



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, NOVEMBER 14, 2023

**CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA
5:30 PM**

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3072

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.

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.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.gov/webstreaming>

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may only be provided live during the City Council meeting in person. 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. Members of the public may submit written comments by email to CityClerk@milpitas.gov

The meeting will be streamed via Zoom for viewing purposes only. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_Yt_HeYJVRSaGncCX1p-W2w

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@milpitas.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

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 (5:30 PM)

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Rick Bolanos, LCW

Bargaining unit: LIUNA, UPEC (Pro-Tech, MEA, MidCon), IAFF, MPOA

(b) CONFERENCE WITH LEGAL COUNSEL

Existing Litigation pursuant to Government Code Section 54956.9:

In re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-02873

City as a Class Member

CLOSED SESSION ANNOUNCEMENT

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

PLEDGE OF ALLEGIANCE

INVOCATION (Mayor Montano)

PRESENTATIONS (6:00 PM)

PUBLIC FORUM (6:05 PM)

Members of the public are invited to speak on any item that does not appear on today's agenda. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record. As an item not listed on the agenda, no action can be taken, however the City Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (6:15 PM)

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

C1. Receive City Council Calendar of Meetings for November and December 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for November and December 2023.

C2. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C3. Approve the 2024 City Council Meeting Schedule (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve the 2024 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

- C4. Authorize and Approve Travel to San Francisco, CA, for Councilmember Hon Lien to Attend the (1) 9th Annual CALNET Leadership Retreat to be Held on November 16 – 17, 2023, and the (2) National API Elected Officials Summit to be held on November 18 -19, 2023, for an Estimated Total Not-to-Exceed Amount of \$1000 Budgeted Under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ned Thomas, City Manager, 408-586-3053)**

Recommendation: Authorize and approve travel to San Francisco, CA, for Councilmember Hon Lien to attend (1) the 9th Annual CALNET Leadership Retreat to be held on November 16 – 17, 2023; and (2) the National API Elected Officials Summit to be held on November 18 -19, 2023, for an estimated total not-to-exceed amount of \$1,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

- C5. Authorize the City Manager to Negotiate and Execute an Extension of the Existing Sister Cities Memorandum of Understanding with the City of Dagupan, Philippines (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)**

Recommendation: Authorize the City Manager to negotiate and execute an extension of the existing Memorandum of Understanding with the City of Dagupan, Philippines for a period of five years with two additional five year mutual options.

- C6. Approve and Authorize the City Manager to Execute a Software License and Professional Services Agreement with TriTech Software Systems, Inc. for Computerized Maintenance Management System Subscription License Fees for a Total Amount Not-to-Exceed \$374,105.21, Subject to the Annual Appropriation of Funds (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute a software license and professional services agreement with TriTech Software Systems, Inc. for computerized maintenance management system subscription license fees for a total amount not-to-exceed \$374,105.21, subject to the annual appropriation of funds.

- C7. Report on Bids and Adopt a Resolution Authorizing the City Manager to Award the Construction Contract to I & A Contractor, Inc. in the Amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Recommendation: (1) Receive report on bids and adopt a resolution authorizing the City Manager to award a construction contract to the lowest responsible and responsive bidder, I & A Contractor, Inc., in the amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$64,245.00 for the Sports Center Roof Rehabilitation Project.

- C8. Consider One Fee Waiver from Kiwanis Club of Milpitas Foundation and one Donation Request from Knights of Columbus St. John's Council 5796 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Recommendation: (1) Approve a Fee Waiver of \$900.00 for the Kiwanis Club of Milpitas Foundation's 20th Annual MUSD Crab Feed and Auction Event scheduled for February 9, 2024; and (2) Approve a donation request of \$500.00 for the Knights of Columbus St. John's Council 5796 for their 45th Annual Free Thanksgiving Dinner event at the St. John the Baptist Catholic Church on Thursday, November 23, 2023.

COMMUNITY DEVELOPMENT (6:30 PM)

9. **Receive Report on Manufacturing Day 2023 and Issue Certificates of Commendation to Event Collaborators (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046; and Michael Thomas, Economic Development Specialist, 408-586-3045)**

Recommendation: Receive report on Manufacturing Day 2023 and issue certificates of commendation to event collaborators.

10. **Receive Presentation on Proposed Mixed-Use Development at 70 N. Main St. and Provide Direction on Preferred Alternative regarding Shared Parking Agreement (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Michael Fossati, Senior Planner, 408-586-3274)**

Recommendation: (1) Receive a summary of a pre-application to demolish an existing vacant restaurant and develop a mixed-use building without on-site parking; and (2) Provide direction on the preferred alternative to provide exclusive access to City-owned land and facilitate a shared parking agreement with the property owner.

11. **Receive a Presentation from Staff and Applicant and Provide Direction Regarding Conceptual Plans for Proposed Development (“600 Valley Way”) to Subdivide Three Existing Lots into Two Parcels Totaling 7.22 Acres to Facilitate up to 104 Townhome Units and 140 Rental Affordable Units, for a Total of 244 Residential Units at 461, 538, and 602 Valley Way (APNs 022-28-022, -024, and -025) (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Lillian VanHua, Senior Planner, 408-586-3073)**

Recommendation: (1) Receive presentations from staff and the applicant; (2) Receive public comment; and (3) Provide feedback on the Preliminary Review Application and staff's recommendation on how to accommodate the Project through the Gateway-Main Street Specific Plan process.

LEADERSHIP AND SUPPORT SERVICES (8:00 PM)

12. **Review the List of Agenda Item Requests From Individual Councilmembers and Provide Direction to Staff Through the Council-Approved Prioritization Process (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)**

Recommendation: (1) Review list of agenda item requests from individual Councilmembers and provide direction to staff, through the prioritization process, on which Group 1 items should be advanced; (2) Provide additional input to staff, if any, on Group 1 items that received Council direction to advance and all Group 2 items (3) Approve recommendations on certain Group 3 items as outlined in the Analysis section of this report.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (8:30 PM)

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

ADJOURNMENT (8:35 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on

your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mmutalipassi@milpitas.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.milpitas.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: <https://www.milpitas.gov/129/Agendas-Minutes> (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov or at Milpitas City Hall.
Contact the City Clerk's Office at 408-586-3001 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 CityClerk@milpitas.gov prior to the meeting. You may request a larger font agenda.

October 2023						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

MILPITAS CITY COUNCIL CALENDAR

November 2023

December 2023						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 7:00 PM -Community Advisory Commission (EC)	2 5:30 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (GB)	3	4
5 2:00 PM -Flag-Raising Ceremony: Native American Heritage & Culture – Cesar Chavez Plaza	6 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	7 7:00 PM -City Council	8 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)	9 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -Cities Assoc of SCC (CM)	10  CITY HALL CLOSED IN OBSERVANCE OF VETERANS DAY	11 9:00 AM -Veterans Day Ceremony – Veterans Plaza
12	13 4:30 PM -Economic Development and Trade Commission (CM)	14 4:00PM - Milpitas HOPE 5:30 PM -Special Council Meeting in lieu of 11/21 Regular Meeting	15 11:00 AM -Finance Subcommittee (CM/EC) 6:00 PM -Energy and Environmental Sustainability Commission (EC)	16 3:00 PM -VTA Safety, Security, and Transit Planning & Operations Committee (CM) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Wind Room Foster City Community Center) 7:00 PM -Public Safety and Emergency Preparedness Commission (HL)	17	18
19	20 7:00 PM -Science, Technology, and Innovation Commission (GB) 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library)	21	22	23  CITY HALL CLOSED FOR THANKSGIVING	24	25
26	27 7:00 PM -Arts Commission (EC)	28	29 11:00 AM -1000 Hillview Ct. Stakeholder Meeting (CM/EC)	30		

November 2023						
S	M	T	W	T	F	S
5	6	7	1	2	3	4
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Milpitas City Council Calendar

December 2023

January 2024						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 7:00 PM-Tree Lighting Ceremony	2
3	4 7:00 PM-Parks, Recreation & Cultural Resources Commission (HL)	5 6:00 PM-Closed Session 7:00 PM-City Council	6 1:00 PM-Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 3:00 PM-City/School Collaborative Subcommittee (CM/EC) 5:30 PM-Veterans Commission (CM) 7:00 PM-Community Advisory Commission (EC)	7 5:30 PM-Milpitas Chamber of Commerce Board (GB) 5:30 PM-Santa Clara VTA Board of Directors (CM)	8	9
10	11	12 5:30 PM-Special Council Meeting with Closed Session at 5:30 PM	13 4:30 PM-City Council Subcommittee (CM/EC) 7:00 PM-Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM-Planning Commission	14 4:00 PM-Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM-Santa Clara VTA Policy Advisory Committee (EC) 6:00 PM-Youth Advisory Commission (HL) 7:00 PM-Cities Assoc of SCC (CM)	15	16
17	18 7:00 PM-Science, Technology, and Innovation Commission (GB)	19	20 6:00 PM-Energy and Environmental Sustainability Commission (EC)	21 3:00 PM-VTA Security, and Transit Planning and Operations Committee (CM) (San Jose)	22	23
24	25  City Observed Holiday	26  City Observed Holiday	27  City Hall and City Facilities Closed (Fire and Police are not affected)			
31						

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 11/9/2023

December 5, 2023 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Vice Mayor Chua)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for December 2023 (City Clerk)
2. Approve City Council Meeting minutes of November 14, 2023 (City Clerk)
3. Preview list of items for December 12, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (City Clerk)
6. Commission Workplan and Accomplishments (City Clerk)
7. Update on the Proposed Joint Powers Agency (JPA) Agreement for the Cities Association of Santa Clara County (City Manager)
8. ACFR (Finance)
9. ERP Contract (Finance)
10. Council Chamber A/V Replacement Contract (Information Technology)
11. 2nd Reading - 1355 California Circle Zoning Amendment (Planning)
12. Award of Custodial Services Contract (Public Works)
13. Disposition of Fleet and Equipment (Public Works)
14. Report on Emergency HVAC Repairs (Public Works)

LEADERSHIP AND SUPPORT SERVICES

15. Pushcart Regulation (City Attorney)
16. Potential Departmental Realignments (Human Resources)
17. Senator Wahab Presentation on Legislation (City Manager)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve City Council Meeting Schedule for 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/14/2023
Recommendation:	Approve the 2024 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

Background:

Pursuant to Milpitas Municipal Code Section I-1-2.01, the City Council shall hold its regular meetings on the first and third Tuesday of each month. Typically, in November of each year staff presents a proposed meeting schedule, noting any conflicts that may exist with regularly scheduled meeting dates for the City Council's review and approval.

