bids were received from the pre-qualified contractors.

Analysis:

The summary of bid results is shown below and is included as **Attachment 2**.

Bidder	Location	Base Bid
Engineer's Estimate		\$10,830,000
Sausal Corporation	Concord, CA	\$ 7,638,200
C. Overaa & Co.	San Jose, CA	\$ 8,500,000
DL Falk Construction, Inc.	Hayward, CA	\$ 9,519,000
Angeles Contractor, Inc	City of Industry, CA	\$ 10,372,000

The Base Bid prices submitted by the bidders vary between 4% to 29% under the Engineer's Estimate. The range of variation in pricing is likely due to the current construction market which has slowed as a result of the COVID-19 pandemic. The lowest responsive bid submitted by a responsible bidder is from Sausal Corporation, with a Base Bid amount of \$7,638,200, which is \$3,191.800 below the Engineer's Estimate.

On September 14, 2020, the City received a bid protest from C. Overaa & Co. (**Attachment 4**). The protest was forwarded on to Sausal Corporation for review, and Sausal issued response dated September 18, 2020 (**Attachment 5**). Though there is no authority under the City's bid protest procedures for a protesting bidder to supplement their bid protest, C. Overaa & Co. issued a second bid protest letter to the City on September 23, 2020 – referred to as a sur-reply (**Attachment 6**). The protest and sur-reply were reviewed by City staff in consultation with the City Attorney's office, determined to be meritless, and City staff notified C. Overaa & Co. in writing on or about September 25, 2020 of its intent to recommend rejection of the bid protest to the City Council ("City Protest Response") (**Attachment 7**).

City staff recommends that the bid protest from C. Overaa & Co. be rejected as meritless for the reasons specified in the City Protest Response.

The following is a summary of the items raised in the protest and the City Protest Response.

1. Alleged Failure to List a Subcontractor for the Bituminous Membrane Roofing Work

The protest alleges that Sausal failed to list a subcontractor for the bituminous membrane roofing work thereby rendering Sausal's bid nonresponsive. Public Contract Code section 4101 only requires a bidder to list subcontractors who will perform any work in excess of one-half of 1% of its total bid amount. If a subcontractor is not listed in the bid for a specific construction trade in excess of one-half of 1% of the bid amount, the Public Contract Code requires the bidder to self-perform the work. In response to the City's request to Sausal for clarification regarding the subject matter, Sausal stated that it intends to self-perform the bituminous membrane roofing work. Based on the foregoing, the City is under no obligation to reject Sausal's bid as nonresponsive for failure to list a subcontractor for the bituminous membrane roofing work.

2. Alleged Failure to Provide a Notary Acknowledgement on the Bid Bond

The protest alleges that Sausal's failure to provide a notary acknowledgment for Sausal's signature on the bid bond render's Sausal's bid nonresponsive. This is an inconsequential defect. The bid bond is signed by Josh Ward, President, on behalf of Sausal Corporation and there is no dispute or disagreement about who signed the bid bond. Moreover, the surety also signed the bid bond and provided a notary acknowledgement (as well as an original attorney-in-fact certificate). Accordingly, the surety signed the bid bond guaranteeing that Sausal Corporation would execute the construction agreement if awarded the contract, and the bid bond is fully enforceable. Therefore, this is an immaterial deviation which the City may waive.

3. Alleged Abnormality on Sausal's Subcontractor Listing Form

Sausal provided incorrect information for one of its listed subcontractors – Concrete Builders. The protest claims that Sausal essentially listed two separate subcontractors for the same scope of work. However, there is nothing in the bid package to suggest that Sausal listed two subcontractors for the same scope of work. Rather, the mistake arises out of Concrete Builders providing incorrect information to Sausal, which in turn led Sausal to list incorrect information for Concrete Builders under the subcontractor listing form. Pursuant to applicable law as further discussed in the City Protest Response, the City is not required to reject Sausal's bid as nonresponsive due to the foregoing immaterial deviation.

Additionally, a bid advisory letter ("Union Letter") from Carpenter Local Union 405 ("Union") was received on September 15, 2020, requesting the City conduct a factual inquiry that Sausal Corporation qualifies as a "responsible" and "responsive bidder" (**Attachment 8**). Sausal Corporation reviewed the Union Letter and provided a written response ("Response Letter") received by the City on September 21, 2020 (**Attachment 9**). The City Attorney and City staff reviewed both the Union Letter and Response Letter. Below is the summary of the issues raised in the Union Letter.

1. Sausal Corporation's bid is unrealistically low in comparison with second lowest bid and engineer's estimate, raising the questions whether the bid is nonresponsive for not accurately reflecting the cost to perform the work and whether it violates Labor Code section 2810.

The Union is concerned that Sausal Corporation's bid is unrealistically low compared to the second lowest bid (approximate 7%) and the Engineer's Estimate. In turn, they claim that the bid doesn't accurately reflect the cost of the work and is in violation of Labor Code section 2810 because the City knows or should know there are not sufficient funds to allow Sausal to comply with all applicable laws. The Union also questions whether Sausal Corporation calculated its bid price correctly and, if so, whether they intend to pay prevailing wages in compliance with state prevailing wage law.

If Sausal Corporation calculated its bid price incorrectly because of a material mistake in filling out the bid, it had the opportunity to withdraw its bid under Public Contract Code section 5103, but it did not. Additionally, the Response Letter does not suggest that Sausal Corporation calculated its bid price incorrectly. Further, the Contract Documents require Sausal Corporation to comply with all applicable laws, including, but not limited to, the California Labor Code and state prevailing wage law. At the same time, there are mechanisms in place for the City to enforce compliance. Sausal Corporation will be required to provide a performance bond guaranteeing completion of the Project and a payment bond guaranteeing that all subcontractors, material suppliers, equipment suppliers and laborers will be paid – labor must be paid at applicable prevailing wage rates. Notably, in the past five years, Sausal Corporation has not been assessed back wages or penalties for failure to comply with these codes and laws.

City staff determined that no further action is required in response to this matter based on the lack of any substantive issues impacting the responsiveness of Sausal Corporation's bid or Sausal Corporation's attributes as a responsible bidder.

2. Sausal Corporation's bid may be nonresponsive for failing to disclose Civil Wage and Penalty Assessments (CWPAs) Issued by the DIR's Division of Labor Standards Enforcement.

The Union Letter alleges that Sausal Corporation failed to disclose Civil Wage and Penalty Assessments (CWPA) issued by the Department of Industrial Relations ("DIR") against two of Sausal Corporation's subcontractors within the last five years. However, Sausal did not list either of the referenced subcontractors for the Project and is, therefore, not required to disclose the CWPA claims. Additionally, the Response Letter points out that one claim involved a project that was completed in 2014, more than five years ago, and that the other matter was dismissed by the hearing officer.

City staff determined that no further action is required in response to this matter as it does not raise any actionable issues.

3. Sausal Corporation may not be a responsible bidder as required by the Public Contract Code for the following reasons:

Potential Failure to Adequately Screen Subcontractor Tri Valley Excavating

The Union Letter states the Contractor State License Board (CSLB) database shows "Pending Disciplinary Action" against Tri Valley Excavating, one of Sausal Corporation's listed subcontractors. City staff contacted Sausal Corporation and was advised that the action was resolved in 2017. By law, CSLB is required to post a "Pending Disciplinary Action" for five years. Further, even if it was discovered that Tri Valley Excavating was not licensed to perform on the Project, Sausal Corporation could substitute them under Public Contract Code section 4107.

City staff determined that no further action is required in response to this matter as it does not raise any actionable issues.

History of Litigation

The Union Letter states two lawsuits were filed by subcontractors in 2014 and 2015 against Sausal Corporation for failure to pay for work completed on the same public project. On one of the lawsuits, the public agency owner rejected the claim by the subcontractor. The other lawsuit was dismissed. Since the lawsuits were not within the past five years, Sausal Corporation was not required to disclose this information. Additionally, the City during the prequalification process evaluated and reviewed Sausal Corporation's history of litigation and is comfortable with moving forward with Sausal Corporation.

City staff determined that no further action is required in response to this matter as it does not raise any actionable issues.

Delays on Past School and College Projects

The Union Letter identifies two project delays in 2014 and 2016. The project owners approved the contract time extensions requests, and both projects were completed without any claims, litigation or liquidated damages. Delays are not unusual on a construction project and can be caused by a multitude of factors such as design changes or unforeseen conditions. In addition, the Union Letter specifies a construction defect on one of the projects that caused delay of completion. It was determined to be a design related issue and not due to Sausal Corporation or its subcontractor's work. Further, the City during the prequalification process checked all references provided and determined that the Sausal Corporation is qualified as a responsible bidder capable of performing the Project.

City staff determined that no further action is required in response to this matter as it does not raise any actionable issues.

OSHA Violations

The Union Letter states, regarding OSHA, there were “serious violations” committed in 2016 by Sausal Corporation. Staff reviewed the documentation of the violations and determined the violations were actually categorized as “other,” which is not consistent with the claim in the Union Letter of “serious violations.” In the past five years, Sausal Corporation has not been assessed any “serious”, “willful”, or “repeat” violations of safety or health regulations by California or Federal OSHA. In 2019/2020, Sausal Corporation had an Experience Modification Rate (EMR) of 0.64, less than the industry average of 1.0 (EMR below 1.0 is considered safer than average). Further, as part of the prequalification process, the City reviewed Sausal Corporation’s compliance with safety laws and regulations and determined that Sausal Corporation did not have any noncompliance issues substantively affecting their ability to perform the Project.

City staff determined the OSHA violations were minor and no further action is required in response to this matter.

Staff recommends the City Council adopt a Resolution (**Attachment 1**) to reject the bid protest from C. Overaa & Co., waive immaterial bid deviations, and award a construction contract to Sausal Corporation for a total contract amount of \$7,638,200. There is sufficient funding available in the Project budget to award this contract and no additional funding appropriation is required.

The construction contingency established for the Project is \$1,200,000, which is approximately 15% of the total contract value. As previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy (**Attachment 3**). This policy allows for a timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approve necessary change orders in order to limit potential claims or risks to the City

Staff also recommends the approval of Amendment No. 1 to the Design Services Agreement with SKA to provide additional compensation for construction support services. Construction support services would include assistance in reviewing the contractor’s schedule, responding to questions from the contractor, and minor design changes required to complete construction, if needed. Staff has negotiated a scope and fee for Amendment No. 1 for a price not to exceed \$75,000 (**Attachment 11**), which is considered reasonable for the scope of services. No additional funding appropriation is required for Amendment No. 1 to the Design Services Agreement with SKA.

Policy Alternative:

Alternative: Do not reject the bid protest and do not award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation.

Pros: None

Cons: The Project is on schedule to start construction in early 2021, which will allow completion of the building enclosure by Fall 2021 and avoid potential weather delays. Not awarding the contract will delay the Project for up to six months and will likely increase Project costs by an estimated amount of \$1,000,000, which would have to be funded from reserves.

Reason not recommended: It is recommended the Project be awarded to Sausal Corporation to ensure the Project remains on schedule and within budget.

Fiscal Impact:

The FY 2020-21 Adopted Budget assumed the construction cost for the improvements to be \$15.7 million financed with the issuance of \$13 million in general fund lease revenue bonds for the replacement of Fire Station No.2. Based on the competitive bidding environment primarily for the construction contract, on October 20, 2020, the City Council approved the sale and issuance of \$9.6 million bond, a decrease of \$3.4 million. Therefore, staff recommends reducing the financing source and project budget by \$3.4 million.

Even with the recommended budget adjustment, there is sufficient funding available to award the construction contract and authorize Amendment No. 1 to the Design Services Agreement with SKA. As of August 31, 2020, the available Project funding is as follows:

2020 Lease Revenue Bonds	\$9,600,000
General Government CIP Fund	\$2,530,000
Available Project Budget	\$ 12,130,000

Summary of Estimated Construction Cost

Construction Contract	\$ 7,638,200.00
15% Construction Contingency	\$ 1,200,000.00
Administration and Inspection	\$ 600,000.00
Design Services Agreement - Amendment No.1	\$ 75,000.00
Total Estimated Cost	\$ 9,513,200.00

The remaining funds in the Project of about \$2.6 million are needed to cover other Project costs such as lease payments and demobilization for the temporary fire station, moving costs from the temporary to the permanent facility, as well as staff and soft costs.

California Environmental Quality Act:

The Project qualifies for categorical exemption under Class 2 "Replacement or Reconstruction" as defined in CEQA Guidelines Section 15302.

Recommendation:

Adopt a resolution to:

- (i) Reject a bid protest from C. Overaa & Co.;
- (ii) Waive immaterial bid deviations in Sausal Corporation's bid;
- (iii) Award a construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200;
- (iv) Authorize the City Manager to execute the construction contract with Sausal Corporation;
- (v) Authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000;
- (vi) Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project;
- (vii) Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Attachments:

- 1: Resolution
- 2: Bid Results
- 3: Change Order Policy
- 4: Bid Protest from C Overaa & Co.
- 5: Sausal Protest Response Letter
- 6: Sur-reply from C Overaa & Co.
- 7: City Protest Response
- 8: Carpenter Local Union 405 Bid Advisory Letter
- 9: Sausal Union Bid Advisory Letter Response
- 10: Design Service Agreement with SKA
- 11: Amendment No. 1 to Design Service Agreement with SKA
- 12: Budget Change Form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REJECTING A BID PROTEST FROM C. OVERAA & CO., WAIVING IMMATERIAL BID DEVIATIONS AND AWARDED A CONSTRUCTION CONTRACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER SUBMITTING A RESPONSIVE BID, SAUSAL CORPORATION, IN THE AMOUNT OF \$7,638,200 FOR THE FIRE STATION NO. 2 REPLACEMENT, PROJECT NO. 3447, AND AUTHORIZING THE ENGINEERING DIRECTOR/CITY ENGINEER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000 FOR THE PROJECT, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE DESIGN SERVICES AGREEMENT WITH SHAH KAWASAKI ARCHITECTS

WHEREAS, Project No. 3447, Fire Station No. 2 Replacement (“Project”) is in the approved 2020-2025 Capital Improvement Program; and

WHEREAS, on December 4, 2018, the City Council authorized the City Manager to execute a Design Services Agreement with Shah Kawasaki Architects (“SKA”) in an amount not to exceed \$913,494.00 for the Project; and

WHEREAS, on January 7, 2020, the City Council approved the Project plans and specifications and authorized the advertisement of the bidder prequalification package; and

WHEREAS, on March 3, 2020, the City Council approved the list of four pre-qualified bidders for the Project; and

WHEREAS, the Engineer’s Estimate for the Project Base Bid items is \$10,830,000; and

WHEREAS, the Project was bid in accordance with the bidding requirements under the Uniform Public Construction Cost Accounting Act; and

WHEREAS, on September 10, 2020, four sealed bid proposal were received. The base bid pricing varies between 4% to 29% under the Engineer’s Estimate; and

WHEREAS, one bid protest from C. Overaa & Co. was filed with the City within five (5) days of the bid opening; and

WHEREAS, the bid protest from C. Overaa & Co., was deemed meritless and a notice of intent to reject the bid protest was delivered to C. Overaa & Co. (“Notice”); and

WHEREAS, the lowest responsible bidder submitting a responsive bid is Sausal Corporation, in the base bid amount of \$7,638,200; and

WHEREAS, sufficient funds are available in the Project budget to award the base bid item under Sausal Corporation’s bid in the amount of \$7,638,200; and

WHEREAS, staff recommends the City Council reject the bid protest from C. Overaa & Co., as meritless for the reasons specified in the Notice, waive the missing notary acknowledgment for the person signing on behalf of Sausal Corporation as an immaterial deviation in the bid, and award a construction contract for the Base Bid items to Sausal Corporation, the lowest responsible bidder submitting a responsive bid, and authorize the City Manager to execute a contract in the total amount of \$7,638,200 in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed \$1,200,000; fifteen percent (15%) of the total contract value, due to the Project’s tight completion schedule and staff’s capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City; and

WHEREAS, staff recommends the City Council approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project.

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 rejects the bid protest from C. Overaa & Co., as meritless for the reasons specified in the Notice.
3. The City Council waives immaterial bid deviations in Sausal Corporation's bid.
4. The City Council hereby awards the construction contract to and authorizes the City Manager to execute the contract and related documents with the lowest responsible bidder submitting a responsive bid, Sausal Corporation, for the Base Bid scope of work in the amount of \$7,638,200 for the Project.
5. The Engineering Director/City Engineer is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$1,200,000 for the Project.
6. The City Council approves and authorizes the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney



CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

Project Name: Fire Station No.2 Replacement
Project No. : 3447
Bid Date: September 10, 2020 at 2:00 PM

		Apparent Low Bidder				
		Engineer's Estimate	Sausal Corporation	C. Overra & Co.	DL Falk Construction Inc.	Angeles Contractor, Inc.
Item	DESCRIPTION	Cost	Cost	Cost	Cost	Cost
1	Construct New Fire Station	\$9,980,000.00	\$7,413,800.00	\$8,074,000.00	\$9,293,000.00	\$10,107,100.00
2	Mobilization & Demobilization	\$750,000.00	\$150,000.00	\$400,000.00	\$120,000.00	\$80,000.00
3	SWPPP	\$50,000.00	\$47,400.00	\$15,000.00	\$35,000.00	\$82,000.00
4	Sheeting, Shoring and Bracing	\$30,000.00	\$1,000.00	\$1,000.00	\$15,000.00	\$0.00
5	Covid 19 Health Order Job Site Compli	\$20,000.00	\$26,000.00	\$10,000.00	\$56,000.00	\$102,900.00
Base Contract Work (Labor, material, services, equipment)		\$10,830,000.00	\$7,638,200.00	\$8,500,000.00	\$9,519,000.00	\$10,372,000.00

List of Sub-Contractors

Description	Sausal Corporation	C. Overra & Co.	DL Falk Construction Inc.	Angeles Contractor, Inc.
Electrical	Con J Franke	Kaave	AMP Electric	KAAVE
Vehicle Exhaust	Air Exchange	Air Exchange		
CIP concrete	Concrete Builders	Landavazo	Jalos Concrete	Concrete Builders
Polished Concrete Flooring	BAC		Bakers Floor and Surface	
Brick unit masonry	Townsend & Schmidt	Townsend	Stoney Masonary	Townsend
Structural and Misc Steel	Martin's steel works		Martin's steel works	Martin's steel works
Architectural wood work	OCSI	Freemont	GH Fixtures	
Thermal insulation	Coast	Coast Building	Coast Building Products	
Metal wall panels	Four Cs	Tecta America	Four Cs	Four Cs
Alum and Glass sectional OH Doors	Byron Epp		AAC Glsas	AAC Glsas
Entrances and storefronts	American Glass	National Glass		
Gypsum Board Assemblies	Harrison Drywall	Harrison	Ironwood commercial builders	
Acoustical Celilings	Dana Kitchens	High Point	Highpoint Acoustics	
Painting and Coating	Valdez	Valdez	Valdez	
Fire Suppression System	Marquee	FootHill	Marquee fire protection	
Plumbing	Dinelli	DA Bender	Plumbing Syrell	Cal Pacific
Diesel Fuel System	Bagley	Bagley		
HVAC	Sullivan	Lefco	Sullivan heating	Coolmart
Earthwork	Tri Valley			Azul
Paver	Earth Shelter			
Landscaping	TD Builder	TD Builders	JJ Nguyen Inc	Eggl Landscape
Site Utilities	Pipe Net Inc			

Fence and Gate			Crusader fence	Pisor Fence
Rough Carpentry and Drywall		Richard Hancock		GMG
Millwork				Fremont's Millwork
Roofing		Tecta America	State roofing	State Roofing
Doors				Commercial
Overhead door		Byron EPP		Vyron
Fire Sprinkler				Bsaeline
Fuel Storage System			Bagleur enterprises	
Earthwork and utilities		bay cities grading and paving	bay cities grading and paving	
Concrete steel reinforcing		MCR	Camblin Steel	
Garage Doors			National Door Co	
Pavers		Alpha & Omega		
Metals		Weldway		
Membrane Roofing		State Roof		
Folding Gate		Byron EPP		

Construction Change Order Policy for Fire Station No. 2 Replacement, Project No. 3447.

2007 City Council Approved Construction Change Order Policy

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

Fire Station No.2 Replacement Project Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$7,638,200	N/A	\$ 1,200,000



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Richmond, CA 94801
Tel 510-234-0926
Fax 510-237-2435
www.overaa.com

September 14, 2020

Lyhak Eam, P.E.,
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(408) 586-3349
Email: Leam@ci.milpitas.ca.gov

Re: Milpitas Fire Station No. 2 Replacement Bid Opening September 10, 2020, 2:00pm

Dear Lyhak Eam, P.E.,

C. Overaa & Co. ("Overaa") hereby protests the award of the Milpitas Fire Station No. 2 Replacement project that bid on September 10, 2020, to any bidder other than Overaa. Overaa submitted the lowest responsive bid. Sausal Corporation ("Sausal") violated mandatory provisions of the Milpitas Fire Station No. 2 Replacement bidding requirements and California law, and Sausal's bid should be rejected.

This letter is intended to be:

1. A protest against an award of the Contract to Sausal, because Sausal's bid was non-responsive. Sausal failed to meet specific requirements detailed in the project documents for Subcontractor Listings, Modified Bituminous Membrane Roofing, and Completion of Bid Forms.
2. A protest against the award to Sausal due to several material abnormalities and irregularities on their bid form. Sausal had abnormalities and irregularities regarding subcontractor listings for Concrete Builders.
3. A request under Gov. Code Section 54954.1 for mailed notices of all meetings of the Milpitas City Council at which any issues pertaining to the award of the Contract are on the agenda. If there is any fee or other requirement for this service, please let us me know so that I can make the proper arrangements to receive these notices.
4. A request to be informed when any staff reports or recommendations concerning any issues pertaining to the award of the Contract are available to the public, so I can review those reports or recommendations.

Sausal's bid does not meet the specification requirements listed in the bid documents and gained an unfair bid advantage by not complying with the specifications for Subcontractor Listings, Modified Bituminous Membrane Roofing, and Completion of Bid Forms.



200 Parr Boulevard
Richmond, CA 94801
Tel 510-234-0926
Fax 510-237-2435
www.overaa.com

Subcontractor Listings

Per specification section 00 21 13 – Instructions to Bidders - 9 Subcontractors:

9. SUBCONTRACTORS

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

Sausal failed to list a subcontractor for specification 07 52 00 Modified Bituminous Membrane Roofing. This scope is well in excess of one half of one percent (0.5%) mandating a subcontractor listing as stated in specification 00 21 13 – Instructions to Bidders – 9 Subcontractors. Sausal was the only bidding general contractor to not list a membrane roofing subcontractor and Overaa's lowest membrane roofing quote was 2% or four times the listing requirement (as indicated on its bid form). This is a clear violation of the bid documents and subcontractor listing requirements as this opens up the opportunity for Sausal to bid shop after the public bid opening. **Sausal's bid must be rejected as it is non-responsive.**

Modified Bituminous Membrane Roofing

Per specification section 07 52 00 – 1.5 Quality Assurance:

1.5 QUALITY ASSURANCE

- A. Sustainability Requirements: Comply with CALGreen requirements including those relative to energy efficiency.
- B. Installer Qualifications: Roofing manufacturer certified or approved.
- C. Supervisor: Installer to maintain full-time supervisor/foreman who is on jobsite during roofing work who is experienced in installation of roofing system specified.

Sausal failed to provide a subcontractor listing for Modified Bituminous Membrane Roofing. This indicates one of two scenarios: 1. Sausal's bid for Modified Bituminous Membrane Roofing was less than the subcontractor listing amount of one half of one percent (0.5%) or 2. Sausal will self-perform the Modified Bituminous Membrane Roofing scope. As previously detailed the scope of work for Modified Bituminous Membrane Roofing is well in excess of one half of one percent (0.5%). In addition Sausal cannot self-perform this work because they are not a certified or approved installer per specification section 07 52 00 – 1.5 Quality Assurance. Sausal gained an unfair bid advantage by not listing a subcontractor for a scope of work that is over one half of one percent (0.5%) and that they cannot self-



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perform. This opens up the opportunity for Sausal to bid shop after the public bid opening. **Sausal's bid must be rejected as it is non-responsive.**

Completion of Bid Forms

Per specification section 00 21 13 – Instructions to Bidders - 7 Completion of Bid Forms:

7. COMPLETION OF BID FORMS

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

Sausal deviated from filling out the bid forms per specification 00 21 13 – Instructions to Bidders – 7 Completion of Bid Forms by not filling out / notarizing page 27 of 00 41 43 – Bid Forms (attachment 1). This form is required to be executed for a bid form to be considered complete and it is clearly blank. **Because of this, Sausal's bid must be rejected as it is non-responsive.**

Since Sausal's bid does not promise to do what is required by the bid documents, Sausal's bid is nonresponsive and must be rejected. *See also MCM Const., Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359 (rejection of bid as nonresponsive was proper because it failed to comply with specification).

Sausal's bid form contains several abnormalities and irregularities on their bid form regarding subcontractor listings for Concrete Builders.

CIP Concrete

Sausal listed two separate sets of subcontractor information for CIP Concrete (attachment 1). Their listing states: Concrete Builders – El Dorado Hills – 801786 – 1000000297 – CIP Concrete – 6.4%. The issue is the subcontractor name and location provided "Concrete Builders" and "El Dorado Hills" has license and DIR number of 981710 and 1000033703. This does not match Sausal's bid form listing of 801786 and 1000000297. This license and DIR number are for a company called "Concrete Services" located in Sacramento. Essential Sausal has listed two separate subcontractors for the same scope of work. This provided Sausal an unfair competitive advantage and opens up the opportunity for Sausal to bid shop after the public bid opening. It is a basic rule of competitive bidding that bids must conform to the specifications, and if a bid does not conform, it may not be accepted. (*Cypress Sec., LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1015; *Taylor Bus. Service, Inc. v. San Diego Bd. Of*



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Education (1987) 195 Cal.App.3d 1331, 1339.) Bids which are not strictly responsive can only be accepted if the deviation could not have affected the amount of the bid or given a bidder an advantage or benefit not afforded other bidders. (Konica Business Machines, U.S.A., Inc. v. Regents of the University of California (1988) 206 Cal.App.3d 449, 454-455.) **BHM's gained an unfair competitive advantage and their bid shall be deemed non-responsive.**

Conclusion

Under California's competitive bidding statutes, a contract must be awarded to the lowest responsive bidder. To be responsive, a bid must conform to the material terms of the bid package. City of Inglewood v. Los Angeles County Civic Center Authority (1972) 7 Cal.3d 861. A bid that differs materially from the bid specifications must be rejected. Stimson v. Hanley (1907) 151 Cal. 379. Typically, the material terms of a bid are those that affect price, quantity, quality, or delivery and those terms that the bid package clearly identifies as mandatory. Pozar v. Department of transp. (1983) 145 Cal.App.3d 269. A bid also fails to comply materially with the bid package if it gives the bidder an unfair competitive advantage over other bidders. Menefee v. County of Fresno (1985) 163 Cal.App.3d 1175. In addition to bid irregularities affecting pricing and the mandatory terms of the bid package, a bidder gains an unfair advantage if a mistake in its bid gives the bidder the right to withdraw its bid without forfeiting its bid bond. (See California Public Contract Code Section 5103.).

Under California competitive bidding statutes, Sausal failed by:

1. Sausal failed to meet specific requirements detailed in the project documents.
2. Sausal had abnormalities and irregularities for: Concrete Builders.
3. These errors gave Sausal an unfair advantage over other bidders.

California law precludes the City from waiving the errors in Sausal's bid. Sausal's bid contains several abnormalities, as a result, Overaa is the lowest responsive and responsible bidder and pursuant to public contracts code section 22038 the city must award the project to the lowest responsible bidder submitting a responsive bid or reject all bids received.

Overaa believes that The City of Milpitas should:

- Reject Sausal's bid as non-responsive.
- Determine that Overaa's bid is responsive, and
- Award the Contract to Overaa as the lowest responsive bidder.

Sincerely,

C. OVERAA & CO.



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Richmond, CA 94801
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Fax 510-237-2435
www.overaa.com

A handwritten signature in blue ink, appearing to read "Larry Etcheverry".

Larry Etcheverry
Vice President, Estimating

Cc: Larry Etcheverry, Overaa, via. Email
Jerry Overaa, Overaa, via. Email
Cody Lee, Overaa, via. Email

Sausal, Josh Ward, President, via facsimile (925)568-2525 & Email: sausal@sausal.net

Attached: Attachment 1

00 41 43 – BID FORMS

1.1 Bid Acknowledgement.

NAME OF BIDDER: Sausal Corporation

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

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

MILPITAS FIRE STATION NO.2 REPLACEMENT

- A We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Contract Documents for the Total Bid Price indicated herein.
- B The undersigned agrees that this Bid constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the City and a third party, whichever is earlier.
- C The undersigned has by careful examination of the Contract Documents and any addenda thereto, and by examination of the actual Site conditions, satisfied itself as to the nature and location of all Work, the plans and specifications, and the general and local conditions to be encountered in the performance of any Work, the requirements of the Contract and all other matters which can in any way affect the Work or the cost thereof.
- D The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

List Addenda No's. 1, 2, 3

- E Attached hereto and by this reference incorporated herein and made a part of this Bid are the following forms which have been completed and executed by undersigned Bidder:

- 1. Designation of Subcontractors form.
- 2. Bidder Information and Experience form.
- 3. Noncollusion Declaration form.
- 4. Iran Contracting Act Certification form.
- 5. Public Works Contractor Registration Certification form.

6. Attached is the completed Wage Theft Certification form.
7. Contractor's Certificate Regarding Workers' Compensation form.
8. Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
- F If awarded a contract, the undersigned hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within fourteen (14) days after the City provides the successful bidder with the Notice of Award.
- G Upon receipt of the signed contract and other required documents, the contract will be executed by the City, after which the City will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.
- H Bidder is an individual _____, or corporation X, or partnership _____, organized under the laws of the State of California.
- I Bidder represents and confirms that license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):
281425 1-31-2022 "B"

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

(SIGNATURES CONTINUED ON NEXT PAGE)

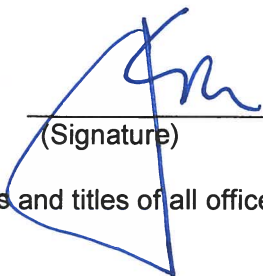
J The undersigned that the representations made herein herein are true and correct and all of the information submitted in connection with this Bid are made under penalty of perjury under the laws of the State of California.

Executed at Concord, CA, on this 8th day of September, 2020.

(Bidder's Name – Print or Type)

Josh Ward, President
(Name and Title)

(Corporate Seal)


(Signature)

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

Name James E Ward Title Chairman

Complete Address 3550 Willow Pass Road Concord, CA 94519

Phone 925-568-2200 Fax 925-568-2525

Name Josh Ward Title President

Complete Address 3550 Willow Pass Road Concord, CA 94519

Phone 925-568-2200 Fax 925-568-2525

Name Leslie L Ward Title Secretary

Complete Address 3550 Willow Pass Road Concord, CA

Phone 925-568-2200 Fax 925-568-2525

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

1.2 BID SCHEDULE

Base Bid Item #1: Construct New Fire Station

This item includes provision of all labor, material, services and equipment, necessary for the completion of all Work shown in the attached plans and described in the attached specifications and other Contract Documents suitable for its intended use, and all other work except those items included in bid items #2 through 5

Seven Million four hundred thirteen thousand eight hundred Dollars (\$ *7,413,800.00*)

Base Bid Item #2- Mobilization & Demobilization

This item includes provisions for all labor, materials and equipment necessary for Mobilization/ Demobilization, as described in the Specifications.

one hundred fifty thousand Dollars (\$ *150,000.00*)

Base Bid Item #3- SWPPP

This item includes provision for all labor, materials and equipment necessary for the completion of a Storm Water Pollution Prevention Plan (SWPPP) and all surface-water pollution prevention and erosion control measures, as described in the specifications.

Forty seven thousand four hundred Dollars (\$ *47,400.00*)

Base Bid Item #4- Sheeting, Shoring and Bracing

This item includes provision for all labor, materials and equipment necessary for the completion of Sheeting, Shoring and Bracing or Equivalent Method.

one thousand Dollars (\$ *1,000.00*)

Base Bid Item #5- Covid 19 Health Order Job Site compliance & Protocols

This item includes provision for all labor, material and equipments necessary to comply with all applicable and current health order laws and regulations including but not limited to OSHA and Cal-OSHA.

Twenty six thousand Dollars (\$ *26,000.00*)

Total Base Bid (Base Bid Item #1 + 2 + 3 + 4 +5)

Seven million six hundred thirty eight thousand two hundred Dollars (\$ *7,638,200.00*)

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

performance of the Work. The Contractor's bid price will include all safety protocols as prescribed in the Contractor's COVID-19 Plan including social distancing and mandated facial coverings to ensure a safe jobsite.

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

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

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

If the Contract Documents specify Alternate Bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), in the City's sole discretion. The City can choose to include any, all, or none of the Alternate Bid items in the Work. If the City selects any of the Alternate Bid items, the corresponding Alternate Bid prices shall be added to or deducted from Base Bid Price for the Work. The City can award/select Alternate Bid items at any time(s).

Alternate Bids	Description	Unit of Measure	Estimate Qty	Unit Price	Total Item Price
ALTERNATE #1 ☐ Add ☐ Deduct					
ALTERNATE #2 ☐ Add ☐ Deduct					
ALTERNATE #3 ☐ Add ☐ Deduct					
ALTERNATE #4 ☐ Add ☐ Deduct					
ALTERNATE #5 ☐ Add ☐ Deduct					
ALTERNATE #6 ☐ Add ☐ Deduct					

1.3 List of Subcontractors

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

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

As stated in the Instructions to Bidders, Bidder is required to complete at least **20%** of the contract value with its own forces. Bidder shall indicate the value of each subcontractor's work and the sum may not exceed the allowable amount.

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work
Electrical	Con J Franke	Stockton	280366	1000000355	10%
Vehicle Exhaust	Air Exchange	Fairfield	664135	1000011166	2.1%

(Attach additional sheets if necessary)

Name of Bidder General Corporation

Signature [Signature]

Name and Title Josh Ward, President

Dated 9.8.2020

Continued 

SUBCONTRACTOR LIST

SUBCONTRACTOR NAME AND EMAIL ADDRESS	LOCATION OF BUSINESS	CSLB NO.	DIR REG NO.	PORTION OF WORK TO BE PERFORMED	PERCENT OF WORK
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1 . Concrete Builders	El Dorado Hills	801786	1000000297	CIP Concrete	6.4%
2 . BAC	Livermore	242104	1000005107	Polished Concrete Flooring	0.6%
3 . Townsend & Schmidt	Sacramento	186559	1000000879	Brick Unit Masonry	1.8%
4 . Martin's Steel Works	Vacaville	1006101	1000042475	Structural and Misc. Steel	5.5%
5 . OCSI	Orland	189381	1000000526	Architectural Woodwork	1.6%
6 . Coast	Santa Clara	465440	1000650447	Thermal Insulation	0.9%
7 . Four Cs	Fresno	908294	1000002824	Metal Wall Panels	4.4%
8 . Byron Epp	Laguna Hills	433078	1000014101	Alum and Glass Sectional OH Doors	2.5%
9 . American Glass	Livermore	1051657	1000367971	Entrances and Storefronts	2.4%
10 . Harrison Drywall	San Francisco	620446	1000004951	Gypsum Board Assemblies	2.3%
11 . Dana Kitchens	Santa Rosa	744400	1000021942	Acoustical Ceilings	0.9%
12 . Valdez	Sacramento	897696	1000010016	Painting and Coating	0.6%
13 . Marquee	Sacramento	570970	1000000041	Fire Suppression System	1.1%
14 . Dinelli	Foster City	801472	1000000999	Plumbing	6.3%

BIDDER'S COMPANY NAME: **Sausal Corporation**

1.4 Bidder Information and Experience Form

Changes Occurring Since Prequalification

If any substantive changes have occurred since Bidder submitted its prequalification package for this Project, Bidder shall list them below. If none are listed, Bidder certifies that no substantive changes have occurred.

no changes

Additional Bidder's Statements:

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

A. VERIFICATION AND EXECUTION

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

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder Sausal Corporation
Signature [Signature]
Name Josh Ward
Title President
Date 9-8-2020

1.5 Non-Collusion Declaration

The undersigned declares:

I am the President of Sausal Corporation, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 9-8-2020 [date], at Concord [city], California [state].

Name of Bidder Sausal Corporation
Signature [Signature]
Name Josh Ward
Title President

1.6 Iran Contracting Act Certification.
(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

- ☒ The Contractor is not:
- (1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - (2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- ☐ The City has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the City will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- ☐ The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: _____
Printed Name: Josh Ward
Title: President
Firm Name: Saeysal Corporation
Date: 9.8.2020

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

1.7 Public Works Contractor Registration Certification

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

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

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

Name of Bidder: Sausal Corporation

DIR Registration Number: 1000001877

DIR Registration Expiration: 6-30-2022

Small Project Exemption: Yes or X No

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

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

Name of Bidder Sausal Corporation

Signature [Signature]

Name and Title Josh Ward, President

Dated 9-8-2020

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

1.8 Wage Theft Certification

The Bidder certifies subject to penalty for perjury that the option checked below relating to the Bidder and its subcontractors' status in regard to wage theft is true and correct:

☒ Neither the Bidder nor any of its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.

☐ The Bidder or its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline. For each violation, the Bidder shall provide a copy of (i) the final court order and/or final administrative decision/action; and (ii) documents demonstrating either that the order/decision/action has been fully satisfied, or if the order/decision/action has not been fully satisfied, documents evidencing a payment or other alternative plan approved by the court/government agency to satisfy the order/decision/action and proof that the Bidder or its subcontractors are in compliance with that plan as of the bid submission deadline.

☐ The City has exempted the Bidder from the requirements of the City of Milpitas Wage Theft Procurement Policy.

Signature: Josh Ward

Printed Name: Josh Ward

Title: President

Firm Name: Sausal Corporation

Date: 9-8-2020

1.9 Contractor's Certificate Regarding Workers' Compensation.

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

Name of Bidder Sausal Corporation
Signature [Signature]
Name Josh Ward
Title President
Dated 9-8-2020

1.10 Bid Bond

Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies bid.

The makers of this bond are, Sausal Corporation, as Principal, and North American Specialty Insurance Company, as Surety and are held and firmly bound unto the City of Milpitas, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to CITY for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated September 10, 20 20, for Milpitas Fire Station No. 2 Replacement.

If the Principal does not withdraw its Bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the City as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 24th day of August, 2020, the name and corporate seal of each corporation.

(Corporate Seal)

Sausal Corporation

Contractor/Principal

By [Signature]

Title Josh Ward, President

(Corporate Seal)

North American Specialty Insurance Company

Surety

By [Signature]

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Jon Richard Sullivan, Attorney-in-Fact

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

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

Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

PLEASE SEE ATTACHED NOTARY ACKNOWLEDGMENT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

ACKNOWLEDGMENT

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

State of California
County of Marin)

On August 24, 2020 before me, Karen Rhodes, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Karen Rhodes (Seal)



SWISS RE CORPORATE SOLUTIONS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Overland Park, Kansas, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Overland Park, Kansas, each does hereby make, constitute and appoint:

MICHAEL B. MCGOWAN, SUSAN J. MCGOWAN, DEBBIE L. WELSH
JON RICHARD SULLIVAN, KAREN RHODES, and TRISHA CHANG

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company, when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By 
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company



By 
Michael A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 17 day of JANUARY, 2018.

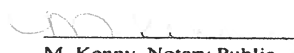
North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook

ss:

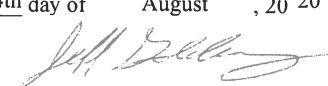
On this 17 day of JANUARY, 2018, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Michael A. Ito, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.




M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 24th day of August, 2020.


Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company

At 2:00 p.m. on September 10, 2020, all bidders will submit their bids as set forth in bid documents and as amended by the following:

ADDENDUM No. 1

In order to minimum the exposure and limit the spread of Covid-19, instead of in-person pre-bid meeting, the City will be conducting a zoom conference call meeting. The meeting will be held on August 6, 2020 at 10:00AM via Zoom meeting.

Interested bidders shall contact Lyhak Eam, P.E. at 669-263-3257 or email at Leam@ci.milpitas.ca.gov to get the call-in information.

END OF ADDENDUM No. 1

This addendum shall be signed by each bidder and kept for their files. Acknowledgement of receipt of this addendum in the space provided in the Proposal is required. Failure to acknowledge an addendum may subject the bidder to disqualification.

I, Josh Ward
representing Sausal Corporation
have carefully read this addendum, understand it, acknowledge receipt of this addendum and will comply its terms.

This addendum is issued by

Michael Silveira
Michael Silveira, P.E.
CIP Manager

7/27/2020
Date

At 2:00 p.m. on September 10, 2020, all bidders will submit their bids as set forth in bid documents and as amended by the following:

ADDENDUM No. 2

Enclosed is the minute for the pre-bid meeting that was held on 08/06/2020 at 10:00AM via Zoom Meeting.

Please contact Lyhak Eam, P.E. at 669-263-3257 or email at Leam@ci.milpitas.ca.gov for any questions related to this bid.

END OF ADDENDUM No. 2

This addendum shall be signed by each bidder and kept for their files. Acknowledgement of receipt of this addendum in the space provided in the Proposal is required. Failure to acknowledge an addendum may subject the bidder to disqualification.

I, Joan Ward

representing

Sausal Corporation

have carefully read this addendum, understand it, acknowledge receipt of this addendum and will comply its terms.

This addendum is issued by

Michael Silveira

Michael Silveira, P.E.
CIP Manager

08-07-2020

Date

ATTACHMENTS

- **Exhibit A** : DIR Newsline
- **Drawings:** C-002, C-003, C-006, L-001, L-003, A-101, A-104, P1.0, P2.3 and ES-102

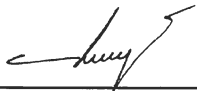
Please contact Lyhak Eam, P.E. at 669-263-3257 or email at Leam@ci.milpitas.ca.gov for any questions related to this bid.

END OF ADDENDUM No. 3

This addendum shall be signed by each bidder and kept for their files. Acknowledgement of receipt of this addendum in the space provided in the Proposal is required. Failure to acknowledge an addendum may subject the bidder to disqualification.

I, Josh Ward, President
representing Sausal Corporation
have carefully read this addendum, understand it, acknowledge receipt of this addendum and will comply its terms.

This addendum is issued by


Lyhak Eam, P.E.
Associate Civil Engineer

08-28-2020

Date

REPLY TO:

SMITHCURRIE

CRAIG WALLACE
ATTORNEY AT LAW
TEL: 415 394-6688
cwwallace@smithcurrie.com

September 18, 2020

Via email: Leam@ci.milpitas.co.gov

Lyhak Eam, P.E.
Associate Civil Engineer
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: *Milpitas Fire Station No. 2 Replacement
Project No. 3447
Response to Overaa Bid Protest dated 09.14.20*

Dear Mr. Eam:

We represent Sausal Corporation. We write to respond to Overaa's 09.14.20 bid protest on the Milpitas Fire Station No. 2 Replacement Project. Overaa's bid protest should be rejected and the contract awarded to Sausal as the lowest responsible bidder. Overaa asserts three reasons for protesting Sausal's bid and we address those in order. We observe that Overaa's letter identifies three basis for its protest, although it includes a list with four items, and only two of those four have to do with the bid protest. The latter two items have nothing to do with the bid protest.

Overaa argues that Sausal "failed to list a subcontractor for specification 07 52 00 Modified Bituminous Membrane Roofing." There is no bid requirement to list such a subcontractor, and Overaa does not identify any bid requirement. The Instructions to Bidder (00 21 13), at Section 29 (p.11) require a bid protester to specifically identify the irregularity or accusation, and that failure to do so is a basis to reject the protest. Overaa argues that because it believes the line item for this amount exceeds 0.5% of the bid amount, a subcontractor is required to be listed. While Overaa explains what it did on its own bid, it does not identify a bidding requirement to list such a subcontractor. There is no such requirement. Moreover, even if the line item exceeds the 0.5% threshold and a subcontractor is not listed, there are other



SMITHCURRIE.COM

SUITE 1300
275 BATTERY STREET
SAN FRANCISCO, CA 94111

OFFICE 415 394 6688
FAX 415 394 6687

options, for example, correction for an inadvertent clerical error could be sought under proper circumstances (PCC §5103) or the prime could have decided to self-perform the scope (PCC §4106). Accordingly, this is not a ground to reject Sausal's bid.

Next, Overaa argues Sausal "deviated" from filling out the bid form because it did "not fill[] out/notarize page 27 of 00 41 43 – Bid forms (attachment 1)." That page is a boiler plate Notary Acknowledgment form for Sausal's bid bond. Overaa ignores the fact that Sausal did include a notary acknowledgement in its bid, which appears immediately after the Notary Acknowledgement form with which Overaa takes issue. That satisfies the bid requirement. Moreover, the sole and singular purpose of the notary acknowledgement is to confirm the person who signs the bid bond document is who they represent they are, and not that the document is accurate or valid. The notary acknowledgement confirms this because it states, "A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document." Overaa does not take issue with the identity of the individual who signed the bid bond, cite any bidding requirement as to the notarization regarding the bid bond, or raise any issue related to the validity of the bid bond. Inasmuch, Overaa's assertion of a bid irregularity does not have any merit.

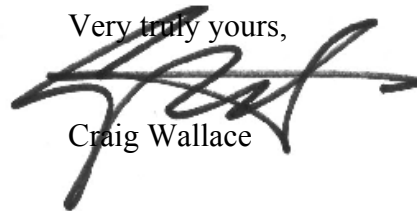
Third, Overaa argues Sausal listed a different CSLB license number for one of its subcontractors listed in its bid, Concrete Builders. It concludes its argument by saying, in bold for emphasis no less, "BHM's gained an unfair competitive advantage and their bid shall be deemed non-responsive." There is no "BHM" involved in this bid and shows this argument was simply copied from another of Overaa's bid protest letters. As shown on Concrete Builders' 09.10.20 proposal (a copy is attached hereto as Exhibit A), Sausal copied the license number (801786) which Concrete Builders provided in its bid to Sausal. Sausal accurately provided in its bid the information it was given, however that information was incorrectly provided by Concrete Builders to Sausal. The entity, Concrete Builders, located at 4993 Golden Foothills Parkway, Suite 3, El Dorado Hills, 94762, is properly licensed as CSLB Number 981710, and registered with the DIR, as Overaa acknowledges in its protest letter. Concrete Builders, in El Dorado Hills, is identified in Sausal's bid so there is no uncertainty as to the identified subcontractor and the percentage of the bid that it works represents. Indeed, another bidder, Angeles Contractor, Inc., also used Concrete Builders in its bid. Item number 10 of the Instructions to Bidders (p. 6) states, "Subcontractors must possess the appropriate licenses for each specialty subcontracted." That same section gives the City "the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the City of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract." Concrete Builders satisfies this requirement, and the City has the authority to confirm this if there is any concern. As such, Sausal's bid meets the bidding requirements. Considering this to be an irregularity in the bid presumes that Concrete Builders purposefully included the wrong license number in its bid, which would not make any sense. Concrete Builders is a fully qualified subcontractor to perform the work identified, and this is not an irregularity in the bid so as to reject Sausal's bid as responsive.