Discussion:

In the past the City Council has canceled both of the July regular City Council meetings for a summer recess. Also, due to celebration of National Night Out on the first Tuesday in August, the City Council approved in 2019 the cancelation of the first meeting date in August each year. Staff recommends that a Special meeting be scheduled for August 13, 2024, to conduct the business that would have otherwise been done on August 1.

Staff is proposing one date in January for a Council Retreat, and dates in the months of January, February, and May 2024 for Council study sessions on the Comprehensive Zoning Update, Preliminary Budget, Capital Improvement Plan (CIP), and Operating Budget. Moreover, staff is proposing additional Special Meeting dates in the months of September and October as placeholders.

City staff has prepared the calendar for next year and requests that the Council confirm the City Council meeting schedule for 2024 for its regular bi-monthly Tuesday business meetings. The proposed 2024 schedule is included in the Council agenda packet.

Fiscal Impact:

There is no fiscal impact associated with this item.

California Environmental Quality Act (CEQA):

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

Recommendation:

Approve the 2024 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

Attachment:

2024 Council Meeting Dates List

City of Milpitas City Council

2024 Regular Meeting Dates

Tuesdays at 7:00 PM

and

Special Meeting Dates

Tuesdays at 5:30 PM or TBD

January 9 and 16
TBD Council Retreat
January 23 Comprehensive Zoning Update Study Session
January 30 Preliminary 23-24 Budget Study Session
February 6 and 20
February 13 CIP Study Session
March 5 and 19
April 2 and 16
May 7 and 21
May 14 FY 2023-24 Budget Study Session
June 4 and 18
<i>July – none</i>
August 13 and 20
September 3 and 17
September 24
October 1 and 15
October 22
November 5 and 19
December 3 and 17

Note: Both July meetings and the first Tuesday in August (for National Night Out on August 2) are canceled. Tuesday, August 13 is scheduled for business that would otherwise be conducted on August 6. Special meeting dates are subject to change.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize and Approve Travel to San Francisco, CA, for Councilmember Hon Lien to Attend: (1) the 9th Annual CALNET Leadership Retreat to be Held on November 16 – 17, 2023, and; (2) the National API Elected Officials Summit to be held on November 18 - 19, 2023, for an Estimated Total Not-to-Exceed Amount of \$1,000 Budgeted Under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ned Thomas, City Manager, 408-586-3053)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	11/14/2023
Recommendation:	Authorize and approve travel to San Francisco, CA, for Councilmember Hon Lien to Attend: (1) the 9 th Annual CALNET Leadership Retreat to be held on November 16 – 17, 2023, and; (2) the National API Elected Officials Summit to be held on November 18 -19, 2023, for an estimated total not-to-exceed amount of \$1,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

BACKGROUND:

The California Asian Leadership Network of Elected and Appointed Officials (CALNET) is a project of the Asian Pacific American Leadership Foundation, which will hold its 9th Annual Leadership Retreat in San Francisco on November 16-17, 2023. This exclusive invite-only retreat has provided Asian American and Pacific Islander (AAPI) elected and appointed officials throughout California the rare opportunity to connect, strategize, and share best practices with each other. With a primary focus on Asia-Pacific leadership during Asia-Pacific Economic Cooperation (APEC) week this year, CALNET has invited more than 500 key AAPI leaders from across the United States to explore launching the first-ever national organization of AAPI elected and appointed officials.

The API Coalition and Civic Leadership USA (CLUSA) will host an inaugural National API Elected Officials Summit in San Francisco immediately following the Asia-Pacific Economic Corporation (APEC) Leaders' and CEO Summit. The National API Elected Officials Summit will bring together over 300 API elected officials to exchange experiences and ideas and build relationships.

The preliminary agendas for both events are attached to this report.

ANALYSIS:

The City of Milpitas Travel and Expense Policy requires all travel for the elected officials and the City Manager to be approved by the City Council. Council approval of this request will allow Councilmember Hon Lien to network and have dialogue with several California and national leaders. Continued participation and attendance in conferences also ensures that the Milpitas community is fully represented at the regional, state, and national levels.

POLICY ALTERNATIVE(S):

Not Applicable

FISCAL IMPACT:

The estimated not-to-exceed expenses for the 9th Annual CALNET Retreat and the National API Elected Officials Summit, including the registration fee, is \$1,000. To date, Councilmember Lien has an estimated

balance of \$8,593.31 in her Individual Elected Official allocation of \$10,000 for Conferences/Meetings/Memberships.

California Environmental Quality Act (CEQA):

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., Title 14, Section 15378.

RECOMMENDATION:

- 1) Authorize and approve travel to San Francisco, CA, for Councilmember Hon Lien to Attend: (1) the 9th Annual CALNET Leadership Retreat to be held on November 16 – 17, 2023, and; (2) National API Elected Officials Summit to be held on November 18 -19, 2023, for an estimated total not-to-exceed amount of \$1,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

Attachment(s):

- (a) Draft conference agenda
- (b) Council budget tracking



APALF

Dear Hon. Lien,

Thank you for registering to our 9th Annual CALNET Leadership Retreat on November 16 – November 17 at the Hyatt Regency in San Francisco. A full program will be sent shortly. We are happy to announce the confirmation of some key speakers, including:

- Congressmember Judy Chu, Chair of Congressional Asian Pacific American Caucus (CAPAC)
- California State Treasurer Fiona Ma
- Assemblymember Evan Low, Chair of the California API Legislative Caucus
- San Francisco District Attorney David Chiu

DATE:

Thursday, November 16

Welcome reception, dinner, and keynote remarks

4pm-8pm:

Friday, November 17

Breakfast, panel discussions, lunch, and a special discussion of our national launch

8am-5pm

PLACE:

Hyatt Regency Embarcadero
5 Embarcadero Circle
San Francisco, CA 94111

REGISTRATION:

Please click [here](#) to register

Password:

***If you have requested hotel lodging, an email will be sent to confirm the request in the coming weeks. CALNET is an exclusive invite-only retreat for current AAPI elected officials. All functions including dinner, breakfast, lunch and breakouts may only be attended by registered attendees. To encourage an open environment for discussions, staff, colleagues, and spouses are not permitted to attend CALNET functions.*

The theme of this year's Retreat is: **"United as One: Diversity, Equity, and Inclusion in the AAPI Community."**

As you know, CALNET is a statewide network of AAPI elected and appointed officials. It aims to help AAPI elected and appointed officials be the best public servants they can be by providing a network through which they learn from each other, collaborate, share best practices, and debate relevant and critical issues. CALNET's Annual Leadership Retreat, now in its ninth year, is an invite-only event for current elected officials; with nearly five hundred invited to attend.

We are expanding our outreach to invite AAPI elected and appointed officials nationwide to discuss taking our annual retreat "national" to build a larger network of AAPI leaders from across the nation. At this year's CALNET we are launching AAPI LEAD (Leadership Elected Appointed), given the need for a national AAPI organization of AAPI elected and appointed officials. Remember we attended

NALEO a few years back to learn about their structure and the organization. NALEO (National Association of Latino Elected and Appointed Officials) is providing advice and assistance in this effort.

To learn more about past retreats, please visit <http://www.apalf.org/calnet>.

Invite Flyer Below



ASIAN PACIFIC AMERICAN LEADERSHIP FOUNDATION PRESENTS

**Seats are Limited...
Register Today!**

The 9th Annual CALNET Leadership Retreat • Nov. 16 - 17, 2023

UNITED ONE



Diversity, Equity and Inclusion in the AAPI Community



**SPECIAL LUNCHEON
KEYNOTE SPEAKER
CONGRESSMEMBER
*JUDY CHU***

Congressmember Judy Chu leads a special discussion that will help build the framework to take CALNET “national” with NALEO advising and providing assistance in this effort.

WHAT: 9th Annual CALNET Leadership Retreat
WHEN: Thursday, November 16 – Friday, November 17
WHERE: Hyatt Regency San Francisco
5 Embarcadero Center, San Francisco, CA 94111
WHO: AAPI elected leaders from across the nation



Scan code to register • Visit apalf.org to learn more

NATIONAL API ELECTED OFFICIALS SUMMIT TENTATIVE AGENDA

Here's a brief overview of the event, including the list of state and federal API elected officials who have joined the honorary host committee, as well as the event flyer.

General Information

Host: API Coalition, Civic Leadership USA

Event Name: National API Elected Officials Summit

Event Date & Time: Saturday November 18th 12:00 pm – Sunday
19th 12:00 pm

Event Venue: The Westin St. Francis San Francisco on Union Square

335 Powell St, San Francisco, CA 94102

Agenda

11/18 11:00 am – 12:00 pm

Check-in & Network

12:00 pm – 2:00 pm

National API Elected Officials Summit Lunch

2:15 pm – 3:30 pm

Breakout Sessions

3:45 pm – 5:00 pm

Breakout Sessions

5:00 pm – 7:00 pm

Saturday Evening Reception

11/19 8:30 am – 10:00 am

Sunday Breakfast

10:15 am – 11:30 am

Breakout Sessions

Travel and Training FY 23-24 Budget Tracking for Council

ATTACHMENT 2

Mayor Montano				
	Training/Travel Event	FY23-24 Amount Expended/Estimated	Total \$ 2,944.33	Remaining Balance \$ 7,055.67
1	Sacramento Annual Conf/Expo: Sept 20 - 22	\$ 1,371.08		
2	Washington DC National Advocacy Day: Oct 3 - 6	\$ 1,573.25		

Vice Mayor Chua				
	Training/Travel Event	FY23-24 Amount Expended/Estimated	Total \$ 1,367.40	Remaining Balance \$ 8,632.60
1	Sacramento Annual Conf/Expo: Sept 20 - 22	\$ 1,367.40		

Councilmember Phan				
	Training/Travel Event	FY23-24 Amount Expended/Estimated	Total \$ -	Remaining Balance \$ 10,000.00
1				

Councilmember Lien				
	Training/Travel Event	FY23-24 Amount Expended/Estimated	Total \$ 1,406.69	Remaining Balance \$ 8,593.31
1	Sacramento Annual Conf/Expo: Sept 20 - 22	\$ 1,406.69		

Councilmember Barbadillo				
	Training/Travel Event	FY23-24 Amount Expended/Estimated	Total \$ -	Remaining Balance \$ 10,000.00
1				



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Negotiate and Execute an Extension of the Existing Sister Cities Memorandum of Understanding with the City of Dagupan, Philippines (Staff Contact: Matt Cano, Deputy City Manager (408-586-3012))
Category:	Leadership and Support Services
Meeting Date:	11/14/2023
Recommendation:	Authorize the City Manager to negotiate and execute an extension of the existing Memorandum of Understanding with the City of Dagupan, Philippines for a period of five years with two additional five-year mutual options.

BACKGROUND:

The City of Milpitas and the City of Dagupan, Philippines, executed their first memorandum of understanding (MOU) on April 15, 2003, establishing a Sister City relationship to broaden cooperation and goodwill between the two cities, enrich cultural understanding, and create adult and student exchange opportunities. On December 17, 2019, the Milpitas City Council directed staff to approve a renewed Memorandum of Understanding with the City of Dagupan, Philippines, continuing the Sister City relationship for a period of five years.

ANALYSIS:

The City of Milpitas established a Sister Cities program on May 21, 1996. Through the years, the City maintained relationships with various international cities, but at the moment, the City's only active relationship is with Dagupan, Philippines. Prior relationships with Huizhou, China, and Tsukuba, Japan, have expired. The current MOU with Dagupan will expire in December 2024.

A delegation from the City of Dagupan will visit Milpitas in late November 2023. Given the longstanding relationship between Milpitas and Dagupan, the City Council may wish to consider extending the existing MOU during the delegation's visit. Staff recommends that the City Council delegate authority to the City Manager to prepare revised language and execute a new MOU to extend the Sister City relationship with Dagupan for an additional five years. A copy of the draft MOU is attached to this report for reference.

POLICY ALTERNATIVE(S):

As an alternative to this recommendation, the Mayor and City Council could decline to extend the MOU at this time and re-consider this decision in late 2024, once the existing MOU is set to expire.

FISCAL IMPACT:

As the MOU is currently in effect and the costs of the infrequent visits are being absorbed within staff's existing workload, there are no fiscal impacts to this recommendation. However, future requests for additional sister cities relationships would have a fiscal impact and would need to be referred to the annual budget process for consideration.

California Environmental Quality Act (CEQA):

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:

Authorize the City Manager to negotiate and execute an extension of the existing Memorandum of Understanding with the City of Dagupan, Philippines for a period of five years with two additional five-year mutual options.

ATTACHMENT:

(a) Draft MOU with Dagupan



Attachment 1 – Draft Memorandum of Understanding

***Note: Tracked changes are purposely shown as they are showing proposed edits from the current MOU approved by the City Council in 2019**

DRAFT MEMORANDUM OF UNDERSTANDING

AGREEMENT FOR THE CONTINUATION OF A SISTER CITY RELATIONSHIP BETWEEN THE CITY OF MILPITAS AND CITY OF DAGUPAN

WHEREAS, the Cities of Milpitas and Dagupan executed their first memorandum of understanding on April 15, 2003, establishing a Sister City relationship between the City of Milpitas and City of Dagupan to enrich cultural understanding, create adult and student exchange opportunities and broaden cooperation to encourage goodwill between the Cities, and;

WHEREAS, on December 17, 2019 the Milpitas City Council approved a five-year extension to this MOU;

WHEREAS, the City of Milpitas and City of Dagupan support the promotion of mutual understanding, expansion of official and non-governmental exchanges, and friendship through promotion of peace, stability and prosperity in the Asia-Pacific Region and the world at large, and;

WHEREAS, in order to consolidate and further develop the friendship and cooperation between the City of Dagupan and the City of Milpitas, both cities agree to continue the Sister City relationship on the following terms:

1. To promote common prosperity and development, both cities will organize, on the basis of equality, mutual benefit and goodwill, cultural exchanges, contacts to support an electronic "pen pal" program for students, and other information sharing that may include art, business, commerce, science, technology, culture, history, education, sports, public health and administration.

2. Citizens, civic and business groups of each city are recognized as ambassadors of goodwill to organize cultural exchanges that may include art, history, education, health and sports interests, business and commerce, and other information sharing.
3. To the extent possible, one cultural exchange visit to each city shall be organized involving adults and students within the duration of this Memorandum of Understanding. Each visit shall be reviewed in advance between the Milpitas Sister Cities Commission and the City of Dagupan or its designee.
4. Cultural exchange visit details and activities shall be cooperatively agreed upon by organizing citizens and civic and business groups. Activities shall be provided with the objective to deepen cultural awareness and friendship between citizens, business leaders and government officials.
5. The leaders and top-level department administrators of both cities shall maintain and facilitate open channels of communication to expedite consultation, exchange and cooperation on questions and issues of common concern.
6. The effective term for this Memorandum of Understanding shall be for five years following the date of execution of the Memorandum, with two additional mutually agreeable five-year extension options, for a total potential term of up to fifteen years. Prior to expiration of this Memorandum of Understanding, the Sister City Relationship shall be reviewed by the City of Milpitas ~~Sister Cities Commission~~ and City of Dagupan or its designee to evaluate the progress of the relationship, as well as recommend whether the relationship shall continue.
7. This agreement represents the entire agreement between the cities. It may not be changed or modified without a resolution signed by the leaders of both cities.

The City of Milpitas and City of Dagupan, by mutual agreement, hereby execute this renewed Memorandum of Understanding this ~~10th~~ ____ day of ~~March~~ ____ at Milpitas City Hall, California, United States of America. ~~This agreement is for five years, set to expire on March 10, 2025.~~

DAGUPAN CITY
On its behalf

CITY OF MILPITAS
On its behalf

Belen T. Fernandez, Mayor

Carmen Montano, Mayor



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Software License and Professional Services Agreement with TriTech Software Systems, Inc. for Computerized Maintenance Management System Subscription License Fees for a Total Amount Not-to-Exceed \$374,105.21, Subject to the Annual Appropriation of Funds (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	11/14/2023
Recommendation:	Approve and authorize the City Manager to execute a software license and professional services agreement with TriTech Software Systems, Inc. for computerized maintenance management system subscription license fees for a total amount not-to-exceed \$374,105.21, subject to the annual appropriation of funds.

BACKGROUND:

On May 1, 2018, Council approved an agreement with Lucity, Inc. for software license and professional services to implement a new computerized maintenance management system (CMMS) for the Public Works Department. The system currently handles all aspects of Public Works Maintenance Management including, but not limited to: Fleet, Parks, Water, Sewer, Facilities, Storm Water, Streets, Pavement and Traffic assets. The system also integrates with the City's MyMilpitas app to provide updates with residents on the status of work request and work orders.

On January 1, 2020, TriTech Software Systems, Inc. acquired Lucity, Inc and assumed performance of the software license and professional services agreement, effective July 6, 2020.

On July 29, 2020, the City executed Amendment No. 1 to include additional software and services for the additional compensation amount of \$31,600.00 for the new not-to-exceed amount of \$267,742.47. The amendment changed the license structure of the agreement to allow all Public Works staff to have access to the CMMS in the field from any mobile device. The amendment also included additional tasks to set up and train staff on the use of the Fats, Oil, and Grease (FOG) module of the CMMS for inspections to maintain compliance with local, state, and federal regulations.

On November 2, 2021, the City executed Amendment No. 2 to add an additional 10 concurrent licenses at a one-time cost of \$22,940.64 and annual maintenance cost of \$2,940.64 this year and \$4,000.00 the following year for the new not-to-exceed amount of \$297,623.75. With the additional licenses, an increased number of staff in the Department were able to access the CMMS at the same time, improving customer service delivery.

ANALYSIS:

After approval of the first and second amendments to the contract with TriTech Software Systems, Inc., staff expanded the system to mobile devices. With the expansion of the use into the field, it became apparent that the 20 concurrent licenses for Public Works staff to share to access and make updates to work orders and asset data per the amended agreement was insufficient and did not allow for adequate number of staff to access and update workorders at the same time.