Mr. Lyhak Eam
September 18, 2020
Page 3

Finally, Section 00 11 16 - Notice Inviting Bids, at page 3 of the bid package, states that City reserves the right to “waive any irregularities or informalities in any bids or in the bidding process.” While none of the items identified by Overaa constitutes a bid irregularity, even if the City were to determine otherwise, the City has the authority to reject such irregularities. It should exercise that discretion here to reject Overaa’s protest and award the contract to Sausal as the lowest responsive bidder.

Sausal’s bid is the lowest responsive bid and came in \$850,000 less than the next bidder, representing a significant value of the City’s taxpayers. Overaa’s bid protest should be rejected and Sausal awarded the Fire Station contract.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Wallace', with a stylized, sweeping flourish extending to the right.

Craig Wallace

Cc: client (via email)
Larry Etcheverry (Overaa)

EXHIBIT A

CONCRETE BUILDERS

Attention: **Estimating Department**
To: Estimators
Phone:
Email:

From: Joel Douglas
Direct: 415-871-5295
License No. 801786

Project: Milpitas Fire Station No. 2

Date: 9-10-20

Per your request we are pleased to provide a proposal for the construction of the following concrete scope of work on this project as hereby detailed below:

- Y Pricing is provided based on drawings provided by: 100% CD dated 5-29-20
- Y Addendum Noted: 1 thru 3
- Y Specifications: Cast in Place Concrete Per Plan

Building Foundations and Slabs

- Excavate, place and finish foundations
- Excavation assumed to be completed prior to plumbing and electrical rough-ins
- Set Bollards (furnished by others)
- 5-inch building slab and 9-inch slab at Apparatus Bay
- 6-inch rock and 10-inch rock at Apparatus Bay
- 15 mil vapor-barrier under slab
- 6-inch Locker Pad

Site Concrete

- Brick Wall Footing
- Cast in Place retaining wall
- Containment Curb
- 4.5 inch grey sidewalks
- Curbs and Gutters
- City Curb, Gutter and Sidewalks
- Drive Aisles
- 7.5 inch PCC
- Trash Enclosure
- Bollards (13 each), furnished by others
- Flag Pole Footing (1 each), setting pole by others, sleeve by others
- Push Button Pad
- All concrete is standard grey with a broom finish
- Reinforcing for site items.
- One mobilization for site work

4993 Golden Foothills Parkway, Suite 3 El Dorado Hills CA 94762



200 Parr Boulevard
Richmond, CA 94801
Tel 510-234-0926
Fax 510-237-2435
www.overaa.com

September 23, 2020

Lyhak Eam, P.E.,
Associate Civil Engineer, at City of Milpitas
The City of Milpitas
City Hall
455 E. Calaveras Boulevard
Milpitas, CA 95035
(408) 586-3349
Email: Leam@ci.milpitas.ca.gov

Re: Milpitas Fire Station No. 2 Replacement Bid Opening September 10, 2020, 2:00pm
Sausal Corporations response to Overaa's Bid Protest dated September 18, 2020

Dear Lyhak Eam, P.E.,

C. Overaa & Co. ("Overaa") is in receipt of Craig Wallace's (Legal Counsel representing Sausal Corporation) response to Overaa's bid protest for the Milpitas Fire Station No. 2 project dated 09.18.20. After careful review, we find their response to be without merit and their bid should be rejected as nonresponsive. Sausal's bid violated mandatory provisions to meet specific requirements detailed in the project documents and contained several material abnormalities & irregularities. Mr. Wallace's response does not sufficiently defend these bid form errors. Therefore Overaa should be awarded the project Milpitas Fire Station No. 2 Replacement as it is the lowest responsive responsible bidder.

In regards to Sausal's failure to list a subcontractor for specification 07 52 00 Modified Bituminous Membrane Roofing, Mr. Wallace's response can be broken down into several false claims:

- "There is no bid requirement to list such a subcontractor" in reference to Sausal's failure to list a Modified Bituminous Membrane Roofing subcontractor.
- "(Overaa) does not identify a bidding requirement to list such a subcontractor." in reference to our protest letter.
- "even if the line item exceeds the 0.5% threshold and a subcontractor is not listed, there are other options, for example, correction for an inadvertent clerical error could be sought under proper circumstances (PCC §5103) or the prime could have decided to self-perform the scope (PCC §4106). Accordingly, this is not a ground to reject Sausal's bid."

In response to the items mentioned above, and as previously stated in Overaa's protest letter dated 09.14.20, per Public Contract Code Section 4104 and project document specification section 00 21 13 – Instructions to Bidders – 9 Subcontractors, there is a bid requirement to list any subcontractor whose contract value is over 0.5% of the total bid price. In this bid, Sausal's total bid price was \$7,638,200 and



200 Parr Boulevard
Richmond, CA 94801
Tel 510-234-0926
Fax 510-237-2435
www.overaa.com

0.5% of their bid is \$38,191. For reference, attached is State Roofing's proposal that was listed by Overaa and the remaining two other bidders (attachment 1). State Roofing's price of \$162,148 is well in excess of 0.5% of Sausal Corporations bid (actual 2.12%). The scope of work for Membrane Roofing is clearly over 0.5% and was required to be listed on the bid form.

Mr. Wallace then claims that there are other options if the line item exceeds the 0.5% threshold and a subcontractor is not listed. He references PCC §5103; this code falls under chapter 5 Relief of Bidders, to be utilized when a General Contractor is pulling their bid. In addition PCC §5103 (b) states that "He or she gave the public entity written notice within five working days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred." Did Sausal provide written notice of their mistake within 5 working days of the bid opening? By referencing this code is Sausal admitting to a mistake and intends to pull their bid? Finally, Mr. Wallace states that since Sausal failed to list a subcontractor for a scope clearly over the 0.5% threshold, they could self-perform the work per PCC §4106. However, as indicated in Overaa's protest letter, specification section 07 52 00 – 1.5 Quality Assurance states that the installer must be certified or approved by the roof manufacturer. Sausal does not meet this requirement and therefore cannot self-perform this work.

In regards to Sausal's failure to properly list subcontractor information for CIP Concrete.

Sausal acknowledged in their protest response letter they incorrectly listed required information for their designated CIP Concrete subcontractor. Per Public Contract Code 4107.5 the General Contractor has two working days to submit an inadvertent clerical error in a sub listing. Sausal acknowledged they made a clerical error in their sub listing for CIP Concrete, was a written claim of inadvertent clerical error received by the City within two working days of the bid opening? If not, Sausal gained an unfair bid advantage by essentially listing two separate sets of subcontractor information for the same scope of work. This gives them the opportunity after the bids have been opened to negotiate with two subcontractors; either selecting the listed license # 801766 subcontractor named Swinerton Builders dba Concrete Services or as stated in the protest rebuttal the intent to use the subcontractor listed by the name of Concrete Builders with a license # 981710

Sausal's errors are twofold; their bid does not promise to do what is required by the bid documents, therefore is nonresponsive and must be rejected. *See also MCM Const., Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359 (rejection of bid as nonresponsive was proper because it failed to comply with specification). And by not conforming to the specification they obtain an unfair competitive advantage which opens up the opportunity for bid shopping after the public bid opening. Bids which are not strictly responsive can only be accepted if the deviation could not have affected the amount of the bid or given a bidder an advantage or benefit not afforded other bidders. (*Konica Business Machines, U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454-455.)



200 Parr Boulevard
Richmond, CA 94801
Tel 510-234-0926
Fax 510-237-2435
www.overaa.com

It is clearly stated in this response letter and in Overaa's original Protest Letter dated 09.14.20 that Sausal's bid does not meet the specification requirements listed in the bid documents and gained an unfair bid advantage by not complying with the specifications for Subcontractor Listings.

Under California's competitive bidding statutes, a contract must be awarded to the lowest responsive bidder. To be responsive, a bid must conform to the material terms of the bid package. City of Inglewood v. Los Angeles County Civic Center Authority (1972) 7 Cal.3d 861. Overaa's bid is the lowest responsible bid that conforms to the material terms of the bid package.

Overaa reiterates that The City of Milpitas should:

- Reject Sausal's bid as non-responsive.
- Determine that Overaa's bid is responsive, and
- Award the Contract to Overaa as the lowest responsive bidder.

Sincerely,

C. OVERAA & CO.

A handwritten signature in blue ink, appearing to read "Larry Etcheverry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry Etcheverry
Vice President, Estimating

Cc: Larry Etcheverry, Overaa, via. Email
Jerry Overaa, Overaa, via. Email
Cody Lee, Overaa, via. Email

Sausal, Josh Ward, President, via Email: sausal@sausal.net

Attached: Attachment 1



September 10, 2020

C. Overaa & Co
General Contractor

Contact: Lisa Fong / Larry Etcheverry

Email: llisaf@overaa.com / larrye@overaa.com

Phone: (510) 234-0926

I. Project Information: MILPITAS FIRE STATION NO. 2 REPLACEMENT / PROJECT NO. 3447
1263 Yosemite Drive, Milpitas, CA 95035

II. Owner Information:
City of Milpitas, 455 E. Calaveras Boulevard, Milpitas, California 95035

III. Manufacturer: Johns Manville

IV. Scope of Work: New Construction – Roof membrane system; Taper insulation, cover board, 2 ply SBS
Modified Bitumen membrane Roofing.

1. Over new plywood horizontal sheathing, Install ISO Taper insulation, ¼” per foot slope, min 2” thick start.
2. Install ½” cover board, mechanically attached with Screws & plates through ISO insulation per manufacturer’s specifications.
3. Install JM DynaBase base sheet, 1 ply, set in hot asphalt at rate per manufacturer’s specifications.
4. Install JM DynaLastic 180 FR CR G Cap sheet, 1 ply, set in hot asphalt at rate per manufacturer’s specifications.
5. At vertical surfaces-equipment curbs & walls, install Cant Strips at angles, 2 ply base flashing membrane,
 - a. 1 ply-JM DynaBase base sheet, and
 - b. 1 ply-JM DynaLastic 180 FR CR G Cap sheet, set in asphalt mastic.
6. At penetrations, apply JM Perma Flash System.
 - a. Pipe vents, Tubular Daylighting Devices, Dryer vent, Tie-back anchors
7. At drains and overflows, provide Lead blank flashings as required by manufacturer’s specifications.
8. Install JM walk way pads at location indicated on Roof Plan drawing,
9. Warranty: Manufacturer 20 year NDL; Contractor 2 year

V. Specification Date: 7-17-20

VI. Sections / Pages:

- 07 52 00 - Modified Bituminous Membrane Roofing

VII. Plan Date: 7-17-20

VIII. Plan Pages / Details:

- A-124 Roof Plan
- A-501 EXTERIOR DETAILS, E9
- A-521 ROOF DETAILS, A1, A5, A13, G1
- A-522 ROOF DETAILS,
- A-523 ROOF DETAILS, G1

IX. Exclusions:

1. Plywood roof sheathing,
2. Sheetmetal – Stainless Steel metal caps, bands; Sheetmetal Roofing & wall panels
3. Roof Hatch; Roof Ladder w/retractable safety post.
4. Tie-back Roof Anchors, installation & engineering calcs

5. Plumbing; plumbing hardware
6. Painting
7. Carpentry / Blocking / Sleepers
8. Permits
9. Bonds
10. Deck Preparation inspections
11. Deck protection from moisture prior to roof installation.
12. Multiple Phase unless indicated elsewhere
13. Roof Surface Protection after installation
14. Cleaning roof prior to Manufacturer Inspection if applicable

Price: \$162,148.

This bid must be included in the final contract in the body of the contract as an attachment signed by both parties.

Additional Work approved after the contract:

Time and material work:

\$165.00 per man hour / Portal to Portal

Material cost plus 15%

X. Price is based on the following:

- a) Phases included: One / additional phasing will be charge for re-mobilizing.
- b) Installation between 7am and 4pm .
- c) Scaffolding will be in place installed by others for the duration of the project at all exposed eave locations.
- d) Project is bid for access to crane load all materials and equipment from the street with no restrictions i.e. powerlines, scaffold etc. If street closures or hand loading is required there will be added costs.
- e) GC must provide all utilities i.e. but not limited to Toilet, Water and Electrical outlets. In the event a heat welding walker is used we will need 50 amp 230 volts 4600 watt service.
- f) Attendance of weekly meetings 1-2 weeks prior to start and during the process of our installation only.
- g) If project is delayed and material increases will occur, all remaining materials must be purchased and paid for.
- h) If pre-purchase is not possible, the cost increase will be charged separately.
- i) Payment Schedule: Progress billings will occur monthly after initial material billing.
- j) Materials must be pre-purchased and will be billed upon order. Materials can be stored at our shop in San Leandro, jobsite grounds (if secured) or on the roof.
- k) Payment: upon receipt of invoice.
- l) Retention will be set at 5% and will be paid 30 days after completion of our work.

Salesman: **Stephen Tong**

e-mail: steve@stateroofingsystems.com

Phone: 510-317-1477 // Fax: 510-317-1470

If this cannot be added to the General Contract we will need written approval / Signatures are required in addition to any other contract documents that will be provided.

Signature Date

Print Name

Attachments: **To follow upon acceptance**

General Conditions

Product Data Sheets & Details



CITY OF MILPITAS

ENGINEERING

Phone: (408)-586-3300

SEPTEMBER 25, 2020

VIA CERTIFIED MAIL AND EMAIL

C. Overaa & Co.
200 Parr Boulevard
Richmond, CA 94801

SUBJECT: City of Milpitas
Fire Station No. 2 Replacement – Project No. 3447
Notice of Intent to Reject Bid Protest

Dear Mr. Larry Etcheverry:

The City of Milpitas (“City”) has reviewed the bid protest letter filed by C. Overaa & Co. (“Overaa”) dated September 14, 2020 (“Protest”) with regards to the above captioned project (“Project”). The City is also in receipt of Overaa’s September 23, 2020 response letter to Sausal Corporation’s (“Sausal”) September 18, 2020 response to the Protest. Please be advised Overaa’s September 23, 2020 letter is an unallowable sur-reply (“Sur-Reply”), which does not comply with the City’s bid protest procedures under Section I-2-3.19 of the Milpitas Municipal Code. On this basis alone, the Sur-Reply is subject to rejection and the City has no obligation to consider it. Nevertheless, the City has reviewed the Sur-Reply and the Protest and determined them to be substantively meritless as they pertain to the bid submitted by the lowest responsible bidder submitting a responsive bid on the Project – Sausal.

As a threshold matter, a bid must conform to the material terms of the bid package. (*DeSilva Gates Constr. v. Department of Transp.* (2015) 242 Cal.App.4th 1409; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175.) A bid is responsive if it promises to do what the bidding instructions demand. (*Williams v. Clovis Unified Sch. Dist.* (2007) 146 Cal.App.4th 757; *Valley Crest Landscape Inc. v. City of Davis* (1996) 41 Cal.App.4th 1432, 1438.) Responsiveness should be determined from the face of the bid. (*Great W. Contractors, Inc. v. Irvine Unified Sch. Dist.* (2010) 187 Cal.App.4th 1425.) However, a bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not affect the amount of the bid or give a bidder an advantage over others. (*Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897; *Bay Cities Paving & Grading, Inc. v. San Leandro* (2014) 223 Cal.App.4th 1181.) A deviation must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of potential bidders. These considerations must be evaluated from a practical rather than hypothetical standpoint, with reference to the factual circumstances of the case. (*Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908-09, internal citations omitted.)

With the foregoing in mind and in reviewing the bid submitted by Sausal, it is clear the alleged errors in the bid are either not errors at all, or are at most immaterial deviations and certainly do not amount to material mistakes requiring the City to reject the bid as nonresponsive.

Generally, the Protest asserts Sausal's bid is nonresponsive because Sausal: (1) violated the bid specifications and Subletting and Subcontracting Fair Practices Act ("Act") by failing to list a subcontractor for bituminous membrane roofing work thereby resulting in Sausal gaining an unfair competitive advantage; (2) failed to complete the notary acknowledgement included in the bid forms for Sausal's signature on the bid bond; and (3) listed two (2) separate sets of subcontractor information for the cast-in-place concrete work, providing them an unfair competitive advantage. A review of the basis for the Protest shows that it is without substantive merit.

Failure to List a Subcontractor for the Bituminous Membrane Roofing Work is Not a Material Bid Error

Failure to list a subcontractor for the bituminous membrane roofing work does not render Sausal's bid nonresponsive or give them an unfair competitive advantage. Pursuant to Public Contract Code section 4104 (referenced in the bid specifications), a bidder is required to list all subcontractors who will perform any work in excess of one-half of 1% of its bid amount. If a subcontractor is not listed in the bid for a specific construction trade in excess of one-half of 1% of the bid amount, the Public Contract Code requires the bidder to self-perform the work. (Pub. Cont. Code, § 4106.)

In this case, Sausal's failure to list a subcontractor for the bituminous membrane roofing work does not violate the bid specifications or the Act. Sausal's failure to list a subcontractor for the bituminous membrane roofing work only means that Sausal is legally (and by contract) obligated to self-perform all such work. In Sausal's September 21, 2020 letter to the City clarifying its substitution request related to Sausal's alleged inadvertent error in listing Four C's for metal wall panel work, Sausal states that it intends to self-perform the bituminous membrane roofing work. It follows that the City has no basis to find that Sausal failed to comply with the bid specifications or the Act. In a similar vein, Sausal did not gain an unfair competitive advantage by not listing a subcontractor for the bituminous membrane roofing work. As discussed herein, pursuant to Public Contract Code section 4106, failing to list a subcontractor for certain work merely means that Sausal agrees to perform that work themselves. Therefore, no competitive advantage was conferred onto Sausal based on not listing a subcontractor for the bituminous membrane roofing work. Based on the foregoing, the City is under no obligation to reject Sausal's bid as nonresponsive for failure to list a subcontractor for the bituminous membrane roofing work.

Sausal Provided a Valid Bid Bond Including All Required Notary Acknowledgements

Overaa also claims that Sausal's failure to provide a notary acknowledgment for Sausal's signature on the bid bond render's Sausal's bid nonresponsive. However, this is an inconsequential defect. For one, the bid bond is signed by Josh Ward, President, on behalf of Sausal and there is no dispute or disagreement about who signed the bid bond. That being said, even if there was a dispute about whether Sausal executed the bid bond, the surety also signed the bid bond and provided a notary acknowledgement (as well as an original attorney in fact certificate). Accordingly, the surety signed the bid bond guaranteeing that Sausal would execute the agreement if awarded the contract and the bid bond is fully enforceable. Therefore, this is an immaterial deviation which the City may waive.

Sausal's Subcontractor Listing Form Does Not Include Material Bid Errors

Finally, the City is not required to reject Sausal's bid as nonresponsive due to Sausal providing incorrect information about its listed subcontractor Concrete Builders. Overaa's assertion that Sausal essentially

listed two separate subcontractors for the same scope of work, thus giving Sausal an unfair competitive advantage and making Sausal's bid nonresponsive is a misstatement of the law. While Overaa believes such an irregularity is fatal, if Sausal actually listed two separate contractors for the same scope of work, Sausal's bid would not be nonresponsive. It merely means that Sausal would be required by law to perform the work themselves. (See Pub. Cont. Code, § 4106.)

That being said, there is nothing to suggest that Sausal listed two (2) subcontractors for the same item of work. Instead, Concrete Builders provided incorrect information to Sausal, which in turn led Sausal to list incorrect information for Concrete Builders under the subcontractors listing form. The City is not required to reject Sausal's bid as nonresponsive due to said incorrect information. Instead, the City still has the ability to accept a bid that does not strictly conform to the requirements of the Act. (86 Cal.Ops.Atty.Gen. 90, 90 (2003).) Relying on Public Contract Code section 4110, the Attorney General found that a local agency has a statutorily prescribed remedy in the event bidders violate any of the provisions of the Act. Specifically, Section 4110 authorizes the awarding body, at its discretion, to cancel the contract or assess the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved in the event the prime contractor fails to comply with its obligations under the Act. (Pub. Cont. Code, § 4110.) Implicit within the public entity's power to cancel the contract for failure to comply with the Act is the power to either accept or reject the bid in the first instance. (86 Cal.Ops.Atty.Gen. 90, 94 ["[t]he permissive authority to cancel the contract necessarily includes the authority to execute the contract".]) The City determined that this incorrect information was an immaterial defect because the City could easily ascertain this information by looking up Concrete Builders' information on databases maintained by the Contractors State License Board and Department of Industrial Relations. In fact, Overaa presumably did the same thing in order to provide Concrete Builders' CSLB number and DIR number in the Protest.

In light of the foregoing and contrary to Overaa's assertion, Sausal's failure to provide complete information for Concrete Builders does not require the City to reject Sausal's bid as non-responsive.

We note the clear policy and purpose associated with the review of bids and bid protests as dictated by the court in *Ghilloti*, *supra*:

They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. 'It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.' (*Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377,383, 301 P.2d 97.)

(*Ghilloti*, *supra* 45 Cal.App.4th at 908-09.) Consistent with this policy, the City finds the Protest, including the Sur-Reply, wholly meritless and rejects it in its entirety.

In response to your request under Government Code section 54954.1 for mailed notices of meetings of the City Council pertaining to the award of the Project, please provide the City a valid mailing address or/and

email address; there is no cost associate to that. Please also note that all City Council Meeting agenda are available to the public on the City website.

The City will consider award of this contract at its meeting on November 17, 2020. City staff intends to recommend rejection of Overaa's Protest as meritless and award of the contract to the lowest responsible bidder submitting a responsive bid, Sausal.

Sincerely,

Steven Erickson

Steve Erickson, P.E.
City Engineer/Engineering Director

cc: Michael Silveira, CIP Manager
Lyhak Eam, Associate Civil Engineer



CARPENTERS LOCAL UNION 405

SERVING SANTA CLARA & SAN BENITO COUNTIES

September 15, 2020

City of Milpitas
City Hall, 455 E. Calaveras Boulevard
Milpitas, CA 95035

Re: Milpitas Fire Station No. 2 Replacement Project –Bid Advisory Regarding Sausal Corporation

Please accept this bid advisory on behalf of members of Carpenters Local 405 (herein "Local 405"), which represents working men and women in the City of Milpitas.

INTRODUCTION

In addition to our other duties as a labor organization, Local 405 monitors local construction projects to help ensure that fair and open competitive bidding practices are utilized and that taxpayers get the best value for their tax dollars. This is important because the policies underlying our State's competitive bidding laws not only foster fairness among bidders, but also protect the public trust.

Fair competitive bidding acts as a "guard against favoritism, improvidence, extravagance, fraud, and corruption; to prevent the waste of public funds; and to obtain the best result for the public."¹

"Competitive bidding laws are passed for the benefit and protection of the taxpaying public, not for the benefit and enrichment of bidders."² Proper enforcement of these laws results in more responsible contractors bidding and performing construction jobs, reduces instances of health and safety problems, promotes the timely completion of the contracted work, and helps to ensure the final product is of the highest quality and value for the taxpayer dollar.

The California Public Contract Code requires a public agency to award construction contracts funded in whole or in part by public funds to the lowest responsive and responsible bidder.³ The Code defines a responsible bidder as a "bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."⁴

The City of Milpitas ("City") bid the Milpitas Fire Station No. 2 Replacement Project ("Project") on September 10, 2020. We urge the City to conduct a factual inquiry to determine whether the Project's apparent low bidder, Sausal Corporation, 3550 Willow Pass Rd., Concord, CA 94519 ("Sausal Corporation"), qualifies as a "responsive" and "responsible" bidder as defined under law.

¹ *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171.

² *Id.*

³ Public Contract Code § 20162.

⁴ Public Contract Code § 1103.

In considering whether to accept Sausal Corporation's bid, Local 405 also urges the City to request additional information from Sausal Corporation regarding its bid amount. There is an unrealistically large difference between Sausal Corporation's bid and, both, the second low bidder and the engineer's estimate, posing the question whether the contract contains sufficient funds to cover the costs of compliance with all relevant legal requirements under California Labor Code section 2810.

DISCUSSION

1. Sausal Corporation's Bid Was Unrealistically Low in Comparison with Both the Second Lowest Bid and the Engineer's Estimate, Raising the Questions Whether the Bid is Non-Responsive for Not Accurately Reflecting the Cost to Perform the Work and Whether It Violates Labor Code Section 2810

Local 405 has carefully reviewed the bid results on the Project. The lowest three bids, according to the bid summary released on September 10, were: 1. Sausal Corporation \$7,638,200.00; 2. C. Overaa & Co., \$8,500,000.00; and 3. DL Falk Construction Inc., \$9,519,000.00. The Engineer's Estimate for the base contract work (labor, material, services, equipment) for the Project is \$10,830,000.00.

"A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted."⁵ Failure to satisfy all bid specifications renders a bid non-responsive as a matter of law. Such non-responsive bids must be rejected.

According to Tab 30 of the Instructions to Bidders for the Project ("Bidder Instructions"), *"The City may reject any Bid which, in its opinion when compared to other Bids received or to the City's internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items."*

Additionally, Labor Code section 2810 ("section 2810") provides (in relevant part) as follows:

(a) A person or entity shall not enter into a contract or agreement for labor or services with a construction ... contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

...

(g)(1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees.

...

⁵ *Konica Bus. Machines U.S.A. Inc. v. Regents of Univ. of California* (1988) 206 Cal. App. 3d 449, 454.

(i)(1) The term “knows” includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase “should know” includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

In sum, section 2810 prohibits public entities from entering into a construction contract that they should know does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws and regulations governing the labor or services to be provided.⁶ Violations of section 2810’s requirements may subject the public entity to liability if the contractor fails to meet its obligations to workers on the Project.⁷

While we appreciate the City’s desire to complete the Project in an economical manner, Sausal Corporation’s bid was unrealistically low in comparison with *both* the second lowest bid *and* the engineer’s estimate, raising the question whether a contract with Sausal Corporation would include funds sufficient to allow compliance with prevailing wage and all other applicable labor laws. Sausal Corporation’s bid for \$7,638,200.00 was **\$861,800.00** less than the second low bid of \$8,500,000.00 – approximately a 10% difference, and **\$3,191,800.00** less than the engineer’s estimate of \$10,830,000.00 – approximately a **29.4%** difference. Where the discrepancy between the bid prices is this great, with the low bid substantially lower than other bids received, the questions emerge as to whether the apparent low bidder has calculated the bid price correctly and, if so, whether the apparent low bidder is intending to avoid prevailing wage requirements.

Under these circumstances, the reasonable and prudent course of action would be for the City to request additional information from Sausal Corporation to ensure that its proposed contract contains sufficient funds to cover the costs of compliance with prevailing wage and all other applicable labor laws. If the contract does not contain sufficient funds, the City should reject Sausal Corporation’s bid as non-responsive pursuant to its Bidder Instructions because the bid would not accurately reflect the cost to perform the work. The City’s failure to do so would expose the City to liability under section 2810.

2. Sausal Corporation’s Bid May Also Be Non-Responsive for Failing to Disclose Civil Wage and Penalty Assessments (“CWPA’s”) Issued By the DIR’s Division of Labor Standards Enforcement

Sausal Corporation checked the option relating to the Bidder status in regard to the “Wage Theft Certification”: *“Neither the Bidder nor any of its subcontractors have been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local*

⁶ Cal. Lab. Code § 2810, subd. (d).

⁷ Cal. Lab. Code § 2810, subd. (g)(1).

wage and hour laws, including but not limited to the federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the bid submission deadline.” Sausal Corporation certified this statement under penalty of perjury.

However, through a California Public Records Act request, Local 405 obtained information regarding two Civil Wage and Penalty Assessments against Sausal Corporation’s subcontractors, for which Sausal Corporation was jointly and severally liable, as determined by the Department of Industrial Relations (“DIR”), Division of Labor Standards Enforcement (**Attachment 1**):

Case Number	Awarding Body	Project Name	Prime Contractor	Subcontractor	Date	Wages and Penalties
40-43994	County of Alameda Housing Authority	HACA Main Office (Remodel & Addition)(HACA 201304)	Sausal Corporation	V.E.M. General Engineering, Inc.	June 17, 2016	Wages: \$20,715.13 Penalties: \$24,950.00 \$13,560.00
40-47961-137	Sunnyvale School District	Lakewood Elementary School Modernization	Sausal Corporation	Trahan Mechanical, Inc.	May 19, 2016	Wages: \$29,681.83 Penalties: \$32,880.00

It therefore appears that Sausal Corporation was not forthcoming when it represented that it and its subcontractors had not been found by an “administrative action of an investigatory government agency to have violated ... state or local wage and hour laws... within the past five (5) years form the bid submission deadline.”

3. Sausal Corporation May Not Be a “Responsible” Bidder as Required By the Public Contract Code.

For the reasons set forth below, Sausal Corporation may lack fitness and capacity to satisfactorily perform the contract at issue, based on a potential failure to adequately screen its subcontractor and documented performance history explained in this section. The District should therefore examine Sausal Corporation’s bid to determine if Sausal Corporation is truly a responsible contractor capable of completing the Project on time and on budget.

a. Potential Failure to Adequately Screen Subcontractor Tri Valley Excavating

Sausal Corporation listed Tri Valley Excavating Co Inc., (“Tri Valley Excavating”) CSLB License number 541927, as its subcontractor. Local 405 has a major concern with Tri Valley Excavating.

The Bidder Instructions, Tab 14, states: “If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project”.

The source of this bid requirement is Labor Code section 1771.7(a), which states: “[a] contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, . . . or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5.” Labor Code section 1725.5 establishes the requirements for contractor registration, which are also listed on the DIR’s website (**Attachment 2**⁸). Contractors must meet, among others, the following requirements to register: 1) have a Contractors State License Board license if applicable to trade; and 2) not have any delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency.

Local 405’s review of the Contractors State License Board online licensed contractor database (**Attachment 3**) shows that the license of Tri Valley Excavating is current and active. However, the “Additional Status” section of Tri Valley Excavating’s license page states the following: “Pending Disciplinary Action. Disciplinary action is pending against this licensee in the form of a citation.” A review of the citation disclosure information indicates that Tri Valley Excavating has pending citations for the Business & Professions Code sections 7109.A (departure from trade standards) and 7113 (exceeded contract amount). Each violation constitutes a cause for disciplinary action and, according to the California State License Board, if an accusation is filed and upheld, the license may be suspended or revoked.

It therefore appears that Tri Valley Excavating is currently subject to a pending disciplinary action that can cause the suspension or revocation of its CSLB license. Accordingly, Tri Valley Excavating may be unable to maintain the DIR registration necessary to perform work on public projects.

If Tri Valley Excavating does not maintain DIR registration for the duration of the Project, it will be illegal for it to continue to work on the Project. Moreover, the City of Milpitas will be subject to penalties from the DIR. Local 405 will monitor the Project and file a public works complaint against Tri Valley Excavating and the City of Milpitas if appropriate. Thus, Local 405 strongly encourages the City of Milpitas to conduct a factual investigation to determine if Tri Valley Excavating complies with DIR registration requirements, such that it can maintain DIR registration for the duration of the Project.

b. Delays on Past School and College Projects

- i) In December 9, 2014 the Burlingame School District Board of Trustees awarded a contract to Sausal Corporation for the Burlingame Intermediate School (BIS) Classroom Building Project (**Attachment 4**) in the amount of \$9,908,500.00. Once approved, the contract set the original completion date to January 22, 2016. Local 405 obtained documentation from the Burlingame School District which shows the following: (1) according to multiple change orders (**Attachment 5** change order 4, change order 20 and final Change order 22) Sausal Corporation proposed to extend the contract date required for Substantial Completion first for 69 days, then for 62 days, and for 66 days, a total of 197 days.

⁸ Also available at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

- ii) In February 16, 2016 the West Valley Mission Community College awarded a contract to Sausal Corporation for the Facilities Replacement Building- Increment 2 Project in the amount of \$13,660,200.00. The Local 405 obtained the attached documentation from the West Valley Mission College which shows that, Sausal Corporation requested a time extension of 183 calendar days. The College approved the extension but determined that only 44 of the 183 days should be compensable. The College submitted a notice of completion which shows the project was eventually completed on December 11, 2018. **(Attachment 6)**

In addition to the delays and increase of the contract amount, the West Valley Mission Community College performed testing and evaluation of water intrusion at the project and identified it as a "construction issue," specifically involving inconsistent and missing mortar. The College is currently remediating the issue of water intrusion at this project and has withheld funds for incomplete and defective work. On February 28, 2019, the College issued a withhold of funds to Sausal Corporation requesting completion and repair of incomplete work and assessed an estimated total of \$102,000 in incomplete work. **(Attachment 7)**

We urge the City to review the enclosed documents and conduct its own investigation into Sausal Corporation's work history, to determine whether Sausal Corporation should be considered a responsible contractor.

c. History of Litigation

It is crucial for the City to be aware of Sausal Corporation's history of litigation as well as its performance record in the critical area of health and safety.

A review of area court records shows that Sausal Corporation has been involved in a series of connected court cases as both a plaintiff and a defendant in a matter stemming from the performance of a public works project. In Marin County, Sausal Corporation has been a party to the following lawsuits:

CIV1402511 Volpe Company, Inc. vs Sausal Corporation (COMPLEX)

Case Type: Breach of Contract

Date Filed: 6/30/2014

Judgment date: 12/20/2019

Currently in Court of Appeals: A159372

CIV150267 Steven E. Berlin, Inc. vs Sausal Corporation

Case Type: Breach of Contract

Date Filed: 7/20/2015

The lawsuits are related to a project that the City of Novato awarded to Sausal Corporation. The original claims were filed by subcontractors against Sausal Corporation for failure to pay, but later in the process the City of Novato as the project owner also became involved in the legal dispute.

As part of this complex litigation, Sausal Corporation filed a cross-complaint against the City of Novato and several of its subcontractors on 09/10/2015 (**Attachment 8**). In turn, the City filed a counter-claim against Sausal Corporation on 9/23/2015 (**Attachment 9**, page 4). The City was dismissed as a party on 8/28/2019 (**Attachment 9**, page 69). After a jury trial in which Sausal was found liable, The Marin County Superior Court issued a Second Amended Judgment against Sausal Corporation in the total amount of \$1,385,580.23, including attorney's fees and costs, on 01/23/2020 (**Attachment 9**, page 76). Sausal filed an appeal.

More than five years after the initial legal filing, the appeal filed by Sausal is still pending before the Court of Appeal, First Appellate District (**Attachment 10**) Case Nos: A159372 and related cases A158140 and A157577.

While our litigation review was limited in scope, this series of related cases is concerning and suggests there is cause to further examine Sausal Corporation's record of performance.

c. OSHA Violations

In addition, regarding California or federal OSHA violations, here too, Sausal Corporation has committed serious violations. A search of OSHA's online database lists the following inspections involving alleged serious violations by Sausal Corporation dating back to 2016.⁹

Nr: 1172950.015, Report ID: 0950615, Open Date: **08/19/2016**, Sausal Corporation, 2100 Napa Vallejo Highway, Mailing: 422 Whitney Street, San Leandro, CA 94577, Case Status: CLOSED

Violations Cited:

ID: 01001 Type: Other Standard: 1509(A) Issuance: 11/21/2016 Current Penalty: \$300 Initial Penalty: \$300 Last Event: I - Informal Settlement	ID: 02001 Type: Other Standard: 1632(B) Issuance: 11/21/2016 Current Penalty: \$1,350 Initial Penalty: \$1,350 Last Event: I - Informal Settlement	ID: 03001 Type: Other Standard: 1712(C)(1) Issuance: 11/21/2016 Current Penalty: \$1,350 Initial Penalty: \$1,350 Last Event: I - Informal Settlement
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Nr: 1166921.015, Report ID: 0950615, Open Date: **07/28/2016**, Sausal Corporation, 100 Montgomery Street, San Ramon, CA 94583, Mailing: 422 Whitney Street, San Leandro, CA 94577 Case Status: CLOSED

Violations Cited:

ID: 01001 Type: Other Standard: 1509(A) Issuance: 11/21/2016	ID: 02001 Type: Other Standard: 1621(A) Issuance: 11/21/2016	ID: 03001 Type: Other Standard: 1712(C)(1) Issuance: 11/21/2016
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⁹ OSHA's searchable online database, which maintains records of its enforcement inspections, is available at: <https://www.osha.gov/pls/imis/establishment.html#disclaim>.

Current Penalty: \$300 Initial Penalty: \$300 Last Event: I - Informal Settlement	Current Penalty: \$1,350 Initial Penalty: \$1,350 Last Event: I - Informal Settlement	Current Penalty: \$1,350 Initial Penalty: \$1,350 Last Event: I - Informal Settlement
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The City should contact OSHA directly with any additional questions regarding these inspections.

CONCLUSION

In light of the issues we have described above, Local 405 respectfully urges the City to proceed carefully in exercising its fiduciary responsibility. Specifically, we request the City to consider the following course of action before awarding the Project:

1. Request additional information from Sausal Corporation to ensure that its proposed Project contract contains sufficient funds to cover the costs of compliance with prevailing wage and all other applicable labor laws;
2. Determine whether Sausal Corporation's failure to disclose information about Civil Wage and Penalty Assessments ("CWPA's") issued by the DIR's Division of Labor Standards Enforcement, renders its bid non-responsive as a matter of law;
3. Conduct a thorough inquiry into Sausal Corporation's history of ongoing and concluded litigation and OSHA assessments and Sausal Corporation's failure to adequately screen Tri Valley Excavating, to verify whether Sausal Corporation qualifies as a responsible bidder with the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform this public works contract; and
4. Consider awarding the project to the second lowest bidder, C. Overaa & Co.

Adequately investigating issues of responsiveness and responsibility goes directly to the heart of the City's fiduciary responsibility to taxpayers. Local 405 would appreciate notification of what steps you will take in order to ensure compliance with the State's competitive bidding laws. We look forward to your response by September 25, 2020.

Thank you for your time and consideration to this very important matter.

Sincerely,

Cesar Sanchez

Labor Compliance Investigator

Enclosures

Cc: City of Milpitas City Council:
Rich Tran, Mayor, email: rtran@ci.milpitas.ca.gov
Bob Nuñez, Vice Mayor, email: bnunez@ci.milpitas.ca.gov
Karina R. Dominguez, Councilmember, email: kdominguez@ci.milpitas.ca.gov
Carmen Montano, Councilmember, email: cmontano@ci.milpitas.ca.gov
Anthony Phan, Councilmember, email: aphan@ci.milpitas.ca.gov

Steve P. Erickson, Engineering Director / City Engineer, email: serickson@ci.milpitas.ca.gov
Lyhak Eam, P.E. Associate Civil Engineer, email: leam@ci.milpitas.ca.gov

REPLY TO:

CRAIG WALLACE

ATTORNEY AT LAW
TEL: 415 394-6688
cwwallace@smithcurrie.com

September 21, 2020

Via email: Leam@ci.milpitas.co.gov

Lyhak Eam, P.E.
Associate Civil Engineer
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: *Milpitas Fire Station No. 2 Replacement
Project No. 3447
Response to Cesar Sanchez's (Carpenter's Local 405) 09.15.20 Letter*

Dear Mr. Eam:

We represent Sausal Corporation. We write to respond to Cesar Sanchez's 09.15.20 letter, sent on behalf of Carpenter's Local Union 405. He sent his letter addressed to the "City of Milpitas," and copied the Mayor, the Vice-Mayor, three City council members, and two City Engineers, including yourself. Mr. Sanchez, the Local's Labor Compliance Investigator, invites the City of Milpitas to determine whether Sausal is a "responsive" and "responsible" bidder. His invitation should be rejected.

The City of Milpitas already determined that Sausal is a responsive and responsible bidder. Months ago, the City performed its due diligence and conducted a fair inquiry, and determined that Sausal is a prequalified general contractor for this project, along with three other general contractors. That should be the end of this issue.

Moreover, Mr. Sanchez is not interested in a fair inquiry, but only presents innuendo and suggestions, without any due diligence, to present a distorted picture. His letter is purely intended to present Sausal in a bad light, rather than attempting to present useful and helpful information to the City. Nonetheless, below, we briefly address the issues raised by Mr. Sanchez. As counsel for Sausal, we note Mr. Sanchez wrote substantially similar letters to other

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public entities, on behalf of different local carpenter's unions, containing the very same assertions. These other attempts to paint Sausal in a bad light were rejected.

Mr. Sanchez observes that Sausal was the low bidder for the Project. He presents the three lowest bidders and all three are below Milpitas' engineer's estimate. He then goes on to overtly suggest, without any basis, that there is a question whether Sausal plans on paying prevailing wages on the project. He ignores that the law requires paying prevailing wages, that there are numerous processes in place to assure this, and that Sausal has paid prevailing wages for decades on its projects.

He next suggests that Sausal perjured himself because he found some information dated in 2016 about two of Sausal's subcontractors. He claims that the two subcontractors had been found to have violated state or local wage and hour laws within the past five years. Reflecting the failure to do any investigation, the HACA project was completed in 2014, six years ago, and the Lakewood/Trahan matter was dismissed years ago because the hearing officer did not find any claims warranted.

Mr. Sanchez next suggests Sausal does not adequately screen its subcontractors. Once again, this ignores Sausal's decades of construction experience in the Bay Area. To support such a broad assertion, he cites to a single purported "pending" CSLB investigation as to Tri-Valley Excavating. However, the issue involved work performed in 2017 and the CSLB states the matter is resolved, but the law requires it be posted for five years. Once again, Mr. Sanchez failed to point this out to the City.

Mr. Sanchez cites to a 2014 (six years ago) Burlingame project and asserts that there were requested time extensions on the Project. Delays are not unusual in the construction industry and can be caused by any multitude of factors. The mere existence of a request for additional time on a project, as Mr. Sanchez cites, is, itself, meaningless. He also provides a distorted picture of the West Valley Mission Community College project. He asserts Sausal requested 183 days of extension as if that were the material point he wants to bring to the City's attention, but then acknowledges "the College approved the extension." That is the end of that issue. He also suggests that some construction issues arose at the project, which is accurate, however he fails to note these were determined to be design related issues and not due to Sausal's or its subcontractors' work. Despite his intent to suggest otherwise, the West Valley College project is complete and fully paid.

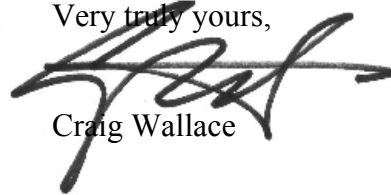
Mr. Sanchez cites to a lawsuit in which Sausal was involved which began in 2014, six years ago. Despite Mr. Sanchez's use of the plural ("filed by subcontractors"), the lawsuit was initiated via one single subcontractor's failure to be paid, and the failure to be paid was because the public entity (City of Novato) did not accept the subcontractor's claims for payment. The City's construction manager believed the subcontractor was submitting falsified billing. Sausal responsibly sought to require the subcontractor to establish its right to the claimed money for the benefit of the public entity.

Mr. Lyhak Eam
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Last, Mr. Sanchez cites to two OSHA matters from 2016. As an initial matter, Sausal's worker's compensation mod rating is the best (i.e., lowest) that a general contractor like Sausal can obtain at 0.64, reflecting the very safe work environment maintained by Sausal at its projects. As to the OSHA violations, both were resolved to OSHA's satisfaction roughly 30 days after Sausal was given notice of the violations. Mr. Sanchez asserts these were "serious violations," however the very same website from which Mr. Sanchez obtained his information shows the claims were resolved as not being "serious violations" but were categorized as an "other" violation type. If the City of Milpitas has any concerns about this, Sausal encourages it to contact OSHA to inquire as to Sausal's safety record.

As noted at the outset, the City already performed its due diligence as to Sausal and the other prequalified bidders months ago. The picture presented by Mr. Sanchez is distorted and incomplete, and reflects a failure to properly evaluate the assertions being made against Sausal. Sausal is prepared to address any concern the City may have, and looks forward to a successful completion of the Project.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig Wallace", with a long horizontal stroke extending to the right.

Craig Wallace

Cc: client (via email)

**CITY OF MILPITAS
DESIGN SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into as _____, 20____ by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **SHAH KAWASAKI ARCHITECTS, a California Corporation**, with its principal place of business at **570 10th Street, Suite 201, Oakland, CA 94607** (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

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

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. City desires to engage Designer to render such services for the **Fire Station No. 2 Replacement** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Designer.

3.1.1 Scope of Services. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **DECEMBER 4, 2018** to **DECEMBER 31, 2022**, unless earlier terminated as provided herein. Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates **Philip Sheng-Ti Luo** (License No. C-29075) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under

this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of City, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control

of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Designer Services.

3.8.1 Request for Services. At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services

made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Designer with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **STEVE ERICKSON, DIRECTOR OF ENGINEERING/CITY ENGINEER**, or his or her designee, as the City's contact for the implementation of the Services hereunder.

Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **NINE HUNDRED THIRTEEN THOUSAND FOUR HUNDRED NINETY-FOUR Dollars (\$913,494.00)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through

the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Designer. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to

submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.10.7 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.10.8 Labor Compliance. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer’s performance of Services, including any delay, shall be Designer’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the City. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Designer or any subcontractor.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Designer’s Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Designer as provided in this Agreement.

3.12.2 City’s Suspension of Work. If Designer’s Services are suspended by City, City may require Designer to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Designer shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled

at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to City copies of all Project Documents required by City. In addition, Designer shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Designer, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Designer shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Designer's obligation to defend, indemnify, and/or hold harmless arises out of Designer's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Designer's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer, and, upon Designer obtaining a final adjudication by a court of competent jurisdiction, Designer's liability for such claim, including the cost to defend, shall not exceed the Designer's proportionate percentage of fault.

3.15 Insurance. Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Designer shall not

allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required therein.

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its

specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Santa Clara County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

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

3.27 Safety.

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Steve Erickson, City Engineer /

Director of Engineering

CONSULTANT:

Shah Kawasaki Architects, Inc.

570 10th Street, Suite 201

Oakland, CA 94607

Attn: Philip Luo, Principal

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

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

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Designer warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Wage Theft Certification.