Therefore, staff is recommending approval of a new agreement with TriTech Software Systems, Inc. for a total not-to-exceed contract amount of \$374,105.21 for the contract period of August 31, 2023, through August 30, 2029. The new agreement would transition the department to an enterprise license account which will allow

all Public Works staff to unlimited licenses to access the CMMS in the field from any mobile device and office. With unlimited licenses, all staff in the Department would be able to access the CMMS at the same time, improving customer service delivery and will assist Public Works lead workers and managers in reviewing, assigning, and prioritizing work requests which are originating from residents and businesses through MyMilpitas App or self-generated by City employees.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve and authorize the City Manager to execute the software license and professional services agreement with Central Square.

Pros: None.

Cons: The City would not be taking the additional steps needed to ensure all Public Works staff have access to the CMMS in the field for work orders, leading to loss of productivity for staff.

Reason for Not Recommending: The software license and professional services agreement would increase productivity for the staff and lead to better management of the City's assets and regulatory compliance.

FISCAL IMPACT:

Sufficient funding is available in the Public Works Department operating budget. Ongoing renewal costs will need to be approved and appropriated by City Council on an annual basis, subject to the appropriation of funds.

	Contract Term	Amount
Year 1	8/31/23-8/30/24	\$ 55,000.00
Year 2	8/31/24-8/30/25	\$ 57,750.00
Year 3	8/31/25-8/30/26	\$ 60,637.50
Year 4	8/31/26-8/30/27	\$ 63,669.38
Year 5	8/31/27-8/30/28	\$ 66,852.84
Year 6	8/31/28-8/30/29	\$ 70,195.49
Not-to-Exceed Amount		\$374,105.21

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378

RECOMMENDATION:

Approve and authorize the City Manager to execute a software license and professional services agreement with TriTech Software Systems, Inc. for computerized maintenance management system subscription license fees for a total amount not-to-exceed \$374,105.21, subject to the annual appropriation of funds.

ATTACHMENT(S):

(a) Agreement

CITY OF MILPITAS
SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This Software License and Professional Services Agreement (hereinafter referred to as “**Agreement**”) is made by and between the CITY OF MILPITAS, a California municipal corporation (herein “City”), and **CentralSquare dba TriTech Software Systems Inc.**, a California corporation, having a principal place of business at **1000 Business Center Drive, Lake Mary, Florida 32746** (herein “Provider”) on this date of _____.

RECITALS

A. Provider is the owner of its proprietary software that the City has selected to use for the City’s **Computerized Maintenance Management System** (the “**Software**”).

B. Provider desires to grant to City and City desires to obtain from Provider a nonexclusive license to use the Software and obtain the services in accordance with the terms and on the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Use of the Software. Provider shall provide City with the software and services, which are described in the Provider’s Proposal and attached hereto as Exhibit “A” and incorporated herein by reference (“Software”). The specifications, performance and functionality of the Software shall comply in all respects with the requirements set forth in the Provider Proposal and any documentation for the Software (“Functional Requirements”). The City shall have a perpetual fully paid license to use the Software for its operations, subject to the payment of the license fees set forth in Exhibit “A.”
2. Services. Provider shall further provide City with implementation, installation, project management, and training services in connection with the implementation of the Software as further described in Exhibit “A” (“Services”).
3. Project Schedule. Provider shall provide the Software in a prompt and timely manner. Any delays or changes in implementing the Software shall be subject to the terms of Section 7.
4. Compensation.
 - a. Subject to paragraph 4(b) below, the City shall pay for the Software, including the related Services, in accordance with the schedule of costs set forth in Exhibit “A.”
 - b. In no event shall the total amount paid for the Software, including related services, rendered by Provider under this Agreement exceed the sum of **Three Hundred Seventy-Four Thousand One Hundred Five Dollars and Twenty**

Cents (\$374,105.20) unless there is a change in the scope of the Services and such change is reflected in the execution of a written amendment pursuant to Section 7 of this Agreement.

- c. Payment to Provider shall be considered as full compensation for all personnel, materials, supplies, and equipment used in performing the Services.
 - d. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Provider to correct such work or billings or seek any other legal remedy.
5. Maintenance and Support Services. Following the warranty period for the Software, Provider has agreed to make maintenance and support services for the Software available to City in accordance with the terms of the Provider Proposal, which is attached hereto as Exhibit "A." The Software Support and Maintenance Provisions contain mutually agreed upon pricing for such services, which pricing shall remain in effect for so long as City makes the payments set forth in Exhibit "A."
6. Contract Documents. The following documents shall govern the performance of the Scope of Work and the terms and conditions for the provision of the Software and Services (collectively, the "Contract Documents"):
- a. This Agreement;
 - b. Provider Proposal (Exhibit "A"); and
 - c. City Insurance Requirements (Exhibit "B").

In the event of any conflict between the terms and conditions of the Contract Documents, the Contract Documents shall govern in accordance with the foregoing order of priority with this Agreement acting as the master agreement.

7. Additional Work. If changes in the Project and the Contract Documents seem merited by Provider 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 Provider with a statement of the estimated changes in the Provider Proposal. An amendment to the Agreement shall be prepared by the City and executed by both parties before any change becomes binding upon City. Provider acknowledges that any material amendment to the Contract Documents, particularly with respect to the schedule of charges in the Provider Proposal, may be subject to approval by the City Council. Such amendment shall not render ineffective or invalidate unaffected portions of the Contract Documents.
8. Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Provider and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by the City.

9. Notice to Proceed. The obligations of Provider to commence performance shall be triggered by Provider's receipt of notice from the City to proceed. Thereafter, Provider shall proceed in accordance with the Project Schedule. The Notice to Proceed shall set forth the date of commencement of the Project Schedule.

10. Delays in Performance.

- a. Neither the City nor Provider shall be considered in default of the Contract Documents 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 under the Contract Documents. It is not intended by the parties that any such delay shall extend for a period in excess of sixty (60) days.

11. Confidentiality. Provider understands and agrees that, in the performance of the work or services under this Agreement may involve access to City data or information that is Confidential Information. Provider agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Provider and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of this Agreement. Provider's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. Provider agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Provider will not disclose any Confidential Information of City except as compelled by a court or administrative body or required by any law or regulation. Provider will give notice if any disclosure request is received for City's Confidential Information, so City may file an objection with the relevant court or administrative body.

12. Compliance with Law.

- a. In carrying out its obligations under the Contract Documents, Provider shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including but not limited to Cal/OSHA requirements

and requirements for verification of employees' legal right to work in the United States.

- b. If required, Provider shall assist the City, as requested, in obtaining and maintaining all permits required of Provider by federal, state and local regulatory agencies.
- c. Provider is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Provider agrees to fully comply with such Prevailing Wage Laws. Provider 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 Provider 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 Section 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.
- d. 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 Provider and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Provider shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider’s sole responsibility to comply with all applicable registration and labor compliance requirements. 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.
- e. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Provider or any subconsultant that affect Provider’s performance of Services, including any delay, shall be Provider’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Provider caused delay and shall not be compensable by the City. Provider 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 Provider or any subconsultant.

13. Warranty

- a. Software Warranty. Provider warrants that the Software will conform in all material respects to the Functional Requirements for a period of twenty-four (24) months (“Warranty Period”) following the date upon which the Software has completed user acceptance testing and is placed in use by City in a live production environment (“Go-Live”). Provider agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the Warranty Period. In addition, Provider warrants that any customization and/or error correction to the Software will conform in all material respects to the Functional Requirements. This warranty is void if the City or any other third party intentionally changes or modifies the Software without the permission of Provider.
- b. Malware. Provider warrants that the Software shall not contain any lock, counter, CPU reference, virus, worm, or other malware or device capable of halting operations or erasing or altering data or programs. Provider further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the Software (or any hardware) or Services.
- c. Service Warranty. Provider warrants that all Services provided under this Agreement will be performed in a professional, competent and workmanlike manner in accordance with the requirements of the Project Schedule. City shall notify Provider in writing of any breach of this warranty no later than ninety (90) days following Go-Live. Provider shall further provide a sufficient number of properly trained and competent staff to carry out the Services in a skilled and professional manner consistent with the best practices in the software industry and in compliance with the Project Schedule.
- d. Remedies. Provider covenants that it will make corrections of program malfunctions or errors which are reported in writing to Provider during the Warranty Period and which are necessary for the Software to conform to the warranties set forth in Section 13 of this Agreement. City agrees to allow Provider the opportunity to make repeated efforts within a thirty (30) day time period to correct programming errors or malfunctions as warranted in this Agreement. Provider agrees that program malfunctions that result in an inoperable system resulting in a financial impact to the City, or inefficient work-around, will be given its highest priority with the problem corrected as soon as practicably possible, consistent with a high priority item under the Software Support and Maintenance Provisions, using its most experienced and knowledgeable resources. Provider will strive to have any and all malfunctions resolved within no more than five calendar days.

14. Acceptance Testing; Final Acceptance. All Software and Services shall be subject to acceptance testing by City to verify, to its reasonable satisfaction, that each deliverable

conforms to the requirements of a particular phase or milestone as set forth in the Exhibit “A” hereto or with respect to the Software, that it conforms to the Functional Requirements in all material respects and does not contain errors. City and Provider will agree on a reasonable testing methodology for the Software. Acceptance testing will not begin for any deliverable until sufficient data, as reasonably determined by City, has been converted and loaded into the Software or component thereof to enable City to test the functionality of the Software or any component thereof in a test environment that approximates a live production environment. If City determines that any Software deliverable or Services do not conform with the foregoing requirements, City shall promptly deliver to Provider a notice of non-conformity, and Provider shall work diligently to correct all nonconformities free of charge to City by issuing one or more error corrections or re-performing the defective Services. Each error correction shall be subject to additional acceptance testing by City. Notwithstanding the acceptance of any deliverable by City, such deliverable shall remain subject to the warranty obligations of Provider for the entire Warranty Period. “Final Acceptance” shall occur ninety (90) days after Go-Live provided that the Software is operating properly in accordance with all of the Functional Requirements and there are no material warranty issues that adversely impact the ability of City to operate the Software.

15. Assignment and Subcontractors. Provider shall not subcontract, assign or transfer this Agreement or any rights under or interest in the Contract Documents without the written consent of the City, which may be withheld for any reason at the sole discretion of the City. Nothing contained herein shall prevent Provider from employing independent contractors, as well as employees, to provide Services as Provider may deem appropriate, provided, however, that Provider shall remain fully responsible for such independent contractors.
16. Independent Contractor.
 - a. Provider enters into this Agreement as an independent contractor and not as an employee of the City. The Provider shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Provider are employees, agents, contractors or subcontractors of the Provider and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Provider by any such employees, agents, contractors subcontractors, or any other person resulting from performance of this Agreement.
 - b. Provider agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.
17. Integration. The Contract Documents represent the entire understanding of the City and Provider as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters

covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

18. Title to Software. Provider represents and warrants that it is the sole owner of the Software or, if not the owner, that it has received all legally required authorizations from the owner to license the Software as contemplated herein, has the full power to grant the rights required by this Agreement, and that neither the Software, nor its use in accordance with the Contract Documents, will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or City.
19. Infringement and Performance Breach Remedies. If it is claimed that any work furnished by Provider, whether first developed by Provider for the City or not, infringes any intellectual property right or is otherwise unlawful, Provider agrees to defend or settle any such claim or suit at Provider's expense and to indemnify and hold the City harmless from any losses, damages or harm, including attorney's fees and legal expenses, incurred as a result of such claim. Without the City's prior written approval, Provider shall not accept any liability on the City's behalf for the infringement, nor shall Provider reach a settlement that from the City perspective impairs the value or usefulness of the work that is the subject of the infringement claim. Provider will also pay all damages and costs that by final judgment, settlement or other resolution are assessed against the City due to such alleged or proven infringement and reimburse the City for any direct damages suffered by the City as a result of the infringement claim, including but not limited to attorney's fees. Should Provider find, or be found, to have infringed on any intellectual property rights, Provider will procure; (i) a right for the City to continue using the applicable Software or Work Product, (ii) a solution to mitigate the infringement, or (iii) a product to replace the infringing product that provides the functionality and complies with the specifications contained in the Contract Documents. The City shall not incur any additional costs related to the aforementioned remedies.
20. Termination
 - a. Termination for Default. Subject to the right to cure contained in Section 20.b., the City may terminate this Agreement in whole or in part, at any time that the City determines that Provider is in material default of its obligations under the Contract Documents. Termination for default is effective on the date specified in the City's written notice of default. Should Provider fail to cure a default, then in addition to any other remedies provided by law or the Contract Documents, Provider shall compensate the City's actual costs to obtain substitute performance. A termination for default shall be deemed a termination for convenience if the termination for default is later found to be without justification.
 - b. Cure. Provider shall have a period of ten (10) days following a written notice of default to either cure such default or if such default cannot be cured within such period, to provide evidence satisfactory to City, in its sole discretion, that Provider is taking action to cure such default.
 - c. Termination for Convenience. This Agreement may be terminated by the City, in whole or in part, upon thirty (30) days written notice to Provider, when the City

determines this to be in its best interest. The termination for convenience is effective on the date specified in the City's written notice. Termination for convenience may entitle Provider to payment for reasonable costs allocable to the Contract Documents for work or costs incurred by Provider up to the date of termination. Provider shall not be paid compensation as a result of a termination for convenience that exceeds the amount payable under the schedule of charges in Exhibit "A."

- d. Termination for Non-Appropriation. City's payment obligation under this Agreement extends only to funds appropriated annually by City's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, City's applicable department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. However, City's governing body has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. If City is appropriated insufficient funds to continue annual payments under this Agreement, City may terminate this Agreement effective upon the last day of the fiscal year for which funds were appropriated. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to the effective termination date. Provider'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.
- e. Software License. If there is a termination for any reason, the City shall have the right to elect to (i) retain and use any Software for which City has paid the license fee to Provider; or (ii) return and discontinue use of such Software in exchange for a refund of such license fee.

21. Indemnification. Provider shall indemnify, defend (with counsel approved by City), and hold harmless the City, its officers, officials, agents, and employees (collectively, the "Indemnitees") from and against any and all claims, damages, demands, liability, costs, losses and expenses, (all of the foregoing collectively "Claims"), including without limitation court costs and reasonable attorneys' fees, which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, Provider's performance of services pursuant to this Agreement, including without limitation, Claims arising on account of injury to or death of persons or damage to property. City does not and shall not waive any rights against Provider which City may have pursuant to this Section because of Provider's provision of insurance policies required by this Agreement. Provider's obligations to defend and indemnify the City shall survive the expiration or termination of this Agreement. Provider shall not be required to indemnify City for Claims arising from the sole negligence or willful misconduct of the Indemnitees.

22. Conflicts of Interest.

- a. Provider covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any present interest, nor shall they acquire any interest, direct

or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.

- b. Provider shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City's Contract Administrator determines in writing that Provider's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Provider also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Agreement, City determines and notifies Provider in writing that Provider's duties under this Agreement warrant greater disclosure by Provider than was originally contemplated. Provider shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

23. Liability of Contractor. Provider shall be responsible for performing the services under this Agreement in a manner which is consistent with the generally-accepted standards of the Provider's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Provider or its employees, agents, contractors or subcontractors.

24. Insurance.

- a. Provider will comply with the "Insurance Requirements" of City which are attached hereto as Exhibit "B" and included as a part of this Agreement.
- b. No limitation on liability contained in the Contract Documents shall apply to any third party claim for personal injury or wrongful death arising from the negligent acts or willful misconduct of either party, its agents or assigns. Furthermore, no limitation on liability applicable to Provider shall apply to any third party claim that the Software infringes upon the intellectual property rights of another party, nor to the obligation of Provider to deliver the Software and Services in accordance with the Scope of Work and Provider's warranty obligations.

25. Laws, Venue, and Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in a state or federal court situated in the County of Santa Clara, State of California.

26. Documents. Provider shall deliver to City no less than one (1) full set of documentation, manuals, and training materials for the Software. City shall have the right to copy such documents and materials for its own internal use of the Software.

27. Project Manager. Provider shall assign **Jakea Simons** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

28. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered in person or sent via commercial overnight delivery or by certified mail, addressed to each party at the address set forth below or such other address for which a party has given notice in accordance with this section. Notice will be effective upon receipt, or within five (5) days of delivery.

City:

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

Provider:

TriTech Software Systems Inc.
1000 Business Center Drive
Lake Mary, Florida 32746
Attn: Jakea Simons

29. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Provider.
30. Non-Discrimination. Provider shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.
31. Prohibited Interests. Provider maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement. Further, Provider 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 Provider, 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.
32. Unauthorized Aliens. Provider hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Provider so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Provider hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.
33. Wage Theft Prevention.
- a. Provider, and any subcontractor it employs to complete Services 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, PROVIDER 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 PROVIDER OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. PROVIDER 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, PROVIDER 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 PROVIDER 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 Provider or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Provider learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Provider 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. Provider 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 Provider or its subcontractor is subject to a payment or other alternative plan, the Provider 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.

34. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.
35. Counterparts. This Agreement and any exhibits, amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Agreement or any amendment or renewal. A signature by any party to this Agreement provided by facsimile or electronic mail is binding upon that party as if it were the original.

[Signatures on following page]

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

CITY OF MILPITAS

Approved By:

Ned Thomas, City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk manager

Approved As To Content:

Christian Di Renzo, Public Works Director

**CentralSquare dba TriTech Software
Systems Inc.**

Signature

Name

Title

Date

**EXHIBIT A
SOFTWARE SERVICES**

Provider will continue the software license and professional services for the Computerized Maintenance Management System Software .

This agreement includes the subscription and professional services for the following:

Product: Product Name
Enterprise Asset Management Bundled-On Premise Site License Annual Subscription
Asset Management - Asset Subscription Option On Premise
Asset Management - Work Subscription Option On Premise
Asset Management - GIS Desktop Subscription Option On Premise
Asset Management - GIS Web Subscription Option On Premise
Asset Management - Mobile Subscription Option On Premise
Asset Management - Citizen Portal Subscription Option On Premise
Asset Management - Rest API's Option Subscription On Premise

This agreement is for the term of August 31, 2023 through August 30, 2029 and will be invoiced annually per the Annual Renewal Schedule.

[Annual Renewal Schedule on the Following Page]



This is a budget estimate provided as of 10/11/2023. This estimate can change if additional products are purchased, or pricing changes prior to your renewal period.