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

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

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

3.35.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

3.35.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other

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

3.36 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.37 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.38 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

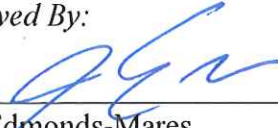
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND SHAH KAWASAKI ARCHITECTS**

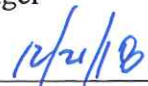
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:



Julie Edmonds-Mares
City Manager

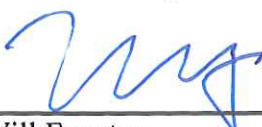


Date

Approved As to Content:

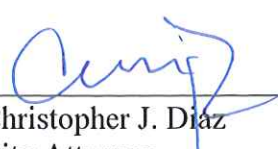
 12/6/18

Steve Erickson
Director of Engineering/City Engineer

 12-10-18

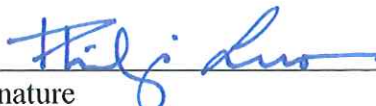
Will Fuentes
Director of Financial Services

Approved As To Form:



Christopher J. Diaz
City Attorney

SHAH KAWASAKI ARCHITECTS



Signature

Philip Luo
Name

Principal
Title

11/19/2018
Date

EXHIBIT “A”
DESIGNER’S SCOPE OF SERVICES

Scope of Services - Fire Stations No. 2 Replacement

Consultant shall perform professional services related to the pre-design, site planning and schematic design, design development, temporary relocation and facilities for fire services, construction documents, bidding and award, and construction support for the Milpitas Fire Station No. 2 Project to be located at 1263 Yosemite Drive, in the City of Milpitas, California, ("Project"). Consultant shall provide professional services in accordance with this Agreement and coordinate with the City to provide a design for a complete fire station, ready for operations. Services under the scope of work shall comply with contract provisions. Consultant shall also provide consultation to City staff, City Council and others who are involved with the Project and shall provide guidance, advice and assistance in completion of the Project.

Section 1: General Requirements

The City of Milpitas seeks to replace Fire Station No. 2 located at 1263 Yosemite Drive with a new fire station on the same site. The Milpitas Fire Department (MFD) expects staff increases to 24 members, which includes three shifts of eight fire fighters. The apparatus bay will also increase in size to three bays for two Type 1 Fire Engines, one Type 1 Reserve Fire Engine, one Type 3 Fire Engine, and one Ambulance. It is anticipated that the new building will include (3) apparatus bays, dorm rooms, office, day room, kitchen/dining room, and various support rooms. Site improvements will include modified driveways, new parking lot, and possibly a temporary residence and fire apparatus canopy.

The City's Project staff (Project Manager) shall manage the design of this Project and performance under this Agreement. Consultant shall receive final direction from the Project Manager or authorized designee only. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies. Consultant shall provide the services necessary to complete the design and assist with public bid process, construction administration, and closeout of the Project, as defined in this Agreement. Consultant shall assist with project management/coordination and preparation of technical documents in compliance with applicable codes, rules, regulations, and guidelines as required by the Building Department for issuance of a Building Permit and for bid and construction. The specifications shall include the City's front-end contract provisions and the bid schedule.

A. General Performance Requirements:

1. Consultant shall coordinate the scope of services described herein with the City and City's separate consultants and contractors as needed and as directed by City. Consultant shall also manage, coordinate, and review work submitted by the Sub-consultants for accuracy and conflicts with other disciplines.
2. Consultant and the City recognize the importance of the need to maintain the Architect's key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner.

3. The schedule for the performance of the Consultant's services included in Exhibit A may be adjusted by mutual agreement as the Project proceeds. Consultant shall manage the Consultant's services, manage its Sub-consultants and administer the Project.
Consultant shall consult with the City, research applicable design criteria, communicate with members of the Project Team, and issue monthly written progress reports and brief weekly email updates on progress, or as otherwise mutually agreed to with the City.
4. Consultant shall prepare, and periodically update, a Project Schedule and cost plan for the City's review. The Project Schedule shall identify milestones, dates for decisions required of the City, design services furnished by the Consultant and the Consultant's Sub-consultants, dates of reviews and approvals required by governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the Consultant, completion of documentation provided by the Consultant, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by City and shall incorporate pertinent calendar information including all Consultant Holidays, City Holidays, and public meeting dates of the City Council, Planning Commission, and Public Safety and Emergency Preparedness Commissions. The project schedule shall include these milestone dates:
 - a. Completion of Phase 1: Programming Phase February, 2019
 - b. Completion of Phase 2: Schematic Design May, 2019
 - c. Completion of Phase 3: Design Development August, 2019
 - d. Completion of Phase 4: Construction Documents December, 2019
 - e. Other milestones pertinent to the completion of the project
 - f. See Exhibit "B"
5. Consultant shall keep the Project within the Construction Budget (Cost Plan) to be established for the Fiscal Year (FY) 2019-2024 Capital Improvement Program (CIP) with the help of the consultant. Consultant is to develop a Cost Plan to help refine the Construction Budget through the Programming and Schematic Design. Consultant shall assist the City establish a not-to-exceed Construction Budget by February 2019 for the Fiscal Year (FY) 2019-2024 CIP budget process to secure bond funding for construction.
6. Consultant shall submit design documents to the City for purposes of review and evaluation by the City at the end of the Programming, Schematic Design (30%), Design Development (60%), and 95% Construction Document phases. Consultant shall address comments provided and compiled by the City into a single set of coordinated comments and make revisions as required by the City for each phase in a timely manner. In responding to review comments and revising the design documents, Consultant shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent. Submittals that have not completely addressed prior review comments will either be accepted as an intermediate submittal that does not satisfy the milestone, or may be rejected, until the submittal addresses the prior review comments.

7. Consultant shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
8. Consultant shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines.
9. The Consultant shall assist the City with community outreach effort and attend up to two community meetings. The Consultant will attend the Planning Commission and City Council meeting to assist with presentations to obtain approvals and entitlements for the Project.
10. Consultant shall provide the City with information and recommendations on the value of alternative materials, building systems and equipment, together with other considerations based on program, budget, resilience, and aesthetics in developing the design for the Project.
11. Upon request of the City, Consultant shall make presentations to explain the design of the Project to representatives of the City, as necessary to inform the City's various bodies (City Council, Commissions, Subcommittees, and Departments) to support the City's development and Capital Improvement review process, at each of the phases.
12. Consultant shall not rely on the accuracy of City Record Documents. The City does not warrant the accuracy or completeness of its Record Documents. Consultant shall verify all information to their professional satisfaction. Consultant may rely upon the new design documents relating to the Project, to the standard of care of those documents that are provided. Consultant will note and report any discrepancies observed in the course of professional activities covered by the services provided under this Agreement.
13. Consultant shall prepare team Organizational meetings to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
14. Consultant shall meet with the City Building and Planning departments, prior to the start of Schematic Design, Design Development and Construction Document phases in order to review local and state codes for zoning, building, and CEQA submittal and approval requirements.
15. Consultant shall make all submittals required to obtain building permits for the Project to the City of Milpitas Building Inspection Division, 455 East Calaveras Blvd, First Floor. The City will be responsible for City Department reviews and permit fees. The Consultant shall meet with the Building Official as required to review and discuss plan review comments from the Building Official. The Consultant shall make any and revisions to the plans and provide all submittals to the City as required by the City of Milpitas Building Official in order for the City to issue required building permits.

16. The Consultant shall be responsible for reviewing, coordinating, integrating and preparing construction documents of Sub-Consultants, and obtaining the stamp and signature on the plans and documents of Sub-consultants requiring professional licensure, as required by State law. Consultant shall incorporate into each set of plans and each submittal to the City and City Building Inspection Division those plans, specifications, calculations, reports and other documents prepared by Sub-Consultants. The electrical engineer shall be responsible for coordinating low voltage wiring with other electrical design. Plans that are prepared by Sub-Consultants and not incorporated into sets of complete plans will not be accepted by the City Building Department and will not satisfy achievement of the milestone.
17. Consultant shall provide design coordination of structural system, mechanical, HVAC, plumbing, fire protection, data/voice raceway, audio/visual technology, electrical, lighting, telecommunications, alarm, and other systems, for proper location, clearance and space requirements in order to reduce potential conflicts between these systems.
18. The Consultant and Sub-consultants shall meet the standard of care in performing their services. Personnel assigned to this project shall complete tasks only within their area of competence. The Consultant Team shall endeavor to perform its services in accordance with current electrical, fire, mechanical, building, safety, and other applicable codes, rules, regulations, and laws.
19. Consultant shall provide required design and detailing during the design phase of the Project, and limit the amount of design and detailing required during construction or required of the Construction Contractor to those items specifically enumerated herein below. Consultant shall provide detailed concept drawings and performance specifications and specific examples of material, products, fixtures and equipment that meet the performance specification, that provide sufficient detail to coordinate design/build work with the Project. A list of "deferred submittals" for Contractor design/build work to be included in the Construction Documents may include the following, as modified by the comments in [brackets]:
 - a. Temporary Earthwork
 - b. Elevator car and conveyance mechanism, and connection to structure - [Consultant shall design the structural support, shaft, pit.]
 - c. Automatic fire sprinkler system - [Consultant shall coordinate performance and location, layout the head locations, trim and performance specifications.]
 - d. Cold formed metal framing (exterior metal stud walls & roof joists) -[Consultant shall determine typical sections, gage, width and stud spacing, and finish.]
 - e. Non-load bearing metal wall framing (interior stud walls) -[Consultant shall determine stud size and define performance in specifications.]
 - f. Integral elements of manufactured Glazing systems, excluding structural support - [Consultant shall coordinate structural support specify fit finish.]

- g. Integral structural elements of manufactured skylight systems except structural framing and support. - [Consultant shall design waterproofing and coordinate lighting, fire sprinkler, and other appurtenances, except individual window panes.]
- h. HVAC equipment and ductwork supports - [Consultant shall coordinate ductwork and review design of supports for HVAC equipment]
- i. Pre-manufactured steel stairs - [Consultant shall specify rise and run.]
- j. Manufactured Guardrail and handrail structural components of systems [Consultant shall show extent, location, and extensions, fit and finish and coordination.]
- k. Ceiling Systems - [Consultant shall show extent, location, and elevations, fit finish and coordination.]

Consultant shall neatly list submittals required in the Specifications, organized in categories, indicating: the item, at least one acceptable manufacturer or material supplier, and references to the item mentioned in the Construction Documents, other pertinent comments or information. Quantities will be indicated in the drawings. Estimated cost will be provided in the cost estimate.

Generally, systems or products that are proprietary, licensed, or require periodic payments for continued use, are not acceptable. Exceptions may be allowed for certain software and other items, where Consultant has provided reasonable information that indicates the use is necessary and cost-effective to the City.

- 20. Work shall be done in an electronic format, appropriate to the work product, including (AutoCAD/Revit) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Primavera or Project) schedules, and other appropriate digital electronic formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a paper hard copy.
- 21. The Consultant shall prepare cost estimates to assist the City develop a budget for the project. Cost estimates will be prepared for 30%, 60%, and 95% Design Documents. Cost estimates shall factor in market conditions and other considerations for construction anticipated to start in late 2019. If the bid cost exceeds the 95% Design Cost Estimate by 10%, the Consultant will assist the City with value engineering as part of the base scope of services. The City will bid out the project within 4 months of the final cost estimate.
- 22. Consultant shall design and detail aspects of the Project to convey design intent through detailed concept drawings and performance specifications. A list of "deferred submittal" items will be provided in the drawings and specifications to define General Contractor design-built work. Specifications will list submittals required by the General Contractor.

23. Work shall be done in electronic format. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. Large files will be transferred through cloud services such as Office 365 SharePoint.
24. Follow City's CAD drafting standard guidelines.
25. Green Infrastructure and Sustainability: Consultant will include sustainability measures into the design of the project. The design will consider measures will to improve energy efficiency, water usage, storm water quality control, and occupant health. The building design will meet Cal Green Standards, which is comparable to sustainability standards defined by LEED Silver. LEED certification and documentation is not included in this scope of work. The project will be designed to be able to install photovoltaic panels and one vehicle charging station at a later date. Conduit will be run as required, and space shall be provided in the electrical room for future connections.
26. Furniture Fixture & Equipment (FF&E): Consultant will provide selection services and will prepare plans and specifications for furniture, fixtures, and equipment related to the building facility as required for public bidding. Typical FF&E includes Furniture (desks, tables chairs, beds, nightstands, window treatments, carpet, flooring, filing cabinets, pedestals, lazy boy chairs, lamps, patio furniture), Appliances (washer, dryer, refrigerator, microwave, oven/range, dishwasher), and Air compressor. Exercise equipment, and firefighting support equipment will be provided by City and Contractor installed. The following items are assumed to be provided by others: gym equipment, small items (tools, appliances, kitchenware, janitorial), entertainment (TV's, DVD's, usually provided by fire fighters), IT/telecom/alert/AV (computers, servers, switches, alert [Zetron], radios, PA, AV), and fire station specialties (hose dryer, extractor, SCBA, Cascade). The Consultant shall work with the City and the City's vendors to provide the necessary backbone electrical and mechanical infrastructure needed for installation of the equipment mentioned.
27. Prepare a work plan that will support integration and interface of the proposed new Fire Station Alert System. The equipment and installation will be deployed by an outside vendor.
28. Temporary Fire Station: Consultant will prepare schematic design for Planning Approval, and upon approval will prepare architectural, civil and electrical construction documents for a temporary fire station. The temporary station shall be located on the existing fire station parking lot site and shall be phased to allow continuous operation between the demolition of the existing station and completion of the new station. The temporary station shall consist of a modular housing unit for three fire personnel, a metal awning for a fire engine, turnout and limited apparatus support storage, and a minimum of three parking stalls. During the design process, the City will make the determination to lease or purchase the modular housing unit and the awning structure directly or require the general contractor to provide as part of the construction documents. The

construction documents at minimum will be to prepare the site for the temporary utilities, site work, and structures and restoration of the site to the final new station configuration.

29. Standard of Performance: Consultant acknowledges that is their obligation to prepare a bid package, including plans, specifications, and other bid documents suitable for bidding under the Public Contract Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package. Consultant shall produce a 100% Construction Documents ready for bid within the schedule. Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 10% of the total construction bid price.

B. Estimate of Probable Construction Cost:

1. Consultant shall be responsible to design the Project to the approved Construction Budget. The Consultant shall provide an Estimate of Probable Construction Cost at 30%, 60%, and 95% Design Documents, to demonstrate the design is within the approved Construction Budget. The approved Construction Budget shall be such that if the lowest bid is within 110% of the final Estimate of Probable Construction Cost it will be no greater than the Cost Plan. Consultant shall not proceed further with next phases until each design submittals cost estimate is reconciled within the City's Construction Budget.
2. If the bid cost exceeds the 95% Design Cost Estimate by 10%, the Consultant will assist the City with value engineering as part of the base scope of services. The City will bid out the project within 4 months of the final cost estimate.

Section 2 - Scope of Services

The Consultants' scope of services for this Project shall include Architectural and Engineering Services outlined below for these new and renovated facilities. The Consultant shall provide in-house personnel or Sub-consultants to perform the services in this Agreement and as described below:

- Architectural Design
- Civil Engineering/Site Grading/Site Storm water Management Plan
- Topographical Surveying
- Landscape Design
- Structural Engineering
- Mechanical Engineering
- Plumbing Design
- Electrical Engineering
- Lighting Design
- FF&E Design
- Environmental Analysis

- Geotechnical Engineering
- Demolition Plan
- Cost Estimating

Phase 1 - Programming Phase

During the Programming Phase, the Consultant will gather information and prepare a program for the facility.

1. Kick-off Meeting: Meet with City to review project goals, work plan / schedule and initial budget to develop a Cost Plan. Review current fire station design best practices (Cal Fire Presentation). Tour existing Milpitas fire stations and discuss MFD operations and preferences.
2. Review Existing Documents: Obtain existing documents from City, potentially including prior topographic surveys, existing floor plans, site/utility locations, and reports. Review and develop questions for the City.
3. Tour of SKA Fire Station: Tour SKA's latest fire station (Napa 5) to discuss implementation of design best practices and lessons learned.
4. Interview and Prepare Program: Based on information discussed during tours of the Milpitas and SKA stations, prepare an initial program spreadsheet consisting of proposed site elements rooms, functions, net and gross square footage. Review and refine the recommendations in an interactive workshop with City.
5. Community Workshop #1: Conduct a meeting with the local community and solicit opinions regarding an appropriate aesthetics fit for the neighborhood. Record comments/opinions.
6. Topographic Survey: Prepare topographic survey.
7. City Review: Submit program spreadsheet for City approval.
8. Meetings: 2 included in this phase including meetings listed above.
9. Deliverables shall include:
 - a. Cost Plan
 - b. Summary of interviews and programming
 - c. Spreadsheet of programmatic spaces
 - d. Topographic survey
 - e. Summary of Community Workshop #1
 - f. Tour and meeting minutes

Phase 2 - Schematic Design (30%) Phase

During the Schematic Design (30%) Phase, the Consultant will work with the City to develop building plans and engage the community to develop an appropriate aesthetic fit with the

community. The Consultant shall obtain approvals of the Schematic Design from Public Safety and Emergency Preparedness Commissions, Planning Commission, and City Council, which all require public meeting presentation. Based on the City's current streamlined construction budget, the design team's approach will be to provide a highly cost effective design with a few alternative enhancements agreed in advance with the City. In this manner, it will not be necessary to "Value Engineer" the project down, but rather add enhancements if they can be afforded.

1. Consultant to prepare Team Meetings and meetings with necessary City staff to present the conceptual building alternatives.
2. Consultant to refine Schematic Design Plan based on meetings and other review comments.
3. Consultant to do preliminary code compliance review per City Building and Planning Departments requirements.
4. Consultant to prepare Schematic Design package and statement of Estimate of Probable Construction Cost to establish a Construction Budget for the FY2019-24 CIP.
5. Consultant shall provide services necessary for the preparation of Schematic Design documentation for review and approval by the City. Said Schematic documentation shall be based on the City approved Conceptual Design and shall be of sufficient scope and detail to fix and describe the size and character of the Project.
6. Schematic Design documentation services to be provided by Consultant shall include the following:
 - a. Architectural design/documentation services, including development of all Schematic Design documents necessary to establish the final scope, relationships, forms, size, appearance and cost of the Project.
 - b. The Schematic Design Documents shall include scale drawings for the following:
 - i. the site plan with on-site and off-site work information
 - ii. preliminary building plans depicting the area and configuration requirements for all interior and exterior spaces and demonstrating the solution for pedestrian & vehicular access and adjacency requirements;
 - iii. Sections including the context; elevations including the context; and, colored plan diagrams showing programmed uses and circulation.
 - iv. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/8" = 1' for floor plans.
 - c. The Schematic Design Documents shall include study models, perspective sketches, electronic modeling or combinations of these media. Models shall illustrate the building's day and nighttime appearance from interior and exterior perspectives and the impact of solar effects on the building.

- d. The Schematic Design Documents shall describe preliminary alternatives for materials, finishes, systems and products including an evaluation of their life cycle cost, durability.
- e. The Schematic Design Documents shall describe preliminary selections of major building systems and construction materials.
- f. The Schematic Design Documents shall indicate site improvements including landscaping outdoor spaces and location and layout of parking for employees, City vehicles and visitors, and pedestrian access. It shall also include a description of materials and equipment.
- g. Documents shall identify preliminary space requirements for structural and building enclosure systems, preliminary space requirements for all mechanical systems and other equipment, and points of connection for utilities including but not limited to electric, natural gas, water, sanitary, storm, telecom, data, cable TV and others.
- h. The Schematic Design shall also address access control and security measures.

7. Tasks:

- a. Temporary Relocation: Assist the MFD develop a feasible temporary relocation plan for Fire Station No. 2 to meet the Standards of Cover operations and level of service during construction. Cost estimates for the temporary relocation will be included in the Construction Budget.
- b. Develop Options: Based on the approved program, develop (3) site options indicating apparatus ingress/egress, parking, Convault, generator, and the total interior gross square footage determined in the program phase. Diagrammatically indicate general locations of interior functions.
- c. Review Options with City by discussing pros and cons of each option as well as rough order of magnitude cost differences if any. Collectively choose one option for further development.
- d. Prepare Schematic Design and Planning Submittal of selected option. Prepare site plan, landscape plan, floor plan, roof plan, building section, exterior elevations, and single line diagrams for structural, mechanical and electrical systems. In addition, prepare exterior rendering, storm water plan, planting, and exterior lighting diagrams for the Planning submittal.
- e. Community Workshop #2: Conduct a meeting with the local community and present schematic design elevations and their relationship to comments made at Community Workshop #1. Record comments/opinions.
- f. Review Schematic Design during a progress meeting with City.
- g. Prepare cost estimate of the Schematic Design and 3-4 enhancements as noted above.
- h. Prepare Geotechnical and Environmental Analysis: Based on the location of the proposed building, prepare geotechnical analysis. Prepare a Phase I Environmental Analysis of the existing site and building for abatements necessary for site work and building demolition.

- i. Assist the City present the Schematic (Concept) Design to the Planning Commission, Public Safety and Emergency Preparedness Commissions, and the City Council to obtain approvals to move on to the Design Development Phase.
8. Meetings: 7 included in this phase
 - a. 2 Design meetings with the City
 - b. Up to 2 Community Outreach meetings
 - c. Planning Commission for project entitlement
 - d. Public Safety and Emergency Preparedness Commissions
 - e. City Council Meetings for the approval of the Concept Design
9. Deliverables shall include:
 - a. Temporary relocation plan
 - b. Summaries of Community Meetings
 - c. Meeting minutes
 - d. Phase 1 Environmental Analysis report for the site and building.
 - e. Architectural & Civil Site Plan at 1/16"=1'-0" scale
 - f. Floor Plans at 1/8"=1'-0" scale
 - g. Exterior Elevations at 1/8"=1'-0" scale
 - h. Building Sections at 1/8"=1'-0" scale
 - i. Design area tabulations
 - j. 30% Cost Estimate/Construction Budget
 - k. Rendered perspectives or other illustrations to convey design intent for presentations

Phase 3 - Design Development (60% Phase)

Based on the approved Schematic Design Documents, prepare Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical and electrical systems, materials and such other elements as appropriate. Advise the City of any adjustments to the preliminary estimate of Construction Cost.

1. Consultant shall coordinate and manage its Sub-consultants throughout the Design Development phase and coordinate with the City, City's representatives and key departments, including but not limited to City's Building, Planning, Engineering, and Information Services staff.
2. Consultant shall prepare Design Development documents as specified in "Deliverables" section below based on refinement and further development of the approved schematic design, including preliminary furniture layouts, built-in fixtures, and equipment selections.
3. Consultant shall attend Team Meeting, and Fire Department Meeting, and present 50% Design package for review and approval by the City.

4. Consultant shall refine design development plans based on comments received from City.
5. Consultant shall coordinate meetings with Building & Fire Department to review plans.
6. Consultant shall finalize Design Development package as noted in Section below.
7. Consultant shall attend Team Meeting, MFD Meeting, and with City Council Meeting to present 100% design development package for review and approval by the City if requested by the City Project Manager.
8. Tasks:
 - a. Consultant shall prepare design development packages for new Fire Station and a Temporary Fire Station:
 - i. Consultant shall refine and update schematic design drawings including the temporary relocation plan in response to comments from City representatives.
 - ii. Consultant shall develop building and site details.
 - iii. Consultant shall prepare in-progress specifications for projects.
 - iv. Consultant shall develop interior/exterior design.
 - v. Consultant shall prepare interior/exterior product/finish boards.
 - b. Consultant shall submit the design development packages in PDF format to City for review which shall include the architectural, structural, and building systems drawings, and relevant drawings and materials.
 - c. Consultant shall coordinate and meet with project team, as needed, including Public Works Engineering, Fire, and Planning.
 - d. Upon completion of design development, Consultant shall provide a design development-level construction cost estimate and a project schedule including time for permits required for the project.
 - e. Consultant shall present design development packages to City.
9. Meetings: 3 included in this phase
 - a. Design Meetings
 - b. Planning Commission Meeting
10. Deliverables shall include:
 - a. Site Design:
 - i. Temporary relocation plan
 - ii. Demolition Plan
 - iii. Storm water Management Plan as required
 - iv. Architectural, Civil, and Landscape Plans at 1/16"=1'-0" scale
 - v. Building plan located dimensionally with pertinent adjacencies, street lines and grades, property lines, required setbacks, easements, rights of

- way, manholes, sewers, hydrants, light standards, etc., interfaced with survey
- vi. Preliminary grading and landscaping plans coordinated with mechanical/electrical for utility entry points; elevation datum at entries
- vii. Indicate areaways, vaults, access to subgrade spaces.
- viii. Preliminary site and exterior building lighting scheme with identification of fixture types
- ix. Parking area, paths, stairs, ramps, berms, terraces, etc.
- x. Design development details:
 - 1. Railings
 - 2. Stairs
 - 3. Ramps
 - 4. Paving types and patterns
 - 5. Benches
 - 6. Plants (if necessary) etc.
- b. Floor Plans at $\frac{1}{8}"=1'-0"$
 - i. Building perimeter footprint and exterior wall type, thickness and composition
 - ii. Structural column grid
 - iii. Major mechanical/electrical systems determined and their requirements reflected and indicated on plans
 - iv. Indicate building core - elevators, stairs, etc.
 - v. Internal partitions and types indicated
 - vi. Door swings indicated
 - vii. Adequate internal and external dimensions
 - viii. Floor, slab, and level elevations
 - ix. Typical door types
 - x. Typical partition types
 - xi. Building core element-well worked out with dimensions
 - 1. Stairs
 - 2. Elevators
 - 3. Major shafts
- c. Enlarged Plans

Large-scale (i.e. $\frac{1}{4}" = 1'-0"$ or $\frac{1}{2}" = 1'-0"$ if needed); detail lobby, entries, public plaza, major corridors, special spaces, etc. Typical to provide interior elevations of enlarged plan areas with surfaces delineated
- d. Exterior Elevations at $\frac{1}{8}"=1'-0"$ scale:
 - i. Total full-height facades including roof structures
 - ii. Fenestration fixed and related to interior walls and internal slab heights
 - iii. Overall vertical building and floor heights indicated and related to established building datum
 - iv. Indicate grid lines
 - v. Indicate setbacks, building profiles, expansion joints, etc.
 - vi. Indicate treatment of visible mechanical equipment

- vii. Systems impact (precast concrete, stone, panel systems, metal/glass curtain wall, etc.)
- e. Sections at $\frac{1}{8}"=1'-0"$:
 - i. Overall building longitudinal and transverse or cross section at same scale as floor plans
 - ii. Wall Sections ($\frac{3}{4}"=1'-0"$)
 - Full height sections conveying basic building configuration, to indicate:
 1. Foundation and perimeter treatment
 2. Typical wall construction
 3. Back-up structure, abutting floor system
 4. Window location and insulation methods
 5. Flashing, masonry coursings
 6. Mechanical penetration impacts (furring, etc.)
 7. Parapet design
- f. Interior Elevations
 - Typical and special spaces, interfaced with, and cross-referenced to, floor and reflected ceiling plans. Indicate:
 - i. Suspended ceiling lines reflecting structural and mechanical conditions above
 - ii. Breaks
 - iii. Level changes
 - iv. Pertinent vertical dimensions
 - v. Wall material and finish
- g. Reflected Ceiling Plans at $\frac{1}{8}"=1'-0"$
 - Typical and special spaces. Integrated plans reflecting structural, mechanical, and electrical impacts. Plans to indicate:
 - i. Lighting layouts
 - ii. Soffits, coves, furring
 - iii. Skylight locations
 - iv. Ceiling materials
 - v. Acoustic treatments
 - vi. Interface with window details
 - vii. HVAC grilles - supply and return
 - viii. Fire-sprinklers, if critical to design
 - ix. Access panels
 - x. Exposed structure
- h. Schedules:
 - i. Room Finish
 - ii. Door
 - iii. Window or storefront
- i. Structural Drawings:
 - i. Floor plans at the same scale as the architectural drawings
 - ii. Typical floor framing plans, including -Sizing of beam drops
 - iii. Slab openings

- iv. Thicknesses
- v. Depressions
- vi. Framing indication and governing sizing at:
 - 1. Roof structures
 - 2. Penthouse
 - 3. Bulkheads
 - 4. Other
- vii. Non-typical framing scheme where required:
 - 1. Lobby
 - 2. Floors at grade
 - 3. Other
- viii. Column points established
- ix. Final column schedule
- x. Preliminary details and sections to adequately indicate structural system
- xi. Preliminary details of major unique conditions that impact on scheme (as determined by the architect).
- xii. Details indicating accommodation with mechanical/electrical at areas of major interface
- xiii. Design development specifications
- xiv. Any necessary recommended adjustments to the preliminary estimate of construction cost
- j. Mechanical / Plumbing / Electrical
 - i. Floor plans: systems represented, major equipment, and equip. clearance requirements:
 - 1. Major shafts (sizes)
 - 2. Chases
 - 3. Mechanical rooms and electric closets - convector/fan coil locations, etc.
 - 4. Plumbing riser diagrams
 - 5. Fire-sprinkler (if applicable) main and secondary distribution branch system
 - ii. Penetrations:
 - 1. Wall
 - 2. Slab
 - 3. Beam
 - iii. Enlarged plans:
 - 1. Boiler/heater spaces - include clear height requirements
 - 2. Transformer vaults - approval sought (application started) from local utility company
 - 3. Switchgear, emergency generator, water storage tanks, fire pumps, etc.
 - 4. Roof cooling towers, major air conditioning and air-handling equipment, packaged units, etc.

- iv. Roof Plans - roof air-handling equipment: cooling towers, exhaust fans, vent pipes, etc.
- v. Data to be developed in conjunction and in coordination with the project team:
 - 1. Integrated diagrammatic lighting plans indicating overhead mechanical and electrical equipment for typical floor and special spaces
 - 2. Preliminary electric light fixture schedule and cuts sheets
 - 3. Cut sheets and explanatory information for interior visual items such as:
 - a. Louvers
 - b. Registers
 - c. Heating/cooling units
 - d. Cabinets
 - 4. Exterior louver requirements and proposed locations
- k. Updated construction cost estimate

Phase 4 - Construction Documents (95% & 100% Phase)

Based on the approved Design Development Documents, Consultant will prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the project. Consultant will advise the City of any adjustments to previous preliminary estimates of construction cost indicated by changes in requirements or general market conditions and will assist the City in filing documents required for the approval of governmental authorities having jurisdiction over the project. The Consultant will also assist the City in the preparation of drawings and specifications necessary for bid. Separate construction bid packages shall be required for, at minimum, for temporary relocation/facilities and Fire Station No. 2 Replacement.

- 1. Consultant shall coordinate and manage Sub-consultants throughout construction documents phase.
- 2. Consultant shall refine and further develop the approved Design Development package based upon City's comments on the 100% Design Development package review.
- 3. Consultant shall attend Team Meeting: 95% Construction Documents presentation.
- 4. Consultant shall prepare 100% Construction Documents package, with City's comments from the Design Development package incorporated.
- 5. Consultant to coordinate with City's telecommunications staff.
- 6. Consultant to prepare a separate construction documents package for temporary facilities/relocation and Fire Station No. 2 Replacement for Building and Fire department plan check review and permitting. Consultant shall submit permitted plans to the Engineering Department for Bidding.

7. Consultant shall prepare the 100% Construction Documents packages with final quality control review from City and Fire Department back check corrections.
8. Consultant shall make a formal presentation of the design along with the Consultant's Final Estimate of Probable Construction Cost to the Public Safety and Emergency Preparedness Commissions Meeting and City Council Meeting for Plan approval for public bid.
9. Tasks:
 - a. Consultant shall prepare construction documents for a new Fire Station:
 - i. Consultant shall refine and update design development drawings.
 - ii. Consultant shall prepare technical specifications for project in CSI format.
 - iii. Consultant shall coordinate the technical specifications with City's General Conditions and Construction Contract template
 - iv. Consultant shall refine interior design.
 - v. Consultant shall develop final interior finish boards.
 - vi. Consultant shall coordinate with City's design team
 - b. Consultant shall prepare a separate construction documents for temporary facilities/relocation for bid before the new Fire Station.
 - c. Consultant shall submit the 95% construction documents package in PDF format to City for review, which shall include the architectural, structural, and building systems drawings, and any relevant drawings, and materials and specifications. Anticipated plan sheets for submittal to the City shall include but not limited to the following:
 - i. Cover Sheet
 - ii. Construction Plan and Notes
 - iii. Temporary Relocation Plan
 - iv. Architectural Exterior and Interior Plans, Elevation and Finish Schedule
 - v. Structural Plans and Details
 - vi. MEP plans
 - vii. Typical Cross Sections
 - viii. Cabinetry, Doors and Miscellaneous details
 - d. Consultant shall provide a 95% construction documents cost estimate.
 - e. Consultant shall incorporate City comments and update drawings and specifications and issue 95% construction documents for permit.
 - f. Consultant shall respond to building department plan check comments as required to secure a permit for the project and issue a 100%.
 - g. Consultant will assist the City by providing drawings and specifications for bid.
10. Meetings: 3 included in this phase

- a. Design Meeting
 - b. Public Safety and Emergency Preparedness Commissions Meeting
 - c. City Council Meeting
- 11. Provide Final PS&E in PDF and in native electronic document formats (AutoCAD, Word, etc.).
- 12. Consultant shall submit wet stamped and signed plans and specifications for Building Permit submittal.
- 13. Deliverables shall include (PDF's and stamped and wet signed documents for the Building Permit submittal):
 - a. Site Design Drawings (refined from DD Phase):
 - i. Temporary Relocation Plan
 - ii. Demolition Plan
 - iii. Architectural Site Plan
 - iv. Civil Site Plan, Paving Plan, Erosion Control Plan, Storm water Control (Green Infrastructure) Plan, Grading Plan, Utility Plan, and Construction Details
 - v. Landscape Site Plan, Planting Plan, Irrigation Plan, Construction Details
 - b. Floor Plans (refined from DD Phase)
 - c. Enlarged Plans (refined from DD Phase)
 - d. Exterior Elevations (refined from DD Phase)
 - e. Sections (refined from DD Phase):
 - i. Overall Building Sections
 - ii. Wall Sections
 - f. Interior Elevations (refined from DD Phase)
 - g. Reflected Ceiling Plans (refined from DD Phase)
 - h. Schedules (refined from DD Phase):
 - i. Room Finish Schedule
 - ii. Door Schedule
 - iii. Partition Schedule
 - i. Details at 1 1/2" or 3"=1'-0"

Large-scale (1 1/2", 3") as required. Key to floor plan or original reference drawing:

 - i. Window types: divisions, pattern, mullion profiles, vent detail, glazing type, jamb/ head, plan section
 - ii. Stairwells - include guard and handrail design
 - iii. Metal and glass walls, side lites, etc.; for division, profile, and glazing type
 - iv. Non-typical design-related heavy gage metal work requiring special fabrication, joining, fastening to other building elements
 - v. Interior partition type and schedules - typical only; keyed to floor plans
 - vi. Built-in furniture items, reception desks, worktops, counters, cabinet types, display cases, recesses, millwork, etc.
 - vii. Typical ceiling details showing support, bracing, and transitions

- viii. Finish details showing transitions
- j. Structural Drawings (refined from DD Phase):
 - i. Add construction details
- k. Mechanical / Plumbing / Electrical (refined from DD Phase):
 - i. Add construction details

Phase 5 – Bid/Award and Construction Support

The City shall coordinate the public bid process. The Consultant shall provide separate construction bid packages as required for temporary facilities/relocation for existing Fire Station No. 2.

Consultant shall prepare a full-sized original bid set, stamped and wet signed (as required by the State) by the appropriate licensed design disciplines, to be on file in the City Engineer's Office, during bidding, and provide a digital copy of the bid package.

Once the Construction Documents are ready for public bid, the City will facilitate the bid process. Consultant will assist the City during bid phase to solicit bids from qualified contractors, attend the pre-bid meeting, address requests for information, prepare addendums as required, and assist with the evaluation of bids.

Once a bid is accepted and approved by the City, Consultant shall compile any addendums or changes to the bid package, revise the documents as necessary, and provide the City with a conformed Construction Document set labeled "for construction".

During Construction, the Consultant will attend regular site meetings, observe construction progress, review pay requests, respond to Requests for Information and substitution requests, address design changes, and review submittals and shop drawings. The team will also prepare change orders and essential bulletins, provide substantial completion and final completion certificates and assist the City in the closing of the project.

1. Consultant shall assist the City in the review and evaluation of bids.
2. If the lowest responsive bid for a Bid Package exceeds the Construction Budget for the Bid Package by more than 10%, Consultant will assist the City with value engineering as part of the base scope of services to reduce the Estimated Project Construction Cost for the Bid Package to a level that falls within the Construction Budget and assist with the rebidding as necessary.
3. The Construction Phase will commence on the date established by the Agreement between City and Contractor, and will terminate after Notice of Completion or, in the absence of a Notice of Completion, after Final Completion, of the entire Work.
4. Consultant shall attend and participate in pre-construction meetings called by the City's Project Manager.
5. The Consultant's responsibilities shall include, but not be limited to,
 - a. interpretation of the Contract Documents;

- b. periodic site observations;
 - c. review of submittals;
 - d. review of the Project Schedule;
 - e. providing cost or schedule analysis for field or change orders;
 - f. preparation of documents for proposed changes;
 - g. review of and making recommendations regarding approval of Contractor cost, schedule or application for payment data;
 - h. and general consultation to the City on design matters.
6. Consultant shall make periodic on-site observations of construction as it progresses. The frequency of site visits will average once every two weeks. When not on-site, the Consultant shall attend weekly meetings by teleconference.
 7. The consultant will assist the City with project closeout. Consultant will assist the City with the preparation of a punch list and verification of repairs. The consultant team will also assist with the systems commissioning process.
 8. The Consultant shall furnish the City one CAD copy of Record Drawings and one copy of Specifications in electronic format. Record drawings shall consist of marked-up drawings and specifications of as-built conditions provided by the Contractor.

Deliverables:

- Full set of stamped and wet signed bid documents (one hardcopy and digital copy)
- For award, a conformed set of construction documents.
- Documents related to construction support as described herein
- Record Drawings in CAD and specifications in electronic format

Phase 6 - Furniture Fixture and Equipment (FF&E)

The Consultant will assist the City with the preparation of FF&E plans and specifications including coordination with City's specialty vendors. The scope will include movable furniture, fixtures, and other equipment related to the facility but are not permanently connected to the structure or the building. FF&E will include furnishings for the dorm rooms, the day room, dining room, office, and kitchen appliances. The scope will not include firefighting equipment, exercise equipment, personal equipment/devices, and any other equipment that are not facility related.

1. Consultant shall prepare furniture, fixtures and equipment layout during the Design Development Phase and review with the City and MFD
2. Consultant shall make preliminary selection of furniture, fixtures, and equipment and review cut sheets with the City and MFD
3. Consultant shall refine and update furniture, fixture and equipment drawings during Construction Document Phase
4. Deliverables shall include:

- a. Furniture, fixture, and equipment (FF&E) plan
- b. FF&E schedule with basis of design product type, manufacturer, model, color, etc.

Phase 7 – Design Contingency

The scope of services includes a \$50,000 design contingency to address additional services as needed and as approved by the City.

Section 3: Additional Service

The following services are not included in the Consultant's Services and may be provided by the Consultant as Additional Services per the terms described in the Agreement:

1. Additional Meetings
2. For FS#3, evaluation of community risks, station performance, and response times to service calls to assess the level of service of the current station and location to ultimately determine if an alternate site is warranted for FS#3.
3. If alternate site for FS#3 is recommended, investigate and recommend potential location and sites.
4. Design services for demolition and construction FS#3

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Compensation for all Services rendered under this Agreement is based on a lump sum amount not-to-exceed. Designer will invoice City on a monthly cycle based on the fee and phasing/funding schedules attached as Exhibit "B". Designer will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.

Exhibit B - Fee Schedule

Replacement of Fire Stations No. 2

Programming Phase	\$25,192	
Schematic Design (30%)	\$186,842	
Design Development (60%)	\$151,530	
Construction Documents (95% & 100%)	\$233,401	
Construction Support	\$197,559	
Furniture Fixture and Equipment (FF&E)	\$20,000	
Design of Temporary Station	\$31,970	
Total Design Fee	\$846,494	
Reimbursable Expenses	\$17,000	(Permit & Construction Phase)
Contingency for As Needed Services	\$50,000	
Total Contract Amount	\$913,494	

Compensation will be lump sum not-to-exceed amount, billed monthly on a percentage completion basis.

We recommend that the City set aside a reimbursable expenses allowance during the construction phase for printing and delivery of submittals. SKA is willing to review shop drawings electronically if provided by the Contractor, which will reduce expenses significantly. Local travel is included in base scope of services. Reimbursable expenses may also be required for large format printing or delivery for items requested by the City or Authority Having Jurisdiction (AHJ).

Shah Kawasaki Architects
City of Milpitas
RFP for Fire Station 2 (Project No. CP-3447)
Fee Schedule
11/8/2018

		ARCH	CIVIL	LANDSCAPE	STRUCT	MECH	PLUMB	ELEC	ENVIRON	GEOTECH	COST	TOTAL
1.00 Programming Phase (Fire Station 2)	HR	71	24	8	14	1.5	2.5	2	4	0	0	127
1.01 Kick-off Meeting	HR	9	2	2	6	1.5	1.5	2	2	N/A	0	
1.02 Review Existing Documents, Field & Data Collection	HR	16	4	4	8	0	1	N/A	2	N/A	N/A	
1.03 Interview and Prepare Program	HR	40	2	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1.04 Topographic Survey	HR	2	16	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1.05 City Review	HR	4	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Programming Phase (Fire Station 2)	FEE	\$14,200	\$6,375	\$850	\$1,904	\$170	\$276	\$272	\$544	\$0	\$0	\$25,192
2.00 Schematic Design (30%)	HR	738	48	58	46	9	7	30	24	110	50	1120
2.01 Develop Options	HR	80	6	12	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.02 Review options with City	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.03 Prepare Schematic Design & Planning Submittal	HR	464	32	32	40	8	6	30	N/A	N/A	N/A	
2.04 Prepare Geotechnical & Environmental Analysis	HR	2	0	0	N/A	N/A	N/A	N/A	24	80	N/A	
2.05 Review Schematic design with City	HR	8	2	2	6	1	1	0	N/A	N/A	N/A	
2.06 Prepare cost estimate	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	50	
2.07 City Review	HR	8	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.08 Planning Review, Community Engagement & Approval	HR	160	4	8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Schematic Design (30%)	FEE	\$125,460	\$5,100	\$6,800	\$6,256	\$956	\$744	\$3,893	\$3,621	\$19,750	\$8,000	\$186,842
3.00 Design Development (60%)	HR	579	66	43	126	17	15	49	0	0	54	949
3.01 Prepare Design Development	HR	555	60	40	120	16	14	46	N/A	N/A	N/A	
3.02 Review Design Development with the City	HR	8	2	2	6	1	1	3	N/A	N/A	N/A	
3.03 Prepare cost estimate	HR	8	4	1	N/A	N/A	N/A	N/A	N/A	N/A	54	
3.04 City Review	HR	8	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Design Development (60%)	FEE	\$92,640	\$12,750	\$6,800	\$17,136	\$1,806	\$1,594	\$6,250	\$0	\$0	\$9,750	\$151,530
4.00 Construction Documents (95% & 100%)	HR	904	226	146	246	41	33	49	0	0	72	1717
4.01 Prepare 95% Construction Documents	HR	720	140	60	200	28	22	40	N/A	N/A	N/A	
4.02 Review Construction Documents with the City	HR	8	4	4	6	1	1	0	N/A	N/A	N/A	
4.03 Prepare cost estimate	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	72	
4.04 Building Department and City Review	HR	8	40	40	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
4.05 Prepare 100% Construction Documents	HR	160	40	40	40	12	10	9	N/A	N/A	N/A	
	STAFF	322.86%										
Construction Documents (95% & 100%)	FEE	\$135,600	\$22,950	\$10,625	\$33,456	\$4,356	\$3,506	\$6,250	\$0	\$0	\$12,000	\$233,401
5.00 Construction Support	HR	1000	40	40	132	16	14	34	0	0	0	1276
5.01 Bid & CA Support incl RFI's, submittals, field reports	HR	1000	40	40	132	16	14	34			N/A	
	STAFF	357.14%										
Construction Support	FEE	\$160,000	\$3,000	\$3,000	\$21,120	\$2,000	\$1,750	\$4,900	\$0	\$0	\$0	\$197,559
6.00 Furniture Fixture Equipment (FF&E)	HR	140										140
6.01 Prepare FF&E Plans & Specifications	HR	140	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Furniture Fixture Equipment (FF&E)	FEE	\$ 20,000	0	0	0	0	0	0	0	0	0	\$20,000
7.00 Temporary Station	HR	110	60	4	0	0	0	34	0	0	0	208
7.01 Temporary Station	HR	110	60	4	N/A	N/A	N/A	34	N/A	N/A	N/A	
	STAFF	39.29%										
Temporary Station	FEE	\$20,000	\$6,000	\$500	\$0	\$0	\$0	\$4,900	\$0	\$0	\$0	\$31,970
Subtotal of Hours	HR	3542	464	299	564	84.5	71.5	198	28	110	176	5537
Average Blended Rate		\$160	\$121	\$96	\$142	\$110	\$110	\$134	\$149	\$180	\$169	
Net Fees		\$567,900	\$56,175	\$28,575	\$79,872	\$9,289	\$7,870	\$26,465	\$4,165	\$19,750	\$29,750	\$829,811
SKA Markup (5%)(Geotech 20%)		0	\$2,809	\$1,429	\$3,994	\$464	\$394	\$1,323	\$833	\$3,950	\$1,488	\$16,683
Total Fees		\$567,900	\$58,984	\$30,004	\$83,866	\$9,753	\$8,264	\$27,788	\$4,998	\$23,700	\$31,238	\$846,494
8.00 Contingency for As Needed Services		\$50,000										\$50,000
9.00 Reimbursable Budget (limited printing & delivery only)		\$17,000										\$17,000

Shah Kawasaki Architects
City of Milpitas
RFP for Fire Station 2 (Project No. CP-3447)
Project Schedule
11/8/2018

	2019												2020			
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1.00 Programming Phase (Fire Station 2)		1.5 M														
1.01 Kick-off Meeting																
1.02 Review Existing Documents, Field & Data Collection																
1.03 Interview and Prepare Program																
1.04 Topographic Survey																
1.05 City Review																
2.00 Schematic Design (30%)			3 Months													
2.01 Develop Options																
2.02 Review options with City																
2.03 Prepare Schematic Design & Planning Submittal																
2.04 Prepare Geotechnical & Environmental Analysis																
2.05 Review Schematic design with City																
2.06 Prepare cost estimate																
2.07 City Review																
2.08 Planning Review, Community Engagement & Approval																
3.00 Design Development (60%)						3 Months										
3.01 Prepare Design Development																
3.02 Review Design Development with the City																
3.03 Prepare cost estimate																
3.04 City Review																
4.00 Construction Documents (95% & 100%)									3.5 Months							
4.01 Prepare 95% Construction Documents																
4.02 Review Construction Documents with the City																
4.03 Prepare cost estimate																
4.04 Building Department and City Review																
4.05 Prepare 100% Construction Documents																
5.00 Construction Support														14 Mos		
5.01 Bid & CA Support incl RFI's, submittals, field reports																

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

See attached Exhibit "C" for Designer's and subconsultants' Hourly Rates.