Account: Account Name	Product: Product Name	Quantity	Start Date	End Date	Net Total	Start Date	End Date	Net Total	Start Date	End Date	Net Total	Start Date	End Date	Net Total	Start Date	End Date	Net Total	Start Date	End Date	Net Total
Milpitas, CA	Enterprise Asset Management Bundled-On Premise Site License Annual Subscript	1	8/31/2023	8/30/2024	USD 55,000.00	8/31/2024	8/30/2025	USD 57,750.00	8/31/2025	8/30/2026	USD 60,637.50	8/31/2026	8/30/2027	USD 63,669.38	8/31/2027	8/30/2028	USD 66,852.84	8/31/2028	8/30/2029	USD 70,195.49
Milpitas, CA	Asset Management - Asset Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - Work Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - GIS Desktop Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - GIS Web Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - Mobile Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - Citizen Portal Subscription Option On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Milpitas, CA	Asset Management - Rest API's Option Subscription On Premise	1	8/31/2023	8/30/2024	USD 0.00	8/31/2024	8/30/2025	USD 0.00	8/31/2025	8/30/2026	USD 0.00	8/31/2026	8/30/2027	USD 0.00	8/31/2027	8/30/2028	USD 0.00	8/31/2028	8/30/2029	USD 0.00
Total	Sum Count	8			USD 55,000.00			USD 57,750.00			USD 60,637.50			USD 63,669.38			USD 66,852.84			USD 70,195.49

Grand Total USD 319,105.20

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

_____ Bid Bond
_____ Performance Bond
_____ Payment Bond

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

Other Insurance Provisions:

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

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

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

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

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

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

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

X Waiver of Subrogation:

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

Completed Operations

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

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Report on Bids and Adopt a Resolution Authorizing the City Manager to Award the Construction Contract to I & A Contractor, Inc. in the Amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Public Hearings-Community Services and Sustainable Infrastructure
Meeting Date:	11/14/2023
Recommendation:	(1) Receive report on bids and adopt a resolution authorizing the City Manager to award a construction contract to the lowest responsible and responsive bidder, I & A Contractor, Inc., in the amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$64,245.00 for the Sports Center Roof Rehabilitation Project.

BACKGROUND:

The roof at the Milpitas Sports Center is over 30 years old and nearing the end of its useful life requiring rehabilitation. In addition to the roof rehabilitation, replacement of HVAC duct work will also be required to meet California Title 24 Building Energy Efficiency Standards requirements. Commonly referred to as Title 24, these standards were adopted to ensure new and existing buildings achieve energy efficiency and preserve outdoor and indoor environmental quality. Specifically related to this project, Title 24 contains requirements for the types of roofing materials used in new construction or re-roofing projects.

ANALYSIS:

On September 19, 2023, the City issued an Invitation for Bid (IFB) 24-029 for the Sports Center Roof Rehabilitation Project. 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. A mandatory bid walk was held on September 27, 2023, with nineteen (19) contractors in attendance. Seven (7) bids were received at the bid close on October 24, 2023, ranging from \$428,300.00 to \$989,000.00.

#	Contractor	Base Bid
1	I & A Contractor, Inc.	\$428,300.00
2	Foothill Air Conditioning and Heating, Inc.	\$495,700.00
3	Valhalla Builders	\$504,200.00
4	Pioneer Contractors, Inc.	\$515,000.00
5	Best Contracting Services, Inc.	\$694,760.00
6	Brazos	\$774,200.00
7	One Day Installation & Repairs, Inc.	\$989,000.00

After reviewing the required bid documents, I & A Contractor, Inc. was the lowest responsible bidder submitting a responsive bid. The bid submitted was within the City's estimate for these services.

Staff is requesting authority to execute change order contingencies related to this project for the not-to-exceed amount of \$64,245.00 (15% of base bid). This authority will allow for more effective administration and timely

completion of the repairs outlined in this project caused by unexpected discovery of other issues that may arise during the project.

Staff recommends the City Council award the contract for the Project to I & A Contractor, Inc. for the base bid amount of \$428,300.00 and authorize the City Manager to execute contract change orders in an aggregate amount not-to-exceed \$64,245.00.

POLICY ALTERNATIVE(S):

Alternative 1: Direct City staff to reject all bids and not proceed with the project.

Pros: The City would be able to use the \$428,300.00 for other projects.

Cons: Rejecting all bids and deferring the rehabilitation of the Sports Center roof could later result in further structural damage to the facility.

Reason for Not Recommending: Not proceeding with the project would defer improvements that would update the facility to meet California Title 24 Building Energy Efficient Standards requirements.

FISCAL IMPACT:

Funding source is from the Capital Improvement Project No. 3422 - City Building Roofing Repairs for this project. As of November 6, 2023, the balance in CIP 3422 is \$923,257.83.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The project entails the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use and is exempt from CEQA pursuant to Cal. Code Regs., tit. 14, § 15301.

RECOMMENDATION:

- (1) Receive report on bids and adopt a resolution authorizing the City Manager to award a construction contract to the lowest responsible and responsive bidder, I & A Contractor, Inc., in the amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project; and
- (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$64,245.00 for the Sports Center Roof Rehabilitation Project.

ATTACHMENT(S):

- (a) Resolution
- (b) Agreement

I RESOLUTION No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AWARDING A CONSTRUCTION CONTRACT TO I & A CONTRACTOR, INC. FOR THE
REHABILITATION OF THE MILPITAS SPORTS CENTER ROOF PROJECT**

WHEREAS, City Milpitas Municipal Code Section I-2-3.08 (“Formal Bid Procedures”) authorizes the City Council to award construction contracts to the responsible bidder, whose proposal is determined in writing to be the most advantageous to the City, taking into consideration, price, value, and the evaluation factors set forth in the request for proposals; and

WHEREAS, Capital Improvement Program Project No. 3422 - Building Roofing Repairs is an approved project which provides for the assessment, design, and construction of improvements to City facilities in the adopted 2024-2028 Capital Improvement Program (CIP) budget; and

WHEREAS, the Milpitas Sports Center is a City facility that offers full-service fitness programs and amenities including a gym, pools, and dance studios; and

WHEREAS, the roof at the Milpitas Sports Center is nearing the end of its useful life and requires rehabilitation; and

WHEREAS, the Public Works Department identified the need for a qualified contractor to conduct the roofing and related HVAC duct work; and

WHEREAS, in accordance with the bidding requirements under the California Uniform Public Construction Cost Accounting Act and Public Contracting Code, the Project was advertised for bid on September 19, 2023, in accordance with the bidding requirements; and

WHEREAS, the Purchasing Agent has determined that lowest responsible bidder submitting a responsive bid is I & A Contractor, Inc., in the base bid amount of \$428,300.

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 authorizes the City Manager to award a construction contract to I & A Contractor, Inc. in the Amount of \$428,300.00 for the Sports Center Roof Rehabilitation Project.
3. The City Council of the authorizes the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$64,200.00 for the Sports Center Roof Rehabilitation Project.

PASSED AND ADOPTED this day of , 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Multalipassi, City Attorney



CITY OF MILPITAS

MILPITAS, CALIFORNIA

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR

SPORTS CENTER ROOF REHABILITATION PROJECT

24-029

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00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the City Council of the City of Milpitas ("City") invites and will receive sealed Bids up to but not later than **2:00 p.m. on Tuesday, October 17, 2023** at City of Milpitas City Hall, 1st floor, Information Service Counter, 455 E. Calaveras Boulevard, Milpitas, California 95035, for the furnishing to City of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for **Sports Center Roof Rehabilitation Project** (the "Project"). At said time, Bids will be publicly opened and read aloud at the City Office. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.

Bids must be submitted on the City's Bid Forms. Bidders may obtain a copy of the Contract Documents from Prints Charles Reprographics, 1643 South Main Street, Milpitas CA 95035, (408) 240-3330, www.printscharlesrepro.com or incoming@printscharlesrepro.com. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the City shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

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

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

A **MANDATORY** Pre-Bid Conference is scheduled for **September 27, 2023 at 10:00am** and on to review the Project's existing conditions at **Milpitas Sports Center, 1325 E. Calaveras Blvd., Milpitas, CA 95035**. Representatives of the City and consulting engineers, if any, will be present. Bidders need only to attend one Pre-Bid Conference. Questions asked by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and issued as an Addendum. Bids will not be accepted from any bidder who did not attend one of the mandatory Pre-Bid Conferences.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

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

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

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

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

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

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: C-39 Roofing Contractor and C-20 – Warm Air, Heating, Ventilating and Air Conditioning.

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

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

For further information, contact Steve Pietrobono/Buyer, at spietrobono@milpitas.gov or 408-472-8085.

END OF NOTICE INVITING BIDS

00 21 13 – INSTRUCTIONS TO BIDDERS

1. SECURING DOCUMENTS

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

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

Addenda, if any, issued during the bid period will be posted on www.printscharlesrepro.com. Failure to acknowledge addenda may make a bid nonresponsive and not eligible for award of the contract.

2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS

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

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

3. INTERPRETATION OF DRAWINGS AND DOCUMENTS

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

4. INSPECTION OF SITE; PRE-BID CONFERENCE

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

5. ADDENDA

The City reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the City shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the City will extend the deadline for submission of Bids. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid submission date. Each prospective Bidder shall provide City a name, address, email address, and facsimile number to which Addenda may be sent, as well as a telephone number by which the City can contact the Bidder. Any Addenda will be posted on www.printscharlesrepro.com. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each Bidder should contact Steve Pietrobono/Buyer, at spietrobono@milpitas.gov or 408-472-8085.

to verify that it has received all Addenda issued, if any, prior to the Bid opening. The Bidder shall indicate the Addenda received prior to bidding in the space provided in the Bid Form. Failure to indicate all Addenda may be sufficient cause for rejecting the Bid.

6. ALTERNATE BIDS

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

7. COMPLETION OF BID FORMS

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

8. MODIFICATIONS OF BIDS

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

9. SUBCONTRACTORS

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

The successful bidder will be required to self-perform at least 20% of the work.

10. LICENSING REQUIREMENTS

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

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

11. BID GUARANTEE (BOND)

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

12. IRAN CONTRACTING ACT OF 2010

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

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

13. NONCOLLUSION DECLARATION

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

14. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

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

15. WAGE THEFT CERTIFICATION

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

16. BIDDER INFORMATION AND EXPERIENCE FORM

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

17. WORKERS' COMPENSATION CERTIFICATION

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

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

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

18. SIGNING OF BIDS

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

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

19. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials, in a sealed

envelope, addressed and delivered or mailed, postage prepaid, to the City Clerk before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the bidder. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the City as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened. The envelope shall also contain the following in the lower left-hand corner thereof:

Bid of _____ (Bidder's Name)_____
for the Sports Center Roof Rehabilitation Project

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

20. OPENING OF BIDS

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

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

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

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

21. WITHDRAWAL OF BID

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

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

22. BIDDERS INTERESTED IN MORE THAN ONE BID

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

23. SUBSTITUTION OF SECURITY

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

24. PREVAILING WAGES

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

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

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

26. INSURANCE REQUIREMENTS

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

27. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS

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

to City within ten (10) working days from the date the City provides the successful bidder with the Notice of Award.

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

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

29. FILING OF BID PROTESTS

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

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

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

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

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

30. BASIS OF AWARD; BALANCED BID

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

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

31. AWARD PROCESS

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the City Council may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3)

the required insurance certificates and endorsements. Once the City notifies the Bidder of the award, the Bidder will have fourteen (14) calendar days from the date of this notification to execute the Contract and supply the City with all of the required documents and certifications. Regardless of whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run twenty-one (21) calendar days from the date of the Notice of Award. Once the City receives all of the properly drafted and executed documents, certifications from the Bidder, and any other documents as maybe specified in the Contract Documents, the City shall issue a Notice to Proceed to that Bidder.

32. EXECUTION OF CONTRACT

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

00 41 43 – BID FORMS

1.1 Bid Acknowledgement.

NAME OF BIDDER: _____

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:

SPORTS CENTER ROOF REHABILITATION PROJECT

- 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. _____
- E Attached hereto and by this reference incorporated herein and made a part of this Bid are the following forms which have been completed and executed by undersigned Bidder:
 - 1. Designation of Subcontractors form.
 - 2. Bidder Information and Experience form.
 - 3. Noncollusion Declaration form.
 - 4. Iran Contracting Act Certification form.
 - 5. Public Works Contractor Registration Certification form.
 - 6. Attached is the completed Wage Theft Certification form.

7. Contractor's Certificate Regarding Workers' Compensation form.
8. Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
- F If awarded a contract, the undersigned hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within fourteen (14) days after the City provides the successful bidder with the Notice of Award.
- G Upon receipt of the signed contract and other required documents, the contract will be executed by the City, after which the City will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.
- H Bidder is an individual _____, or corporation _____, or partnership _____, organized under the laws of the State of _____.
- 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):

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 _____, on this ____ day of _____, ____.

(Bidder's Name – Print or Type)

(Corporate Seal)

(Name and Title)

(Signature)

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

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

Name _____ Title _____

Complete Address _____

Phone _____ Fax _____

1.2 BID SCHEDULE

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	TOTAL ITEM PRICE
1.	Mobilization	LS	1		
2.	Diversion of Recyclable Waste Materials	LS	1		
3.	Rehabilitation of roof, and installation of roofing materials	EA	1		
4.	Replacement of HVAC duct work to meet Title 24 requirements.	EA	1		
TOTAL BASE BID PRICE					

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

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

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

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

TOTAL BID PRICE:

TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES FOR Sports Center Roof Rehabilitation Project	
\$ _____	Total Bid Price in Numbers
\$ _____	Total Bid Price in Written Form
In case of discrepancy between the written price and the numerical price, the written price shall prevail.	

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

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of the Work

(Attach additional sheets if necessary)

Name of Bidder_____

Signature_____

Name and Title_____

Dated_____

1.4 Bidder Information and Experience Form

A. INFORMATION ABOUT BIDDER

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

1.0 Name of Bidder: _____

2.0 Type, if Entity: _____

3.0 Bidder Address: _____

4.0 How many years has Bidder's organization been in business as a Contractor?

5.0 How many years has Bidder's organization been in business under its present name? _____

5.1 Under what other or former names has Bidder's organization operated?

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: _____

6.2 State of Incorporation: _____

6.3 President's Name: _____

6.4 Vice-President's Name(s): _____

6.5 Secretary's Name: _____

6.6 Treasurer's Name: _____

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: _____

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

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

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

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

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

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

13.0 List Trade References:

14.0 List Bank References (Bank and Branch Address):

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

B. LIST OF CURRENT PROJECTS (BACKLOG)

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

Project Name, & Owner Contact Information	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

C. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

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

Project Name, & Owner Contact Information	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

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

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

2. Summarize each person's specialized education:

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

4. Summarize such experience:

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

Additional Bidder's Statements:

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

E. VERIFICATION AND EXECUTION

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

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder_____

Signature_____

Name_____

Title_____

Date_____

1.5 Non-Collusion Declaration

The undersigned declares:

I am the _____ of _____, 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 _____ [date], at _____ [city], _____ [state].

Name of Bidder_____

Signature_____

Name_____

Title_____

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: _____

Title: _____

Firm Name: _____

Date: _____

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: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or XX 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 _____

Signature _____

Name and Title _____

Dated _____

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

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: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

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_____

Signature_____

Name_____

Title_____

Dated _____

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, _____, as Principal, and _____, 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 _____, 20____, for the **Sports Center Roof Rehabilitation Project**.

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 _____ day of _____, 20____, the name and corporate seal of each corporation.

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

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

Date of Document

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

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

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☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

00 52 13 – CONTRACT

This CONTRACT, No. **24-029** is made and entered into this day of _____ by and between City of Milpitas, sometimes hereinafter called “City,” and **I & A Contractor, Inc.**, sometimes hereinafter called “Contractor.”

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

a. **SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

SPORTS CENTER ROOF REHABILITATION PROJECT

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor’s failure to comply with this obligation.

b. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City’s Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **One Hundred Eighty (180) calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

c. **CONTRACT PRICE.** The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Four Hundred Twenty-Eight Thousand Three Hundred Dollars and Zero Cents (\$428,300.00)**. Payment shall be made as set forth in the General Conditions.

d. **LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum set forth in Section 00 73 13, Article 1.11 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

e. **COMPONENT PARTS OF THE CONTRACT.** The “Contract Documents” include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification

Public Works Contractor Registration Certification
Wage Theft Certification
Performance Bond
Payment (Labor and Materials) Bond
General Conditions
Special Conditions
Technical Specifications
Addenda
Plans and Drawings
Caltrans Standard Specifications, except Division 1
Caltrans Standard Plans
Applicable Local Agency Standards and Specifications, as last revised
Approved and fully executed change orders
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

f. **PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

g. **INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

h. **PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

i. **WAGE THEFT PREVENTION.**

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

(b) BY SIGNING THIS CONTRACT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS CONTRACT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS

SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS CONTRACT.

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

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

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

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF MILIPITAS

I & A CONTRACTOR INC

By _____
Ned Thomas, City Manager

By: _____

Its: _____

Printed
Name: _____

**(CONTRACTOR'S SIGNATURE MUST BE
NOTARIZED AND CORPORATE
SEAL AFFIXED, IF APPLICABLE)**

APPROVED AS TO FORM:

By: _____
City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved:

Christian Di Renzo, Director of Public Works

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

00 61 13 – BOND FORMS

1.1 Performance Bond.

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by City in enforcing such obligation.

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

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

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Title or Type of Document

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 ☐ General

Number of Pages

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

Date of Document

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

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

1.2 Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

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

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

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

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

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that

this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal)

Contractor/Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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- ☐ Individual
☐ Corporate Officer

Title(s)

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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COUNTY OF _____

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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.

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

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00 72 13 – GENERAL CONDITIONS

ARTICLE 1 DEFINED TERMS

Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- A. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
- B. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
- C. Additional Work -- New or unforeseen work will be classified as “Additional Work” when the City’s Representative determines that it is not covered by the Contract.
- D. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
- E. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
- F. Bidder -- The individual or entity who submits a Bid directly to the City.
- G. Caltrans Standard Specifications - Standard Specifications of the State of California, Department of Transportation, Current Edition. Any reference therein to a State agency or officer shall be interpreted as if the corresponding City office or agent acting under this contract were so specified.
- H. Caltrans Standard Plans - Standard plans of the State of California, Department of Transportation, Current Edition. All metric measurements or quantities in the Caltrans Standard Plans shall be disregarded, and equivalent United States measures used.
- I. Change Order (“CO”) -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
- J. Change Order Request (“COR”) -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work. This term may also be referred to as a Change Order Proposal (“COP”), or Request for Change (“RFC”).
- K. City -- The City of Milpitas.

- L. City Council, Council -- The City Council of the City.
- M. City's Representative -- The individual or entity as identified in the Special Conditions to act as the City's Representative.
- N. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- O. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
- P. Contract Documents -- The documents listed in Section 00 52 13, Article 5. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
- Q. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
- R. Contract Times -- The number of days or the dates stated in the Contract Documents to: achieve defined Milestones, if any; and to complete the Work so that it is ready for final payment.
- S. Contractor -- The individual or entity with which the City has contracted for performance of the Work.
- T. Contractor's Designated On-Site Representative -- The Contractor's Designated On-Site Representative will be as identified in Section 00 72 13, Article 3 and shall not be changed without prior written consent of the City.
- U. Daily Rate -- The Daily Rate stipulated in the Contract Documents as full compensation to the Contractor due to the City's unreasonable delay to the Project that was not contemplated by the parties.
- V. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
- W. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
- X. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

- Y. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- Z. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- AA. Engineer, whenever not qualified, shall mean the City Engineer or its designee, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. On all questions concerning the acceptance of materials, machinery, the classifications of material, the execution of work, conflicting interest of the contractors performing related work and the determination of costs, the decision of the Engineer, duly authorized by the City Council, shall be binding and final upon both parties.
- BB. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1. or any succeeding entity designated by the City.
- CC. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a class I, class II, or class III disposal site in accordance with provisions of existing law, whichever is more restrictive.
- DD. Holiday -- The Holidays are defined as legal Federal, State, and City holidays including:

New Year's Day - January 1
Martin Luther King Jr.'s Birthday -- Third Monday in January
Lincoln's Birthday -- February 12
President's Day -- Third Monday in February
Memorial Day - Last Monday in May
Independence Day - July 4
Labor Day - First Monday in September
Veteran's Day - November 11
Thanksgiving Day - Fourth Thursday in November
Friday after Thanksgiving
Christmas Eve -- December 24
Christmas Day - December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

- EE. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.