2. REIMBURSABLE EXPENSES.

As provided in Exhibits "B" and "C", Reimbursable Expenses may include the following:

- Printing and delivery during the construction phase for shop drawing and sample reviews.
- Printing, delivery, and other reprographic or specialty services to create presentations for the City.
- Printing and delivery required for planning submittal, permit, or other submittals to Authority Having Jurisdiction (AHJ).
- Other printing or delivery requested by the City.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates in the attached Exhibit "C" and as approved by the City.

4. ADDITIONAL CONSULTANTS.

If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus no more than **TEN PERCENT (10%)** for surcharge. City shall have the authority to review and approve the rates of any such consultants.

S H A H
KAWASAKI

ARCHITECTS

**Shah Kawasaki Architects Billing Rates
2018**

Principal	\$220
Architect 3	\$180
Architect 2	\$150
Architect 1	\$125
Design Staff 3	\$150
Design Staff 2	\$130
Design Staff 1	\$115
Emerging Professional 3	\$105
Emerging Professional 2	\$95
Emerging Professional 1	\$85
Administrative Staff	\$95

Reimbursable expenses are in addition to the labor rates above and are for expenses incurred on behalf of the project including printing, plotting, scanning, mail / delivery services and travel expenses when outside of the San Francisco Bay Area.

ZFA STRUCTURAL ENGINEERS

► 2018 hourly rates

Executive Principal	\$205
Senior Principal	\$190
Principal	\$160
Senior Associate	\$145
Associate.....	\$135
Senior Engineer.....	\$120
Engineer.....	\$110
Engineer – Designer	\$100
Project BIM Manager.....	\$110
Senior BIM Technician	\$100
BIM Technician.....	\$95
Engineering Support.....	\$60

ELECTRICAL ENGINEERING SCHEDULE OF HOURLY RATES

As of Jan. 1, 2018

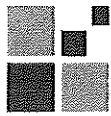
Professional Electrical Engineer	\$191.00
Electrical Engineer / Designer	\$167.00
Electrical Design Assistant	\$117.00
Electrical Cost Estimator	\$125.00
Field Technician / Electrician	\$121.00
Computer Aided Design / Drafter	\$106.00
Secretarial	\$88.00

Note: Overtime rates shall be 1.5 times the rates listed above for hours worked.

Reimbursable expenses shall include the following:

- Sub-consultant cost plus 10% markup or as negotiated.
- Instrumentation and Equipment rental costs plus 10% markup.
- Air fare Cost + 15%
- Lodging Cost + 15%
- Mileage \$0.50 per mile
- Reproduction Cost + 15%
- Mailing/Shipping Cost + 15%

Rates are effective through December 31 annually



SIEGFRIED

Charge Rate Schedule

Contact Information

Stockton

3244 Brookside Road, Ste. 100
Stockton, CA 95219
209.943.2021

Sacramento

109 Scripps Drive
Sacramento, CA 95825
916.520.2777

San Jose

111 North Market Street, Ste. 300
San Jose, CA 95113
408.754.2021

Modesto

100 Sycamore Ave, Ste. 100
Modesto, CA 95354
209.762.3580

» siegfriedeng.com

Professional Classification

Hourly Rate

Managing Principal	\$245
Principal	\$219
Senior Associate	\$193
Associate	\$172

Project Engineer	\$163
Engineer II	\$149
Engineer I	\$133

Project Landscape Architect	\$161
Landscape Architect II	\$139
Landscape Architect I	\$114

Project Land Surveyor	\$163
Surveyor II	\$147
Surveyor I	\$129
Survey Crew, 2 Person	\$265
Survey Crew, 1 Person	\$175
Instrumentman	\$188
Chainman/Rodman	\$129

Senior Technician	\$129
Technician III	\$114
Technician II	\$99
Technician I	\$84

Expert Witness	\$400
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Clerical	\$77
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Reimbursable Expenses

Printing, Copying, Materials, Etc.	Cost + 10%
Mileage	In accordance with Federal Standard Mileage Reimbursement Rates

Notes

1. Instrumentman and Chainman rates apply to services requiring Prevailing Wage Rates for work performed at the job site.
2. These rates are effective May 28, 2018 and are subject to periodic adjustments.

2018 HOURLY RATES – COST MANAGEMENT



DISCIPLINE	HOURLY RATE
<i>Cost Management Services</i>	
Managing Director / Director / Regional Director	\$210.00
Associate Director	\$185.00
Senior Cost Manager / Senior MEP Cost Manager	\$175.00
Cost Manager	\$160.00
Assistant Cost Manager / Estimating Technician / Intern	\$115.00

EXHIBIT "D"
INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Designer's Agreement.

Designer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Designer, its agents, representatives, employees or subcontractors.

Designer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Designer shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Designer's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Designer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Designer, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

- ☒ Insurance appropriate to the Designer's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate
- ☐ (If Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- ☐ Insurance appropriate to the Designer's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- ☒ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. *(Not required if Designer provides written verification it has no employees)*

The Designer makes the following certification, required by section 1861 of the California Labor Code:

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

Designer Signature

Builder's Risk (Course of Construction):

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

Surety Bonds:

- ☐ Contractor shall provide the following Surety Bonds:
1. Bid Bond
 2. Performance Bond
 3. Payment Bond

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

Designer's Pollution Legal Liability:

- ☐ Designer's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim and \$2,000,000 policy aggregate.

If the Designer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Designer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

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

Additional Insured Status:

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Designer or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Designer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Designer's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

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

For any claims related to this contract, the **Designer's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Designer's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Designer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged,

impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Designer hereby grants to City a waiver of any right to subrogation which any insurer of said Designer may acquire against the City by virtue of the payment of any loss under such insurance. Designer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Designer, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Designer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Designer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to the contract effective date**, the Designer must purchase “extended reporting” coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Designer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Designer shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Designer and City in the same manner and to the same extent as Designer is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Designer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Designer’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Designer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/5/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Dealey, Renton & Associates
P. O. Box 12675
Oakland CA 94604-2675

CONTACT NAME: David C. Eckman

PHONE (A/C, No, Ext): 510-465-3090

FAX (A/C, No): 510-452-2193

E-MAIL ADDRESS: deckman@dealeyrenton.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Travelers Property Casualty Co of Ameri

25674

INSURER B : Travelers Indemnity Co. of Connecticut

25682

INSURER C : Travelers Casualty & Surety Co. America

31194

INSURER D :

INSURER E :

INSURER F :

INSURED
Shah Kawasaki Architects
570 - 10th Street, Suite 201
Oakland CA 94607

SHAHKAWAS

COVERAGES

CERTIFICATE NUMBER: 922924364

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y Y	6809H776249	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y Y	BA9745M715	5/1/2018	5/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$		CUP9887P47A	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N/A	UB4K465043	5/1/2018	5/1/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability		105511924	10/17/2018	10/17/2019	\$1,000,000 \$2,000,000 per Claim Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project #18725, Replacement of Fire Station #2, 1263 Yosemite Drive, Milpitas, CA

City of Milpitas and its elected and appointed officers, attorneys, agents and employees are named as an additional insured as respects general and auto liability as required per written contract or agreement. General Liability and Auto Liability are Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s). 30 Days Notice of Cancellation

CERTIFICATE HOLDER

CANCELLATION 30 Day Notice of Cancellation

City of Milpitas
Attn: Woojae Kim
455 E. Calaveras Boulevard
Milpitas CA 95035

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76(00) — 001

POLICY NUMBER: UB4K465043

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT CALIFORNIA
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 3.00 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

City of Milpitas
Attn: Woojae Kim
455 E. Calaveras Boulevard
Milpitas CA 95035

Job Description

Re: Project #18725, Replacement of Fire Station
#2, 1263 Yosemite Drive, Milpitas, CA - City of
Milpitas

DATE OF ISSUE: 11/30/2018

ST ASSIGN: CA

017106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph A.5., **Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Shah Kawasaki Architects

Endorsement Effective Date: 5/1/2018

SCHEDULE

Name Of Person(s) Or Organization(s): Re: Project #18725, Replacement of Fire Station #2, 1263 Yosemite Drive, Milpitas, CA - City of Milpitas

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

AMENDMENT NO. 1
TO DESIGN SERVICES AGREEMENT BETWEEN CITY OF MILPITAS AND
SHAH KAWASAKI ARCHITECTS

This Amendment is entered into this 17th day of November, 2020 by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Shah Kawasaki Architects, a California Corporation (hereafter referred to as "CONSULTANT"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 1.

RECITALS

WHEREAS, on December 4, 2018, the parties entered into an Agreement entitled "Design Services Agreement between the City of Milpitas and Shah Kawasaki Architects" ("Agreement") for design services in the total amount of \$913,494.00; and

WHEREAS, the parties now desire to amend the Agreement to increase the compensation by \$75,000 to allow CONSULTANT to provide additional design and construction support services for Fire Station No.2 Replacement Project as described in Exhibit A-1, attached hereto, for a new total amount of \$988,494.00; and

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

1. Section 3.10.1, entitled " Designer's Compensation for Basic Services", the first line is hereby amended to read as follows:

"City shall pay to Designer, for the performance of all Services rendered under this agreement, the total not to exceed amount of Nine Hundred Eighty-Eight Thousand Four Hundred Ninety-Four dollars (**\$988,494**) ("Total Compensation")."

2. **Exhibit A-1**, attached hereto and incorporated herein by this reference, are hereby added to the Agreement.
3. The Designer agrees to maintain and pay for all insurance policies as stated in Section 3.15, entitled "Insurance" of the Agreement dated December 4, 2018. The Designer shall provide the City with renewal certificates of the current policies upon the expiration of the current policies
4. Except as amended by this Amendment No. 1, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

5. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.
6. If any provision of this Amendment No. 1 shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment No. 1 unless elimination of such provision materially alters the rights and obligations set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 1
TO DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND
SHAH KAWASAKI ARCHITECTS**

This Amendment No. 1 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT
SHAH KAWASAKI ARCHITECTS

APPROVED BY:

Steven McHarris, City Manager

By: _____
Philip Luo, Principal

Date

Date

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

APPROVED

Walter Rossmann, Deputy City Manager

APPROVED AS TO CONTENT:

Steve P. Erickson,
Engineering Director/City Engineer

S H A H
KAWASAKI
ARCHITECTS

REQUEST FOR AUTHORIZATION OF ADDITIONAL SERVICES

Basic Services Project: Milpitas Fire Station #2

Date: 10/21/2020

Project Number: 18725

Additional Request Number: 7

To: Mr. Lyhak Eam, P.E.
Associate Civil Engineer
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

1. BACKGROUND FOR ADDITIONAL SERVICE REQUEST

We propose to amend our contract to include additional contingency for Fire Station #2.

2. SCOPE OF ADDITIONAL SERVICE

The work will include construction support that is not listed in the original contract.

3. SCHEDULE

There is no proposed change to the Schedule.

4. COMPENSATION

Services described above will be provided on a time and material basis with a not-exceed of \$75,000.

5. TERMS

Upon return of a fully executed authorization, this service shall become part of the agreement identified above. Any further services are excluded and will be requested under a separate authorization of additional services.

6. ACCEPTANCE

(Please sign both copies, return one copy to SKA and keep the other copy for your records)

SHAH KAWASAKI ARCHITECTS
A CALIFORNIA CORPORATION

OWNER:

BY: Alan Kawasaki

BY: _____

TITLE: Principal

TITLE: _____

DATE: 10/21/2020

DATE: _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ Budget Appropriation ☐ Budget Transfer	331-9513447153899 334-3870	\$3,400,000 \$3,400,000	331-951344774800 334-3999	\$3,400,000 \$3,400,000

Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co., Waive Immaterial Bid Deviations and Award the Construction Contract to Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; Authorize the City Manager to Execute the Construction Contract; Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders; Approve and Authorize the City Manager to Execute Amendment No. 1 to the Design Service Agreement with Shah Kawasaki Architects; and Approve a related Budget Amendment.

Background:

Project No. 3447 - Fire Station No. 2 Replacement ("Project") is in the approved 2020-2025 Capital Improvement Program. Fire Station No. 2 was constructed in 1968 and the building and site have reached the end of their service life and need replacement.

The City Council approved the Project plans and specifications and authorized the advertisement of the bidder prequalification package on January 7, 2020. Subsequently, the City Council approved the list of four pre-qualified bidders on March 3, 2020. The Project plans and specifications were advertised for bid on digital construction trade publications and in the Milpitas Post on July 24 and 31, 2020, in accordance with the bidding requirements of the Uniform Public Construction Cost Accounting Act. Bid opening was held on September 10, 2020, and four sealed bids were received from the pre-qualified contractors.

Analysis:

The summary of bid results is shown below and is included as **Attachment 2**.

Bidder	Location	Base Bid
Engineer's Estimate		\$10,830,000
Sausal Corporation	Concord, CA	\$ 7,638,200
C. Overaa & Co.	San Jose, CA	\$ 8,500,000
DL Falk Construction, Inc.	Hayward, CA	\$ 9,519,000
Angeles Contractor, Inc	City of Industry, CA	\$ 10,372,000

The Base Bid prices submitted by the bidders vary between 4% to 29% under the Engineer's Estimate. The range of variation in pricing is likely due to the current construction market which has slowed as a result of the COVID-19 pandemic. The lowest responsive bid submitted by a responsible bidder is from Sausal Corporation, with a Base Bid amount of \$7,638,200, which is \$3,191,800 below the Engineer's Estimate.

On September 14, 2020, the City received a bid protest from C. Overaa & Co. (**Attachment 4**). The protest was forwarded on to Sausal Corporation for review, and Sausal issued response dated September 18, 2020 (**Attachment 5**). Though there is no authority under the City's bid protest procedures for a protesting bidder to supplement their bid protest, C. Overaa & Co. issued a second bid protest letter to the City on September 23, 2020 – referred to as a sur-reply (**Attachment 6**). The protest and sur-reply were reviewed by the City Attorney, determined to be meritless, and City staff notified C. Overaa & Co. in writing on or about September 25, 2020 of its intent to recommend rejection of the bid protest to the City Council ("City Protest Response") (**Attachment 7**).

City staff recommends that the bid protest from C. Overaa & Co. be rejected as meritless for the reasons specified in the City Protest Response and waive the missing notary acknowledgment for the person signing on behalf of Sausal Corporation as an immaterial deviation in the bid.

Fiscal Impact:

The FY 2020-21 Adopted Budget assumed the construction cost for the improvements to be \$15.7 million financed with the issuance of \$13 million in general fund lease revenue bonds for the replacement of Fire Station No.2. Based on the competitive bidding environment primarily for the construction contract, on October 20, 2020, the City Council approved the

sale and issuance of \$9.6 million bond, a decrease of \$3.4 million. Therefore, staff recommends reducing the financing source and project budget by \$3.4 million. Even with the recommended budget adjustment, there is sufficient funding available to award the construction contract and authorize Amendment No. 1 to the Design Services Agreement with SKA. As of August 31, 2020, the available Project funding is as follows:

2020 Lease Revenue Bonds	\$9,600,000
General Government CIP Fund	\$2,530,000
Available Project Budget	\$ 12,130,000

Summary of Estimated Construction Cost

Construction Contract	\$ 7,638,200.00
15% Construction Contingency	\$ 1,200,000.00
Administration and Inspection	\$ 600,000.00
Design Agreement- Amendment No.1	\$ 75,000.00
Total Estimated Cost	\$ 9,513,200.00

Policy Alternative:

Alternative: Do not reject the bid protest and do not award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation.

Pros: None

Cons: The Project is on schedule to start construction in early 2021, which will allow completion of the building enclosure by Fall 2021 and avoid potential weather delays. Not awarding the contract will delay the Project for up to six months and will likely increase Project costs by an estimated amount of \$1,000,000.

Reason not recommended: It is recommended the Project be awarded to Sausal Corporation to ensure the Project remains on schedule and within budget.

California Environmental Quality Act:

The Project qualifies for categorical exemption under Class 2 "Replacement or Reconstruction" as defined in CEQA Guidelines Section 15302.

Recommendation:

1. Adopt a resolution to:
2. Reject a bid protest from C. Overaa & Co.;
3. Waive immaterial bid deviations in Sausal Corporation's bid;
4. Award a construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200;
5. Authorize the City Manager to execute the construction contract with Sausal Corporation;
6. Authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000;
7. Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for the Project.
8. Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Attachments:

- 1: Resolution
- 2: Bid Results
- 3: Change Order Policy
- 4: Bid Protest from C Overaa & Co.
- 5: Sausal Response Letter
- 6: Sur-reply from C Overaa & Co.
- 7: City Protest Responses
- 8: Carpenter Local Union 405 Bid Advisory Letter
- 9: Sausal Bid Advisory Letter Response
- 10: Design Service Agreement with SKA
- 11: Amendment 1 to Design Service Agreement with SKA

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

Meeting Date: November 17, 2020

Requested by:	Department Head: Steve Erickson	Date: November 17, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: November 17, 2020
Date approved by City Council, if required:		Confirmed by:

ATTACHMENT 3

CERTIFIED APPLICATOR LETTER



Waterproofing Associates Inc

is a Master Select Commercial Roofing Contractor for GAF

As one of the 1% of roofing contractors in the U.S. who have achieved GAF Master Select™ status, this contractor has exhibited an uncompromising commitment to installation excellence and continuous education, and has pledged to ensure that each customer receives their best choice in roofing and are authorized to offer the GAF Enhanced Guarantees listed below.

GAF ID: 1003582

Valid Through: 10/2021

Member Since: 04/2011

Jim Schnepfer
President and CEO, GAF

Bobby Fischer
VP, Contractor Programs, GAF

Guarantees offered



Designations



PROJECT REFERENCE LIST

- A. **Project Name:** Rolling Hills Middle School
- B. **Project Location:** 130 Herman Avenue
Watsonville, CA 95076
- C. **Owner Contact:** Pajaro Valley Unified School District
Name Ryan Block
Phone # (831) 786-2380
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** Pajaro Valley Unified School District
Name Ryan Block
Phone # (831) 786-2380
Email ryan_block@pvusd.net
- F. **Total Value of Construction:** \$1,608,139.00
(Including Change Orders) \$161,059.00
Original Contract: \$1,447,080.00
- G. **Original Scheduled Completion Date:** 1/31/2018
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 1/17/2018
- J. **Description of Project & Scope of Work Performed:** Re-Roof - AEPSpan & Johns Manville Specs.
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Randy Carter
- M. **Superintendent:** Jay Hartung
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

- A. **Project Name:** Central Wolfe
- B. **Project Location:** 280 N. Wolfe Road
Sunnyvale, CA 94085
- C. **Owner Contact:** Apple, Inc.
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** Level 10 Construction, LP
Name Thuy Nguyen
Phone # (408) 747-5000
Email tnguyen@level10gc.com
- F. **Total Value of Construction:** \$8,347,026.00
(Including Change Orders) \$8,149,733.00
Original Contract: \$608,243.00
- G. **Original Scheduled Completion Date:** 1/31/2018
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 1/12/2018
- J. **Description of Project & Scope of Work Performed:** Roof Coating - Sarnafil and CETCO Specs.
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Eric Moorehead
- M. **Superintendent:** Lupe Gonzalez
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

- A. **Project Name:** Cold Storage Roof
- B. **Project Location:** 3771 Channel Drive
West Sacramento, CA 95691
- C. **Owner Contact:** LBA Fund VI-Company XXXIV, LLC
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** LBA Realty, LLC
Name Bob Kubichek
Phone # (949) 428-7336
Email bkubichek@lbarealty.com
- F. **Total Value of Construction:** \$2,431,231.00
(Including Change Orders) \$82,371.00
Original Contract: \$2,348,860.00
- G. **Original Scheduled Completion Date:** 3/31/2020
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 3/11/2020
- J. **Description of Project & Scope of Work Performed:** Re-Roof w/ Carlisle Specs
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** John Ravetti
- M. **Superintendent:** George Timmons
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

A.	Project Name:	United Airlines Tech OP Center
B.	Project Location:	800 S. Airport Blvd San Francisco, CA 94128
C.	Owner Contact: Name Phone #	United Airlines Steve Sulgit N/A
D.	Architect or Engineer Contact: Name Phone #	N/A N/A N/A
E.	Construction Manager Contact: Name Phone # Email	United Airlines Steve Sulgit N/A steve.sulgit@united.com
F.	Total Value of Construction: (Including Change Orders) Original Contract:	\$1,051,266.00 \$51,993.00 \$999,273.00
G.	Original Scheduled Completion Date:	10/31/2019
H.	Time Expansions Granted:	Zero
I.	Actual Date Of Completion:	10/25/2019
J.	Description of Project & Scope of Work Performed:	Roof Replacement w/ Tremco Specs
K.	Number of Stop Notices filed by Suppliers Subcontractors:	None
L.	Project Manager:	Rodger Odom
M.	Superintendent:	Michael Wilmerding
N.	Did the project include constructing or modernizing an earthquake resistant building?:	N/A

- A. **Project Name:** Panattoni Re-Roof
- B. **Project Location:** 11980 Harlan Road
Lathrop, CA 95330
- C. **Owner Contact:** PanCal Logistics D 15, LLC
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** Independent Roofing Consultants
Name Ted Christensen
Phone # (925) 460-0220
- E. **Construction Manager Contact:** Independent Roofing Consultants
Name Ted Christensen
Phone # (925) 460-0220
Email ted@ircotech.com
- F. **Total Value of Construction:** \$1,852,267.00
(Including Change Orders) \$8,287.00
Original Contract: \$1,843,980.00
- G. **Original Scheduled Completion Date:** 5/31/2019
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 5/21/2019
- J. **Description of Project & Scope of Work Performed:** TPO Re-Roof w/ Carlisle Specs
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Jim Vincent/Steve Nash
- M. **Superintendent:** George Timmons
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

A.	Project Name:	Yuba City High School
B.	Project Location:	850 B Street Yuba City, CA 95991
C.	Owner Contact: Name Phone #	Yuba City Unified School District Mark Button (530) 822-5252
D.	Architect or Engineer Contact: Name Phone #	N/A N/A N/A
E.	Construction Manager Contact: Name Phone # Email	Yuba City Unified School District Mark Button (530) 822-5252 mbutton@ycusd.org
F.	Total Value of Construction: (Including Change Orders) Original Contract:	\$1,338,049.00 \$40,249.00 \$1,297,800.00
G.	Original Scheduled Completion Date:	8/31/2018
H.	Time Expansions Granted:	Zero
I.	Actual Date Of Completion:	8/10/2018
J.	Description of Project & Scope of Work Performed:	Built-up Roofing & Fluid Applied Roofing
K.	Number of Stop Notices filed by Suppliers Subcontractors:	None
L.	Project Manager:	Rob Wyllie
M.	Superintendent:	George Timmons
N.	Did the project include constructing or modernizing an earthquake resistant building?:	N/A

- A. **Project Name:** Canada College Building 23 (Math & Science)
- B. **Project Location:** 4200 Farm Hill Blvd.
Redwood City, CA 94061
- C. **Owner Contact:** San Mateo County Community College District
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** McCarthy Building Companies, Inc.
Name Emily Carver
Phone # (415) 397-5151
Email ecarver@mccarthy.com
- F. **Total Value of Construction:** \$1,180,615.00
(Including Change Orders) \$45,404.00
Original Contract: \$1,135,211.00
- G. **Original Scheduled Completion Date:** 6/30/2019
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 6/21/2019
- J. **Description of Project & Scope of Work Performed:** Re-Roof - Sika Sarnafil Specs.
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Eric Moorehead
- M. **Superintendent:** Jay Hartung
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

- A. **Project Name:** Hayward Courthouse
- B. **Project Location:** 24405 Amador Street
Hayward, CA 94544
- C. **Owner Contact:** Judicial Council of California
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** Mark Scott Construction, Inc.
Name Tom Mistrion
Phone # (650) 336-3733
Email tmistrion@msconstruction.com
- F. **Total Value of Construction:** \$2,903,172.00
(Including Change Orders) \$10,172.00
Original Contract: \$2,893,000.00
- G. **Original Scheduled Completion Date:** 8/31/2018
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 8/31/2018
- J. **Description of Project & Scope of Work Performed:** PVC Single Ply, Metal Roofing & Deck Coating
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Rob Wyllie
- M. **Superintendent:** Lupe Gonzalez
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

- A. **Project Name:** Washington Middle School
- B. **Project Location:** 560 Iverson St.
Salinas, CA 93901
- C. **Owner Contact:** Salinas Union High School District
Name Richard Alvarez
Phone # (831) 796-7000
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** Salinas Union High School District
Name Richard Alvarez
Phone # (831) 796-7000
Email richard.alvarez@salinasuhdsd.org
- F. **Total Value of Construction:** \$2,181,006.00
(Including Change Orders) \$29,088.00
Original Contract: \$2,151,918.00
- G. **Original Scheduled Completion Date:** 12/31/2018
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 12/21/2018
- J. **Description of Project & Scope of Work Performed:** Re-Roof - Firestone Specs.
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Rodger Odom
- M. **Superintendent:** Jay Hartung
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

- A. **Project Name:** Gilead NB-324 Roofing
- B. **Project Location:** 322 Lakeside Drive
Foster City, CA 94404
- C. **Owner Contact:** Gilead Sciences, Inc.
Name N/A
Phone # N/A
- D. **Architect or Engineer Contact:** N/A
Name N/A
Phone # N/A
- E. **Construction Manager Contact:** McCarthy Building Companies, Inc.
Name Ali Arif
Phone # (510) 254-1664
Email aarif@mccarthy.com
- F. **Total Value of Construction:** \$2,404,868.00
(Including Change Orders) \$249,003.00
Original Contract: \$2,155,865.00
- G. **Original Scheduled Completion Date:** 2/28/2019
- H. **Time Expansions Granted:** Zero
- I. **Actual Date Of Completion:** 2/20/2019
- J. **Description of Project & Scope of Work Performed:** Re-Roof - Sika Sarnafil Specs.
- K. **Number of Stop Notices filed by Suppliers** None
Subcontractors:
- L. **Project Manager:** Eric Moorehead
- M. **Superintendent:** Jay Hartung
- N. **Did the project include constructing or modernizing an earthquake resistant building?:** N/A

RESUMES



Resumes of Proposed Key Managerial/Supervisory Personnel

1. **Steve Nash** **President at Waterproofing Associates, Inc.**
2. 38 Years' Experience
3. 25 Years with Waterproofing Associates, Inc.
4. B.A., Major in Business Economics
 - a. University of California, Santa Barbara, California
 - b. 4 Years
5. C-39 License # 819472 Issued 05/02/2003
6. 36 Years with Public Works Construction and OSHPD Projects
7. **Independent Roofing Consultants** (925)-829-5030
 - 6955 Sierra Court Ted Christensen
 - Dublin, CA 94568
 - Stanford University Medical Center** (650)-725-5260
 - 300 Pasteur Drive Murray Nicolson
 - Stanford, CA 94205
 - Stanford Hospital** (650)-721-5789
 - 300 Pasteur Drive Zeb Woods
 - Stanford, CA 94205

Litigation History

None



Resumes of Proposed Key Managerial/Supervisory Personnel

1. **George Timmons** **Safety Director/Superintendent at Waterproofing Associates, Inc.**
2. 37 Years' Experience
3. 24 Years with Waterproofing Associates, Inc.
4. Trade School -Roofing
 - a. 2 Years
 - b. OSHA 10 & 30 Hour Trained CERTA Trainer, BAASMA Training, NRCS Roofing Industry Fall Protection Training.
5. Armerlite, Duralast, CIM, Tremco, Firestone, and Sarnafil Certified
6. 33 Years with Public Works Construction and OSHPD Projects
7. **Stanford Hospital and Clinics** (650)-725-6986
300 Pasteur Drive Mike Horton
Stanford, CA 94305

Independent Roofing Consultants (925)-829-5030
6955 Sierra Court Ted Christensen
Dublin, CA 94568

Litigation History

None



WATERPROOFING ASSOCIATES, INC.

California License C-39, C-43/649862
975 Terra Bella Ave.
Mountain View, CA 94043

Fax 650-965-9005
Phone 650-937-1299
www.roofwa.com

Resumes of Proposed Key Managerial/Supervisory Personnel

1. **Kevin Grimes** **Service Mgr./Estimator/PM at Waterproofing Associates, Inc.**
2. 46 Years' Experience
3. 22 Years with Waterproofing Associates, Inc.
4. General Business
 - a. Canada College, California
 - b. 1 Year
5. Previously held C-39 License for ten years
6. 42 Years with Public Works Construction and OSHPD Projects
7. **PacTrust, LP** (408)-439-5901
2000 Wyatt Drive Larry Sunseri
Santa Clara, CA 95054
- Rodan Builders** (650)-619-3467
859 Cowan Road Jim Sample
Burlingame, CA 94010

Litigation History

None



Resumes of Proposed Key Managerial/Supervisory Personnel

1. **Lupe Gonzalez** **Superintendent at Waterproofing Associates, Inc.**
2. 40 Years' Experience
3. 24 Years with Waterproofing Associates, Inc.
4. General Education
 - a. High School Graduate, Mexico
 - b. 4 Years
5. Sarnafil, Firestone, Tremco, Siplast, GAF, Johns Manville & Soprema
Certified
6. Fluent in English and Spanish
7. 35 Years with Public Works Construction and OSHPD Projects
8. **CEO Construction** (408)-767-9257
419 Manzanita Street Chuck Ogran
Redwood City, CA 94063

Zolman Construction (650) 642-7136
565 Bragato Road John Klug
San Carlos, CA 94070

Litigation History

None



Resumes of Proposed Key Managerial/Supervisory Personnel

1. **John Ravetti** **Estimator/PM at Waterproofing Associates, Inc.**

2. 25 Years' Experience

3. 20 Years with Waterproofing Associates, Inc.

4. B.A., Adapted Physical Education

a. California State University, Chico

b. 4 Years

c. High School Graduate

5. C-39 License

6. 19 Years with Public Works Construction and OSHPD Projects

7. **References:**

• **Hensel Phelps Construction** (408)-452-1800

2107 North First Street, Suite #101 Jonathan Snow

San Jose, CA 95131

Magnum Construction (310)-257-1600

25419 Narbonne Avenue Ernest Magana

Lomita, CA 90717

Litigation History

None



- Litigation History:**

None



Resumes of Proposed Key Managerial / Supervisory Personnel

1. Jay Hartung Superintendent at Waterproofing Associates, Inc.

2. 27 Years' Experience

3. 8 Years with Waterproofing Associates

4. General Education

a. High School Graduate

b. 2 Years – AA Degree

5. Sika-Sarnafil, CertainTeed and Firestone Certified

6. Supervised Kaiser Anaheim, Guam Military Base, Nimitz Navy, Tracy
Defense Depot and Lawrence Livermore Labs Projects

12 Years with Public Works and OSHPOD Projects

7. Fluent in English

8. References:

- **Sika-Sarnafil** (925)-864-1462
Bruce Adame
- **Consultant** (925)-330-3281
Ed McConell
- **Firestone** (510)-508-5794
Barney Lahane
- **Gilbane Building Co.** (408)-288-3192
Cell# (408)-288-3192
Tabitha Williams
2100 Moorpark Avenue
San Jose, CA 95135

Litigation History:

None



Resumes of Proposed Key Managerial / Supervisory Personnel

1. **Eric Moorehead** **Estimator/PM at Waterproofing Associates, Inc.**

2. 15 Years' Experience

3. 8 Years with Waterproofing Associates

4. General Education

 a. High School Graduate

 b. College Degree in Construction Management
 At California State University, Chico

5. 12 Years in both Roofing and Waterproofing in construction of medical, residential, education, business and institutional buildings.

6. 13 Years Public Works Projects

7. Fluent in English

8. **References:**

• **Mc Carthy Construction Company** (707)-888-3061

343 Sansome Street, 14th Floor

Matt Richardson

San Francisco, CA 94104

• **Western Roofing Supply** (925)-330-1898

15002 Wicks Blvd.

John Nolan

San Leandro, CA 94577

Litigation History:

None

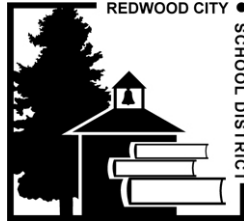
ATTACHMENT 4

REDWOOD CITY SCHOOL DISTRICT

750 Bradford Street • Redwood City • CA 94063 (650) 423-2200 FAX: (650) 423-2204

Board of Education

Janet Lawson, President
Alisa MacAvoy, Vice President
María Díaz-Slocum, Clerk
Cecilia I. Márquez
Dennis McBride



Superintendent

John R. Baker, Ed.D

November 18, 2020

VIA EMAIL

Greg Gillis
Vice President
Sausal Corporation
greg@sausal.net

Mr. Gillis,

This letter is to confirm that Sausal Corporation currently holds an active construction contract with Redwood City School District in the amount of \$10,628,000 and that Sausal is in process of executing the work associated with this construction contract at Orion Alternative School.

Thanks,

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

Don Dias
Bond Program Director
ddias@rcsdk8.net

**MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
June 8, 2020**

Mayor Rinn called a Special Meeting of the City Council to order at 5:00 PM via teleconference, complete proceedings of which were electronically recorded. The meeting agenda was posted on the City Hall outdoor bulletin board at 100 Gregory Lane, Pleasant Hill, CA on June 5, 2020 by Deputy City Clerk Juanita Davalos.

1. CALL TO ORDER

2. ROLL CALL

Attendee Name	Title	Status
Matthew Rinn	Mayor	Present
Sue Noack	Vice Mayor	Present
Ken Carlson	Councilmember	Present
Timothy M. Flaherty	Councilmember	Present
Michael Harris	Councilmember	Present

3. PUBLIC COMMENT

Mayor Rinn opened public comment.

There was no public comment.

Mayor Rinn closed public comment.

4. PUBLIC WORKS AND COMMUNITY DEVELOPMENT

4.1 Adopt Resolution No. 44-20 Rejecting All Bids for the Pleasant Hill Library Project and Directing Staff to Rebid the Project

Janet Coleson, City Attorney, explained that the City received bids for the Pleasant Hill Library Project (“Project”) from four pre-qualified contractors. Ms. Coleson said that staff found an anomaly in a line item submitted by the lowest bidder. She commented that the anomaly is more than just a clerical or typographical error. Ms. Coleson made the strong recommendation to reject all bids pursuant to contract and case law and to have the City re-bid the Project.

Councilmember Harris asked about the timeline for the rebidding process.

John Baker, Swinerton Management & Consulting, said that the bid period would be open for two weeks and could begin that week. He estimated that the delay would be about one month.

Mayor Rinn opened public comment.

Vinson Heine, Vice President of C. Overaa & Company (“Overaa”), expressed his objection to the recommendation of having the City reject all bids. He said that a considerable amount of work was done in preparing the bid and does not understand the City’s rationale in rejecting the bid.

Gerald Overaa, Chief Executive Officer of Overaa, provided the background on Overaa and its work on other local library projects. Mr. Overaa said that the City would forfeit approximately \$881,000 between Overaa and next lowest bidder, and that Overaa would likely not rebid on the Project. Mr. Overaa commented that the Project would be delayed for more than one month. He expressed his concern that the bidding process should be fairer.

Jack Prosek, Pleasant Hill, said that the explanation to the public regarding the bid anomaly was very vague. Mr. Prosek expressed his doubts that the anomaly would warrant rejection of all bids. He expressed his opposition in rejecting the bid without more information that the anomaly constituted a significant error.

Michael Timpane, Attorney for Overaa, reported that the anomaly was fully explained in a letter directed to Ananthan Kanagasundaram, Senior Civil Engineer. Mr. Timpane cited case law in support of his client's position and said that the City is not in a position to reject all bids.

Mayor Rinn closed public comment.

Councilmember Harris requested that Ms. Coleson and staff respond to the statements expressed during Public Comment.

Ms. Coleson stated that she reviewed the comments and information regarding Overaa's bid and said that the City has the right to reject all bids. She said that the anomaly is an item that would be paid for by Contra Costa County.

Mr. Baker said that the bid form would be revised to prevent this from happening again.

Mr. Kanagasundaram said that he does not anticipate major changes to the bid form since the other three bidders completed the form correctly.

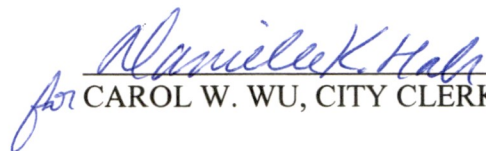
Councilmembers and Ms. Coleson continued their discussions regarding possible alternatives to rebidding the project; the City's obligation to its agency partners and constituents; and the necessity for a clean bid.

Motion (Flaherty/Noack) to Approve item 4.1, carried as follows:

AYES: Carlson, Flaherty, Harris, Noack, Rinn

5. ADJOURNMENT

Mayor Rinn adjourned the meeting to a Closed Session at 5:28 PM. The next regular meeting will be held on Monday, June 15, 2020, beginning at 7:00 PM.


for CAROL W. WU, CITY CLERK

ATTACHMENT 6

OSHA VIOLATIONS HISTORY

SAUSAL COPORATION



Occupational Safety and Health Administration

Menu

Q

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- Español

Inspection Detail

Quick Link Reference

1275593.015 | 1172950.015 | 1166921.015 | 315830687

Case Status: CLOSED

Inspection: 1275593.015 - Sausal Corporation

Inspection Information - Office: Ca Oakland

Nr: 1275593.015	Report ID: 0950614	Open Date: 11/02/2017
Sausal Corporation		
2400 Central Parkway		Union Status: NonUnion
Dublin, CA 94568		
SIC:		
NAICS: 236116/New Multifamily Housing Construction (except Operative Builders)		
Mailing: 422 Whitney Street, San Leandro, CA 94577		
Inspection Type:	Unprog Rel	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 03/21/2018
		Close Case: 03/23/2018

Case Status: CLOSED

Case Status: CLOSED

Inspection: 1172950.015 - Sausal Corporation

Inspection Information - Office: Ca American Canyon District Office

Nr: 1172950.015	Report ID: 0950615	Open Date: 08/19/2016
Sausal Corporation		
2100 Napa Vallejo Highway		Union Status: NonUnion
Napa, CA 94559		
SIC:		
NAICS: 236220/Commercial and Institutional Building Construction		
Mailing: 422 Whitney Street, San Leandro, CA 94577		
Inspection Type:	Complaint	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 11/10/2016
		Close Case: 12/20/2016
Related Activity:	Type	ID
	Complaint	1125045
		Safety
		Yes
		Health

Case Status: CLOSED

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2			1		3
Current Violations				3		3
Initial Penalty	\$2,700	\$0	\$0	\$300	\$0	\$3,000
Current Penalty	\$0	\$0	\$0	\$3,000	\$0	\$3,000
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	1509(A)	11/21/2016		\$300	\$300	\$0		I - Informal Settlement
2.	02001	Other	1632(B)	11/21/2016		\$1,350	\$1,350	\$0		I - Informal Settlement
3.	03001	Other	1712(C)(1)	11/21/2016		\$1,350	\$1,350	\$0		I - Informal Settlement

Case Status: CLOSED

Inspection: 1166921.015 - Sausal Corporation

Inspection Information - Office: Ca American Canyon District Office			
Nr: 1166921.015		Report ID: 0950615	Open Date: 07/28/2016
Sausal Corporation			
100 Montgomery Street		Union Status: NonUnion	
San Ramon, CA 94583			
SIC:			
NAICS: 236220/Commercial and Institutional Building Construction			
Mailing: 422 Whitney Street, San Leandro, CA 94577			
Inspection Type: Complaint			
Scope:	Partial	Advanced Notice:	N
Ownership:	Private		
Safety/Health:	Safety	Close Conference:	11/10/2016
		Close Case:	12/27/2016
Related Activity:	Type	ID	Safety
	Complaint	1117829	Yes
			Health

Case Status: CLOSED

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2			1		3
Current Violations				3		3
Initial Penalty	\$2,700	\$0	\$0	\$300	\$0	\$3,000
Current Penalty	\$0	\$0	\$0	\$3,000	\$0	\$3,000
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	1509(A)	11/21/2016		\$300	\$300	\$0		I - Informal Settlement
2.	02001	Other	1621(A)	11/21/2016		\$1,350	\$1,350	\$0		I - Informal Settlement
3.	03001	Other	1712(C)(1)	11/21/2016		\$1,350	\$1,350	\$0		I - Informal Settlement

Inspection: 315830687 - Sausal Corporation**Inspection Information - Office: Ca American Canyon District Office**

Nr: 315830687 Report ID: 0950615 Open Date: 08/09/2013

Sausal Corporation

922 Machin Street

Novato, CA 94945

Union Status: NonUnion

SIC: 1522/General Contractors-Residential Buildings, Other Than Single-Family

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 422 Whitney Street, San Leandro, CA 94577

Inspection Type:	Referral			
Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	10/01/2013	
		Close Case:	03/28/2014	
Related Activity:	Type	ID	Safety	Health
	Referral	902111558	Yes	Yes

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				2		2
Current Violations				2		2
Initial Penalty	\$0	\$0	\$0	\$960	\$0	\$960
Current Penalty	\$0	\$0	\$0	\$960	\$0	\$960
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	341 C01	10/02/2013	10/07/2013	\$685	\$685	\$0		-
2.	01002	Other	3203 B02	10/02/2013	10/07/2013	\$275	\$275	\$0		-

**UNITED STATES
DEPARTMENT OF LABOR**

Occupational Safety and Health Administration
200 Constitution Ave NW
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C. OVERAA & CO.



Occupational Safety and Health Administration

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Inspection Detail

Quick Link Reference

1445593.015 | 1424908.015 | 1379709.015 | 1316471.015 | 1261858.015 | 1069778.015 | 317204899 | 316818814 | 315830422 | 316696939 | 314330481 | 314995937 | 314995994 | 310100771 | 312691512

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1445593.015 - C. Overaa & Co

Inspection Information - Office: Ca American Canyon District Office

Nr: 1445593.015		Report ID: 0950615		Open Date: 11/18/2019	
C. Overaa & Co		5019 Imhoff Place		Union Status: Union	
Martinez, CA 94553		SIC:		NAICS: 237110/Water and Sewer Line and Related Structures Construction	
Mailing: 200 Parr Blvd, Richmond, CA 94801		Inspection Type: Accident		Advanced Notice: N	
Scope: Partial		Ownership: Private		Close Conference: 05/05/2020	
Safety/Health: Safety		Close Case:			
Related Activity:	Type	ID	Safety	Health	
	Accident	1516630			

Case Status: VIOLATIONS UNDER CONTEST

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			1		2
Current Violations	1			1		2
Initial Penalty	\$22,500	\$0	\$0	\$1,060	\$0	\$23,560
Current Penalty	\$22,500	\$0	\$0	\$1,060	\$0	\$23,560
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	1509(A)	05/05/2020		\$1,060	\$1,060	\$0	06/01/2020	-
2.	02001	Serious	3328(A)(2)	05/05/2020		\$22,500	\$22,500	\$0	06/01/2020	-

Case Status: VIOLATIONS UNDER CONTEST

Note: The following inspection has not been indicated as closed. Please be aware that the information shown may change, e.g. violations may be added or deleted. For open cases, in which a citation has been issued, the citation information may not be available for 5 days following receipt by the employer for Federal inspections or for 30 days following receipt by the employer for State inspections.

Inspection: 1424908.015 - C Overaa & Co.

Inspection Information - Office: Ca Oakland

Nr: 1424908.015		Report ID: 0950614		Open Date: 08/21/2019	
C Overaa & Co.					
8750 Patterson Pass Rd.			Union Status: NonUnion		
Livermore, CA 94550					
SIC:					
NAICS: 236220/Commercial and Institutional Building Construction					
Mailing: 200 Parr Boulevard, Richmond, CA 94801					
Inspection Type: Accident					
Scope:		Partial	Advanced Notice:		N
Ownership:		Private			
Safety/Health:		Safety	Close Conference:		02/12/2020
			Close Case:		
Related Activity:	Type	ID	Safety	Health	
	Accident	1488943			

Case Status: VIOLATIONS UNDER CONTEST

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	3					3
Current Violations	3					3
Initial Penalty	\$57,510	\$0	\$0	\$0	\$0	\$57,510
Current Penalty	\$57,510	\$0	\$0	\$0	\$0	\$57,510
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Serious	1509(A)	02/14/2020		\$9,560	\$9,560	\$0	03/02/2020	-
2.	02001	Serious	3650(I)	02/14/2020		\$22,950	\$22,950	\$0	03/02/2020	-
3.	03001	Serious	3650(T)(6)	02/14/2020		\$25,000	\$25,000	\$0	03/02/2020	-

Case Status: CLOSED

Inspection: 1379709.015 - C. Overaa & Co.

Inspection Information - Office: Ca Redding

Nr: 1379709.015	Report ID: 0950623	Open Date: 02/20/2019
C. Overaa & Co.		Union Status: Union

3700 Tibbetts Rd.
Shasta Lake, CA 96019
SIC:
NAICS: 236220/Commercial and Institutional Building Construction
Mailing: 200 Parr Blvd, Richmond, CA 94801

Inspection Type:Planned

Scope:PartialAdvanced Notice:N

Ownership:Private

Safety/Health:SafetyClose Conference:03/21/2019

Emphasis:P:Permit, S:PermitClose Case:06/20/2019

Related Activity:TypeIDSafetyHealth

Referral1428560Yes

Case Status: CLOSED

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			2		3
Current Violations	1			2		3
Initial Penalty	\$5,735	\$0	\$0	\$675	\$0	\$6,410
Current Penalty	\$5,735	\$0	\$0	\$675	\$0	\$6,410
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent	
1.	01001	Other	341(C)(2)(B)	03/21/2019		\$250	\$250	\$0		Z - Issued	
2.	01002	Other	3395(I)	03/21/2019	04/09/2019	\$425	\$425	\$0		Z - Issued	
3.	02001	Serious	15410001 A01	03/21/2019		\$5,735	\$5,735	\$0		Z - Issued	

Case Status: CLOSED

Inspection: 1316471.015 - C. Overaa & Co.

Inspection Information - Office: Ca American Canyon District Office

Nr: 1316471.015Report ID: 0950615Open Date: 05/16/2018

C. Overaa & Co.
Sandy Lane
Bethel Island, CA 94511Union Status: NonUnion

SIC:
NAICS: 236220/Commercial and Institutional Building Construction
Mailing: 200 Parr Blvd, Richmond, CA 94801

Inspection Type:Planned

Scope:PartialAdvanced Notice:N

Ownership:Private

Safety/Health:SafetyClose Conference:08/06/2018

Emphasis:S:Permit, P:PermitClose Case:04/27/2020

Case Status: CLOSED

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations				1		1
Initial Penalty	\$0	\$0	\$0	\$650	\$0	\$650
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0

FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0
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Violation Items											
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent	
1.	01001	Other	1541(C)(2)	08/06/2018		\$0	\$650	\$0	08/20/2018	O - Administrative Law Judge Order	

Case Status: CLOSED

Inspection: 1261858.015 - C. Overaa & Co.

Inspection Information - Office: Ca Foster City District Office

Nr: 1261858.015

Report ID: 0950613

Open Date: 09/05/2017

C. Overaa & Co.

3 Serramonte Blvd.

Daly City, CA 94015

Union Status: NonUnion

SIC:

NAICS: 238110/Poured Concrete Foundation and Structure Contractors

Mailing: 200 Parr Blvd., Richmond, CA 94801

Inspection Type: Referral

Scope: Partial

Ownership: Private

Safety/Health: Safety

Emphasis: S:Permit

Related Activity: Type

Referral

Advanced Notice: N

Close Conference: 01/03/2018

Close Case: 01/04/2018

ID

1260638

Safety

Yes

Health

Case Status: CLOSED

Case Status: CLOSED

Inspection: 1069778.015 - C. Overaa & Company

Inspection Information - Office: Ca San Francisco

Nr: 1069778.015

Report ID: 0950611

Open Date: 05/19/2015

C. Overaa & Company

2055 Silver Ave.,

San Francisco, CA 94124

Union Status: NonUnion

SIC:

NAICS: 236115/New Single-Family Housing Construction (except Operative Builders)

Mailing: 200 Parr Blvd., Richmond, CA 94801

Inspection Type: Accident

Scope: Partial

Ownership: Private

Safety/Health: Safety

Related Activity: Type

Accident

Advanced Notice: N

Close Conference: 12/02/2015

Close Case: 12/02/2015

ID

982806

Safety

Health

Case Status: CLOSED

Inspection: 317204899 - C. Overaa & Co

Inspection Information - Office: Ca Oakland

Nr: 317204899

Report ID: 0950614

Open Date: 06/20/2014

C. Overaa & Co

2489 Martin Luther King Jr Way

Berkeley, CA 94704

Union Status: NonUnion

SIC: 1522/General Contractors-Residential Buildings, Other Than Single-Family

NAICS: 236116/New Multifamily Housing Construction (except Operative Builders)
Mailing: 200 Parr Boulevard, Richmond, CA 94801

Inspection Type:Referral

Scope:PartialAdvanced Notice:N

Ownership:Private

Safety/Health:SafetyClose Conference:11/18/2014

Planning Guide:Safety-ConstructionClose Case:08/21/2015

Emphasis:L:Regionp1

Related Activity:TypeIDSafetyHealth

Referral201502101YesYes

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations						
Initial Penalty	\$6,750	\$0	\$0	\$0	\$0	\$6,750
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
Deleted	1.	01001	Serious	1712 C01	11/19/2014	11/24/2014	\$0	\$6,750	\$0	12/04/2014	F - Formal Settlement

Inspection: 316818814 - C. Overaa & Co.

Inspection Information - Office: Ca Concord

Nr: 316818814

Report ID: 0950622

Open Date: 09/24/2013

C. Overaa & Co.

6040 Vaca Station Rd

Elmira, CA 95625

Union Status: Union

SIC: 1623/Water, Sewer, Pipeline, and Communications and Power Line Construction
NAICS: 237110/Water and Sewer Line and Related Structures Construction
Mailing: 200 Parr Blvd, Richmond, CA 94801

Inspection Type:Accident

Scope:PartialAdvanced Notice:N

Ownership:Private

Safety/Health:SafetyClose Conference:11/22/2013

Close Case:01/17/2015

Related Activity:TypeIDSafetyHealth

Accident102694650

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations				1		1
Initial Penalty	\$18,000	\$0	\$0	\$0	\$0	\$18,000
Current Penalty	\$0	\$0	\$0	\$7,000	\$0	\$7,000
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
	#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent

1.	02001	Other	3301 C	11/22/2013	09/30/2013	\$7,000	\$18,000	\$0	12/03/2013	F - Formal Settlement
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Accident Investigation Summary						
Summary Nr: 202510186		Event: 09/17/2013		Worker'S Thumb Is Crushed When Caught Inside Pipe		
On September 17, 2013, Employee #1, employed by a water and sewer line construction company, was working at a sewer/water treatment plant. He was installing a pressurized, 48-inch diameter pipe plug into a pipe. The plug suddenly shifted inside the pipe. Employee #1's hand was caught between the pipe plug and the inside wall of the pipe. His left thumb was crushed. Employee #1 was transported to the hospital, admitted, and treated for bruises, contusions, and abrasions of the left thumb.						
Keywords: installing, wall, finger, construction, caught between, crushed, pipe, sewage, hand, water						
	Inspection			Degree	Nature	Occupation
1	316818814			Hospitalized injury	Bruise/Contus/Abras	Construction laborers

Inspection: 315830422 - C. Overaa & Co

Inspection Information - Office: Ca American Canyon District Office				
Nr: 315830422		Report ID: 0950615		Open Date: 06/05/2013
C. Overaa & Co				
80 Lomita Dr				
Mill Valley, CA 94941				
Union Status: Union				
SIC: 1542/General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses				
NAICS: 236220/Commercial and Institutional Building Construction				
Mailing: 200 Parr Blvd, Richmond, CA 94801				
Inspection Type:		Complaint		
Scope:		Partial	Advanced Notice:	N
Ownership:		Private		
Safety/Health:		Safety	Close Conference:	06/05/2013
Planning Guide:		Safety-Construction	Close Case:	06/05/2013
Related Activity:		Type	ID	Safety
		Complaint	779723519	Health
				Yes

Inspection: 316696939 - C Overaa & Co

Inspection Information - Office: Ca Modesto				
Nr: 316696939		Report ID: 0950624		Open Date: 01/08/2013
C Overaa & Co				
901 S. Walnut Rd			Union Status: Union	
Turlock, CA 95380				
SIC: 1542/General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses				
NAICS: 236220/Commercial and Institutional Building Construction				
Mailing: 200 Parr Blvd, Richmond, CA 94801				
Inspection Type:	Accident			
Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	01/17/2013	
Emphasis:	S:Construction (Cship)	Close Case:	01/17/2013	
Related Activity:	Type	ID	Safety	Health
	Accident	102728789		

Accident Investigation Summary		
Summary Nr: 202523296	Event: 01/04/2013	Worker Is Poisoned When Turbo Blaster Strikes His Wrist
On January 4, 2013, an employee, of C. Overaa & Co., was working at a sewer and water treatment plant. He was using a high pressure washer (Turbo Blaster) in an attempt to clear the clogged hose of a wet/dry vacuum (shop vac). He inserted the tip of the high pressure washer into the vacuum hose. When he squeezed the pressure washer trigger, the water force caused the pressure washer tip to withdraw from the clogged hose. As the pressure washer tip cleared the end of the hose, the water pressure stream struck the employee's wrist. The employee required hospitalization and treatment for systemic poisoning		

Keywords: vacuum cleaner, construction, hose, waste proc fac, clogged, hydraulic tool, high pressure, struck by, poisoning, wrist

	Inspection			Degree	Nature	Occupation
1	316696939			Hospitalized injury	Poisoning(Systemic)	Construction laborers

Inspection: 314330481 - C. Overaa & Co.

Inspection Information - Office: Ca Concord

Nr: 314330481	Report ID: 0950622	Open Date: 04/17/2012
C. Overaa & Co. 1098 Pomona St. Crockett, CA 94525		
Union Status: Union		
SIC: 1629/Heavy Construction, Not Elsewhere Classified		
NAICS: 236210/Industrial Building Construction		
Mailing: 200 Parr Blvd., Richmond, CA 94801		
Inspection Type:	Planned	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 08/27/2012
Planning Guide:	Safety-Construction	Close Case: 08/27/2012
Emphasis:	S:Construction (Cship)	

Inspection: 314995937 - C Overaa & Co

Inspection Information - Office: Ca Modesto

Nr: 314995937	Report ID: 0950624	Open Date: 03/23/2012
C Overaa & Co 14950 W. Schulte Rd Tracy, CA 95377		
Union Status: Union		
SIC: 1629/Heavy Construction, Not Elsewhere Classified		
NAICS: 237130/Power and Communication Line and Related Structures Construction		
Mailing: 200 Parr Blvd, Richmond, CA 94801		
Inspection Type:	Unprog Rel	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 03/23/2012
Emphasis:	S:Construction (Cship)	Close Case: 03/23/2012

Inspection: 314995994 - C Overaa & Co

Inspection Information - Office: Ca Modesto

Nr: 314995994	Report ID: 0950624	Open Date: 03/23/2012
C Overaa & Co 14950 W. Schulte Rd Tracy, CA 95377		
Union Status: Union		
SIC: 1629/Heavy Construction, Not Elsewhere Classified		
NAICS: 236210/Industrial Building Construction		
Inspection Type:	Prog Related	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Health	Close Conference: 03/23/2012
		Close Case: 03/23/2012

Inspection: 310100771 - C.Overaa & Co.**Inspection Information - Office: Ca Foster City District Office**

Nr: 310100771	Report ID: 0950613	Open Date: 09/21/2011
C.Overaa & Co.		
900 Alameda De Las Pulgas		Union Status: NonUnion
San Mateo, CA 94402		
SIC: 1542/General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses		
NAICS: 236220/Commercial and Institutional Building Construction		
Mailing: 200 Parr Boulevard, Richmond, CA 94801		
Inspection Type:	Unprog Rel	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 02/13/2012
		Close Case: 02/15/2012

Inspection: 312691512 - C. Overaa & Co.**Inspection Information - Office: Ca San Francisco**

Nr: 312691512	Report ID: 0950611	Open Date: 07/28/2011
C. Overaa & Co.		
1600 Holloway Ave.		Union Status: Union
San Francisco, CA 94132		
SIC: 1542/General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses		
NAICS: 236220/Commercial and Institutional Building Construction		
Mailing: 200 Parr Blvd., Richmond, CA 94801		
Inspection Type:	Unprog Rel	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 09/27/2011
Planning Guide:	Safety-Construction	Close Case: 09/28/2011

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Inspection Detail

Quick Link Reference

1217283.015 | 1145800.015 | 316819358 | 316818335 | 312691405

Case Status: CLOSED

Inspection: 1217283.015 - D.L. Falk Construction Inc.

Inspection Information - Office: Ca Sacramento

Nr: 1217283.015		Report ID: 0950621		Open Date: 03/15/2017	
D.L. Falk Construction Inc.					
4350 Sophistry Drive			Union Status: NonUnion		
Rancho Cordova, CA 95742					
SIC:					
NAICS: 236220/Commercial and Institutional Building Construction					
Mailing: 3526 Investment Blvd., Hayward, CA 94545					
Inspection Type:		Complaint			
Scope:	Partial	Advanced Notice:		N	
Ownership:	Private				
Safety/Health:	Safety	Close Conference:		03/16/2017	
		Close Case:		05/24/2017	
Related Activity:	Type	ID	Safety	Health	
	Complaint	1191608	Yes		

Case Status: CLOSED

Violation Summary

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations				1		1
Initial Penalty	\$0	\$0	\$0	\$410	\$0	\$410
Current Penalty	\$0	\$0	\$0	\$410	\$0	\$410
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	1527(A)(1)(F)2.	03/21/2017		\$410	\$410	\$0		Z - Issued

Case Status: CLOSED**Inspection: 1145800.015 - D L Falk Construction Inc.****Inspection Information - Office: Ca American Canyon District Office**

Nr: 1145800.015 Report ID: 0950615 Open Date: 05/06/2016

D L Falk Construction Inc.

3800 Valley Vista Rd

Walnut Creek, CA 94598

Union Status: NonUnion

SIC:

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 3526 Investment Blvd, Hayward, CA 94545

Inspection Type: Complaint

Scope: Partial

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 07/19/2016

Close Case: 07/26/2016

Related Activity:

Type

ID

Safety

Health

Complaint

1087141

Yes

Case Status: CLOSED**Violation Summary**

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations				1		1
Initial Penalty	\$0	\$0	\$0	\$225	\$0	\$225
Current Penalty	\$0	\$0	\$0	\$225	\$0	\$225
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	01001	Other	3395(I)	07/19/2016		\$225	\$225	\$0		Z - Issued

Inspection: 316819358 - D. L. Falk Construction**Inspection Information - Office: Ca Concord**

Nr: 316819358 Report ID: 0950622 Open Date: 11/25/2013

D. L. Falk Construction

320 Civic Drive

Pleasant Hill, CA 94523

Union Status: NonUnion

SIC: 8741/Management Services

NAICS: 236220/Commercial and Institutional Building Construction

Mailing: 3526 Investment Blvd, Hayward, CA 94545

Inspection Type: Unprog Rel

Scope: Partial

Advanced Notice: N

Ownership: Private

Safety/Health: Safety

Close Conference: 01/09/2014

Close Case: 01/10/2014

Inspection: 316818335 - D. L. Falk Construction Inc.**Inspection Information - Office: Ca Concord**

Nr: 316818335 Report ID: 0950622 Open Date: 08/07/2013

D. L. Falk Construction Inc.

5019 Imhoff Place		Union Status: NonUnion	
Martinez, CA 94553			
SIC: 1531/Operative Builders			
NAICS: 236220/Commercial and Institutional Building Construction			
Mailing: 3526 Investment Blvd, Hayward, CA 94545			
Inspection Type:	Accident		
Scope:	Partial	Advanced Notice:	N
Ownership:	Private		
Safety/Health:	Health	Close Conference:	10/04/2013
		Close Case:	10/07/2013

Inspection: 312691405 - D.L. Falk Construction Inc.

Inspection Information - Office: Ca San Francisco				
Nr: 312691405	Report ID: 0950611	Open Date: 07/07/2011		
D.L. Falk Construction Inc.				
1350 - 7th Avenue		Union Status: NonUnion		
San Francisco, CA 94122				
SIC: 1542/General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses				
NAICS: 236220/Commercial and Institutional Building Construction				
Mailing: 3526 Investment Blvd., Hayward, CA 94545				
Inspection Type:	Complaint			
Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	08/17/2011	
Planning Guide:	Safety-Construction	Close Case:	10/11/2011	
Related Activity:	Type	ID	Safety	Health
	Complaint	208062968	Yes	

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations				1		1
Initial Penalty	\$0	\$0	\$0	\$550	\$0	\$550
Current Penalty	\$0	\$0	\$0	\$550	\$0	\$550
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent	
1.	01001	Other	1712 C01	08/26/2011	09/28/2011	\$550	\$550	\$0			-

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ATTACHMENT 7

LITIGATION HISTORY

SAUSAL CORPORATION

No.	Title	Key Nature	Court Juris	Filed Date	Plaintiff(s)	Defendant(s)	Parties
1	Bay City Mechanical, Inc. v. Sausal Corporation	Contracts, Breach of Warranty	CA Alameda Super. Ct.	14-Jul-20	Plaintiff(s): Bay City Mechanical, Inc., A California Corporation	Defendant(s): Sausal Corporation, A California Corporation	
2	VOLPE CORPORATION, INC. V. SAUSAL CORPORATION	CIVIL	CA CT. APP., FIRST DIST.	14-Jan-20			Party(s): VOLPE CORPORATION, INC.; SAUSAL CORPORATION
3	VOLPE COMPANY, INC. V. SAUSAL CORPORATION	CIVIL	CA CT. APP., FIRST DIST.	12-Aug-19			Party(s): VOLPE COMPANY, INC.; SAUSAL CORPORATION
4	VOLPE COMPANY, INC. V. SAUSAL CORPORATION	CIVIL	CA CT. APP., FIRST DIST.	17-Jun-19			Party(s): VOLPE COMPANY, INC.; SAUSAL CORPORATION
5	Sasco v. Sausal Corporation Et Al	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	28-Mar-19	Plaintiff(s): Sasco	Defendant(s): Sausal Corporation; Elco Electric, Inc.; North American Specialty Insurance Company	
6	Big B Construction, Inc. v. Sausal Corporation Et Al	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	15-Feb-19	Plaintiff(s): Big B Construction, Inc.	Defendant(s): Sausal Corporation; North American Specialty Insurance Company; Washington International Insurance Company	
7	SimplexGrinnell LP v. Red Horse Technologies Inc	Contracts, Breach of Contract	CA Sacramento Super. Ct.	13-Jun-18	Plaintiff(s): SimplexGrinnell LP	Defendant(s): Does 1-200; North American Specialty Insurance Co; Red Horse Technologies Inc; Sausal Corporation	
8	Collins Electrical Company Inc. v. Sausal Corporation et al	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	18-Dec-15	Plaintiff(s): Collins Electrical Company Inc.	Defendant(s): Sausal Corporation; North American Specialty Insurance Company	
9	Sausal Corp. v. Kinetics Mechanical, Etal	Civil	CA SAN MATEO SUPER. CT.	25-Nov-15	Plaintiff(s): Sausal Corporation	Defendant(s): Kinetics Mechaicalservices, Inc	
10	FISHER METAL PRODUCTS, INC. v. SAUSAL CORPORATION, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	13-Nov-14	Plaintiff(s): FISHER METAL PRODUCTS, INC.	Defendant(s): SAUSAL CORPORATION; KRAMER PROJECT DEVELOPMENT CO., INC.	
11	Lindini Company v. Sausal Corporation	CONTRACTS, BREACH OF CONTRACT	CA Sacramento Super. Ct.	4-Aug-14	Plaintiff(s): Lindini Company	Defendant(s): Does 1-10; Sausal Corporation	
12	SLAUSON v. SAUSAL CORPORATION	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	4-Mar-14	Plaintiff(s): STEPHEN S SLAUSON	Defendant(s): SAUSAL CORPORATION; NORTH AMERICAN SPECIALTY INC CO.; BERKELEY UNIFIED SCHOOL DISTRICT; DIGITAL DESIGN COMMUNICATIONS	
13	TRAHAN MECHANICAL, INC. v. SAUSAL CORPORATION	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	11-Dec-13	Plaintiff(s): TRAHAN MECHANICAL, INC., A CALIFORNIA CORPORATION	Defendant(s): SAUSAL CORPORATION, A CALIFORNIA CORPORATION; BERKELEY UNIFIED SCHOOL DISTRICT; NORTH AMERICAN SPECIALTY INSURANCE COMPANY	
14	DECKER ELECTRIC CO., INC V. EDWARD W. SCOTT ELECTRIC CO., INC. ET AL	CONTRACTS, BREACH OF WARRANTY	CA SAN FRANCISCO SUPER. CT.	19-Sep-13			Party(s): DECKER ELECTRIC CO., INC A CALIFORNIA CORPORATION; CAHILL CONTRACTORS, INC. A CALIFORNIA CORPORATION; CAHILL-NIBBI JOINT VENTURE, A JOINT VENTURE OF CALIFORNIA CORPORATIONS; DOES 1-25 INCLUSIVE; EDWARD W. SCOTT ELECTRIC CO., INC. A CALIFORNIA CORPORATION; FEDERAL INSURANCE
15	WESCO INSURANCE v. APPLGATE, RICHARD	CIVIL	CA STANISLAUS SUPER. CT.	3-Sep-13	Plaintiff(s): WESCO INSURANCE COMPANY	Defendant(s): ACCENT CLEAN & SWEEP INC; ADVANCED ENERGY RENEWABLES INC; AE SOLAR ENERGY INC; RICHARD APPLGATE; JOHN LAWRENCE BERGMAN; GRAYBAR ELECTRIC COMPANY INC; KIMBERLITE CORPORATION; SAUSAL CORPORATION; SONITROL SECURITY	
16	SAUSAL CORPORATION v. R. CASSIDY	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	11-Jun-13	Plaintiff(s): SAUSAL CORPORATION	Defendant(s): RAYMOND PATRICK CASSIDY	
17	NOAH CONCRETE CORPORATION v. SAUSAL CORPORATION	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	30-May-13	Plaintiff(s): NOAH CONCRETE CORPORATION	Defendant(s): SAUSAL CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY	
18	BAY CITIES PAVING & GRADING, INC. v. SAUSAL CORPORATION	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	2-May-13	Plaintiff(s): BAY CITIES PAVING & GRADING, INC., A CALIFORNIA CORPORATION; SAUSAL CORPORATION	Defendant(s): SAUSAL CORPORATION; BAY CITIES PAVING & GRADING, INC., A CALIFORNIA CORPORATION	
19	SAUSAL CORPORATION v. AEGIS SECURITY INSURANCE COMPANY	Civil Procedure	CA ALAMEDA SUPER. CT.	22-Oct-12	Plaintiff(s): SAUSAL CORPORATION	Defendant(s): AEGIS SECURITY INSURANCE COMPANY; AMERICAN CONTRACTORS INDEMNITY COMPANY	
20	J. SHUMAKER v. SAUSAL CORPORATION	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	26-Sep-12	Plaintiff(s): JAKE SHUMAKER	Defendant(s): SAUSAL CORPORATION	

21	UNITED V. SAUSAL	CONTRACTS	CA CONTRA COSTA SUPER. CT.	26-Sep-12			Party(s): UNITED BUILDERS CORPORATION; SAUSAL CORPORATION
22	GALEB PAVING, INC., A CALIFOR v. SAUSAL CORPORATION, A CALIF	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	4-Sep-12	Plaintiff(s): GALEB PAVING, INC., A CALIFORNIA CORPORATION	Defendant(s): SAUSAL CORPORATION, A CALIFORNIA CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY, A CORPORATION	
23	DIVISION OF LABOR STANDARDS ENFORCEMENT v. SAUSAL CORPORATION, ET AL	Labor & Employment	CA SANTA CLARA SUPER. CT.	24-Aug-12	Plaintiff(s): DIVISION OF LABOR STANDARDS ENFORCEMENT	Defendant(s): SAUSAL CORPORATION; DICK EMARD ELECTRIC, INC.	
24	Sausal Corporation v. CEM Builders Inc.	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	28-Jun-12	Plaintiff(s): Sausal Corporation	Defendant(s): CEM Builders Inc.	
25	CALHOUN BROTHERS GRADING & PAVING, INC. v. SAUSAL CORPORATION	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	16-Apr-12		Defendant(s): SAUSAL CORPORATION	
26	PDM STEEL SERVICE CENTERS, INC v. J. CHAVEZ, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	4-Apr-12	Plaintiff(s): PDM STEEL SERVICE CENTERS, INC	Defendant(s): SAUSAL CORPORATION; AMERICAN CONTRACTORS INDEMNITY COMPANY; JOSE ERNESTO CHAVEZ	
27	CALHOUN BROTHERS GRADING & PAVING, INC. v. SAUSAL CORPORATION, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	13-Mar-12	Plaintiff(s): CALHOUN BROTHERS GRADING & PAVING, INC.	Defendant(s): SAUSAL CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY; EVERGREEN ELEMENTARY SCHOOL DISTRICT	
28	CALHOUN BROTHERS GRADING & PAVING, INC. v. SAUSAL CORPORATION, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	19-Oct-11	Plaintiff(s): CALHOUN BROTHERS GRADING & PAVING, INC.	Defendant(s): SAUSAL CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY; CAMPBELL UNION HIGH SCHOOL DISTRICT	
29	CALHOUN BROTHERS V. SAUSAL CORP	CONTRACTS, BREACH OF WARRANTY	CA CONTRA COSTA SUPER. CT.	11-Oct-11			Party(s): CALHOUN BROTHERS GRADING & PAVING, INC.; SAUSAL CORPORATION; CALHOUN BROTHERS GRADING & PAVING, INC.; SAUSAL CORPORATION
30	BOYETT CONSTRUCTION INC. A CALIFORNIA CORPORATION v. SAUSAL CORPORATION INC. A CALIFORNIA CORPORATION, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	8-Jul-11		Defendant(s): CAMPBELL UNION SCHOOL DISTRICT A GOVERNMENTAL ENTITY; LIBERTY MUTUAL INSURANCE COMPANY A DELAWARE CORPORATION; SAUSAL CORPORATION INC. A CALIFORNIA CORPORATION	
31	SAUSAL CORPORATION v. DICK EMARD ELECTRIC, INC., ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	22-Apr-11	Plaintiff(s): SAUSAL CORPORATION	Defendant(s): DICK EMARD ELECTRIC, INC.; EMARD ELECTRICAL SERVICES INC.; EMARD ENGINEERING INC.; SOLAR UNITED NETWORK INC.; LUKE EMARD; RICHARD EMARD; ABE EMARD; JUSTIN SWANSON	
32	SAUSAL CORPORATION v. RASMUSSEN	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	22-Apr-11	Plaintiff(s): SAUSAL CORPORATION	Defendant(s): TODD LEON RASMUSSEN	
33	SAUSAL CORPORATION V. PIPES ET AL	CIVIL	CA CONTRA COSTA SUPER. CT.	7-Apr-11			Party(s): SAUSAL CORPORATION; TRICO PIPES; SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT
34	FERGUSON ENTERPRISES V. SAN RAMON U.S.D	REAL PROPERTY, QUIET TITLE	CA CONTRA COSTA SUPER. CT.	27-Jan-11			Party(s): FERGUSON ENTERPRISES INC; SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT; SAUSAL CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY

C. OVERAA & CO

No.	Title	Key Nature	Filed Date	Plaintiff(s)	Defendant(s)	Parties
1	C. OVERAA & CO V. CITY OF SAN PABLO	CIVIL	10/13/2020			Party(s): C. OVERAA & CO; CITY OF SAN PABLO; MANUEL GARCIA; OBSENGINEERING INC
2	Tex Concrete Cutting, Inc v. C. Overaa & Co	Civil	7/7/2020	Plaintiff(s): Tex Concrete Cutting, Inc	Defendant(s): C. Overaa & Co	
3	C. OVERAA & CO. V. F.D. THOMAS, INC. ET AL	CONSTRUCTION	4/29/2020			Party(s): C. OVERAA & CO.; DOES 1 THROUGH 200, INCLUSIVE; F.D. THOMAS, INC.
4	Rebar International Inc. v. C. Overaa & Co.	Contracts, Breach of Warranty	2/20/2020	Plaintiff(s): Rebar International Inc.	Defendant(s): C. Overaa & Co.	
5	Michell Jurado-Alabarran et al. v. Gonzalo Arellano, Jr. et al.	Torts/Negligence, Motor Vehicle	5/20/2019	Plaintiff(s): Gonzalo Arellano, Jr.; C. Overaa & Company; Michell Jurado-Alabarran	Defendant(s): Gonzalo Arellano, Jr.; C. Overaa & Company; Mark Anthony Plaza; Mark Anthony Plaza; Kara Menghini; Kara Menghini	
6	Carbonite Filter Corporation v. C. Overaa & Co.	Contracts, Other Contract	1/9/2019	Plaintiff(s): Carbonite Filter Corporation; C. Overaa & Co.	Defendant(s): C. Overaa & Co.; Carbonite Filter Corporation	
7	Haera v. Allied Packing & Supply, Inc	Torts/Negligence	7/17/2018	Plaintiff(s): Sharon A. Haera	Defendant(s): Allied Packing & Supply, Inc; Associated Insulation Of California; C Overaa & CO; Calaveras Asbestos, Ltd; Cbs Corporation; Certainteed Corporation; Cleaver Brooks, Inc; Consolidated Insulation, Inc; D&M Auto Parts; D.Cummins Corporation; D.W. Nicholson Corporation; Douglass Regulation Company Inc; Eaton Corporation; Fdce California, Inc; General Electric Company; Genuine Parts Company; Graybar Electric Company, Inc; Itt Corporation; Kelly-Moore Paint Company, Inc; Metalcad Insulation, LLC; National Technology And Engineering Solutions Of Sandia LLC; Oneywel International, Inc; P.M. Lattnermanufacturing Company; Parker Hannifin Corporation; Pneumo Abex LLC; Rockwell Automation, Inc; Sandia Corporation; Santa Fe Braun, Inc; Schneider Electric USA, Inc; Soco West, Inc; The Darcoid Company Of California; The Regents Of The University Of California; Union Carbide Corporation; Western Building Materials, CO	
8	A. Teichert & Son, Inc v. C. Overaa & CO.	Contracts, Breach of Contract	5/15/2018	Plaintiff(s): A. Teichert & Son, Inc	Defendant(s): C. Overaa & CO.; City Of Dublin; Travelers Casualty And Surety Company Of America	
9	C. OVERAA & CO. V. SUPERIOR COURT FOR THE COUNTY OF ALAMEDA	CIVIL	11/6/2017			Party(s): C. OVERAA & CO.; SUPERIOR COURT FOR THE COUNTY OF ALAMEDA; EAST BAY MUNICIPAL UTILITY DISTRICT; SAN FRANCISCO PUBLIC UTILITIES COMMISSION; SANTA CLARA VALLEY WATER DISTRICT; DUBLIN SAN RAMON SERVICES DISTRICT; SOUTH SAN JOAQUIN IRRIGATION DISTRICT; SONOMA VALLEY COUNTY SANITATION DISTRICT; CITY OF NAPA; CITY OF VACAVILLE; CITY OF TRACY; CITY OF TRACY; CITY OF MANTECA; COUNTY OF PLACER; RODNEY L. CAMERON; ATTORNEY GENERAL, STATE OF CALIFORNIA; CONSTRUCTION EMPLOYERS ASSOCIATION
10	Crawford v. Cemex Construction Materials Pacific, LLC	Torts/Negligence, Motor Vehicle	10/24/2017	Plaintiff(s): Patricia Crawford; Roger J. Crawford, Jr.	Defendant(s): C. Overaa & CO.; Cemex Construction Materials Pacific, LLC; Ricardo Negron	
11	BAYSIDE INTERIORS, INC. V. C. OVERAA & CO. ET AL	CONTRACTS, BREACH OF WARRANTY	8/23/2017			Party(s): BAYSIDE INTERIORS, INC. A CALIFORNIA CORPORATION; ABB INC.; ABB, INC. A DELAWARE CORPORATION; C. OVERAA & CO. A CALIFORNIA CORPORATION; C. OVERAA & COMPANY; DOES 1 TO 100, INCLUSIVE; LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY A MASSACHUSETTS CORPORATION; PACIFIC GAS AND ELECTRIC COMPANY A CALIFORNIA CORPORATION; WESTCHESTER FIRE INSURANCE COMPANY; WESTCHESTER FIRE INSURANCE COMPANY A PENNSYLVANIA CORPORATION
12	Tex Concrete Cutting, Inc. v. C.Overaa & Co. et al	Contracts, Breach of Warranty	8/14/2017	Plaintiff(s): Tex Concrete Cutting, Inc.	Defendant(s): C.Overaa & Co.; Foothill-De Anza Community College District; Travelers Casualty and Surety Company of America	
13	BANK OF STOCKTON v. TEX CONCRETE CUTTING, INC.	Civil	7/13/2017	Plaintiff(s): BANK OF STOCKTON	Defendant(s): C. OVERAA & CO.; COTRONE COMPANY, INC.; TEX CONCRETE CUTTING, INC.	

14	MID-STATE PRECAST, L.P A CALIFORNIA LIMITED V. C.OVERAA & CO A CALAIFORNIA CORPORATION ET AL	CONTRACTS, BREACH OF WARRANTY	7/6/2017			Party(s): L.P A CALIFORNIA LIMITED MID-STATE PRECAST PARTNERSHIP; ABB INC., A DELAWARE CORPORATION , ERRONEOUSLY SUED HEREIN AS ABB, INC., DOING BUSINESS AS ABB DE, INC., A NORTH CAROLINA CORPORATION; ABB, INC. DOING BUSINESS IN AS ABB DE INC. A NORTH CAROLINA CORPORATION; C. OVERAA & COMPANY; C.OVERAA & CO A CALIFORNIA CORPORATION; C.OVERAA & CO A CALIFORNIA CORPORATION; DOES 1 TO 50; LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY A MASSACHUSETTS CORPORATION; PG&E CORPORATION A CALIFORNIA CORPORATION; ROES 1 THROUGH FIFTY, INCLUSIVE; TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA; TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA A CONNECTICUT CORPORATION; TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA A CONNECTICUT CORPORATION; WESTCHESTER FIRE INSURANCE COMPANY; ABB INC., A DELAWARE CORPORATION , ERRONEOUSLY SUED HEREIN AS ABB, INC., DOING BUSINESS AS ABB DE, INC., A NORTH
15	BENCHMARK INSURANCE COMPANY V. C. OVERRA & CO. ET AL	TORTS/NEGLIGENCE, PROPERTY DAMAGE, NON-MOTOR VEHICLE	6/20/2017			Party(s): BENCHMARK INSURANCE COMPANY A CORPORATION; C. OVERAA & CO.; C. OVERRA & CO. A CORPORATION; DOES 1 TO 100 INCLUSIVE; EDWARD W. SCOTT ELECTRIC CO. INC, A CORPORATION; EDWARD W. SCOTT ELECTRIC CO., INC.
16	FARRELL DESIGN-BUILD COMPANIES INC., V. C. OVERAA & CO. ET AL	REAL PROPERTY, QUIET TITLE	6/14/2017			Party(s): FARRELL DESIGN-BUILD COMPANIES INC., A CALIFORNIA CORPORATION; C. OVERAA & CO. A CALIFORNIA CORPORATION; C.OVERAA & COMPANY; C.OVERAA & COMPANY; DOES 1 THROUGH 20 INCLUSIVE; DOES 1 TO 20 INCLUSIVE; PACIFIC GAS & ELECTRIC COMPANY A CALIFORNIA CORPORATION; WESTCHESTER FIRE INSURANCE COMPANY; WESTCHESTER FIRE INSURANCE COMPANY, A PENNSYLVANIA CORPORATION
17	CENTRAL CONCRETE SUPPLY CO. INC. A CORPORATION V. PACIFIC GAS & ELECTRIC CO A CORPORATION ET AL	BANKING/FINANCE, COLLECTIONS	5/30/2017			Party(s): CENTRAL CONCRETE SUPPLY CO. INC. A CORPORATION SUCCESSOR-IN-INTEREST TO BODE CONCRETE, LLC/WESTSIDE BUILDING MATERIALS; C OVERAA & CO A BUSINESS ENTITY FORM UNKNOWN; DOES 1 TO 40, INCLUSIVE; PACIFIC GAS & ELECTRIC CO A CORPORATION; TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA
18	C. OVERAA & CO. V. PROGRESS GLASS CO. INC.	CONTRACTS, BREACH OF WARRANTY	5/16/2017			Party(s): C. OVERAA & CO.; C. OVERAA & CO.; C. OVERAA & CO., INC.; DOES 1 THROUGH 100, INCLUSIVE; NATIONAL ELEVATOR CO, INC.; NATIONAL ELEVATOR CO, INC.; O'KEEFFE'S, INC.; PINNACLE INSTALLATIONS, INC.; PROGRESS GLASS CO. INC.; PROGRESS GLASS CO. INC.; PROGRESS GLASS COMPANY, INC.; PROGRESS GLASS COMPANY, INC.; ROES 1 THORUGH 10, INCLUSIVE; ROES 1 THROUGH 100, INCLUSIVE; ROES 1-50 INCLUSIVE; S & L PAYTON, INC.; S & L PAYTON, INC.; STANLEY SAITOWITZ; NATOMA ARCHITECTS, INC.; ZOES 1 THROUGH 50, INCLUSIVE; C. OVERAA & CO.; O'KEEFFE'S, INC.; PROGRESS GLASS COMPANY, INC.; S & L PAYTON, INC.
19	BASALITE BUILDING PRODUCTS LLC A NEVADA LIMITED V. SPENCER MASONRY INC. A CALIFORNIA CORPORATION	CONTRACTS, BREACH OF WARRANTY	4/28/2017			Party(s): BASALITE BUILDING PRODUCTS LLC A NEVADA LIMITED LIABILITY COMPANY; C OVERAA & CO., A CALIFORNIA COPORATION; PG&E CORPORATION, A CALIFORNIA CORPORATION; SPENCER MASONRY INC. A CALIFORNIA CORPORATION; MICHAEL D. SPENCER; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

20	SHOOTER & BUTTS INC. A CALIFORNIA CORPORATION V. PACIFIC GAS AND ELECTRIC COMPANY INC. ET AL	CONTRACTS, BREACH OF WARRANTY	4/24/2017			Party(s): SHOOTER & BUTTS INC. A CALIFORNIA CORPORATION; C. OVERAA & COMPANY INC.; DOES 1 TO 20 INCLUSIVE; PACIFIC GAS AND ELECTRIC COMPANY INC.
21	C. OVERAA & COMPANY V. ABB, INC. ET AL	CONTRACTS, BREACH OF WARRANTY	12/30/2016			Party(s): C. OVERAA & COMPANY A CALIFORNIA CORPORATION; ABB, INC. A DELAWARE CORPORATION; DOES 1 THROUGH 100, INCLUSIVE; LIBERTY MUTUAL INSURANCE COMPANY A MASSACHUSETTS CORPORATION; PG&E CORPORATION A CALIFORNIA CORPORATION; WESTCHESTER FIRE INSURANCE COMPANY A PENNSYLVANIA CORPORATION
22	DANNIE SALAS V. C. OVERAA & CO. ET AL	TORTS/NEGLIGENCE, PROPERTY DAMAGE, NON-MOTOR VEHICLE	12/14/2016			Party(s): BENCHMARK INSURANCE COMPANY A CORPORATION (PLAINTIFF FROM CONSOLIDATED CASE#CGC-17-559662); DANNIE SALAS; C. OVERAA & CO. (DEFENDANT FROM CONSOLIDATED CASE#CGC-17-559662); EDWARD W. SCOTT ELECTRIC CO., INC. (DEFENDANT FROM CONSOLIDATED CASE#CGC-17-559662); BERKELEY CEMENT, INC.; BERKELEY CEMENT, INC.; BERKELEY CEMENT, INC.; C. OVERAA & CO.; C. OVERAA & CO.; DOES 1 TO 100; DOES 1 TO 100 INCLUSIVE (DEFENDANT FROM CONSOLIDATED CASE#CGC-17-559662); EDWARD W. SCOTT ELECTRIC CO., INC.; EDWARD W. SCOTT ELECTRIC CO., INC.; PCD; ROES 1 THROUGH 100 INCLUSIVE; ROES 1-100, INCLUSIVE; ROES 1-25; BENCHMARK INSURANCE COMPANY; BERKELEY CEMENT, INC.; C. OVERAA & CO.; EDWARD W. SCOTT ELECTRIC CO., INC.
23	Telstar Instruments Inc v. C Overaa & Company	Contracts, Breach of Contract	12/8/2016	Plaintiff(s): Telstar Instruments Inc	Defendant(s): C Overaa & Company; City of Sacramento; Does 1-50; Hartford Fire Insurance Company a Connecticut Corporation; San Joaquin Electric Co Inc; Surety Does 51-65; Travelers Casualty and Surety Company of America a Connecticut Corporation	
24	Hoagland v. Gilbane Building Company	Torts/Negligence	2/26/2016	Plaintiff(s): Carol Hoagland; Gilbane Building Company	Defendant(s): C. Overaa & CO.; Duran & Venables, Inc.; Duran & Venables, Inc.; Gilbane Building Company	
25	Ohlone College v. Duran & Venables, Inc.	Torts/Negligence	2/26/2016	Plaintiff(s): Ohlone College	Defendant(s): C. Overaa & CO.; Duran & Venables, Inc.; Gilbane Building Company	
26	C. OVERAA & Co. v. California Department of Corrections and Rehabilitation et al.	Writs	2/25/2016	Plaintiff(s): C. OVERAA & Co.	Defendant(s): California Department of Corrections and Rehabilitation; Office of Administrative Hearings, California Department of General Services	
27	United Builders Corporation v. C.R. Laurence Co., Inc.	Contracts, Breach of Warranty	2/17/2016		Defendant(s): C. Overaa & Co.; Lionakis; San Jose-Evergreen Community College District; Travelers Casualty and Surety Company of America; Western Surety Company; Fidelity and Deposit Company of Maryland	
28	Berkeley Cement, Inc. v. C. Overaa & Co. et al	Real Property	12/8/2015	Plaintiff(s): Berkeley Cement, Inc.	Defendant(s): C. Overaa & Co.; San Francisco Unified School District; Travelers Casualty Insurance Company of America; Farmington Casualty Company	
29	HENSON V. C. OVERAA & COMPANY	APPEALS	8/7/2015			Party(s): FLOYD HENSON; GABRIEL MAESTRETTI; LEONARD MINOR; C. OVERAA & COMPANY
30	ARISTECH V. CITADEL	CONTRACTS, BREACH OF WARRANTY	7/29/2015			Party(s): ARISTECH SURFACES,LLC; CITADEL PREMIUM DESIGN, INC.; C. OVERAA & CO.
31	ECONOMY TRUCKING V. C. OVERAA	CONTRACTS, BREACH OF WARRANTY	6/10/2015			Party(s): ECONOMY TRUCKING SERVICES, INC; C OVERAA & COMPANY, INC
32	Travelers Indemnity Company of Connecticut v. Zurich American Insurance Company et al	Contracts, Insurance	5/6/2015	Plaintiff(s): Travelers Indemnity Company of Connecticut	Defendant(s): Zurich American Insurance Company; C. Overaa & Company; Overaa/Miller Construction	
33	Zovich & Sons, Inc. v. City Of Dublin	Writs, Mandamus	2/26/2015	Plaintiff(s): Zovich & Sons, Inc.	Defendant(s): C. Overaa & CO.; City Of Dublin	
34	U.S. GLASS & ALUMINUM INC. V. SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO	CIVIL	2/4/2015			Party(s): U.S. GLASS & ALUMINUM INC.; SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO; C. OVERAA & CO. INC.; BENDHEIM WALL SYSTEMS INC.; STEVEN DARYL CASE; RICHARD BRUCE NORRIS; JOHN BRIMMER
35	BENDHEIM WALL SYSTEMS INC. V. SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO	CIVIL	2/2/2015			Party(s): BENDHEIM WALL SYSTEMS INC.; SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO; C. OVERAA & CO. INC.; U.S. GLASS & ALUMINUM INC.; JOHN PATRICK BRIMMER; STEVEN DARYL CASE; RICHARD BRUCE NORRIS

36	LARRY SUBLETT V. KAISER GYPSUM COMPANY, INC. ET AL	TORTS/NEGLIGENCE, MASS TORT, ASBESTOS	12/26/2014			Party(s): SUBLETT, LARRY; ANDERSON, ROWE & BUCKLEY, INC.; ASSOCIATED INSULATION OF CALIFORNIA; ATLAS HEATING AND VENTILATING COMPANY, INC.; ATLAS HEATING AND VENTILATING COMPANY, LTD.; BAYER CROPSCIENCE INC.; BAYER CROPSCIENCE, INC. EXCEPT AS THE SUCCESSOR-IN-INTEREST TO AMECHEM PRODUCTS, INC.; BORGWARNER MORSE TEC INC, AS SUCCESSOR-BY-MERGER TO BORGWARNER CORPORATION; BUTTNER CORP.; C. OVERAA & CO.; CAHILL CONTRACTORS, INC.; CALIFORNIA DRYWALL CO.; CHICAGO BRIDGE & IRON COMPANY AND ILLINOIS CORPORATION; CLAUSEN-PATTEN, INC.; CLAUSEN-PATTEN, INC., A DISSOLVED CORPORATION; COMSTOCK ELECTRIC; CONSOLIDATED INSULATION, INC.; CROWN CORK & SEAL COMPANY, INC.; CUPERTINO ELECTRIC, INC.; D. ZELINSKY & SONS, INC.; DEVCON CONSTRUCTION INCORPORATED; DEVCON CONSTRUCTION, INC.; DILLINGHAM CONSTRUCTION N.A., INC.; DOES 1-800, INCLUSIVE AS REQUIRED BY CALIFORNIA LAW ON JOINT AND SEVERAL LIABILITY PURSUANT TO CALIFORNIA CIVIL CODE 1431.2
37	King Drywall, Inc. v. Overaa-Turner Group Jv	Contracts, Breach of Contract	10/16/2014	Plaintiff(s): King Drywall, Inc.; Overaa-Turner Group Jv	Defendant(s): King Drywall, Inc.; Oakland Unified School District; Overaa-Turner Group Jv	
38	Barber v. 3m Company	Torts/Negligence, Mass Tort, Asbestos	7/3/2014	Plaintiff(s): Gary R. Barber; Mary Barber; Mw Custom Papers, LLC	Defendant(s): 3m Company; 4520 Corp., Inc.; Albay Construction Company; Ameron International Corporation; Ametek, Inc.; Bechtel Construction Company; Bechtel Corporation; Bechtel Group, Inc.; Bigge Crane & Rigging CO.; C. Overaa & CO.; Cbs Corporation; Certain-Teed Corporation; Chicago Bridge & Iron Company; Crane CO.; Crown Cork & Seal Company, Inc.; D.W. Nicholson Corporation; Daniel International Corporation; Flowserve US Inc.; Fluor Constructors International Inc; Fluor Corporation; Fluor Daniel Illinois Inc; Ford Motor Company; Foster Wheeler Energy Corporation; Gardner Denver, Inc.; Gary R. Barber; General Electric Company; Georgia-Pacific LLC; Greene, Tweed & CO., Inc.; Hercules, Incorporated; Honeywell International, Inc.; Industrial Holdings Corporation; Ingersoll Rand Company; J-M Manufacturing Company, Inc.; J.T. Thorpe & Son, Inc.; John Crane, Inc.; Mary Barber; Monterey Mechanical Company; Mw Custom Papers, LLC; Nooter Corporation; Oscar E. Erickson, Inc.; Pacific Mechanical Corporation; Parker-Hannifin Corporation; Parsons Government Services Inc.; Resco Holdings L.L.C.; Riley Power, Inc.; Rosendahl Industrial Maintenance; Rpi Company; Santa Fe Braun, Inc.; Scott CO. Of California; Sepco Corporation; Sequoia Ventures, Inc.; Soco West, Inc.; Swinerton Builders; Temporary Plant Cleaners, Inc.; The Young Group Ltd; Thomas Dee Engineering Company; Timec Company, Inc.; Union Carbide Corporation; Uop LLC; Urs Corporation; William Powell Company; Wismer & Becker Contracting Engineers; Young Insulation Group Of St. Louis, Inc.	
39	WESTSIDE BUILDING MATERIAL CORP. v. KING DRYWALL, INC.	Contracts, Breach of Contract	4/4/2014	Plaintiff(s): WESTSIDE BUILDING MATERIAL CORP.	Defendant(s): KING DRYWALL, INC.; OVERAA-TURNER GROUP JV; OAKLAND UNIFIED SCHOOL DISTRICT	
40	C. OVERAA & CO. V. U.S. GLASS & ALUMINUM, BENDHEIM WALL SYSTEMS, INC. ET AL	CONTRACTS, BREACH OF WARRANTY	3/25/2014			Party(s): C. OVERAA & CO.; DOES 1 TO 20, INCLUSIVE; LEXINGTON INSURANCE COMPANY; NATOMA ARCHITECTS, INC.; TOFT DE NEVERS & LEE; U.S. GLASS & ALUMINUM, BENDHEIM WALL SYSTEMS, INC.
41	Marina Mechanical v. C. Overaa & CO., Etal	Civil	1/8/2014	Plaintiff(s): Marina Mechanical, A Corporation	Defendant(s): C. Overaa & CO.; Menlo Park City School District; Pacific Coast Trane Controls; Mib	
42	BINKER V. ETCHEVERRY	TORTS/NEGLIGENCE, PROPERTY DAMAGE, MOTOR VEHICLE	11/27/2013			Party(s): MADEL BINKER; LARRY ETCHEVERRY; C. OVERAA & CO.
43	JOSEPH J. ALBANESE, INC. v. C. OVERAA & CO., INC.,	Contracts, Breach of Warranty	11/20/2013	Plaintiff(s): JOSEPH J. ALBANESE, INC., A CALIFORNIA CORPORATION; C. OVERAA & CO a California corporation; DAVID L GATES AND ASSOCIATES INC; DEEMS LEWIS MCKINLEY INC; LEA & BRAZE NGINEERING INC; FIELDTURF USA, INC a Florida corporation; BAY AREA GEOTECHNICAL GRUP	Defendant(s): JOSEPH J. ALBANESE, INC., A CALIFORNIA CORPORATION; C. OVERAA & CO a California corporation; C. OVERAA & CO a California corporation; A PUBLIC AGENCY MENLO PARK CITY SCHOOL DISTRICT; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, A PURPORTED BUSINESS ENTITY, FORM UNKNOWN; FARMINGTON CASUALTY COMPANY; DAVID L GATES AND ASSOCIATES INC; MOES 1-100, INCLUSIVE; DEEMS LEWIS MCKINLEY INC; LEA & BRAZE NGINEERING INC; FIELDTURF USA, INC a Florida corporation; BAY AREA GEOTECHNICAL GRUP	
44	FLOYD HENSON ET AL V. C. OVERAA & COMPANY	CIVIL	10/8/2013			Party(s): FLOYD HENSON; GABRIEL MAESTRETTI; LEONARD MINOR; C. OVERAA & COMPANY; NORTHERN CALIFORNIA LABORERS' JOINT APPRENTICESHIP TRAINING COMMITTEE; UNITED CONTRACTORS; CONSTRUCTION EMPLOYERS ASSOCIATION; ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA
45	C. OVERAA & CO., INC. V. SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO	CIVIL	9/5/2013			Party(s): C. OVERAA & CO., INC.; SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO; U.S. GLASS & ALUMINUM INC.; JOHN PATRICK BRIMMER; STEVEN DARYL CASE; RICHARD BRUCE NORRIS; BENDHEIM WALL SYSTEMS INC.; TOFT, DE NEVERS & LEE; CALVIN LEE; VBN ARCHITECTS INC.; NATOMA ARCHITECTS INC.; NATOMA ARCHITECTS INC
46	C. OVERAA & CO. INC. V. NATOMA ARCHITECTS INC.	CIVIL	8/16/2013			Party(s): C. OVERAA & CO. INC.; NATOMA ARCHITECTS INC.

47	C. OVERAA V. RB FAB	CONTRACTS, BREACH OF WARRANTY	8/16/2013			Party(s): C. OVERAA & CO.; RB FAB, INC.
48	C. OVERAA V. RUHRPUMPEN	CONTRACTS, BREACH OF WARRANTY	8/16/2013			Party(s): C. OVERAA & CO.; RUHRPUMPEN, INC.; C. OVERAA & CO.; TRAVELERS CASUALTY AND SURETY COMPANY OF; EAST BAY MUNICIPAL UTILITY DISTRICT; ROES 1 - 10; RUHRPUMPEN, INC.
49	Bay Point Control v. C. Overaa & CO Etal	Contracts, Breach of Contract	8/9/2013	Plaintiff(s): Bay Point Control Inc	Defendant(s): C. Overaa & CO; South Bayside System Authority; St Paul Fire & Marine Insurance CO	
50	United States for the Use and Benefit of O.C. Jones & Sons, Inc. v. Walbridge/OverAA et al	Contracts, Miller Act	8/5/2013	Plaintiff(s): United States for the Use and Benefit of O.C. Jones & Sons, Inc.	Defendant(s): Walbridge/OverAA; C. Overaa & Co.; Travelers Casualty and Surety Company of America; Liberty Mutual Insurance Company	
51	DLSE V. COVERAA	REMEDIES, JUDGMENTS, ENFORCEMENT	5/21/2013			Party(s): DIVISION OF LABOR STANDARDS ENFORCEMENT; C OVERAA & CO.; WILLIAMS MASONRY
52	WESTAMERICA BANK V. C. OVERAA & CO	CONTRACTS, BREACH OF WARRANTY	5/8/2013			Party(s): WESTAMERICA BANK, AS SECURED CREDITOR FOR G; C. OVERAA & CO.
53	SHACKLES v. CERTAINTED CORPORATION	Torts/Negligence, Mass Tort, Asbestos	12/28/2012	Plaintiff(s): DONALD SHACKLES; ASTA SHACKLES	Defendant(s): CERTAINTED CORPORATION; BORGWARNER MORSE TEC INC.; HONEYWELL INTERNATIONAL, INC.; J-M MANUFACTURING COMPANY, INC.; LAMONS GASKET COMPANY; METROPOLITAN LIFE INSURANCE COMPANY; OWENS ILLINOIS, INC.; PARKER-HANNIFIN CORPORATION; REPUBLIC SUPPLY COMPANY; SLAKEY BROTHERS, INC.; CBS CORPORATION; WESTBURN SUPPLY, INC.; COLONIAL SUGAR REFINING COMPANY; DAP, INC.; GRINNELL LLC; GROENIGER & COMPANY; TAYLOR PLUMBING SUPPLY COMPANY; AMERICAN INTERNATIONAL SUPPLY, INC.; RICHMOND PIPE & SUPPLY CO.; STM AUTOMOTIVE, INC.; ASSOCIATED INSULATION OF CALIFORNIA; CONSOLIDATED INSULATION INC.; DOUGLASS INSULATION COMPANY, INC.; SEQUOIA VENTURES INC.; J.T. THORPE & SON, INC.; WESTERN MACARTHUR COMPANY; MACARTHUR COMPANY; WESTERN ASBESTOS COMPANY; CHEVRON U.S.A., INC.; UNION OIL COMPANY OF CALIFORNIA; C. OVERAA & CO.; SHELL CONSTRUCTION COMPANY; ELMER J. FREETHY, INC.; ALBAY CONSTRUCTION COMPANY; SANTA FE BRAUN, INC.; OSCAR E. ERICKSON, INC.	
54	KNK PAINTING V. C. OVERAA & CO	CONTRACTS, BREACH OF WARRANTY	12/21/2012			Party(s): KNK PAINTING & COATING, INC.; C. EVERAA & CO.; TRAVELERS CASUALTY AND SURETY COMPANY OF AM; CITY OF ATWATER
55	DY ASSOCIATES, INC., A CALIFO v. C. OVERAA AND CO., A CALIFO	Torts/Negligence	10/22/2012	Plaintiff(s): DY ASSOCIATES, INC., A CALIFORNIA CORPORATION	Defendant(s): C. OVERAA AND CO., A CALIFORNIA CORPORATION; WATRY DESIGN, INC., A CALIFORNIA CORPORATION; BAY CITIES PAVING AND GRADING INCORPORATED, A CALIFORNIA CORPORATION; SUTTER HEALTH, A CALIFORNIA CORPORATION; SUTTER EAST BAY HOSPITALS	
56	HENSON v. C. OVERAA AND COMPANY	Labor & Employment	12/30/2011	Plaintiff(s): FLOYD HENSON; GABRIEL MAESTRETTI, MINOR	Defendant(s): C. OVERAA AND COMPANY	
57	AVAR CONSTRUCTION SYSTEMS, INC. v. C. OVERAA & CO.	Contracts, Breach of Contract	10/11/2011	Plaintiff(s): AVAR CONSTRUCTION SYSTEMS, INC.	Defendant(s): C. OVERAA & CO.; CITY OF HAYWARD; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	
58	WEST COAST AGGREGATES, INC. v. CALHOUN BROTHERS GRADING & PAVING, INC.	Banking/Finance, Collections	9/22/2011	Plaintiff(s): WEST COAST AGGREGATES, INC.	Defendant(s): CALHOUN BROTHERS GRADING & PAVING, INC.; C. OVERAA & CO.; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	
59	Pacific Coast Supply, LLC v. Manes	Contracts, Breach of Warranty	2/4/2011	Plaintiff(s): Pacific Coast Supply, LLC A Nevada Limited Liability Company; Pacific Coast Supply, LLC A Nevada Limited Liability Company	Defendant(s): C. Overaa & CO. A California Corporation; Farmington Casualty Company, A Connecticut Corporation; Larry Manes; Travelers Casualty And Surety Company Of America, A Connecticut Corporation	
60	NORTH COUNTIES V. C OVERAA & CO	CONTRACTS	1/5/2011			Party(s): NORTH COUNTIES DRYWALL, INC.; C. OVERAA & CO.; CALIFORNIA SHAKESPEARE THEATER; ST. PAUL FIRE AND MARINE INSURANCE CO; MARINE INSURANCE CO.
61	ROEBER'S INCORPORATED v. C. OVERAA & CO.	Contracts, Breach of Contract	12/3/2010	Plaintiff(s): ROEBER'S INCORPORATED, A CALIFORNIA CORPORATION	Defendant(s): C. OVERAA & CO., A CALIFORNIA CORPORATION; ST. PAUL FIRE AND MARINE INSURANCE COMPANY, A MINNESOTA CORPORATION; A PUBLIC ENTITY CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT	
62	C. OVERAA & CO., INC. V. U.S. GLASS & ALUMINUM, INC. ET AL	CONTRACTS, BREACH OF WARRANTY	11/23/2010			Party(s): C. OVERAA & CO. (FROM CONSOLIDATED CASE #CGC-14-538230); C. OVERAA & CO., INC.; BENDHEIM WALL SYSTEMS, INC.; BENDHEIM WALL SYSTEMS, INC.; BRIMMER, JOHN; BRIMMER, JOHN PATRICK; CASE, STEVEN DARYL; DOES 1 THROUGH 50, INCLUSIVE; DOES 1-20 INCLUSIVE (FROM CONSOLIDATED CASE #CGC-14-538230); FOES 1 THROUGH 50, INCLUSIVE; LEE, CALVIN CHIN; NATOMA ARCHITECTS, INC.; NORRIS, RICHARD BRUCE; ROES 1-50, INCLUSIVE; TOFT, DE NEVERS & LEE; U.S. GLASS & ALUMINUM, INC.; U.S. GLASS & ALUMINUM, INC.; U.S. GLASS & ALUMINUM, INC. SUED HEREIN AS U.S. GLASS & ALUMINUM (FROM CONSOLIDATED CASE #CGC-14-538230); VBN ARCHITECTS; VBN CORPORATION (FROM CONSOLIDATED CASE #CGC-14-538230); VBN CORPORATION; BRIMMER, JOHN; CASE, STEVEN DARYL; NATOMA ARCHITECTS, INC.; NORRIS, RICHARD BRUCE

D. L. FALK CONSTRUCTION

No.	Title	Key Nature	Court Juris	Filed Date	Plaintiff(s)	Defendant(s)	Parties
1	D.L. Falk Construction Inc. v. City Of Livermore	Contracts, Breach of Warranty	CA Alameda Super. Ct.	5-Nov-20	Plaintiff(s): D.L. Falk Construction Inc.	Defendant(s): City Of Livermore	
2	Bultena Construction Company v. D.L. Falk Construction, Inc. Et Al	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	31-Jan-20	Plaintiff(s): Bultena Construction Company	Defendant(s): Liberty Mutual Insurance Company; County Of Santa Clara; D.L. Falk Construction, Inc.	
3	D.L. Falk Construction Inc., A CALIFORNIA CORPORATION v. Bultena Construction Company, et al	Contracts, Breach of Warranty	CA San Mateo Super. Ct.	24-Oct-19	Plaintiff(s): D.L. Falk Construction Inc., A CALIFORNIA CORPORATION	Defendant(s): Bultena Construction Company; DOES 1-10, INCLUSIVE	
4	Security National Insurance C v. D.L. Falk Construction Inc.	Torts/Negligence	CA Alameda Super. Ct.	11-Sep-18	Plaintiff(s): Security National Insurance Company	Defendant(s): D.L. Falk Construction Inc.; Westates Mechanical Corporation, Inc.	
5		Contracts, Breach of Contract	CA Sacramento Super. Ct.	20-Aug-18	Plaintiff(s): West Coast Painting & Decorating Inc	Defendant(s): D L Falk Construction Inc; Does 1-50; Elk Grove Unified School District; Liberty Mutual Insurance Company	
6	B.A. RETRO, INC. V. D.L. FALK CONSTRUCTION, INC.	CIVIL	CA CT. APP., FIRST DIST.	2-Apr-18			Party(s): B.A. RETRO, INC.; D.L. FALK CONSTRUCTION, INC.
7	Western Engineering Contractors Inc. a California corporation v. D. L. Falk Construction Inc a California corporation	Contracts, Breach of Contract	CA Sacramento Super. Ct.	12-Dec-17	Plaintiff(s): Western Engineering Contractors Inc. a California corporation	Defendant(s): D. L. Falk Construction Inc a California corporation; Does 1 to 100 inclusive; Great American Insurance Company an Ohio corporation; Liberty Mutual Insurance Company a Massachusetts corporation; The Ohio Casualty Insurance Company a New Hampshire corporation	
8	B. A. RETRO, INC. V. D. L. FALK CONSTRUCTION, INC.	CIVIL	CA CT. APP., FIRST DIST.	1-Sep-17			Party(s): B. A. RETRO, INC.; D. L. FALK CONSTRUCTION, INC.
9	Oldcastle Buildingenvelope Inc a Delaware corporation v. Calvin Donyelle Craig	Contracts, Breach of Contract	CA Sacramento Super. Ct.	3-Aug-17	Plaintiff(s): Oldcastle Buildingenvelope Inc a Delaware corporation	Defendant(s): Calvin Craig; Calvin Donyelle Craig; D L Falk Construction Inc; Does 1-30; Elk Grove Unified School District; Liberty Mutual Insurance Company a Massachusetts corporation; Nu-Glass System Inc; Roes 1-20; Wesco Insurance Company a Delaware corporation	
10	Volk Electric, Inc. v. D.L. Falk Construction, Inc. et al	Contracts, Breach of Warranty	CA Santa Clara Super. Ct.	20-Jun-17	Plaintiff(s): Volk Electric, Inc.	Defendant(s): D.L. Falk Construction, Inc.; Liberty Mutual insurance Company; West Valley-Mission Community College District	
11	R.M.S. Supply, Inc. v. D.L. Falk Construction, Inc. et al	Contracts, Breach of Warranty	CA Santa Clara Super. Ct.	23-May-17	Plaintiff(s): R.M.S. Supply, Inc.	Defendant(s): D.L. Falk Construction, Inc.; Berkeley Unified School District; Liberty Mutual Insurance Company	
12	Capitol Elevator Co., Inc. v. D L Falk Construction, Inc. et al.	Contracts	CA San Joaquin Super. Ct.	24-Feb-17	Plaintiff(s): Capitol Elevator Co., Inc.	Defendant(s): D L Falk Construction, Inc.; Liberty Mutual Insurance Company; a California Public Entity San Joaquin Delta Community College District	
13	VOLK ELECTRIC, INC. v. D.L. FALK CONSTRUCTION, INC., et al	Contracts, Breach of Warranty	CA San Mateo Super. Ct.	30-Nov-16	Plaintiff(s): VOLK ELECTRIC, INC.; D.L. FALK CONSTRUCTION, INC.	Defendant(s): VOLK ELECTRIC, INC.; D.L. FALK CONSTRUCTION, INC.; LIBERTY MUTUAL INSURANCE COMPANY; DOES 1 THROUGH 100; OHIO CASUALTY INSURANCE COMPANY; ROES 1-100	
14	Volk Electric, Inc. v. D.L. Falk Construction, Inc. et al	Contracts, Breach of Warranty	CA Santa Clara Super. CT.	19-Sep-16	Plaintiff(s): Volk Electric, Inc.	Defendant(s): D.L. Falk Construction, Inc.; Liberty Mutual Insurance Company; City of Palo Alto	
15	Volk Electric, Inc. A Califor v. D.L. Falk Construction, Inc	Contracts, Breach of Contract	CA Alameda Super. Ct.	3-Aug-16	Plaintiff(s): D.L. Falk Construction, Inc.A Purported California Corporation; Volk Electric, Inc. A California Corporation	Defendant(s): City Of Hayward, Public Entity; D.L. Falk Construction, Inc.A Purported California Corporation; Liberty Mutual Insurance Company, A Purported Massachusetts Corporation; Volk Electric, Inc. A California Corporation	
16	Milpitas Unified School District v. Kitchell Corporation et al	Civil	CA Santa Clara Super. Ct.	5-Jul-16	Plaintiff(s): Milpitas Unified School District	Defendant(s): Kitchell Corporation; Bangar Contractors Corporation; D.L. Falk Construction	
17	Murga v. McKay	Contracts, Breach of Contract	CA Alameda Super. Ct.	15-Jun-16	Plaintiff(s): Murga, Strange & Chalmers, Inc.	Defendant(s): City Of Hayward; D.L. Falk Construction , Inc.; Kent McKay; Liberty Mutual Insurance Company	
18	Accelerated Metal Fabrication v. D.L. Falk Construction, Inc	Contracts, Breach of Contract	CA Alameda Super. Ct.	19-Oct-15	Plaintiff(s): Accelerated Metal Fabrication, LLC	Defendant(s): City Of Hayward; D.L. Falk Construction, Inc.; Liberty Mutual Insurance Company	
19	D. L. Falk Construction, Inc v. Hanson's Masonry	Civil	CA SAN MATEO SUPER. CT.	28-Aug-15	Plaintiff(s): D.L. Falk Construction, Inc.	Defendant(s): Hans's Masonry, Inc.	
20	D.L. Falk Construction Inc v. Swanson-Pico	Fraud & Misrepresentation	CA Alameda Super. Ct.	10-Feb-15	Plaintiff(s): D.L. Falk Construction Inc.	Defendant(s): Kelli T. Swanson-Pico	
21	Nor Cal Waterproofing Inc v. D.L. Falk Construction	Small Claims	CA Alameda Super. Ct.	15-Oct-14	Plaintiff(s): Nor Cal Waterproofing Inc	Defendant(s): D.L. Falk Construction	

22	B.A. RETRO INC V. D.L. FALK CONSTRUCTION INC	CONTRACTS, BREACH OF WARRANTY	CA CONTRA COSTA SUPER. CT.	30-Jun-14			Party(s): B.A. RETRO INC; D.L. FALK CONSTRUCTION, INC.; LIBERTY MUTUAL INSURANCE COMPANY; CENTRAL CONTRA COSTA SANITARY DISTRICT; THE OHIO CASUALTY INSURANCE COMPANY
23	CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC. v. GRAND ELECTRIC & CONSTRUCTION CO., INC., ET AL	Banking/Finance, Collections	CA SANTA CLARA SUPER. CT.	2-Jun-14	Plaintiff(s): CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.	Defendant(s): GRAND ELECTRIC & CONSTRUCTION CO., INC.; SANTA CLARA LIBRARY; D.L. FALK CONSTRUCTION INC.; LIBERTY MUTUAL INSURANCE COMPANY	
24	SUTTON v. FALK	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	30-Jan-14	Plaintiff(s): DAVID H. SUTTON	Defendant(s): DAVID L. FALK; D.L. FALK CONSTRUCTION, INC	
25	CHESTER C. LEHMANN CO. v. D.L. FALK CONSTRUCTION, INC.	Banking/Finance, Collections	CA ALAMEDA SUPER. CT.	20-Dec-13	Plaintiff(s): CHESTER C. LEHMANN CO.	Defendant(s): D.L. FALK CONSTRUCTION, INC.; DAVID L. FALK; FREMONT UNIFIED SCHOOL DISTRICT; INTERNATIONAL FIDELITY INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY	
26	D.L. FALK CONSTRUCTION INC., A CALIFORNIA V. SAN FRANCISCO UNIFIED SCHOOL DISTRICT	WRITS	CA SAN FRANCISCO SUPER. CT.	15-Nov-13			Party(s): D.L. FALK CONSTRUCTION INC., A CALIFORNIA CORPORATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT; GONSALVES & STRONCK CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT
27	D.L. FALK CONSTRUCTION INC. V. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, A ET AL	CIVIL	CA SAN FRANCISCO SUPER. CT.	13-Nov-13			Party(s): D.L. FALK CONSTRUCTION INC.; DOES 1 TO 50; SAN FRANCISCO UNIFIED SCHOOL DISTRICT, A MUNICIPAL CORPORATION
28	JOHNSON ENGINEERED SYSTEMS IN v. D.L. FALK CONSTRUCTION, INC	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	12-Nov-13	Plaintiff(s): JOHNSON ENGINEERED SYSTEMS INC.	Defendant(s): D.L. FALK CONSTRUCTION, INC.; FREMONT UNIFIED SCHOOL DISTRICT	
29	JANUS CORP V. D.L. FALK CONSTRUCTION	CONTRACTS, BREACH OF WARRANTY	CA CONTRA COSTA SUPER. CT.	10-Oct-13			Party(s): JANUS CORPORATION; D.L. FALK CONSTRUCTION INC; ACALANES UNION HIGH SCHOOL DISTRICT; LIBERTY MUTUAL INSURANCE COMPANY
30	FOOTHILL AIR CONDITIONING & HEATING, INC. v. D. L. FALK CONSTRUCTION INC.	Small Claims	CA SANTA CLARA SUPER. CT.	9-Oct-13	Plaintiff(s): FOOTHILL AIR CONDITIONING & HEATING, INC.	Defendant(s): D. L. FALK CONSTRUCTION INC.	
31	DIV OF LABOR STANDARDS v. DL FALK CONST ET AL	Labor & Employment, Labor/Management Relations	CA SANTA CRUZ SUPER. CT.	18-Sep-13	Plaintiff(s): DIVISION OF LABOR STANDARDS ENFORCEMENT	Defendant(s): DL FALK CONSTRUCTION INC; DENIS ANDREW MARIS; DENIS ANDREW MARIS	
32	JANUS CORPORATION v. D.L. FALK CONSTRUCTION	Small Claims	CA ALAMEDA SUPER. CT.	11-Sep-13	Plaintiff(s): JANUS CORPORATION	Defendant(s): D.L. FALK CONSTRUCTION	
33	GALEB PAVING INC. V. D. L. FALK CONSTRUCTION INC.	CIVIL	CA CT. APP., FIRST DIST.	28-Aug-13			Party(s): GALEB PAVING INC.; D. L. FALK CONSTRUCTION INC.
34	UNITED BUILDERS CORPORATION v. D.L. FALK CONSTRUCTION, INC., ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	16-Aug-13	Plaintiff(s): UNITED BUILDERS CORPORATION	Defendant(s): D.L. FALK CONSTRUCTION, INC.; LIBERTY MUTUAL INSURANCE COMPANY; EAST SIDE UNION HIGH SCHOOL	
35	GALEB PAVING INC. V. D. L. FALK CONSTRUCTION INC. ET AL.	CIVIL	CA CT. APP., FIRST DIST.	13-Aug-13			Party(s): GALEB PAVING INC.; D. L. FALK CONSTRUCTION INC.; LIBERTY MUTUAL INSURANCE COMPANY
36	C. DESTEFANI v. DL FALK CONSTRUCTION	Small Claims	CA SANTA CLARA SUPER. CT.	23-Jul-13	Plaintiff(s): CARLOS DESTEFANI	Defendant(s): DL FALK CONSTRUCTION	
37	PACE SUPPLY CORP. v. TYRRELL PLUMBING AND MECHANICAL, INC., ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	11-Jun-13	Plaintiff(s): PACE SUPPLY CORP.	Defendant(s): TYRRELL PLUMBING AND MECHANICAL, INC.; EAST SIDE UNION HIGH SCHOOL DISTRICT; D. L. FALK CONSTRUCTION, INC.; LIBERTY MUTUAL INSURANCE COMPANY	
38	D.L. FALK CONSTRUCTION INC. v. NORTHERN STATES ELECTRIC	Contracts	CA ALAMEDA SUPER. CT.	10-Jun-13	Plaintiff(s): D.L. FALK CONSTRUCTION INC.	Defendant(s): NORTHERN STATES ELECTRIC	
39	C. DESTEFANI v. DL FALK CONSTRUCTION	Small Claims	CA SANTA CLARA SUPER. CT.	4-Jun-13	Plaintiff(s): CARLOS DESTEFANI	Defendant(s): DL FALK CONSTRUCTION	
40	WESTAMERICA BANK V. D.L. FALK CONSTRUCTION	CIVIL	CA CONTRA COSTA SUPER. CT.	7-May-13			Party(s): WESTAMERICA BANK; D.L. FALK CONSTRUCTION INC
41	S. ZARRINSARAY v. D.K. FALK CONSTRUCTION, INC., ET AL	Torts/Negligence, Property Damage	CA SANTA CLARA SUPER. CT.	2-Apr-13	Plaintiff(s): SIED M. ZARRINSARAY	Defendant(s): D.L. FALK CONSTRUCTION, INC.; TIM LEBLANC	
42	AYOOB MECHANICAL CO., INC. V. D.I. FALK CONSTRUCTION, INC. ET AL	CONTRACTS, BREACH OF WARRANTY	CA SAN FRANCISCO SUPER. CT.	29-Jan-13			Party(s): AYOOB MECHANICAL CO., INC. A CALIFORNIA CORPORATION; D.I. FALK CONSTRUCTION, INC. A BUSINESS ENTITY; DOES 1 TO 100 INCLUSIVE; INTERNATIONAL FIDELITY INSURANCE COMPANY, A NEW JERSEY CORPORATION

43	PACE SUPPLY CORP v. D. HOWARD, ET AL	Contracts, Breach of Warranty	CA SANTA CLARA SUPER. CT.	12-Dec-12	Plaintiff(s): PACE SUPPLY CORP	Defendant(s): DAVID P HOWARD; SYNERGY MECHANICAL CONTRACTORS, INC.; EAST SIDE UNION HIGH SCHOOL DISTRICT; D.L FALK CONSTRUCTION, INC.; LIBERTY MUTUAL INSURANCE COMPANY	
44	PACE SUPPLY CORP. V. BRIAN AYOOB ET AL	CONTRACTS, BREACH OF WARRANTY	CA SAN FRANCISCO SUPER. CT.	6-Dec-12			Party(s): PACE SUPPLY CORP. A CALIFORNIA CORPORATION; AYOOB MECHANICAL INC. A CALIFORNIA CORPORATION; AYOOB, BRIAN; D.L. FALK CONSTRUCTION, INC. A CALIFORNIA CORPORATION; DOES 1 TO 20 INCLUSIVE; INTERNATIONAL FIDELITY INSURANCE COMPANY, A NEW JERSEY CORPORATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT A PUBLIC ENTITY
45	LACROIX DAVIS, LLC, A DELAWARE LIMITED LIABILITY V. D.L. FALK CONSTRUCTION, INC., A CALIFORNIA ET AL	BANKING/FINANCE, COLLECTIONS	CA SAN FRANCISCO SUPER. CT.	3-Dec-12			Party(s): LACROIX DAVIS, LLC, A DELAWARE LIMITED LIABILITY COMPANY; D.L. FALK CONSTRUCTION, INC., A CALIFORNIA CORPORATION; DOES 1 TO 30, INCLUSIVE; INTERNATIONAL FIDELITY INSURANCE COMPANY, A NEW JERSEY CORPORATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA
46	Systobuilders, Inc. Et Al v. D.L Falk Const. Et Al	Contracts, Breach of Contract	CA SAN MATEO SUPER. CT.	26-Apr-12	Plaintiff(s): Systobuilders, Inc.	Defendant(s): D.L. Falk Construction, Inc.; International Fidelity Insurance Company; South Bayside System Authority	
47	SYSTOBUILDERS V. D.L. FALK CONSTRUCTION	CONTRACTS, BREACH OF WARRANTY	CA CONTRA COSTA SUPER. CT.	25-Apr-12			Party(s): SYSTOBUILDERS, INC.; D.L. FAULK CONSTRUCTION, INC.; INTERNATIONAL FIDELITY INSURANCE COMPANY; CONTRA COSTA COUNTY OFFICE OF EDUCATION
48	CAL, INC., A CALIFORNIA CORPO v. D. L. FALK CONSTRUCTION, IN	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	15-Mar-12	Plaintiff(s): CAL, INC., A CALIFORNIA CORPORATION	Defendant(s): D. L. FALK CONSTRUCTION, INC., A CALIFORNIA CORPORATION; SAN LEANDRO UNIFIED SCHOOL DISTRICT	
49	GALEB PAVING , INC., A CALIFO v. D. L. FALK CONSTRUCTION INC	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	12-Mar-12	Plaintiff(s): GALEB PAVING , INC., A CALIFORNIA CORPORATION	Defendant(s): D. L. FALK CONSTRUCTION INC., A CORPORATION; LIBERTY MUTUAL INSURANCE COMPANY , A CORPORATION	
50	BREAK AWAY CONCRETE CUTTING, INC., A CALIFORNIA V. D.L. FALK CONSTRUCTION INC., A CALIFORNIA ET AL	CONTRACTS, BREACH OF WARRANTY	CA SAN FRANCISCO SUPER. CT.	18-Nov-11			Party(s): BREAK AWAY CONCRETE CUTTING, INC., A CALIFORNIA CORPORATION; D.L. FALK CONSTRUCTION INC., A CALIFORNIA CORPORATION; DOES 1 TO 30, INCLUSIVE; INTERNATIONAL FIDELITY INSURANCE COMPANY, A NEW JERSEY CORPORATION; SAN FRANCISCO UNIFIED SCHOOL DISTRICT, A PUBLIC ENTITY
51	Dinelli Plumbing, Inc v. D.L. Falk Const., Inc Et	Contracts, Breach of Contract	CA SAN MATEO SUPER. CT.	18-May-11	Plaintiff(s): Dinelli Plumbing, Inc	Defendant(s): Nc Falk Construction, D.L.; Liberty Mutual Insurance Company	
52	Graybar Electric v. Miller Electric & Technology	Contracts, Breach of Contract	CA SAN MATEO SUPER. CT.	27-Apr-11	Plaintiff(s): Graybar Electric Company, Inc., A New	Defendant(s): Miller Electric & Technology, Inc., A; Developers Surety And Indemnity Company; A Menlo Park City School District; D.L. Falk Construction, Inc., A California	
53	LEON v. FALK DEVELOPMENT INC.	Contracts, Breach of Contract	CA ALAMEDA SUPER. CT.	8-Apr-11	Plaintiff(s): JEFFREY A LEON	Defendant(s): FALK DEVELOPMENT INC.; D.L. FALK CONSTRUCTION INC.	
54	YOST-TORRES v. SKYLINE STEEL	Torts/Negligence, Motor Vehicle	CA ALAMEDA SUPER. CT.	24-Mar-11	Plaintiff(s): CHRYSTELLE YOST-TORRES; ROBERT TORRES; D.L. FALK CONSTRUCTION, INC.	Defendant(s): SKYLINE STEEL; JOSHUA SPOELSTRA; D.L. FALK CONSTRUCTION, INC.; MICHAEL BOHIN; SKYLINE STEEL; JOSHUA SPOELSTRA	

ATTACHMENT 8

DIR VIOLATIONS HISTORY 2010-2015

NAME - CONTRACTOR(S)	NAME - SUBCONTRACTOR(S)	DATE OF ASSESSEMENT	DATE OF JUDGEMENT	WAGES ASSESSED	LIQUIDATED DAMAGES	PENALTIES ASSESSED
Sausal Corp. a CA corp	Dick Emard Electric, Inc., a CA corp	5/9/2012	8/29/2012	\$ 32,069.75	\$ 14,050.00	\$ 32,069.75
C OVERAA & CO	Williams Masonry	2/4/2013	5/21/2013	\$ 84,532.79	\$ 30,200.00	\$84,532.79
D. L. Falk Construction, Inc.	Louis Riparetti, Inc.	8/10/2009	11/19/2009	\$ 20,362.17	\$ 20,362.17	\$ 7,210.00

PAST PROJECTS CONSTRUCTION CONTINGENCY

Item	Project No.	Project Name	Contract Amount	Council approved contingency	% Apprvoded Contingency	Contingency used	% Contingency Used	Reason	Construction Year
1	3447	Temp Fire Station No. 2 Tenant Improvement	\$ 207,198.00	\$ 50,000.00	24%	\$ 12,047.00	24%	Preform additional work directed by City staff and unforeseen condition	2020
2	5111	Skate Park & Concession Restroom Bldgs.	\$ 4,579,156.00	\$ 760,000.00	17%	\$ 436,964.00	57%	SS replacement, drainage & ADA improvements, Electrical relocation & flagpole	2020
3	5055	Alviso Adobe Resnovation, Phase 5	\$ 523,900.00	\$ 160,000.00	31%	\$ 9,454.00	6%	additional electrical improvements, attic hatch cover, additional painting.	2020
4	7076	McCandless Well	\$ 884,620.00	\$ 265,000.00	30%	\$ 52,162.20	20%	Preform additional work directed by City staff and unforeseen condition	2020
5	3713	Trash Removal Devices Ph 2	\$ 290,195.00	\$ 30,000.00	10%	\$ 240.00	1%	Additional cleaning of 2 inlets	2019
6	4283 & 4287	ADA Curb Ramp Transition Project 2019	\$ 660,063.00	\$ 132,000.00	20%	\$ 34,602.49	26%	quantity adjustments	2019
7	4283 & 4287	Street Resurfacing Project 2018	\$ 3,473,693.00	\$ 696,054.00	20%	\$ 324,207.60	47%	Preform additional work directed by City staff and unforeseen condition	2018
8	3454 & 3458	Enhanced Crosswalk Striping & Beacons / Radar Speed Feedback Signage	\$ 418,150.00	\$ 63,000.00	15%	\$ -	0%	Work has not started	2020
9	5109	Creighton Park Renovation	\$ 2,389,435.00	\$ 300,000.00	13%	\$ 130,579.70	44%	Irrigation and landscape modification, sidewalk expansion, Tree removal, additional fencing, construction signage	2019
10	6115, 6116	Marylinn Drive Sanitary Sewer Rehabilitation,	\$ 970,906.00	\$ 145,635.00	15%	\$ 77,122.00	53%	Bypass sewer line routing, manhole, bid item units extentions	2018

Construction Change Order Policy for Fire Station No. 2 Replacement, Project No. 3447.

2007 City Council Approved Construction Change Order Policy

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

Fire Station No.2 Replacement Project Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$7,638,200	N/A	\$ 1,200,000

**CITY OF MILPITAS
DESIGN SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into as _____, 20____ by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **SHAH KAWASAKI ARCHITECTS, a California Corporation**, with its principal place of business at **570 10th Street, Suite 201, Oakland, CA 94607** (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

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

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. City desires to engage Designer to render such services for the **Fire Station No. 2 Replacement** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Designer.

3.1.1 Scope of Services. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **DECEMBER 4, 2018** to **DECEMBER 31, 2022**, unless earlier terminated as provided herein. Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates **Philip Sheng-Ti Luo** (License No. C-29075) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under

this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) Damages: City may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of City, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control

of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Designer Services.

3.8.1 Request for Services. At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services

made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Designer with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **STEVE ERICKSON, DIRECTOR OF ENGINEERING/CITY ENGINEER**, or his or her designee, as the City's contact for the implementation of the Services hereunder.

Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **NINE HUNDRED THIRTEEN THOUSAND FOUR HUNDRED NINETY-FOUR Dollars (\$913,494.00)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through

the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Designer. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to

submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.10.7 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.10.8 Labor Compliance. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer’s performance of Services, including any delay, shall be Designer’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the City. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Designer or any subcontractor.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Designer’s Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Designer as provided in this Agreement.

3.12.2 City’s Suspension of Work. If Designer’s Services are suspended by City, City may require Designer to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Designer shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled

at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to City copies of all Project Documents required by City. In addition, Designer shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Designer, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Designer shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Designer's obligation to defend, indemnify, and/or hold harmless arises out of Designer's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Designer's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer, and, upon Designer obtaining a final adjudication by a court of competent jurisdiction, Designer's liability for such claim, including the cost to defend, shall not exceed the Designer's proportionate percentage of fault.

3.15 Insurance. Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Designer shall not

allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required therein.

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its

specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Santa Clara County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

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

3.27 Safety.

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Steve Erickson, City Engineer /

Director of Engineering

CONSULTANT:

Shah Kawasaki Architects, Inc.

570 10th Street, Suite 201

Oakland, CA 94607

Attn: Philip Luo, Principal

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

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

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Designer warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Wage Theft Certification.

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

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

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

3.35.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

3.35.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other

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

3.36 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.37 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.38 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

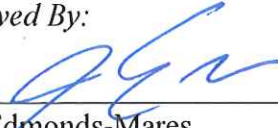
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND SHAH KAWASAKI ARCHITECTS**

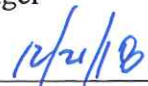
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:



Julie Edmonds-Mares
City Manager

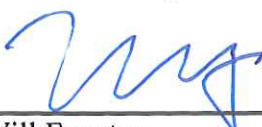


Date

Approved As to Content:

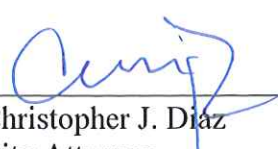
 12/6/18

Steve Erickson
Director of Engineering/City Engineer

 12-10-18

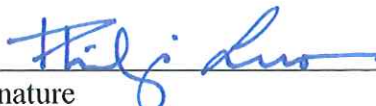
Will Fuentes
Director of Financial Services

Approved As To Form:



Christopher J. Diaz
City Attorney

SHAH KAWASAKI ARCHITECTS



Signature

Philip Luo
Name

Principal
Title

11/19/2018
Date

EXHIBIT “A”
DESIGNER’S SCOPE OF SERVICES

Scope of Services - Fire Stations No. 2 Replacement

Consultant shall perform professional services related to the pre-design, site planning and schematic design, design development, temporary relocation and facilities for fire services, construction documents, bidding and award, and construction support for the Milpitas Fire Station No. 2 Project to be located at 1263 Yosemite Drive, in the City of Milpitas, California, ("Project"). Consultant shall provide professional services in accordance with this Agreement and coordinate with the City to provide a design for a complete fire station, ready for operations. Services under the scope of work shall comply with contract provisions. Consultant shall also provide consultation to City staff, City Council and others who are involved with the Project and shall provide guidance, advice and assistance in completion of the Project.

Section 1: General Requirements

The City of Milpitas seeks to replace Fire Station No. 2 located at 1263 Yosemite Drive with a new fire station on the same site. The Milpitas Fire Department (MFD) expects staff increases to 24 members, which includes three shifts of eight fire fighters. The apparatus bay will also increase in size to three bays for two Type 1 Fire Engines, one Type 1 Reserve Fire Engine, one Type 3 Fire Engine, and one Ambulance. It is anticipated that the new building will include (3) apparatus bays, dorm rooms, office, day room, kitchen/dining room, and various support rooms. Site improvements will include modified driveways, new parking lot, and possibly a temporary residence and fire apparatus canopy.

The City's Project staff (Project Manager) shall manage the design of this Project and performance under this Agreement. Consultant shall receive final direction from the Project Manager or authorized designee only. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies. Consultant shall provide the services necessary to complete the design and assist with public bid process, construction administration, and closeout of the Project, as defined in this Agreement. Consultant shall assist with project management/coordination and preparation of technical documents in compliance with applicable codes, rules, regulations, and guidelines as required by the Building Department for issuance of a Building Permit and for bid and construction. The specifications shall include the City's front-end contract provisions and the bid schedule.

A. General Performance Requirements:

1. Consultant shall coordinate the scope of services described herein with the City and City's separate consultants and contractors as needed and as directed by City. Consultant shall also manage, coordinate, and review work submitted by the Sub-consultants for accuracy and conflicts with other disciplines.
2. Consultant and the City recognize the importance of the need to maintain the Architect's key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner.

3. The schedule for the performance of the Consultant's services included in Exhibit A may be adjusted by mutual agreement as the Project proceeds. Consultant shall manage the Consultant's services, manage its Sub-consultants and administer the Project.
Consultant shall consult with the City, research applicable design criteria, communicate with members of the Project Team, and issue monthly written progress reports and brief weekly email updates on progress, or as otherwise mutually agreed to with the City.
4. Consultant shall prepare, and periodically update, a Project Schedule and cost plan for the City's review. The Project Schedule shall identify milestones, dates for decisions required of the City, design services furnished by the Consultant and the Consultant's Sub-consultants, dates of reviews and approvals required by governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the Consultant, completion of documentation provided by the Consultant, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by City and shall incorporate pertinent calendar information including all Consultant Holidays, City Holidays, and public meeting dates of the City Council, Planning Commission, and Public Safety and Emergency Preparedness Commissions. The project schedule shall include these milestone dates:
 - a. Completion of Phase 1: Programming Phase February, 2019
 - b. Completion of Phase 2: Schematic Design May, 2019
 - c. Completion of Phase 3: Design Development August, 2019
 - d. Completion of Phase 4: Construction Documents December, 2019
 - e. Other milestones pertinent to the completion of the project
 - f. See Exhibit "B"
5. Consultant shall keep the Project within the Construction Budget (Cost Plan) to be established for the Fiscal Year (FY) 2019-2024 Capital Improvement Program (CIP) with the help of the consultant. Consultant is to develop a Cost Plan to help refine the Construction Budget through the Programming and Schematic Design. Consultant shall assist the City establish a not-to-exceed Construction Budget by February 2019 for the Fiscal Year (FY) 2019-2024 CIP budget process to secure bond funding for construction.
6. Consultant shall submit design documents to the City for purposes of review and evaluation by the City at the end of the Programming, Schematic Design (30%), Design Development (60%), and 95% Construction Document phases. Consultant shall address comments provided and compiled by the City into a single set of coordinated comments and make revisions as required by the City for each phase in a timely manner. In responding to review comments and revising the design documents, Consultant shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent. Submittals that have not completely addressed prior review comments will either be accepted as an intermediate submittal that does not satisfy the milestone, or may be rejected, until the submittal addresses the prior review comments.

7. Consultant shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
8. Consultant shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines.
9. The Consultant shall assist the City with community outreach effort and attend up to two community meetings. The Consultant will attend the Planning Commission and City Council meeting to assist with presentations to obtain approvals and entitlements for the Project.
10. Consultant shall provide the City with information and recommendations on the value of alternative materials, building systems and equipment, together with other considerations based on program, budget, resilience, and aesthetics in developing the design for the Project.
11. Upon request of the City, Consultant shall make presentations to explain the design of the Project to representatives of the City, as necessary to inform the City's various bodies (City Council, Commissions, Subcommittees, and Departments) to support the City's development and Capital Improvement review process, at each of the phases.
12. Consultant shall not rely on the accuracy of City Record Documents. The City does not warrant the accuracy or completeness of its Record Documents. Consultant shall verify all information to their professional satisfaction. Consultant may rely upon the new design documents relating to the Project, to the standard of care of those documents that are provided. Consultant will note and report any discrepancies observed in the course of professional activities covered by the services provided under this Agreement.
13. Consultant shall prepare team Organizational meetings to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
14. Consultant shall meet with the City Building and Planning departments, prior to the start of Schematic Design, Design Development and Construction Document phases in order to review local and state codes for zoning, building, and CEQA submittal and approval requirements.
15. Consultant shall make all submittals required to obtain building permits for the Project to the City of Milpitas Building Inspection Division, 455 East Calaveras Blvd, First Floor. The City will be responsible for City Department reviews and permit fees. The Consultant shall meet with the Building Official as required to review and discuss plan review comments from the Building Official. The Consultant shall make any and revisions to the plans and provide all submittals to the City as required by the City of Milpitas Building Official in order for the City to issue required building permits.

16. The Consultant shall be responsible for reviewing, coordinating, integrating and preparing construction documents of Sub-Consultants, and obtaining the stamp and signature on the plans and documents of Sub-consultants requiring professional licensure, as required by State law. Consultant shall incorporate into each set of plans and each submittal to the City and City Building Inspection Division those plans, specifications, calculations, reports and other documents prepared by Sub-Consultants. The electrical engineer shall be responsible for coordinating low voltage wiring with other electrical design. Plans that are prepared by Sub-Consultants and not incorporated into sets of complete plans will not be accepted by the City Building Department and will not satisfy achievement of the milestone.
17. Consultant shall provide design coordination of structural system, mechanical, HVAC, plumbing, fire protection, data/voice raceway, audio/visual technology, electrical, lighting, telecommunications, alarm, and other systems, for proper location, clearance and space requirements in order to reduce potential conflicts between these systems.
18. The Consultant and Sub-consultants shall meet the standard of care in performing their services. Personnel assigned to this project shall complete tasks only within their area of competence. The Consultant Team shall endeavor to perform its services in accordance with current electrical, fire, mechanical, building, safety, and other applicable codes, rules, regulations, and laws.
19. Consultant shall provide required design and detailing during the design phase of the Project, and limit the amount of design and detailing required during construction or required of the Construction Contractor to those items specifically enumerated herein below. Consultant shall provide detailed concept drawings and performance specifications and specific examples of material, products, fixtures and equipment that meet the performance specification, that provide sufficient detail to coordinate design/build work with the Project. A list of "deferred submittals" for Contractor design/build work to be included in the Construction Documents may include the following, as modified by the comments in [brackets]:
 - a. Temporary Earthwork
 - b. Elevator car and conveyance mechanism, and connection to structure - [Consultant shall design the structural support, shaft, pit.]
 - c. Automatic fire sprinkler system - [Consultant shall coordinate performance and location, layout the head locations, trim and performance specifications.]
 - d. Cold formed metal framing (exterior metal stud walls & roof joists) -[Consultant shall determine typical sections, gage, width and stud spacing, and finish.]
 - e. Non-load bearing metal wall framing (interior stud walls) -[Consultant shall determine stud size and define performance in specifications.]
 - f. Integral elements of manufactured Glazing systems, excluding structural support - [Consultant shall coordinate structural support specify fit finish.]

- g. Integral structural elements of manufactured skylight systems except structural framing and support. - [Consultant shall design waterproofing and coordinate lighting, fire sprinkler, and other appurtenances, except individual window panes.]
- h. HVAC equipment and ductwork supports - [Consultant shall coordinate ductwork and review design of supports for HVAC equipment]
- i. Pre-manufactured steel stairs - [Consultant shall specify rise and run.]
- j. Manufactured Guardrail and handrail structural components of systems [Consultant shall show extent, location, and extensions, fit and finish and coordination.]
- k. Ceiling Systems - [Consultant shall show extent, location, and elevations, fit finish and coordination.]

Consultant shall neatly list submittals required in the Specifications, organized in categories, indicating: the item, at least one acceptable manufacturer or material supplier, and references to the item mentioned in the Construction Documents, other pertinent comments or information. Quantities will be indicated in the drawings. Estimated cost will be provided in the cost estimate.

Generally, systems or products that are proprietary, licensed, or require periodic payments for continued use, are not acceptable. Exceptions may be allowed for certain software and other items, where Consultant has provided reasonable information that indicates the use is necessary and cost-effective to the City.

- 20. Work shall be done in an electronic format, appropriate to the work product, including (AutoCAD/Revit) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Primavera or Project) schedules, and other appropriate digital electronic formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a paper hard copy.
- 21. The Consultant shall prepare cost estimates to assist the City develop a budget for the project. Cost estimates will be prepared for 30%, 60%, and 95% Design Documents. Cost estimates shall factor in market conditions and other considerations for construction anticipated to start in late 2019. If the bid cost exceeds the 95% Design Cost Estimate by 10%, the Consultant will assist the City with value engineering as part of the base scope of services. The City will bid out the project within 4 months of the final cost estimate.
- 22. Consultant shall design and detail aspects of the Project to convey design intent through detailed concept drawings and performance specifications. A list of "deferred submittal" items will be provided in the drawings and specifications to define General Contractor design-built work. Specifications will list submittals required by the General Contractor.

23. Work shall be done in electronic format. Deliverables will be submitted in electronic format (PDF) and in native document formats such as Word, Excel, AutoCAD, etc. Large files will be transferred through cloud services such as Office 365 SharePoint.
24. Follow City's CAD drafting standard guidelines.
25. Green Infrastructure and Sustainability: Consultant will include sustainability measures into the design of the project. The design will consider measures will to improve energy efficiency, water usage, storm water quality control, and occupant health. The building design will meet Cal Green Standards, which is comparable to sustainability standards defined by LEED Silver. LEED certification and documentation is not included in this scope of work. The project will be designed to be able to install photovoltaic panels and one vehicle charging station at a later date. Conduit will be run as required, and space shall be provided in the electrical room for future connections.
26. Furniture Fixture & Equipment (FF&E): Consultant will provide selection services and will prepare plans and specifications for furniture, fixtures, and equipment related to the building facility as required for public bidding. Typical FF&E includes Furniture (desks, tables chairs, beds, nightstands, window treatments, carpet, flooring, filing cabinets, pedestals, lazy boy chairs, lamps, patio furniture), Appliances (washer, dryer, refrigerator, microwave, oven/range, dishwasher), and Air compressor. Exercise equipment, and firefighting support equipment will be provided by City and Contractor installed. The following items are assumed to be provided by others: gym equipment, small items (tools, appliances, kitchenware, janitorial), entertainment (TV's, DVD's, usually provided by fire fighters), IT/telecom/alert/AV (computers, servers, switches, alert [Zetron], radios, PA, AV), and fire station specialties (hose dryer, extractor, SCBA, Cascade). The Consultant shall work with the City and the City's vendors to provide the necessary backbone electrical and mechanical infrastructure needed for installation of the equipment mentioned.
27. Prepare a work plan that will support integration and interface of the proposed new Fire Station Alert System. The equipment and installation will be deployed by an outside vendor.
28. Temporary Fire Station: Consultant will prepare schematic design for Planning Approval, and upon approval will prepare architectural, civil and electrical construction documents for a temporary fire station. The temporary station shall be located on the existing fire station parking lot site and shall be phased to allow continuous operation between the demolition of the existing station and completion of the new station. The temporary station shall consist of a modular housing unit for three fire personnel, a metal awning for a fire engine, turnout and limited apparatus support storage, and a minimum of three parking stalls. During the design process, the City will make the determination to lease or purchase the modular housing unit and the awning structure directly or require the general contractor to provide as part of the construction documents. The

construction documents at minimum will be to prepare the site for the temporary utilities, site work, and structures and restoration of the site to the final new station configuration.

29. Standard of Performance: Consultant acknowledges that is their obligation to prepare a bid package, including plans, specifications, and other bid documents suitable for bidding under the Public Contract Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package. Consultant shall produce a 100% Construction Documents ready for bid within the schedule. Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 10% of the total construction bid price.

B. Estimate of Probable Construction Cost:

1. Consultant shall be responsible to design the Project to the approved Construction Budget. The Consultant shall provide an Estimate of Probable Construction Cost at 30%, 60%, and 95% Design Documents, to demonstrate the design is within the approved Construction Budget. The approved Construction Budget shall be such that if the lowest bid is within 110% of the final Estimate of Probable Construction Cost it will be no greater than the Cost Plan. Consultant shall not proceed further with next phases until each design submittals cost estimate is reconciled within the City's Construction Budget.
2. If the bid cost exceeds the 95% Design Cost Estimate by 10%, the Consultant will assist the City with value engineering as part of the base scope of services. The City will bid out the project within 4 months of the final cost estimate.

Section 2 - Scope of Services

The Consultants' scope of services for this Project shall include Architectural and Engineering Services outlined below for these new and renovated facilities. The Consultant shall provide in-house personnel or Sub-consultants to perform the services in this Agreement and as described below:

- Architectural Design
- Civil Engineering/Site Grading/Site Storm water Management Plan
- Topographical Surveying
- Landscape Design
- Structural Engineering
- Mechanical Engineering
- Plumbing Design
- Electrical Engineering
- Lighting Design
- FF&E Design
- Environmental Analysis

- Geotechnical Engineering
- Demolition Plan
- Cost Estimating

Phase 1 - Programming Phase

During the Programming Phase, the Consultant will gather information and prepare a program for the facility.

1. Kick-off Meeting: Meet with City to review project goals, work plan / schedule and initial budget to develop a Cost Plan. Review current fire station design best practices (Cal Fire Presentation). Tour existing Milpitas fire stations and discuss MFD operations and preferences.
2. Review Existing Documents: Obtain existing documents from City, potentially including prior topographic surveys, existing floor plans, site/utility locations, and reports. Review and develop questions for the City.
3. Tour of SKA Fire Station: Tour SKA's latest fire station (Napa 5) to discuss implementation of design best practices and lessons learned.
4. Interview and Prepare Program: Based on information discussed during tours of the Milpitas and SKA stations, prepare an initial program spreadsheet consisting of proposed site elements rooms, functions, net and gross square footage. Review and refine the recommendations in an interactive workshop with City.
5. Community Workshop #1: Conduct a meeting with the local community and solicit opinions regarding an appropriate aesthetics fit for the neighborhood. Record comments/opinions.
6. Topographic Survey: Prepare topographic survey.
7. City Review: Submit program spreadsheet for City approval.
8. Meetings: 2 included in this phase including meetings listed above.
9. Deliverables shall include:
 - a. Cost Plan
 - b. Summary of interviews and programming
 - c. Spreadsheet of programmatic spaces
 - d. Topographic survey
 - e. Summary of Community Workshop #1
 - f. Tour and meeting minutes

Phase 2 - Schematic Design (30%) Phase

During the Schematic Design (30%) Phase, the Consultant will work with the City to develop building plans and engage the community to develop an appropriate aesthetic fit with the

community. The Consultant shall obtain approvals of the Schematic Design from Public Safety and Emergency Preparedness Commissions, Planning Commission, and City Council, which all require public meeting presentation. Based on the City's current streamlined construction budget, the design team's approach will be to provide a highly cost effective design with a few alternative enhancements agreed in advance with the City. In this manner, it will not be necessary to "Value Engineer" the project down, but rather add enhancements if they can be afforded.

1. Consultant to prepare Team Meetings and meetings with necessary City staff to present the conceptual building alternatives.
2. Consultant to refine Schematic Design Plan based on meetings and other review comments.
3. Consultant to do preliminary code compliance review per City Building and Planning Departments requirements.
4. Consultant to prepare Schematic Design package and statement of Estimate of Probable Construction Cost to establish a Construction Budget for the FY2019-24 CIP.
5. Consultant shall provide services necessary for the preparation of Schematic Design documentation for review and approval by the City. Said Schematic documentation shall be based on the City approved Conceptual Design and shall be of sufficient scope and detail to fix and describe the size and character of the Project.
6. Schematic Design documentation services to be provided by Consultant shall include the following:
 - a. Architectural design/documentation services, including development of all Schematic Design documents necessary to establish the final scope, relationships, forms, size, appearance and cost of the Project.
 - b. The Schematic Design Documents shall include scale drawings for the following:
 - i. the site plan with on-site and off-site work information
 - ii. preliminary building plans depicting the area and configuration requirements for all interior and exterior spaces and demonstrating the solution for pedestrian & vehicular access and adjacency requirements;
 - iii. Sections including the context; elevations including the context; and, colored plan diagrams showing programmed uses and circulation.
 - iv. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/8" = 1' for floor plans.
 - c. The Schematic Design Documents shall include study models, perspective sketches, electronic modeling or combinations of these media. Models shall illustrate the building's day and nighttime appearance from interior and exterior perspectives and the impact of solar effects on the building.

- d. The Schematic Design Documents shall describe preliminary alternatives for materials, finishes, systems and products including an evaluation of their life cycle cost, durability.
- e. The Schematic Design Documents shall describe preliminary selections of major building systems and construction materials.
- f. The Schematic Design Documents shall indicate site improvements including landscaping outdoor spaces and location and layout of parking for employees, City vehicles and visitors, and pedestrian access. It shall also include a description of materials and equipment.
- g. Documents shall identify preliminary space requirements for structural and building enclosure systems, preliminary space requirements for all mechanical systems and other equipment, and points of connection for utilities including but not limited to electric, natural gas, water, sanitary, storm, telecom, data, cable TV and others.
- h. The Schematic Design shall also address access control and security measures.

7. Tasks:

- a. Temporary Relocation: Assist the MFD develop a feasible temporary relocation plan for Fire Station No. 2 to meet the Standards of Cover operations and level of service during construction. Cost estimates for the temporary relocation will be included in the Construction Budget.
- b. Develop Options: Based on the approved program, develop (3) site options indicating apparatus ingress/egress, parking, Convault, generator, and the total interior gross square footage determined in the program phase. Diagrammatically indicate general locations of interior functions.
- c. Review Options with City by discussing pros and cons of each option as well as rough order of magnitude cost differences if any. Collectively choose one option for further development.
- d. Prepare Schematic Design and Planning Submittal of selected option. Prepare site plan, landscape plan, floor plan, roof plan, building section, exterior elevations, and single line diagrams for structural, mechanical and electrical systems. In addition, prepare exterior rendering, storm water plan, planting, and exterior lighting diagrams for the Planning submittal.
- e. Community Workshop #2: Conduct a meeting with the local community and present schematic design elevations and their relationship to comments made at Community Workshop #1. Record comments/opinions.
- f. Review Schematic Design during a progress meeting with City.
- g. Prepare cost estimate of the Schematic Design and 3-4 enhancements as noted above.
- h. Prepare Geotechnical and Environmental Analysis: Based on the location of the proposed building, prepare geotechnical analysis. Prepare a Phase I Environmental Analysis of the existing site and building for abatements necessary for site work and building demolition.

- i. Assist the City present the Schematic (Concept) Design to the Planning Commission, Public Safety and Emergency Preparedness Commissions, and the City Council to obtain approvals to move on to the Design Development Phase.
8. Meetings: 7 included in this phase
 - a. 2 Design meetings with the City
 - b. Up to 2 Community Outreach meetings
 - c. Planning Commission for project entitlement
 - d. Public Safety and Emergency Preparedness Commissions
 - e. City Council Meetings for the approval of the Concept Design
9. Deliverables shall include:
 - a. Temporary relocation plan
 - b. Summaries of Community Meetings
 - c. Meeting minutes
 - d. Phase 1 Environmental Analysis report for the site and building.
 - e. Architectural & Civil Site Plan at 1/16"=1'-0" scale
 - f. Floor Plans at 1/8"=1'-0" scale
 - g. Exterior Elevations at 1/8"=1'-0" scale
 - h. Building Sections at 1/8"=1'-0" scale
 - i. Design area tabulations
 - j. 30% Cost Estimate/Construction Budget
 - k. Rendered perspectives or other illustrations to convey design intent for presentations

Phase 3 - Design Development (60% Phase)

Based on the approved Schematic Design Documents, prepare Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical and electrical systems, materials and such other elements as appropriate. Advise the City of any adjustments to the preliminary estimate of Construction Cost.

1. Consultant shall coordinate and manage its Sub-consultants throughout the Design Development phase and coordinate with the City, City's representatives and key departments, including but not limited to City's Building, Planning, Engineering, and Information Services staff.
2. Consultant shall prepare Design Development documents as specified in "Deliverables" section below based on refinement and further development of the approved schematic design, including preliminary furniture layouts, built-in fixtures, and equipment selections.
3. Consultant shall attend Team Meeting, and Fire Department Meeting, and present 50% Design package for review and approval by the City.

4. Consultant shall refine design development plans based on comments received from City.
5. Consultant shall coordinate meetings with Building & Fire Department to review plans.
6. Consultant shall finalize Design Development package as noted in Section below.
7. Consultant shall attend Team Meeting, MFD Meeting, and with City Council Meeting to present 100% design development package for review and approval by the City if requested by the City Project Manager.
8. Tasks:
 - a. Consultant shall prepare design development packages for new Fire Station and a Temporary Fire Station:
 - i. Consultant shall refine and update schematic design drawings including the temporary relocation plan in response to comments from City representatives.
 - ii. Consultant shall develop building and site details.
 - iii. Consultant shall prepare in-progress specifications for projects.
 - iv. Consultant shall develop interior/exterior design.
 - v. Consultant shall prepare interior/exterior product/finish boards.
 - b. Consultant shall submit the design development packages in PDF format to City for review which shall include the architectural, structural, and building systems drawings, and relevant drawings and materials.
 - c. Consultant shall coordinate and meet with project team, as needed, including Public Works Engineering, Fire, and Planning.
 - d. Upon completion of design development, Consultant shall provide a design development-level construction cost estimate and a project schedule including time for permits required for the project.
 - e. Consultant shall present design development packages to City.
9. Meetings: 3 included in this phase
 - a. Design Meetings
 - b. Planning Commission Meeting
10. Deliverables shall include:
 - a. Site Design:
 - i. Temporary relocation plan
 - ii. Demolition Plan
 - iii. Storm water Management Plan as required
 - iv. Architectural, Civil, and Landscape Plans at 1/16"=1'-0" scale
 - v. Building plan located dimensionally with pertinent adjacencies, street lines and grades, property lines, required setbacks, easements, rights of

- way, manholes, sewers, hydrants, light standards, etc., interfaced with survey
- vi. Preliminary grading and landscaping plans coordinated with mechanical/electrical for utility entry points; elevation datum at entries
- vii. Indicate areaways, vaults, access to subgrade spaces.
- viii. Preliminary site and exterior building lighting scheme with identification of fixture types
- ix. Parking area, paths, stairs, ramps, berms, terraces, etc.
- x. Design development details:
 - 1. Railings
 - 2. Stairs
 - 3. Ramps
 - 4. Paving types and patterns
 - 5. Benches
 - 6. Plants (if necessary) etc.
- b. Floor Plans at $\frac{1}{8}"=1'-0"$
 - i. Building perimeter footprint and exterior wall type, thickness and composition
 - ii. Structural column grid
 - iii. Major mechanical/electrical systems determined and their requirements reflected and indicated on plans
 - iv. Indicate building core - elevators, stairs, etc.
 - v. Internal partitions and types indicated
 - vi. Door swings indicated
 - vii. Adequate internal and external dimensions
 - viii. Floor, slab, and level elevations
 - ix. Typical door types
 - x. Typical partition types
 - xi. Building core element-well worked out with dimensions
 - 1. Stairs
 - 2. Elevators
 - 3. Major shafts
- c. Enlarged Plans
Large-scale (i.e. $\frac{1}{4}" = 1'-0"$ or $\frac{1}{2}" = 1'-0"$ if needed); detail lobby, entries, public plaza, major corridors, special spaces, etc. Typical to provide interior elevations of enlarged plan areas with surfaces delineated
- d. Exterior Elevations at $\frac{1}{8}"=1'-0"$ scale:
 - i. Total full-height facades including roof structures
 - ii. Fenestration fixed and related to interior walls and internal slab heights
 - iii. Overall vertical building and floor heights indicated and related to established building datum
 - iv. Indicate grid lines
 - v. Indicate setbacks, building profiles, expansion joints, etc.
 - vi. Indicate treatment of visible mechanical equipment

- vii. Systems impact (precast concrete, stone, panel systems, metal/glass curtain wall, etc.)
- e. Sections at $\frac{1}{8}"=1'-0"$:
 - i. Overall building longitudinal and transverse or cross section at same scale as floor plans
 - ii. Wall Sections ($\frac{3}{4}"=1'-0"$)
 - Full height sections conveying basic building configuration, to indicate:
 1. Foundation and perimeter treatment
 2. Typical wall construction
 3. Back-up structure, abutting floor system
 4. Window location and insulation methods
 5. Flashing, masonry coursings
 6. Mechanical penetration impacts (furring, etc.)
 7. Parapet design
- f. Interior Elevations
 - Typical and special spaces, interfaced with, and cross-referenced to, floor and reflected ceiling plans. Indicate:
 - i. Suspended ceiling lines reflecting structural and mechanical conditions above
 - ii. Breaks
 - iii. Level changes
 - iv. Pertinent vertical dimensions
 - v. Wall material and finish
- g. Reflected Ceiling Plans at $\frac{1}{8}"=1'-0"$
 - Typical and special spaces. Integrated plans reflecting structural, mechanical, and electrical impacts. Plans to indicate:
 - i. Lighting layouts
 - ii. Soffits, coves, furring
 - iii. Skylight locations
 - iv. Ceiling materials
 - v. Acoustic treatments
 - vi. Interface with window details
 - vii. HVAC grilles - supply and return
 - viii. Fire-sprinklers, if critical to design
 - ix. Access panels
 - x. Exposed structure
- h. Schedules:
 - i. Room Finish
 - ii. Door
 - iii. Window or storefront
- i. Structural Drawings:
 - i. Floor plans at the same scale as the architectural drawings
 - ii. Typical floor framing plans, including -Sizing of beam drops
 - iii. Slab openings

- iv. Thicknesses
- v. Depressions
- vi. Framing indication and governing sizing at:
 - 1. Roof structures
 - 2. Penthouse
 - 3. Bulkheads
 - 4. Other
- vii. Non-typical framing scheme where required:
 - 1. Lobby
 - 2. Floors at grade
 - 3. Other
- viii. Column points established
- ix. Final column schedule
- x. Preliminary details and sections to adequately indicate structural system
- xi. Preliminary details of major unique conditions that impact on scheme (as determined by the architect).
- xii. Details indicating accommodation with mechanical/electrical at areas of major interface
- xiii. Design development specifications
- xiv. Any necessary recommended adjustments to the preliminary estimate of construction cost
- j. Mechanical / Plumbing / Electrical
 - i. Floor plans: systems represented, major equipment, and equip. clearance requirements:
 - 1. Major shafts (sizes)
 - 2. Chases
 - 3. Mechanical rooms and electric closets - convector/fan coil locations, etc.
 - 4. Plumbing riser diagrams
 - 5. Fire-sprinkler (if applicable) main and secondary distribution branch system
 - ii. Penetrations:
 - 1. Wall
 - 2. Slab
 - 3. Beam
 - iii. Enlarged plans:
 - 1. Boiler/heater spaces - include clear height requirements
 - 2. Transformer vaults - approval sought (application started) from local utility company
 - 3. Switchgear, emergency generator, water storage tanks, fire pumps, etc.
 - 4. Roof cooling towers, major air conditioning and air-handling equipment, packaged units, etc.

- iv. Roof Plans - roof air-handling equipment: cooling towers, exhaust fans, vent pipes, etc.
- v. Data to be developed in conjunction and in coordination with the project team:
 - 1. Integrated diagrammatic lighting plans indicating overhead mechanical and electrical equipment for typical floor and special spaces
 - 2. Preliminary electric light fixture schedule and cuts sheets
 - 3. Cut sheets and explanatory information for interior visual items such as:
 - a. Louvers
 - b. Registers
 - c. Heating/cooling units
 - d. Cabinets
 - 4. Exterior louver requirements and proposed locations
- k. Updated construction cost estimate

Phase 4 - Construction Documents (95% & 100% Phase)

Based on the approved Design Development Documents, Consultant will prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the project. Consultant will advise the City of any adjustments to previous preliminary estimates of construction cost indicated by changes in requirements or general market conditions and will assist the City in filing documents required for the approval of governmental authorities having jurisdiction over the project. The Consultant will also assist the City in the preparation of drawings and specifications necessary for bid. Separate construction bid packages shall be required for, at minimum, for temporary relocation/facilities and Fire Station No. 2 Replacement.

- 1. Consultant shall coordinate and manage Sub-consultants throughout construction documents phase.
- 2. Consultant shall refine and further develop the approved Design Development package based upon City's comments on the 100% Design Development package review.
- 3. Consultant shall attend Team Meeting: 95% Construction Documents presentation.
- 4. Consultant shall prepare 100% Construction Documents package, with City's comments from the Design Development package incorporated.
- 5. Consultant to coordinate with City's telecommunications staff.
- 6. Consultant to prepare a separate construction documents package for temporary facilities/relocation and Fire Station No. 2 Replacement for Building and Fire department plan check review and permitting. Consultant shall submit permitted plans to the Engineering Department for Bidding.

7. Consultant shall prepare the 100% Construction Documents packages with final quality control review from City and Fire Department back check corrections.
8. Consultant shall make a formal presentation of the design along with the Consultant's Final Estimate of Probable Construction Cost to the Public Safety and Emergency Preparedness Commissions Meeting and City Council Meeting for Plan approval for public bid.
9. Tasks:
 - a. Consultant shall prepare construction documents for a new Fire Station:
 - i. Consultant shall refine and update design development drawings.
 - ii. Consultant shall prepare technical specifications for project in CSI format.
 - iii. Consultant shall coordinate the technical specifications with City's General Conditions and Construction Contract template
 - iv. Consultant shall refine interior design.
 - v. Consultant shall develop final interior finish boards.
 - vi. Consultant shall coordinate with City's design team
 - b. Consultant shall prepare a separate construction documents for temporary facilities/relocation for bid before the new Fire Station.
 - c. Consultant shall submit the 95% construction documents package in PDF format to City for review, which shall include the architectural, structural, and building systems drawings, and any relevant drawings, and materials and specifications. Anticipated plan sheets for submittal to the City shall include but not limited to the following:
 - i. Cover Sheet
 - ii. Construction Plan and Notes
 - iii. Temporary Relocation Plan
 - iv. Architectural Exterior and Interior Plans, Elevation and Finish Schedule
 - v. Structural Plans and Details
 - vi. MEP plans
 - vii. Typical Cross Sections
 - viii. Cabinetry, Doors and Miscellaneous details
 - d. Consultant shall provide a 95% construction documents cost estimate.
 - e. Consultant shall incorporate City comments and update drawings and specifications and issue 95% construction documents for permit.
 - f. Consultant shall respond to building department plan check comments as required to secure a permit for the project and issue a 100%.
 - g. Consultant will assist the City by providing drawings and specifications for bid.
10. Meetings: 3 included in this phase

- a. Design Meeting
 - b. Public Safety and Emergency Preparedness Commissions Meeting
 - c. City Council Meeting
- 11. Provide Final PS&E in PDF and in native electronic document formats (AutoCAD, Word, etc.).
- 12. Consultant shall submit wet stamped and signed plans and specifications for Building Permit submittal.
- 13. Deliverables shall include (PDF's and stamped and wet signed documents for the Building Permit submittal):
 - a. Site Design Drawings (refined from DD Phase):
 - i. Temporary Relocation Plan
 - ii. Demolition Plan
 - iii. Architectural Site Plan
 - iv. Civil Site Plan, Paving Plan, Erosion Control Plan, Storm water Control (Green Infrastructure) Plan, Grading Plan, Utility Plan, and Construction Details
 - v. Landscape Site Plan, Planting Plan, Irrigation Plan, Construction Details
 - b. Floor Plans (refined from DD Phase)
 - c. Enlarged Plans (refined from DD Phase)
 - d. Exterior Elevations (refined from DD Phase)
 - e. Sections (refined from DD Phase):
 - i. Overall Building Sections
 - ii. Wall Sections
 - f. Interior Elevations (refined from DD Phase)
 - g. Reflected Ceiling Plans (refined from DD Phase)
 - h. Schedules (refined from DD Phase):
 - i. Room Finish Schedule
 - ii. Door Schedule
 - iii. Partition Schedule
 - i. Details at 1 1/2" or 3"=1'-0"

Large-scale (1 1/2", 3") as required. Key to floor plan or original reference drawing:

 - i. Window types: divisions, pattern, mullion profiles, vent detail, glazing type, jamb/ head, plan section
 - ii. Stairwells - include guard and handrail design
 - iii. Metal and glass walls, side lites, etc.; for division, profile, and glazing type
 - iv. Non-typical design-related heavy gage metal work requiring special fabrication, joining, fastening to other building elements
 - v. Interior partition type and schedules - typical only; keyed to floor plans
 - vi. Built-in furniture items, reception desks, worktops, counters, cabinet types, display cases, recesses, millwork, etc.
 - vii. Typical ceiling details showing support, bracing, and transitions

- viii. Finish details showing transitions
- j. Structural Drawings (refined from DD Phase):
 - i. Add construction details
- k. Mechanical / Plumbing / Electrical (refined from DD Phase):
 - i. Add construction details

Phase 5 – Bid/Award and Construction Support

The City shall coordinate the public bid process. The Consultant shall provide separate construction bid packages as required for temporary facilities/relocation for existing Fire Station No. 2.

Consultant shall prepare a full-sized original bid set, stamped and wet signed (as required by the State) by the appropriate licensed design disciplines, to be on file in the City Engineer's Office, during bidding, and provide a digital copy of the bid package.

Once the Construction Documents are ready for public bid, the City will facilitate the bid process. Consultant will assist the City during bid phase to solicit bids from qualified contractors, attend the pre-bid meeting, address requests for information, prepare addendums as required, and assist with the evaluation of bids.

Once a bid is accepted and approved by the City, Consultant shall compile any addendums or changes to the bid package, revise the documents as necessary, and provide the City with a conformed Construction Document set labeled "for construction".

During Construction, the Consultant will attend regular site meetings, observe construction progress, review pay requests, respond to Requests for Information and substitution requests, address design changes, and review submittals and shop drawings. The team will also prepare change orders and essential bulletins, provide substantial completion and final completion certificates and assist the City in the closing of the project.

1. Consultant shall assist the City in the review and evaluation of bids.
2. If the lowest responsive bid for a Bid Package exceeds the Construction Budget for the Bid Package by more than 10%, Consultant will assist the City with value engineering as part of the base scope of services to reduce the Estimated Project Construction Cost for the Bid Package to a level that falls within the Construction Budget and assist with the rebidding as necessary.
3. The Construction Phase will commence on the date established by the Agreement between City and Contractor, and will terminate after Notice of Completion or, in the absence of a Notice of Completion, after Final Completion, of the entire Work.
4. Consultant shall attend and participate in pre-construction meetings called by the City's Project Manager.
5. The Consultant's responsibilities shall include, but not be limited to,
 - a. interpretation of the Contract Documents;

- b. periodic site observations;
 - c. review of submittals;
 - d. review of the Project Schedule;
 - e. providing cost or schedule analysis for field or change orders;
 - f. preparation of documents for proposed changes;
 - g. review of and making recommendations regarding approval of Contractor cost, schedule or application for payment data;
 - h. and general consultation to the City on design matters.
6. Consultant shall make periodic on-site observations of construction as it progresses. The frequency of site visits will average once every two weeks. When not on-site, the Consultant shall attend weekly meetings by teleconference.
 7. The consultant will assist the City with project closeout. Consultant will assist the City with the preparation of a punch list and verification of repairs. The consultant team will also assist with the systems commissioning process.
 8. The Consultant shall furnish the City one CAD copy of Record Drawings and one copy of Specifications in electronic format. Record drawings shall consist of marked-up drawings and specifications of as-built conditions provided by the Contractor.

Deliverables:

- Full set of stamped and wet signed bid documents (one hardcopy and digital copy)
- For award, a conformed set of construction documents.
- Documents related to construction support as described herein
- Record Drawings in CAD and specifications in electronic format

Phase 6 - Furniture Fixture and Equipment (FF&E)

The Consultant will assist the City with the preparation of FF&E plans and specifications including coordination with City's specialty vendors. The scope will include movable furniture, fixtures, and other equipment related to the facility but are not permanently connected to the structure or the building. FF&E will include furnishings for the dorm rooms, the day room, dining room, office, and kitchen appliances. The scope will not include firefighting equipment, exercise equipment, personal equipment/devices, and any other equipment that are not facility related.

1. Consultant shall prepare furniture, fixtures and equipment layout during the Design Development Phase and review with the City and MFD
2. Consultant shall make preliminary selection of furniture, fixtures, and equipment and review cut sheets with the City and MFD
3. Consultant shall refine and update furniture, fixture and equipment drawings during Construction Document Phase
4. Deliverables shall include:

- a. Furniture, fixture, and equipment (FF&E) plan
- b. FF&E schedule with basis of design product type, manufacturer, model, color, etc.

Phase 7 – Design Contingency

The scope of services includes a \$50,000 design contingency to address additional services as needed and as approved by the City.

Section 3: Additional Service

The following services are not included in the Consultant's Services and may be provided by the Consultant as Additional Services per the terms described in the Agreement:

1. Additional Meetings
2. For FS#3, evaluation of community risks, station performance, and response times to service calls to assess the level of service of the current station and location to ultimately determine if an alternate site is warranted for FS#3.
3. If alternate site for FS#3 is recommended, investigate and recommend potential location and sites.
4. Design services for demolition and construction FS#3

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Compensation for all Services rendered under this Agreement is based on a lump sum amount not-to-exceed. Designer will invoice City on a monthly cycle based on the fee and phasing/funding schedules attached as Exhibit "B". Designer will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Designer will inform City regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from City.

Exhibit B - Fee Schedule

Replacement of Fire Stations No. 2

Programming Phase	\$25,192	
Schematic Design (30%)	\$186,842	
Design Development (60%)	\$151,530	
Construction Documents (95% & 100%)	\$233,401	
Construction Support	\$197,559	
Furniture Fixture and Equipment (FF&E)	\$20,000	
Design of Temporary Station	\$31,970	
Total Design Fee	\$846,494	
Reimbursable Expenses	\$17,000	(Permit & Construction Phase)
Contingency for As Needed Services	\$50,000	
Total Contract Amount	\$913,494	

Compensation will be lump sum not-to-exceed amount, billed monthly on a percentage completion basis.

We recommend that the City set aside a reimbursable expenses allowance during the construction phase for printing and delivery of submittals. SKA is willing to review shop drawings electronically if provided by the Contractor, which will reduce expenses significantly. Local travel is included in base scope of services. Reimbursable expenses may also be required for large format printing or delivery for items requested by the City or Authority Having Jurisdiction (AHJ).

Shah Kawasaki Architects
City of Milpitas
RFP for Fire Station 2 (Project No. CP-3447)
Fee Schedule
11/8/2018

		ARCH	CIVIL	LANDSCAPE	STRUCT	MECH	PLUMB	ELEC	ENVIRON	GEOTECH	COST	TOTAL
1.00 Programming Phase (Fire Station 2)	HR	71	24	8	14	1.5	2.5	2	4	0	0	127
1.01 Kick-off Meeting	HR	9	2	2	6	1.5	1.5	2	2	N/A	0	
1.02 Review Existing Documents, Field & Data Collection	HR	16	4	4	8	0	1	N/A	2	N/A	N/A	
1.03 Interview and Prepare Program	HR	40	2	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1.04 Topographic Survey	HR	2	16	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1.05 City Review	HR	4	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Programming Phase (Fire Station 2)	FEE	\$14,200	\$6,375	\$850	\$1,904	\$170	\$276	\$272	\$544	\$0	\$0	\$25,192
2.00 Schematic Design (30%)	HR	738	48	58	46	9	7	30	24	110	50	1120
2.01 Develop Options	HR	80	6	12	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.02 Review options with City	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.03 Prepare Schematic Design & Planning Submittal	HR	464	32	32	40	8	6	30	N/A	N/A	N/A	
2.04 Prepare Geotechnical & Environmental Analysis	HR	2	0	0	N/A	N/A	N/A	N/A	24	80	N/A	
2.05 Review Schematic design with City	HR	8	2	2	6	1	1	0	N/A	N/A	N/A	
2.06 Prepare cost estimate	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	50	
2.07 City Review	HR	8	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
2.08 Planning Review, Community Engagement & Approval	HR	160	4	8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Schematic Design (30%)	FEE	\$125,460	\$5,100	\$6,800	\$6,256	\$956	\$744	\$3,893	\$3,621	\$19,750	\$8,000	\$186,842
3.00 Design Development (60%)	HR	579	66	43	126	17	15	49	0	0	54	949
3.01 Prepare Design Development	HR	555	60	40	120	16	14	46	N/A	N/A	N/A	
3.02 Review Design Development with the City	HR	8	2	2	6	1	1	3	N/A	N/A	N/A	
3.03 Prepare cost estimate	HR	8	4	1	N/A	N/A	N/A	N/A	N/A	N/A	54	
3.04 City Review	HR	8	0	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Design Development (60%)	FEE	\$92,640	\$12,750	\$6,800	\$17,136	\$1,806	\$1,594	\$6,250	\$0	\$0	\$9,750	\$151,530
4.00 Construction Documents (95% & 100%)	HR	904	226	146	246	41	33	49	0	0	72	1717
4.01 Prepare 95% Construction Documents	HR	720	140	60	200	28	22	40	N/A	N/A	N/A	
4.02 Review Construction Documents with the City	HR	8	4	4	6	1	1	0	N/A	N/A	N/A	
4.03 Prepare cost estimate	HR	8	2	2	N/A	N/A	N/A	N/A	N/A	N/A	72	
4.04 Building Department and City Review	HR	8	40	40	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
4.05 Prepare 100% Construction Documents	HR	160	40	40	40	12	10	9	N/A	N/A	N/A	
	STAFF	322.86%										
Construction Documents (95% & 100%)	FEE	\$135,600	\$22,950	\$10,625	\$33,456	\$4,356	\$3,506	\$6,250	\$0	\$0	\$12,000	\$233,401
5.00 Construction Support	HR	1000	40	40	132	16	14	34	0	0	0	1276
5.01 Bid & CA Support incl RFI's, submittals, field reports	HR	1000	40	40	132	16	14	34			N/A	
	STAFF	357.14%										
Construction Support	FEE	\$160,000	\$3,000	\$3,000	\$21,120	\$2,000	\$1,750	\$4,900	\$0	\$0	\$0	\$197,559
6.00 Furniture Fixture Equipment (FF&E)	HR	140										140
6.01 Prepare FF&E Plans & Specifications	HR	140	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Furniture Fixture Equipment (FF&E)	FEE	\$ 20,000	0	0	0	0	0	0	0	0	0	\$20,000
7.00 Temporary Station	HR	110	60	4	0	0	0	34	0	0	0	208
7.01 Temporary Station	HR	110	60	4	N/A	N/A	N/A	34	N/A	N/A	N/A	
	STAFF	39.29%										
Temporary Station	FEE	\$20,000	\$6,000	\$500	\$0	\$0	\$0	\$4,900	\$0	\$0	\$0	\$31,970
Subtotal of Hours	HR	3542	464	299	564	84.5	71.5	198	28	110	176	5537
Average Blended Rate		\$160	\$121	\$96	\$142	\$110	\$110	\$134	\$149	\$180	\$169	
Net Fees		\$567,900	\$56,175	\$28,575	\$79,872	\$9,289	\$7,870	\$26,465	\$4,165	\$19,750	\$29,750	\$829,811
SKA Markup (5%)(Geotech 20%)		0	\$2,809	\$1,429	\$3,994	\$464	\$394	\$1,323	\$833	\$3,950	\$1,488	\$16,683
Total Fees		\$567,900	\$58,984	\$30,004	\$83,866	\$9,753	\$8,264	\$27,788	\$4,998	\$23,700	\$31,238	\$846,494
8.00 Contingency for As Needed Services		\$50,000										\$50,000
9.00 Reimbursable Budget (limited printing & delivery only)		\$17,000										\$17,000

Shah Kawasaki Architects
City of Milpitas
RFP for Fire Station 2 (Project No. CP-3447)
Project Schedule
11/8/2018

	2019												2020			
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1.00 Programming Phase (Fire Station 2)		1.5 M														
1.01 Kick-off Meeting																
1.02 Review Existing Documents, Field & Data Collection																
1.03 Interview and Prepare Program																
1.04 Topographic Survey																
1.05 City Review																
2.00 Schematic Design (30%)			3 Months													
2.01 Develop Options																
2.02 Review options with City																
2.03 Prepare Schematic Design & Planning Submittal																
2.04 Prepare Geotechnical & Environmental Analysis																
2.05 Review Schematic design with City																
2.06 Prepare cost estimate																
2.07 City Review																
2.08 Planning Review, Community Engagement & Approval																
3.00 Design Development (60%)						3 Months										
3.01 Prepare Design Development																
3.02 Review Design Development with the City																
3.03 Prepare cost estimate																
3.04 City Review																
4.00 Construction Documents (95% & 100%)									3.5 Months							
4.01 Prepare 95% Construction Documents																
4.02 Review Construction Documents with the City																
4.03 Prepare cost estimate																
4.04 Building Department and City Review																
4.05 Prepare 100% Construction Documents																
5.00 Construction Support														14 Mos		
5.01 Bid & CA Support incl RFI's, submittals, field reports																

EXHIBIT “C”
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

See attached Exhibit “C” for Designer’s and subconsultants’ Hourly Rates.

2. REIMBURSABLE EXPENSES.

As provided in Exhibits “B” and “C”, Reimbursable Expenses may include the following:

- Printing and delivery during the construction phase for shop drawing and sample reviews.
- Printing, delivery, and other reprographic or specialty services to create presentations for the City.
- Printing and delivery required for planning submittal, permit, or other submittals to Authority Having Jurisdiction (AHJ).
- Other printing or delivery requested by the City.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates in the attached Exhibit “C” and as approved by the City.

4. ADDITIONAL CONSULTANTS.

If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer’s actual hourly rates plus no more than **TEN PERCENT (10%)** for surcharge. City shall have the authority to review and approve the rates of any such consultants.

S H A H
KAWASAKI

ARCHITECTS

**Shah Kawasaki Architects Billing Rates
2018**

Principal	\$220
Architect 3	\$180
Architect 2	\$150
Architect 1	\$125
Design Staff 3	\$150
Design Staff 2	\$130
Design Staff 1	\$115
Emerging Professional 3	\$105
Emerging Professional 2	\$95
Emerging Professional 1	\$85
Administrative Staff	\$95

Reimbursable expenses are in addition to the labor rates above and are for expenses incurred on behalf of the project including printing, plotting, scanning, mail / delivery services and travel expenses when outside of the San Francisco Bay Area.

ZFA STRUCTURAL ENGINEERS

► 2018 hourly rates

Executive Principal	\$205
Senior Principal	\$190
Principal	\$160
Senior Associate	\$145
Associate.....	\$135
Senior Engineer.....	\$120
Engineer.....	\$110
Engineer – Designer	\$100
Project BIM Manager.....	\$110
Senior BIM Technician	\$100
BIM Technician.....	\$95
Engineering Support.....	\$60

ELECTRICAL ENGINEERING SCHEDULE OF HOURLY RATES

As of Jan. 1, 2018

Professional Electrical Engineer	\$191.00
Electrical Engineer / Designer	\$167.00
Electrical Design Assistant	\$117.00
Electrical Cost Estimator	\$125.00
Field Technician / Electrician	\$121.00
Computer Aided Design / Drafter	\$106.00
Secretarial	\$88.00

Note: Overtime rates shall be 1.5 times the rates listed above for hours worked.

Reimbursable expenses shall include the following:

- Sub-consultant cost plus 10% markup or as negotiated.
- Instrumentation and Equipment rental costs plus 10% markup.
- Air fare Cost + 15%
- Lodging Cost + 15%
- Mileage \$0.50 per mile
- Reproduction Cost + 15%
- Mailing/Shipping Cost + 15%

Rates are effective through December 31 annually



Charge Rate Schedule

Contact Information

Stockton

3244 Brookside Road, Ste. 100
Stockton, CA 95219
209.943.2021

Sacramento

109 Scripps Drive
Sacramento, CA 95825
916.520.2777

San Jose

111 North Market Street, Ste. 300
San Jose, CA 95113
408.754.2021

Modesto

100 Sycamore Ave, Ste. 100
Modesto, CA 95354
209.762.3580

» siegfriedeng.com

Professional Classification

Hourly Rate

Managing Principal	\$245
Principal	\$219
Senior Associate	\$193
Associate	\$172

Project Engineer	\$163
Engineer II	\$149
Engineer I	\$133

Project Landscape Architect	\$161
Landscape Architect II	\$139
Landscape Architect I	\$114

Project Land Surveyor	\$163
Surveyor II	\$147
Surveyor I	\$129
Survey Crew, 2 Person	\$265
Survey Crew, 1 Person	\$175
Instrumentman	\$188
Chainman/Rodman	\$129

Senior Technician	\$129
Technician III	\$114
Technician II	\$99
Technician I	\$84

Expert Witness	\$400
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Clerical	\$77
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Reimbursable Expenses

Printing, Copying, Materials, Etc.	Cost + 10%
Mileage	In accordance with Federal Standard Mileage Reimbursement Rates

Notes

1. Instrumentman and Chainman rates apply to services requiring Prevailing Wage Rates for work performed at the job site.
2. These rates are effective May 28, 2018 and are subject to periodic adjustments.

2018 HOURLY RATES – COST MANAGEMENT



DISCIPLINE	HOURLY RATE
<i>Cost Management Services</i>	
Managing Director / Director / Regional Director	\$210.00
Associate Director	\$185.00
Senior Cost Manager / Senior MEP Cost Manager	\$175.00
Cost Manager	\$160.00
Assistant Cost Manager / Estimating Technician / Intern	\$115.00

EXHIBIT "D"
INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Designer's Agreement.

Designer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Designer, its agents, representatives, employees or subcontractors.

Designer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Designer shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Designer's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Designer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Designer, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

- ☒ Insurance appropriates to the Designer's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate
- ☐ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
- ☐ Insurance appropriates to the Designer's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- ☒ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Designer provides written verification it has no employees)*

The Designer makes the following certification, required by section 1861 of the California Labor Code:

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

Designer Signature

Builder's Risk (Course of Construction):

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

Surety Bonds:

- ☐ Contractor shall provide the following Surety Bonds:
1. Bid Bond
 2. Performance Bond
 3. Payment Bond

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

Designer's Pollution Legal Liability:

- ☐ Designer's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Designer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Designer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

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

Additional Insured Status:

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Designer or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Designer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Designer's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

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

For any claims related to this contract, the **Designer's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Designer's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Designer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged,

impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Designer hereby grants to City a waiver of any right to subrogation which any insurer of said Designer may acquire against the City by virtue of the payment of any loss under such insurance. Designer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Designer, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Designer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Designer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to the contract effective date**, the Designer must purchase “extended reporting” coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Designer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Designer shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Designer and City in the same manner and to the same extent as Designer is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Designer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Designer’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Designer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/5/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Dealey, Renton & Associates
P. O. Box 12675
Oakland CA 94604-2675

CONTACT
NAME: David C. Eckman
PHONE (A/C, No, Ext): 510-465-3090 FAX (A/C, No): 510-452-2193
E-MAIL
ADDRESS: deckman@dealeyrenton.com

INSURED
Shah Kawasaki Architects
570 - 10th Street, Suite 201
Oakland CA 94607

SHAHKAWAS

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Travelers Property Casualty Co of Ameri	25674
INSURER B : Travelers Indemnity Co. of Connecticut	25682
INSURER C : Travelers Casualty & Surety Co. America	31194
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES

CERTIFICATE NUMBER: 922924364

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y Y	6809H776249	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y Y	BA9745M715	5/1/2018	5/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$		CUP9887P47A	5/1/2018	5/1/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N/A	UB4K465043	5/1/2018	5/1/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability		105511924	10/17/2018	10/17/2019	\$1,000,000 \$2,000,000 per Claim Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project #18725, Replacement of Fire Station #2, 1263 Yosemite Drive, Milpitas, CA

City of Milpitas and its elected and appointed officers, attorneys, agents and employees are named as an additional insured as respects general and auto liability as required per written contract or agreement. General Liability and Auto Liability are Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s). 30 Days Notice of Cancellation

CERTIFICATE HOLDER

CANCELLATION 30 Day Notice of Cancellation

City of Milpitas
Attn: Woojae Kim
455 E. Calaveras Boulevard
Milpitas CA 95035

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76(00) — 001

POLICY NUMBER: UB4K465043

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT CALIFORNIA
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 3.00 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

City of Milpitas
Attn: Woojae Kim
455 E. Calaveras Boulevard
Milpitas CA 95035

Job Description

Re: Project #18725, Replacement of Fire Station
#2, 1263 Yosemite Drive, Milpitas, CA - City of
Milpitas

DATE OF ISSUE: 11/30/2018

ST ASSIGN: CA

017106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph A.5., **Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Shah Kawasaki Architects

Endorsement Effective Date: 5/1/2018

SCHEDULE

Name Of Person(s) Or Organization(s): Re: Project #18725, Replacement of Fire Station #2, 1263 Yosemite Drive, Milpitas, CA - City of Milpitas

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

S H A H
KAWASAKI
ARCHITECTS

REQUEST FOR AUTHORIZATION OF ADDITIONAL SERVICES

Basic Services Project: Milpitas Fire Station #2

Date: 10/21/2020

Project Number: 18725

Additional Request Number: 7

To: Mr. Lyhak Eam, P.E.
Associate Civil Engineer
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

1. BACKGROUND FOR ADDITIONAL SERVICE REQUEST

We propose to amend our contract to include additional contingency for Fire Station #2.

2. SCOPE OF ADDITIONAL SERVICE

The work will include construction support that is not listed in the original contract.

3. SCHEDULE

There is no proposed change to the Schedule.

4. COMPENSATION

Services described above will be provided on a time and material basis with a not-exceed of \$75,000.

5. TERMS

Upon return of a fully executed authorization, this service shall become part of the agreement identified above. Any further services are excluded and will be requested under a separate authorization of additional services.

6. ACCEPTANCE

(Please sign both copies, return one copy to SKA and keep the other copy for your records)

SHAH KAWASAKI ARCHITECTS
A CALIFORNIA CORPORATION

OWNER:

BY: Alan Kawasaki

BY: _____

TITLE: Principal

TITLE: _____

DATE: 10/21/2020

DATE: _____

**SETTLEMENT AGREEMENT AND GENERAL RELEASE
BETWEEN
THE LAFAYETTE REDEVELOPMENT AGENCY AND C. OVERAA & CO.
FOR
THE LAFAYETTE LIBRARY AND LEARNING CENTER PROJECT**

This Settlement Agreement and General Release ("Agreement") is entered into by the Lafayette Redevelopment Agency (the "Agency") and C. Overaa & Co. ("Overaa") (collectively "Parties") as of this date of April ____, 2011 ("Effective Date").

RECITALS

A. Overaa is the general contractor on the Lafayette Library and Learning Center Project (the "Project") pursuant to a contract with The Agency dated February 12, 2007 (the "Contract").

B. The Parties previously entered into a Settlement Agreement and General Release dated March 23, 2009, to address issues that arose before that date.

C. A further dispute between the Parties concerning the Project has arisen regarding alleged changes in the work and Overaa's progress and performance on the Project ("Dispute"). Among the issues involved in the Dispute are Overaa's claims it has incurred monetary damages as a result of alleged construction delays and changes to the Project and the Agency's claims that Overaa is liable for liquidated damages for delays in completing the Project as well as items of work that the City alleges are incomplete and do not comply with the contract documents.

D. The Parties agree that the total adjusted contract amount between the Agency and Overaa is \$33,309,217 and the net remaining (unpaid) contract balance is \$2,488,014. Overaa claims that, in addition to that amount, it should be paid:

- i. \$110,160 for all outstanding change order requests net of credits due to the Agency as a result of these and other contract changes; and,
- ii. \$915,778 for acceleration charges per COR 575.

The Agency claims that Overaa is responsible for:

- iii. \$487,300 for punch list work that has not yet been completed; and,
- iv. \$2,475,100 in liquidated damages.

These amounts listed above comprise and capture the parties' total and complete understanding of the unresolved and unpaid amounts resulting from the Contract.

NOW, THEREFORE, as full settlement, resolution, accord and satisfaction of the Dispute and the Parties' claims and potential claims arising out of the Project, whether known or unknown, the Parties hereby agree as follows:

1. Notice of Completion. Upon execution of this Agreement, the Agency's Governing Board shall take formal action to accept the Project as complete and file a Notice of Completion with the Contra Costa County Recorder.

2. Initial Payment. Within 30 days of the recording of the Notice of Completion, and following receipt of a written Consent to Payment from Overaa's payment and performance bond surety, the Agency shall pay Overaa the sum of One Million Six Hundred Three Thousand Nine Hundred Twenty-Five Dollars (\$1,603,925), calculated as follows:

a.	Contract balance + change orders	\$2,598,174
b.	Costs for preparing for grand opening events	\$30,000
c.	Less 150% of alleged punch list value	(\$730,950)
d.	Less 125% of stop notices	(\$243,299)
e.	Less warranty retention per Contract	(\$50,000)
f.	Net payment	\$1,603,925

3. Waiver of Claims. As more fully set forth below, upon final payment the Parties will forever waive any and all claims against each other for additional compensation of any kind arising from or related to the Project, except as provided in this Agreement, including Overaa's claim for extended overhead, general conditions or other costs, and contract time, including the amount of \$915,778 in acceleration charges set forth in Change Order Request 575, and the Agency's claim for liquidated damages.

4. No Additional Items to Punch List. A copy of the punch list applicable to this Agreement is attached hereto as Exhibit A. The Agency agrees that, upon execution of this Agreement, no additional items will be added to the punch list, except items resulting from work performed to correct items on the current punch list and approved by the Consultant or Arbitrator as set forth below. In addition, Overaa acknowledges that the Agency contends that Overaa is responsible for resolving certain warranty issues related to potential defective work and products for which Overaa has received notice as of the date of this Agreement. A copy of the list of warranty items related to potential defective work and products for which Overaa has received notice is attached hereto as Exhibit B.

5. Punch List Items Under \$7,500. The Agency and Overaa agree to use the following procedure to resolve punch list items under \$7,500, as shown on Exhibit A-1:

a. The parties will engage, not later than April 12, 2011, a mutually acceptable construction consultant experienced in resolving disputes arising from the construction of public buildings ("Consultant"). The Consultant will not have been employed by either the Agency or Overaa in connection with the Project, or in any capacity in the previous 24 months, and have no current or pending business relationship with either the City or Overaa.

b. The Consultant will review the punch list against the contract documents and related documents, such as Requests for Information (“RFI’s) and responses to RFI’s, visit the building with the parties, and will, within ten (10) days from the date the Consultant is engaged, provide binding direction to Overaa and the Agency regarding the punch list items that are individually valued at less than \$7,500.

c. The Consultant may give only one of the following directions for each punch list item:

(i) If the Consultant determines that an item does not meet the contract requirements, direct Overaa to complete the item in accordance with the contract documents. If Overaa elects to complete the item, the Consultant shall (a) confirm the completion and remove the item from the list, or (b) direct Overaa to perform such further work as the Consultant determines is required. Alternatively, if Overaa elects not to complete the item, the Consultant shall establish a credit for the item as set forth in Paragraph (iii) below;

(ii) If the Consultant determines that an item does meet the contract requirements, direct the Agency to remove the item from the punch list; or

(iii) If the Consultant determines that an item does not meet the contract requirements, but that bringing the item into compliance with the contract requirements would cost substantially more than the diminution in value to the Project, the Consultant shall direct the Agency to accept the item “as is,” subject to a credit (reduction in the contract price) from Overaa equal to Consultant’s determination of the diminution in value. In determining any diminution in value, the Consultant shall consider the item’s function, life cycle, aesthetics and any other relevant factors. The amount of the credit shall not exceed 150% of the value set forth for the item in Exhibit A-1.

d. If the Consultant finds that the contract documents and related documents, such as Requests for Information (“RFI’s) and responses to RFI’s do not provide sufficient information to determine whether an item on the punch list meets the contract requirements, the Consultant may consider whether the item meets industry standards for good workmanship on a civic structure similar in quality to the Library, and provide direction, as described above, on that basis.

e. In making the determinations set forth above, the Consultant shall turn first to the contract documents. If, in the Consultant’s determination, the contract documents provide a sufficient basis for a determination, the Consultant shall evaluate the item based on the contract requirements. The Consultant will turn to industry standards only after concluding that the contract requirements are insufficient for a determination of the issue.

f. If the Agency desires to add items to the punch list for work allegedly required because of the punch list work, it shall make a request therefor to the Consultant. The Consultant’s decision as to (a) whether such work is required, and (b) the scope and value of such proposed work shall be binding.

g. The Consultant may also make recommendations on higher value items, which recommendations shall not be binding on the parties.

6. Completion of Punch List. Overaa will aggressively and diligently work to complete, fix and resolve, in compliance with the contract documents and the Consultant's direction, all items on the punch list with a value of less than \$7,500, by June 13, 2011, unless the parties mutually agree otherwise in writing. At its election, Overaa may attempt to resolve items valued of \$7,500 or higher. Should Overaa make such an election, Overaa shall follow the procedures set forth above in Paragraph (5)(c)(i) for removal of the item from the punch list.

7. Punch List Items Valued at \$7,500 and Above. The Agency and Overaa agree to use the following summary arbitration procedure to determine responsibility for and cost of the punch list items that are unresolved and valued at \$7,500 or higher ("Unresolved Punch List Items") as of June 13, 2011. The arbitrators' decision will be binding and not subject to review.

a. The Agency and Overaa will each select one arbitrator experienced in resolving disputes arising from the construction of public buildings no later than June 13, 2011. The party-appointed arbitrators will not have been employed by either the Agency or Overaa in connection with the Project, or in any capacity in the previous 24 months, and have no current or pending business relationship with the appointing party.

b. Those arbitrators will, no later than June 24, 2011, select a third arbitrator experienced in resolving disputes arising from construction of public buildings from the panel of neutrals with construction expertise from the Northern California offices of Judicial Arbitration and Mediation Services ("JAMS"). The third arbitrator will not have been employed by either the Agency or Overaa in connection with the Project, or in any capacity in the previous 24 months, and have no current or pending business relationship with the Agency or Overaa.

c. The arbitrators will receive a set of the contract documents (plans and specifications), the punch list, Requests for Information and responses, and any change orders or other documents either party considers essential to a determination of the punch list issues.

d. The Agency, Overaa and the arbitrators will meet at the Library on a mutually agreeable date, without attorneys, to view the Unresolved Punch List Items. After reviewing the documents and viewing the building with the parties, the arbitrators will issue a written decision setting forth one of the following determinations for each punch list item:

(i) The item does not meet the contract requirements;

(ii) The item does meet the contract requirements; or

(iii) The item does not meet the contract requirements, but bringing the item into compliance with the contract requirements would cost substantially more than the diminution in value to the Project.

e. If the arbitrators find that contract documents and related documents, such as Requests for Information ("RFI's) and responses to RFI's do not provide sufficient information to determine whether an item on the punch list meets the contract requirements, the arbitrators may consider whether the item meets industry standards for good

workmanship on a civic structure similar in quality to the Library, and provide direction, as described above, on that basis.

f. In making the determinations set forth above, the arbitrators shall turn first to the contract documents. If, in the arbitrators' determination, the contract documents provide a sufficient basis for a determination, the arbitrators shall evaluate the item based on the contract requirements. The arbitrators will turn to industry standards only after determining that the contract requirements are insufficient for a determination of the issue.

g. The arbitrators (or, at their election, a cost estimating company) will prepare an estimate of the cost for the Agency to contract for completing or correcting each item the arbitrators determine do not meet the contract requirements. The estimated cost shall not exceed 150% of the value for the item set forth on Exhibit A-1. If bringing an item into compliance with the contract requirements would cost substantially more than the diminution in value to the Project, the arbitrators will determine a credit (reduction in the contract price) equal to the diminution in value. In determining the amount of the credit, the arbitrators (or cost estimating company) shall consider the item's function, life cycle, aesthetics and any other relevant factors. The amount of the credit shall not exceed 150% of the value set forth for the item in Exhibit A-1.

h. The Agency and Overaa will each pay the fees and costs of its selected arbitrator, plus one-half of the fees and costs of the third arbitrator, and those of the estimating company, if any.

8. Final Payment. No later than thirty days after the parties receive the punch list estimate and Overaa delivers to the Agency a written Consent of Surety from Overaa's payment and performance bond surety, the Agency will make final payment to Overaa, which will be calculated as follows:

a. Amount withheld for punch list items \$ 730,950;

b. Reduced by: 1) the estimated cost to correct the incomplete punch list items the arbitrators find do not meet the contract requirements; 2) credits to the Agency as determined by the arbitrators; and 3) the warranty retention per the Contract, which shall be paid to Overaa one year after acceptance of project by the Agency, subject to deductions for warranty work not corrected as specified by Contract Specifications 00700 Part 9; and

c. Reduced by the value of any remaining stop notices for which Overaa has not provided releases or release bonds, times 1.25. If the proposed release bond is in the statutorily required amount and issued by (a) a bonding company licensed in California and (b) a bonding company or an affiliate of a bonding company other than the one which issued the payment and performance bonds for the Project, the Agency shall permit Overaa to provide release bonds for any and all stop notices filed concerning the Project.

9. Pending Litigation. Overaa shall defend and indemnify Agency in the action entitled *Alumawall, Inc. v. C. Overaa & Co., et. al.*, Contra Costa County Superior Court Case No. C 11-00112. Agency shall permit Overaa to file a release bond for the stop notice filed by Alumawall, Inc., as set forth in Paragraph 8(c), above. Upon receipt of final payment, Overaa shall dismiss,

with prejudice, the cross-complaint filed against Lafayette in the action entitled *Blue's Roofing v. C. Overaa & Co., et. al.*, Contra Costa County Superior Court Case No. C-10-00550.

10. Warranties. Overaa, its subcontractors and suppliers shall honor all warranties and guarantees as specified in the Contract documents. The warranty shall begin as of November 14, 2009 for work for which no punch list items have been identified and also for work which Overaa has not received notice of potential defective workmanship or product from the Agency as of the date of this Agreement (as set forth on Exhibit B). For all other items the warranty per the Contract shall begin as of the Agency's date of acceptance of the Project as provided by this Agreement.

11. General Release of Claims.

(a) With the exceptions set forth below, in exchange for the Agency's final payment and releases as set forth herein, Overaa, for itself and on behalf of its surety, affiliates, predecessors, officers, employees, insurers, or any other representative (collectively "Overaa Entities"), shall waive, forgive and release any and all claims, requests, liens, liabilities, causes of action, suits and losses or damages of every kind whatsoever, including but not limited to, obligations or demands for extra compensation, schedule relief or other relief of any sort against the Agency and City of Lafayette, whether known or unknown, manifested or unmanifested, at law or in equity, pursuant to statute, or otherwise, which have arisen or may hereafter arise, in connection with the Dispute or the Project. Overaa's Entities waiver, forgiveness and release of claims specifically includes, but is not limited to, claims for inefficiencies, impacts, cumulative impacts, home office overhead, field office overhead, resource escalation, and any other type of claim arising from the Dispute or from the Project, such as, by way of illustration but not limitation, including those arising from the Contract and all change orders, contractor "File Numbers," Requests for Information, Proposed Change Orders, CORs, impacts, interference and scope changes of any type whatsoever, whenever such work is performed.

(b) With the exceptions set forth in Paragraph 13, below, in exchange for Overaa's performance and releases as set forth herein, the Agency for itself and on behalf of its sureties, insurers, officials, employees, or any other representative (collectively "Agency Entities"), shall waive, forgive and release any and all claims, requests, liens, liabilities, causes of action, suits and losses or damages of every kind whatsoever, including but not limited to, obligations or demands for liquidated damages, extra compensation, schedule relief or other relief of any sort against Overaa, whether known or unknown, manifested or unmanifested, at law or in equity, pursuant to statute, or otherwise, which have arisen or may hereafter arise, in connection with the Dispute or the Project.

12. Waiver of Civil Code section 1542. As part of its general release in this Agreement, and except as provided in Paragraph 13, upon receipt of final payment, Overaa and the Agency expressly waive their rights under Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The parties understand and acknowledge the significance and the consequence of the waiver of Section 1542 of the California Civil Code. The parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, attorney's fees, costs and liabilities of any nature whatsoever that are the subject of this Agreement. The parties agree to assume the risk of the possible discovery of additional or different facts and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts. Should they eventually suffer any additional damages, they will not be permitted to make any claim for those damages. They acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of the Agreement which they do not know exist, which, if known, would materially affect their decision to execute the Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

13. Unrelated Claims, Third Party Actions, Warranties and Latent Construction Defects Exclusion. The Parties agree that specifically excluded from any release or waiver by the parties under this Agreement are any demands, claims and causes of action arising from (a) those warranty issues listed on Exhibit B and such other warranty issues as may arise following the date of this Agreement; (b) latent defects, including those related and unrelated to the Dispute, (c) any third party actions for property damage, bodily injury, personal injury or death, or (d), the Agency's rights pursuant to California Code of Civil Procedure section 337.15. The parties shall not be precluded from bringing any action at law or equity arising from or relating to such matters.

14. No Assignments. The parties represent and warrant that neither has made any assignment and further will make no assignment of any claim, demand, right of action, or any right of any kind whatsoever, embodied in any of the subject matter referred to herein and that no other person or entity of any kind had, has or may have any interest in any of the claims, demands, causes of action, obligations, damages, attorney's fees, costs and liabilities referred to herein.

15. Indemnification. Overaa agrees, on its own behalf and on behalf of its payment and performance bond sureties, that it shall defend and indemnify the Agency and City against any and all claims and lawsuits by subcontractors or material suppliers of Overaa, or anyone claiming through Overaa, arising out of the Project that in any manner relate to the claims released in this Agreement, including but not limited to subcontractor and/or material supplier claims for non-payment, delays, direct costs, and indirect costs. Among other things, Overaa shall defend and indemnify Lafayette in the following action:

*Alumawall, Inc. v. C. Overaa & Co., et. al., Contra Costa County
Superior Court Case No. C 11-00112.*

16. Remainder of Contract in Effect. Except as specifically amended by this Agreement, the Contract shall remain unchanged and in full force and effect.

17. Entire Agreement. This Agreement embodies the entire understanding and agreement between the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements between the Parties with respect to the matters delineated herein.

Each Party acknowledges that no Party, agent or representative of the other Party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement that induced the other Party to sign this document. No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

19. Binding on Successors. This Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

20. Governing Law. Any legal action to enforce the provisions of this Agreement shall be handled pursuant to California law. The Party prevailing in such action shall be entitled to reasonable attorney's fees and such fees shall be included in the judgment, together with all costs.

21. Severability. If any provision or any part of any provision of this Agreement shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force and effect. The remaining provisions of this Agreement, however, shall continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

22. Terms. All terms not herein defined shall have the same meaning as found in the Project Contract Documents.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date:

LAFAYETTE REDEVELOPMENT
AGENCY

C. OVERAA & CO.

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ Budget Appropriation ☐ Budget Transfer	331-9513447153899 334-3870	\$3,400,000 \$3,400,000	331-951344774800 334-3999	\$3,400,000 \$3,400,000

Adopt a Resolution to Reject a Bid Protest from C. Overaa & Co., Waive Immaterial Bid Deviations and Award the Construction Contract to Sausal Corporation, in the amount of \$7,638,200 for the Fire Station No. 2 Replacement Project No. 3447; Authorize the City Manager to Execute the Construction Contract; Authorize the Engineering Director/City Engineer to Negotiate and Execute Contract Change Orders; Approve and Authorize the City Manager to Execute Amendment No. 1 to the Design Service Agreement with Shah Kawasaki Architects; and Approve a Related Budget Amendment.

Background:

On November 17, 2020, Staff presented the bid results for the Fire Station No. 2 Replacement Project, Project No. 3447 ("Project"), and recommended the City Council adopt a resolution to reject a bid protest from C. Overaa & Co., waive immaterial bid deviations, and award the construction contract to the lowest responsible bidder, Sausal Corporation.

During the presentation, staff analyzed the allegations made in the bid protest from C. Overaa & Co. as well as a bid advisory letter submitted by the Carpenters Local 405 Union (Union Letter). As mentioned during the presentation, City Staff and the Attorney's Office have reviewed the bid protest and the Union Letter and determined the claims made have no merit. The recommendation was for the Council to reject the bid protest and to award the construction contract to the lowest bidder, which is Sausal Corporation. The November 17, 2020 City Council Agenda Report is attached for reference. (Attachment 2).

During the presentation, several Council Members stated they had received additional information regarding the safety and labor relations record of Sausal Corporation, and suggested the construction contract should be awarded to the next bidder, C. Overaa & Company for a price that is \$861,800 higher than the low bid submitted by Sausal. The direction from the City Council was for staff further investigate the background of Sausal Corporation as well as C. Overaa & Company and the 3rd low bidder DL Falk Construction Inc. and present these findings at the December 15, 2020 Council Meeting for further discussion.

Fiscal Impact:

The FY 2020-21 Adopted Budget assumed the construction cost for the improvements to be \$15.7 million financed with the issuance of \$13 million in general fund lease revenue bonds for the replacement of Fire Station No.2. Based on the competitive bidding environment primarily for the construction contract, on October 20, 2020, the City Council approved the sale and issuance of \$9.6 million bond, a decrease of \$3.4 million. Therefore, staff recommends reducing the financing source and project budget by \$3.4 million.

Even with the recommended budget adjustment, there is enough funding available to award the construction contract and authorize Amendment No. 1 to the Design Services Agreement with SKA. As of October 31, 2020, the available Project funding is as follows:

2020 Lease Revenue Bonds	\$9,600,000
General Government CIP Fund	\$2,439,552
Available Project Budget	\$ 12,039,552

Summary of Estimated Construction Cost

Construction Contract	\$ 7,638,200.00
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15% Construction Contingency	\$ 1,200,000.00
Administration and Inspection	\$ 600,000.00
Design Services Agreement - Amendment No.1	\$ 75,000.00
Total Estimated Cost	\$ 9,513,200.00

The remaining funds in the Project of about \$2.5 million are needed to cover other Project costs such as lease payments and demobilization for the temporary fire station, moving costs from the temporary to the permanent facility, as well as staff and soft costs.

Policy Alternative:

Alternative: Do not reject the bid protest and do not award the construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation.

Pros: None

Cons: The Project is on schedule to start construction in early 2021, which will allow completion of the building enclosure by Fall 2021 and avoid potential weather delays. Not awarding the contract will delay the Project for up to nine months and will likely increase Project costs by an estimated amount approaching \$1,000,000, which would have to be funded from reserves.

Reason not recommended: It is recommended the Project be awarded to Sausal Corporation to ensure the Project remains on schedule and within budget.

California Environmental Quality Act:

The Project qualifies for categorical exemption under Class 2 "Replacement or Reconstruction" as defined in CEQA Guidelines Section 15302.

Recommendation:

Adopt a resolution to:

1. Reject a bid protest from C. Overaa & Co.;
2. Waive immaterial bid deviations in Sausal Corporation's bid;
3. Award a construction contract to the lowest responsible bidder submitting a responsive bid, Sausal Corporation, in the amount of \$7,638,200;
4. Authorize the City Manager to execute the construction contract with Sausal Corporation;
5. Authorize the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$1,200,000;
6. Approve and authorize the City Manager to execute Amendment No. 1 to the Design Services Agreement with SKA to increase compensation by \$75,000 for construction support services on the Project;
7. Approve a budget amendment for the Fire Station No. 2 Replacement (Project No. 3447) by reducing lease revenue bonds proceeds and construction costs by \$3.4 million.

Attachments:

- 1: Resolution
- 2: November 17, 2020 City Council Agenda Report and attachments
- 3: Roofing personnel qualifications/resume
- 4: Notice of Active RCSD Construction Contract
- 5: City of Pleasant Hill City Council meeting minutes
- 6: OSHA Violations History
- 7: Litigations History
- 8: DIR Violations History
- 9: List of Past Project Construction Contingency
- 10: Change Order Policy
- 11: Design Service Agreement with SKA
- 12: Amendment No. 1 to Design Service Agreement with SKA
- 13: Settlement Agreement Between City of Lafayette and C. Overaa & Co.

☐ Check if City Council Approval required.

Meeting Date: December 15, 2020

Requested by:	Department Head: Steve Erickson	Date: December 15, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: December 15, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report on the Status of COVID19 Testing in the City of Milpitas; Authorize Additional \$278,000 to Fund the City's Mobile Testing Unit and the County Testing Sites through March 31, 2021; and Approve and Authorize the City Manager to execute Amendment No. 2 to Agreement with IGeneX
Category:	Public Safety
Meeting Date:	12/15/2020
Staff Contact:	Geoffrey Maloon, 408-586-2818
Recommendations:	1. Receive an update regarding the status of COVID-19 testing in Milpitas. 2. Authorize \$278,000 to fund the City's mobile testing unit and the County testing sites through March 31, 2021. 3. Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with IGeneX extending the term from October 31, 2020 to December 31, 2021

Background:

On March 12, 2020, in response to the growing Coronavirus threat and the State of California's declaration of a state of emergency, City Manager Steve McHarris proclaimed a local emergency. On March 13, the President of the United States declared a National Emergency concerning the novel coronavirus disease (COVID-19) outbreak. On Monday, March 16, 2020, the County of Santa Clara, and six of the most populous counties in the region, announced a shelter-in-place (SIP) order in light of the increased number of cases of COVID-19 that have been confirmed in Santa Clara County. The incident period related to the Novel Coronavirus Disease (COVID-19) Outbreak has currently no end date.

COVID-19 has severely impacted nations and communities across the globe. There is universal agreement among public health experts, scientists, physicians and emergency managers that widespread testing is one of the keys to reducing the spread of the virus.

During the May 5, 2020 special City Council meeting, Council authorized the City Manager to enter into an agreement with a Milpitas based testing lab, IGeneX, Inc., and subsequently extended under the City Manager's authority until October 30, to support a City mobile testing unit targeting vulnerable populations and employees of businesses based in Milpitas. On May 27, the mobile testing unit began testing Milpitas residents and visitors and has operated Monday-Friday from 9:00 AM-5:00 PM at various sites throughout the City.

On June 2, 2020, the City Council was given an update on the mobile and County fixed testing sites. Council approved an additional \$65,000 to support the City mobile testing unit and \$25,000 to support the County fixed testing operation through August 7 utilizing the Unanticipated Expenditure Reserve. Council was again provided an update on August 4 and approved additional funding in the amount of \$175,000 for continued testing support through October 9 from the same reserve.

As the pandemic unfolded and costs were incurred, staff remained in regular contact with the Federal Emergency Management Agency (FEMA) to ensure that the costs related to the pandemic including the costs for the mobile testing facilities are eligible for reimbursement by FEMA. During a call on May 29, 2020, the FEMA representative confirmed that mobile testing facilities are an eligible expense for reimbursement without

specifying any conditions for reimbursements. During the months of August and September, staff started to compile all necessary data and documentation for FEMA reimbursement including costs related to the testing facilities. As part of seeking input to establish the rental rate for the ambulance used as the mobile testing site, another FEMA representative inquired whether the City received a directive from the County health official to establish a mobile testing site.

On October 6, 2020, the City Council directed the City Manager to develop a Memorandum of Understanding with the County of Santa Clara for COVID-19 testing activities retroactive to March 13, 2020 for FEMA reimbursement purposes, if needed. Staff has been working with FEMA and the County to obtain the necessary documentation to substantiate the need and the partnership that will allow Milpitas to qualify for the FEMA reimbursement. On October 6, the City Council also approved to extend the testing support in the City through December 31, authorizing an additional \$132,500 for the effort.

During the last few months, due to staff capacity, the mobile testing unit was partially or fully taken out of service during certain weeks. In advance of the weeks with reduced service, staff informed residents about the limited availability through the City's website and media channels. Additionally, the testing unit requires significant administrative staff time, which has impacted the advancement of other initiatives.

Analysis:

While the science and recommendations vary, the generally accepted recommendations for testing range between one and twenty-one percent of the population weekly. With a population of approximately 80,000, five percent of the population equates to 4,000 weekly tests.

Fixed Testing

Currently, the County Hospital and Clinic System operates a fixed testing site at the Milpitas Library parking garage and is testing Monday-Friday from 8 AM-4:30 PM. The site is conducting approximately 100-120 tests per day on an appointment only basis. The County testing site has relaxed their testing criteria to include asymptomatic persons. Additionally, the site is open to people outside the County Health system, uninsured individuals and is free of charge. Staff is recommending continuing City support through March 31 in the form of two part-time personnel to assist with intake and traffic control.

The City has supported this effort with equipment such as generators, extension cords, tables, chairs and fans. Additionally, the Recreation and Community Services department have supported the effort with part-time personnel and on-duty Fire department personnel are tasked with decontaminating the site every day when operations cease. As of December 15, the estimated cost of this effort is approximately \$79,500 since the start of the program. The additional cost to support the County fixed site through March 31, 2021 is estimated to be an additional \$24,000, with total costs to support this site estimated to be \$103,500. It is anticipated that approximately \$82,800 of that cost will be reimbursed by FEMA pending coordination regarding FEMA reimbursement with the County as discussed below.

City Mobile Testing Site

The mobile testing unit has conducted over 7,000 tests to date, with approximately 60-65% of all persons tested being Milpitas residents or working in the City. Weekly test volume has increased from an average of 210 tests administered prior to the week before the Thanksgiving Holiday to nearly 700 tests administered during the week before the Holiday of November 16 and over 800 tests administered during the week of the Thanksgiving Holiday. For the period up to mid-November, the positivity rate of tests administered was 2.16%. During the ten business days leading up to the Thanksgiving Holiday, the positivity rate spiked to 6.62%. Unfortunately, this upward trend continued after the Thanksgiving Holiday. The week after Thanksgiving, the City administered close to 900 tests with an 8.75% positivity rate.

As of December 15, the City mobile testing unit has cost approximately \$450,000. This includes staff from various departments such as Fire, Recreation and Community Services, and City Manager's Office, and general support such as hotels for quarantines, supplies and food for testing staff (approximately \$22,500). These costs include staffing the mobile test unit as well as staff hours for administration that includes flyer creation and translation, setting site locations, notification of tested individuals, coordination with the County

Emergency Operations Center Testing Unit, social media updates, appointment setting, website postings and outreach. Staff dedicated to this effort include the Fire Department EMS Battalion Chief, EMS Captain. Recreation and Community Services staff participating in this effort include the Director of Recreation and Community Services, the Community Engagement and Inclusion Administrator and four full-time staff members. Two additional part time staffers have been assigned to the mobile testing unit to assist with documentation and quality control. The costs for the administrative personnel are largely not reimbursed by FEMA because the staff time for these costs was budgeted prior to the declaration of the national emergency. The unanticipated non-reimbursed costs for administration to date total approximately \$73,500 including salary and benefits for administrative personnel.

Recent efforts to reduce needed administrative staff time have been implemented and some administrative functions are one-time only and will not result in additional time needed (flyer creation and translation). Total additional cost anticipated to continue the City's mobile testing program with the mobile test site operational five days a week through March 31 would be \$252,000.

Due to the recent spike in testing demand and increased positivity rate, staff recommends continuing a five-day per week availability of the testing unit. However, due to uncertainty related to FEMA reimbursements and the General Fund revenue shortfall for the current fiscal year, staff may reduce the service to three days a week only once the demand for testing is less and/or the positivity rate falls to average levels experienced up to mid-November. Once the City is assured that the testing costs will be reimbursed, staff will resume the five-day per week schedule. Any changes in service delivery frequency will be shared with the public through the City's website and social media channels.

County Mobile and Pop-up Testing

The County began pop-up testing in the City in the month of August and on a rotating basis moving forward. The pop-up site is able to test up to 800 individuals per day by appointment only. The County pop-up testing is designed to test asymptomatic individuals.

The City will need to provide up to three staff to assist with intake and traffic control for the mobile testing. Estimated costs for staff time through March 31 is approximately \$6,500. An additional \$2,000 will be needed for intake and traffic control to continue to support this program through March 31.

The County pop-up testing site augments the existing testing in the City and increases our monthly testing significantly. The additional County testing sites will allow an increase of up to 1,600 additional test capacity in Milpitas on a monthly basis.

FEMA Reimbursement and Coordination with the County of Santa Clara

As previously reported, FEMA requires that the City receive a directive from the County Health Official to operate testing sites within its boundaries. Staff was not made aware that a directive is necessary in order to receive reimbursement. The FEMA representative suggested that in lieu of a directive, which cannot be granted retroactively, the City enter into a memorandum of understanding (MOU) with the County to seek reimbursement for costs related to the mobile testing facilities established in our City.

On October 1, staff had a conference call with County and FEMA representatives. FEMA reiterated the requirement that the City is required to have legal authority such as a directive from the County Health Official for administering COVID-19 tests. Staff responded that under State law, the City's Health Official shall take measures as may be necessary to prevent the spread of the disease or occurrence or additional cases. Staff drafted a letter for the County to provide the section of State law and documented interactions between the City and County regarding the operation and support for the testing sites to FEMA. If FEMA rejects the City having legal authority, staff will work with the County to develop an MOU to receive FEMA reimbursement through the County. At this time both options are under consideration and discussion between the City Attorney's Office and County Counsel. The County has provided written assurance that they will partner with the City in this effort.

City Mobile Testing Sites to Support Vaccine Administration

Discussions with the County Emergency Medical Services Agency Medical Director, Dr. Ken Miller, indicate that the State of California Emergency Medical Services Agency has expanded the paramedic scope of practice to include vaccine administration when a vaccine becomes available. The vaccine administration plan is developing at a rapid pace at this time and the County has not indicated if a partnership is desired. Staff will report back to Council if there are any significant developments.

IGeneX Agreement Amendment

On May 5, 2020 the City Council approved a public-private partnership agreement with IGeneX to increase opportunities for residents and vulnerable and at-risk populations to receive testing for the novel coronavirus. The original contract expired on June 30 and was extended under the Purchasing Agent's authority to October 31, 2020. Staff seeks authority to further extend the agreement to December 31, 2021.

Policy Alternative:

Alternative: Reduce the mobile testing unit from five days to only three days a week.

Pros: Would reduce expenditures by approximately \$75,000 for the mobile testing unit.

Cons: Reduces access to critical testing facilities.

Reason not Recommended: The current weekly utilization of the mobile testing unit have spiked to 600-900 tests per week due to the Thanksgiving Holiday travel with a higher than average positivity rate. Until this trend is reversed, staff recommends making the mobile testing unit available for five days a week.

Fiscal Impact:

Additional funding needed for all testing efforts through March 31, 2021 is anticipated to be approximately \$278,000, which will be funded from the Unanticipated Expenditure Reserve. Pending County approval of the aforementioned MOU, FEMA reimbursement is anticipated to be 75% or \$208,500 plus 5% management fee (\$13,900). Total estimated costs of support for testing in Milpitas since the start of the program through March 31, 2021 is \$744,500 of which approximately \$595,600 is anticipated to be reimbursed. The remaining costs have been and will be covered by the General Fund.

California Environmental Quality Act:

Not applicable

Recommendations:

1. Receive an update regarding the status of COVID-19 testing in Milpitas.
2. Authorize \$278,000 to fund the City's mobile testing unit and the County testing sites through March 31, 2021.
3. Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with IGeneX Inc. extending the term from October 31, 2020 to December 31, 2021.

Attachments:

- a) Amendment No. 2 to Agreement with IGeneX
- b) Agreement with IgeneX Inc. 05-22-2020
- c) Amendment No. 1 to Agreement with IGeneX 06-09-2020



AMENDMENT NO. 2 TO THE AGREEMENT
WITH
IGENEX, INC.
FOR
COVID-19 MOBILE TESTING SERVICES

This Amendment No. 2 is entered into on October 31, 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **IGeneX, Inc.**, a California Corporation (hereafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 2.

RECITALS:

WHEREAS, on May 22, 2020, the Parties entered into an Agreement for COVID-19 Mobile Testing Services for the City (the "Agreement"), at no cost to the City and with a term period of May 18, 2020, through June 30, 2020; and

WHEREAS, on June 9, 2020, the Parties entered into Amendment No. 1 to the Agreement to extend the term period expiration date to October 31, 2020; and

WHEREAS, the Parties now desire to amend the Agreement to further extend the term period expiration date to December 31, 2021.

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

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

"The term of this Agreement shall be from **May 18, 2020** to **December 31, 2021**, unless sooner terminated by either party."

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE OF AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN THE CITY OF MILPITAS
AND IGENX, INC.
TO PROVIDE COVID-19 MOBILE TESTING SERVICES

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

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Director of
Finance/Risk Manager

Approved As To Content:

Brian Sherrard, Fire Chief

IGeneX, Inc.

Signature

Name

Title

Date



AGREEMENT BETWEEN THE CITY OF MILPITAS AND IGENEX, INC. TO PROVIDE COVID-19 MOBILE TESTING SERVICES

This Agreement is made and entered into as of May-22-2020, 2020 ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **IGeneX, Inc.**, a California Corporation with its principal place of business at 556 Gibraltar Drive, Milpitas, CA 95035 (hereinafter referred to as "IGeneX" or "Contractor"). City and IGeneX are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

RECITALS

- A. On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency as a result of the threat of the novel coronavirus (COVID-19); and
- B. On March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and
- C. On March 16, 2020, Dr. Sara Cody, Health Officer for Santa Clara County, announced a legal order directing residents to shelter at home for three weeks beginning March 17, 2020 due to the novel coronavirus; and
- D. The City has declared a local emergency due to the novel coronavirus; and
- E. The City recognizes the public health risks posed by the novel coronavirus and seeks to augment existing testing capacity to provide critical public health information; and
- F. IGeneX employs or contracts with health care providers to perform medical services, including COVID-19 testing services; and
- G. A public-private partnership with IGeneX will provide increased opportunities for residents and vulnerable and at-risk populations, such as homeless, elderly care facilities, senior mobile home parks and employees of essential businesses, to receive testing for the novel coronavirus.

NOW, THEREFORE, the parties agree as follows:

1. Term.

The term of this Agreement shall be from **May 18, 2020 to June 30, 2020**, unless sooner terminated by either party. Either party may terminate this Agreement immediately, with or without cause, by providing the other party written notice of such termination.

2. Party Obligations.

a. City's Obligations. In addition to all other obligations set forth in this Agreement, City shall have the following obligations:

- 1) City will establish and operate a mobile screening and testing unit for the novel coronavirus at sites to be determined by the City. City will provide medical and clinician support through the City's Fire Department for COVID-19 related screening and testing. The mobile testing unit will operate from 8 am

until 6 pm, Monday through Friday. At the end of each day, City personnel will deliver test kits to the IGeneX lab for processing by IGeneX. City will communicate with IGeneX regarding changes in dates and times of operations of the mobile testing unit.

2) To support the mobile testing unit, the City shall assign employees, agents, contractors and volunteers, to provide traffic control, equipment set-up and other services (e.g., waste management, security) to address public safety needs, as determined in the sole and absolute discretion of the City.

3) The mobile testing unit shall be under the sole and exclusive control of the City. City will generally prioritize testing for vulnerable and at-risk populations, such as homeless, elderly care facilities, senior mobile home parks and employees of essential businesses.

4) City will schedule appointments for COVID-19 testing based on prescreening criteria determined by the County of Santa Clara and other public health guidance.

5) City staff from the Fire Department will notify individuals with positive test results.

6) City shall develop and implement a policy and procedure for administration of tests by City personnel and obtain all necessary approvals to administer the tests.

b. IGeneX's Obligations. In addition to all other obligations set forth in this Agreement, IGeneX shall have the following obligations:

1) IGeneX will provide COVID-19 testing supplies to the City, including test kits, and shall process the tests. All test results shall be certified and communicated to individuals by the IGeneX lab in accordance with all required medical privacy regulations.

2) IGeneX will communicate test results to Dr. Carrillo and will notify individuals with negative test results via US Mail at the address provided on the Test Requisition Form.

3) IGeneX shall process COVID-19 testing, including payments, as set forth in the COVID-19 Test Requisition Form, attached hereto and incorporated herein by reference as Exhibit A.

3. Compliance with Laws.

The parties shall comply with all applicable federal, state and local laws, rules and regulations in performing the services contemplated in this Agreement.

4. Standard of Care.

IGeneX's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

5. Assignment and Subconsultant.

IGeneX shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent IGeneX from employing

independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

6. Insurance.

IGeneX shall not commence services until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit B (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, IGeneX shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

7. Mutual Indemnification.

During the term of this Agreement, IGeneX shall defend, indemnify, and hold harmless the City and the Milpitas Fire Department and its officials, officers, agents, and employees from and against any and all claims, demands, judgments, or liabilities arising from any and all alleged acts or omissions of IGeneX and its officials, officers, agents, and employees during those times when said officials, officers, agents, and employees are performing their obligations required pursuant to the terms of the Agreement. During the term of this Agreement, the City shall defend, indemnify, and hold harmless IGeneX, its officials, officers, agents, and employees from and against any and all claims, demands, judgments, or liabilities arising from any and all alleged acts or omissions of the City and the Milpitas Fire Department and its officials, officers, agents, and employees during those times when said officials, officers, agents, and employees are performing their obligations required pursuant to the terms of the Agreement.

8. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

9. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

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

IGeneX, Inc.
556 Gibraltar Drive
Milpitas, CA 95035
Attn:

and shall be effective upon receipt thereof.

10. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and IGeneX.

11. HIPAA.

IGeneX is a Covered Entity as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA). As the Covered Entity, IGeneX shall be solely responsible for complying with HIPAA and any other federal, state and local laws pertaining to patient confidentiality. In compliance with HIPAA and similar state privacy laws, IGeneX shall only report the result of any testing performed as part of the services to the individual for whom the testing was performed, any public health authorities, and further as required by law.

12. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of City and IGeneX as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

13. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

14. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, IGeneX shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

15. Non-Waiver.

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

[SIGNATURES ON FOLLOWING PAGE]

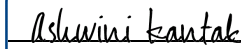
SIGNATURE PAGE FOR AGREEMENT BETWEEN THE CITY OF MILPITAS AND IGENEX, INC. TO PROVIDE COVID-19 MOBILE TESTING SERVICES

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

CITY OF MILPITAS

Approved By:

DocuSigned by:



Steven G. McHarris, City Manager

May-22-2020

Date

Approved As To Form:

DocuSigned by:



Christopher J. Diaz, City Attorney

Approved:

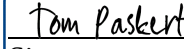
DocuSigned by:



Walter G. Rossmann, Risk Manager/Director of Finance

IGENEX, INC.

DocuSigned by:



Signature

Tom Paskert

Name

Chief Financial Officer

Title

May-22-2020

Date

DIR Registration Number (If Applicable)

EXHIBIT “A”
COVID-19 TEST REQUISITION FORM
(ATTACHED)

EXHIBIT “B”**INSURANCE REQUIREMENTS**

Please refer to the insurance requirements listed below. **Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit A. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

X Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than ___ per occurrence or claim, ___ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

☐ Bid Bond
☐ Performance Bond
☐ Payment Bond

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

Other Insurance Provisions:

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

X Additional Insured Status and Primary/Non-Contributory Language:

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

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

____ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors

Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF MILPITAS
AND IGENX, INC.
TO PROVIDE COVID-19 MOBILE TESTING SERVICES

This Amendment No. 1 is entered into this ^{Jun-09-2020} ____ day of June 2020, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and **IGeneX, Inc.**, a California Corporation (hereafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No 1.

RECITALS

WHEREAS, on May 22, 2020, the Parties entered into an Agreement for COVID-19 Mobile Testing Services for the City (the "Agreement"), at no cost to the City and with a term period of May 18, 2020, through June 30, 2020; and

WHEREAS, the Parties now desire to amend the Agreement to extend the term period expiration date to October 31, 2020.

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

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

"The term of this Agreement shall be from **May 18, 2020** to **October 31, 2020**, unless sooner terminated by either party."

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

[SIGNATURES ON THE FOLLOWING PAGE]

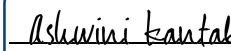
SIGNATURE PAGE OF AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF MILPITAS
AND IGENX, INC.
TO PROVIDE COVID-19 MOBILE TESTING SERVICES

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

CITY OF MILPITAS

Approved By:

DocuSigned by:


Steven G. McHarris, City Manager

Jun-09-2020

Date

Approved As To Form:

DocuSigned by:


Christopher J. Diaz, City Attorney

Approved:

DocuSigned by:


Walter G. Rossmann, Risk
Manager/Director of Finance

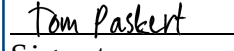
Approved As To Content:

DocuSigned by:


Geoffrey Maloon, Battalion Chief

IGENEX, INC.

DocuSigned by:


Signature

Tom Paskert

Name

Chief Financial officer

Title

Jun-08-2020

Date

DIR Registration Number (If
Applicable)

**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					
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				
	Mayor shall recommend a Milpitas resident to serve on VTA Bike Committee	Dominguez	A	11/17/2020	12/15/2020. Resident rec. for appointment to VTA BPAC
	Vote on County 2020-2025 Plan to end Homelessness	Dominguez	A	11/17/2020	12/1/2020 approved
	Revisit contract provisions of executive staff (CM + CA) best working environment	Phan	A	11/10/2020	discussed @Closed Session 11/17/2020
	Revisit CC Housing Subcommittee, consider dismantling ; bring items to Cncil	Dominguez	A	11/10/2020	11/17, to 12/01/20: Did not vote to eliminate Subcomm.
	Discuss a "safety first" or other event in lieu of National Night Out (per CAC)	Phan (Nuñez)	A	10/20/2020	11/10, to 11/17, 12/01, 12/15
	Emergency request to cap rents on small businesses (tenants) in Milpitas	Dominguez	A	10/6/2020	Resched from 10/20 to 11/10, 11/17, 12/01, 12/15
	Opportunity to share ideas for US census & on City "sponsored" events	Dominguez	A	9/1/2020	Resched from 9/15, to 10/06, 10/20, 11/10 , 11/17, 12/01: remove census topic, move events to CC retreat 2021
	Bring back update report & discuss status of playing fields for girls' softball in Milp.	Dominguez	A	10/20/2020	To City/Schools Subcomm. then CC. See C. Montano 10/14 Bobby Sox softball memo

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	Consider naming "Milpitas Hills"	Dominguez	A	10/20/2020	to Econ. Dev. Commission first. Return later to City Council
	Discuss budget reductions in next FY with input from residents, employees	Nuñez	A	10/6/2020	on 10/20/2020, to 11/10, 11/17
	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
	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

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	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
	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

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	Community Theater, perhaps with MUSD	Nuñez, Phan	F	8/20/2019	8/23/2019	5/14/2020 @CIP Study Session
	policy for Proclamations and Commendations	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020
	policy for Social Media	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020

A: @Announcements
F: on a Form
CM: to/from City Manager

PREVIEW LIST OF AGENDA ITEMS MILPITAS CITY COUNCIL

January 5, 2021

CONSENT CALENDAR

1. Receive City Council calendar for January 2021 (City Clerk)
2. Approve City Council meeting minutes of December 10 and 15, 2020 (City Clerk)
3. Adopt a Resolution approving purchase of Skeeter Type 5 Fire Engine (Rick Frawley)
4. Adopt a Resolution supporting Expanded Telecommuting and other measure to Reduce Single Occupancy Vehicle trips (Steve Chan)
5. Award and Approve New Agreement for Citywide Banking Services (Walter Rossmann)
6. Approve Annual AB1600 report on development fees (Jane Corpus)
7. Authorize City Manager to Execute Master Project Agreement with Valley Water District for Flood Protection Improvements within 3 Creeks & Authorize Reimbursement to the District, CIP No. 3452 (Steve Erickson)
8. Approve Amendment No. 2 to the Agreement with West Yost Associates for Design Services for Main Lift Emissions Control Facility CIP No. 6130 (Elaine Marshall, Tony Ndah)
9. Approve contract with HCI Systems for Fire Alarm and Fire Suppression System Service for total Not to Exceed \$208,660 (Tony Ndah)
10. Approve contract with Silicon Valley Fire for Fire Extinguisher Inspection and Testing Service for total Not to Exceed \$130,000 (Tony Ndah)

LEADERSHIP

11. 1st reading/Intro Ordinance for general updates to MMC (Ashwini Kantak, Chris Diaz)

REPORTS

12. Mayor's recommendations for Council liaison appointments to City Commissions and to outside agencies and boards (Mayor Tran)
13. Review list of Future Agenda Items Requested by City Councilmembers (Mayor & Council)

PREVIEW NEXT AGENDA

14. Preview list of items for January 19, 2021 (City Clerk)