- FF. Notice of Completion -- The form which may be executed by the City and recorded by the county where the Project is located constituting final acceptance of the Project.
- GG. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.
- HH. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
- II. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- JJ. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
- KK. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- LL. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- MM. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
- NN. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.
- OO. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
- PP. Successful Bidder -- The Bidder submitting a responsive Bid to whom the City makes an award.
- QQ. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
- RR. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

- SS. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its bid or as adjusted in accordance with the Contract Documents.
- TT. Warranty -- A written guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
- UU. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

- A. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- B. **Interpretations.** The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

1. Change Orders
2. Contract
3. Addenda
4. Special Conditions
5. Technical Specifications
6. Plans (Contract Drawings)
7. General Conditions
8. Instructions to Bidders
9. Notice Inviting Bids
10. Contractor's Bid Forms
11. City Standard Specifications
12. City Standard Drawings
13. Caltrans Standard Specifications, except Division 1
14. Caltrans Standard Plans
15. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda or Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over Standard Drawings
5. Contract Drawings govern over Shop Drawings

- C. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall always apply.
- D. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Project Work among subcontractors or in establishing the extent of Work to be performed by any trade.

ARTICLE 3 PRECONSTRUCTION AND CONSTRUCTION COMMUNICATION

Before any Work at the site is started, a conference attended by the City, Contractor, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

At this conference the City and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

ARTICLE 4 CONTRACT DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, **five (5)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents, including submittals, at the Project site.

ARTICLE 5 EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK

- A. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.
- B. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

- C. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

ARTICLE 6 EXISTENCE OF UTILITIES AT THE WORK SITE

- A. The City has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- B. Unless indicated otherwise on the Plans and Specifications, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities may not be shown on the Plans. Any connections shown on the Plans are general locations. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the City in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- C. If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.
- D. Notwithstanding the above, pursuant to section 4215 of the Government Code, the City has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for Bids, the City shall assume the responsibility for their timely removal, relocation, or protection.
- E. Contractor, except in an emergency, shall contact the appropriate regional notification center (USA North), Northern California Underground Service Alert at 811 or 1-800-227-2600 or on-line at usanorth811.org at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the City, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification

number has been assigned to the Contractor or any subcontractor of the Contractor and the City has been given the identification number by the Contractor.

ARTICLE 7 SOILS INVESTIGATIONS

- A. Reports and Drawings. The Special Conditions identify:
1. those reports known to the City of explorations and tests of subsurface conditions at or contiguous to the site; and
 2. those drawings known to the City of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own interpretation of the “technical data” and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Contractor may not rely upon or make any claim against the City, City’s Representative, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

ARTICLE 8 CONTRACTOR’S SUPERVISION

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

ARTICLE 9 WORKERS

- A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

ARTICLE 10 INDEPENDENT CONTRACTORS

Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of City and are not entitled to benefits of any kind normally provided employees of City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

ARTICLE 11 SUBCONTRACTS

- A. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.
- B. The City reserves the right to accept all subcontractors. The City's acceptance of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- C. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

ARTICLE 12 VERIFICATION OF EMPLOYMENT ELIGIBILITY

By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

ARTICLE 13 REQUESTS FOR SUBSTITUTION

- A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.
- D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than 15 (15) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.
- E. Substantiating data as described above shall include, at a minimum, the following information:
1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
 4. Information detailing the durability and lifecycle costs of the proposed substitution.
- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
- G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

- H. The Contractor shall bear the costs of all City work associated with the review of substitution requests.
- I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 14 SHOP DRAWINGS

- A. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.
- B. Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written acceptance. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

ARTICLE 15 SUBMITTALS

- A. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- B. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.
- C. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

ARTICLE 16 MATERIALS

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all

other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.
- E. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the City or any independent contractor.
- F. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.
- G. The City shall provide compensation for actual quantities of materials installed in accordance with the Contract Documents and at the price set forth in the Contractor's bid and/or executed change order. The City is not obligated to pay for materials stored on/off site but not yet installed in accordance with the Contract Documents.

ARTICLE 17 PERMITS AND LICENSES

- A. Contractor shall obtain all other necessary permits and licenses for the construction of the Project, including encroachment permits, and shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of public health and safety. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City. Any construction permits required by City for performing any work on this project will be issued by City at no charge to Contractor. Contractor and all subcontractors shall maintain a City business license at all times they are performing the Work.

ARTICLE 18 TRENCHES

- A. **Trenches Five Feet or More in Depth.** Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.
- B. **Excavations Deeper than Four Feet.** If the Work involves excavating trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:
1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 19 DIVERSION OF RECYCLABLE WASTE MATERIALS

In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances, and provide the City Engineer with detailed records and quantities of the materials that were sent to recycling centers. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

ARTICLE 20 REMOVAL OF HAZARDOUS MATERIALS

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

ARTICLE 21 SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

ARTICLE 22 AIR POLLUTION CONTROL

Contractor shall comply with all air pollution and dust control rules, regulations, ordinances and statutes, including, but not limited to, those required by the Air Quality Management District. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 23 LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

ARTICLE 24 TESTS AND INSPECTIONS

- A. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for

observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and City inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

- B. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- C. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- D. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- E. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- F. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

ARTICLE 25 PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall be responsible for all damages to persons or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the City. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- B. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so

act, without appeal, if so authorized or instructed by the Engineer or the City. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the City and the Contractor.

ARTICLE 26 CONTRACTOR'S MEANS AND METHODS

Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

ARTICLE 27 AUTHORIZED REPRESENTATIVES

The City shall designate representatives, who shall have the right to be present at the Project site at all times. The City may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

ARTICLE 28 HOURS OF WORK

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- B. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- C. The Contractor shall pay to the City a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City. Contractor shall also timely notify the City when work will be performed outside regular working hours or on weekends or holidays.

- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.
- F. Refer to the most current version of the City of Milpitas Noise Abatement Ordinance, Ord. 196.6 of the Municipal Code Section V-213. It shall be unlawful for any person to engage or permit to engage in construction of any building or related road or walkway, pool, or landscape improvement or in the construction operations related thereto including to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 7:00 p.m., Monday through Sunday, unless otherwise approved by the City:
 - 1. Powered Vehicles
 - 2. Construction Equipment
 - 3. Loading and Unloading Vehicles
 - 4. Domestic Power Tools

ARTICLE 29 PAYROLL RECORDS; LABOR COMPLIANCE

- A. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- B. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- C. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers,

employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

- D. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:
 - 1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- E. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- F. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.
- G. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.
- H. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 30 PREVAILING RATES OF WAGES

- A. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of

the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

- B. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- C. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

ARTICLE 31 PUBLIC WORKS CONTRACTOR REGISTRATION

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

ARTICLE 32 EMPLOYMENT OF APPRENTICES

- A. Contractor and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

D. The responsibility for compliance with this Article shall rest upon the Contractor.

ARTICLE 33 NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Employment Eligibility; Contractor. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.

Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

Employment Eligibility; Failure to Comply. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

ARTICLE 34 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive

any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

ARTICLE 35 LABOR/EMPLOYMENT SAFETY

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the City prior to beginning Work at the Project site. Contractor shall maintain a confined space program that meets or exceeds the City Standards. Contractor shall adhere to the City's lock out tag out program.

ARTICLE 36 INSURANCE

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

- A. **Additional Insureds; Waiver of Subrogation.** The City, its elected and appointed officials, officers, attorneys, agents employees and volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.

- B. **Workers' Compensation Insurance.** The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.
- C. **Employer's Liability Insurance.** Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.
- D. **Commercial General Liability Insurance.** Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.
1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance.** Contractor shall provide "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work is formally accepted by the City. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.
2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and City, its elected officials, officers, employees, agents and authorized volunteers,

as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by City.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy and sublimit.
4. In addition, the policy shall meet the following requirements:
 - a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - b. Coverage shall include all materials stored on site and in transit.
 - c. Coverage shall include Contractor's tools and equipment.
 - d. Insurance shall include boiler, machinery and material hoist coverage.
- G. **Contractor's Pollution Liability Coverage.** Contractor shall provide pollution liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- H. Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by City. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

ARTICLE 37 FORM AND PROOF OF CARRIAGE OF INSURANCE

- A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related

investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

- B. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.
- C. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- D. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- E. City reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- F. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

ARTICLE 38 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within **ten (10) Days** of the date stated in the City's Notice to Proceed and shall be completed by Contractor specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be

amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed as determined by the City. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- B. **Inclement Weather.** Contractor shall abide by the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. The Contractor shall implement measures and make contingencies as may be required to protect the Work and to all allow Work to proceed during wet or inclement weather to prevent delay or stoppage.
- C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the City in writing of causes of delay. The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.
- D. **No Damages for Reasonable Delay.** The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of the City pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

ARTICLE 39 SCHEDULE OF VALUES, COST BREAKDOWN AND PERIODIC ESTIMATES

Contractor shall furnish on forms Approved by the City:

- A. When requested by the Engineer, and within ten (10) Days of Notice to Proceed with the Contract, the Contractor shall provide a Schedule of Values consisting of

a detailed estimate giving a complete breakdown of the Contract price for each lump sum bid item in the Contract.

- B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the City to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- D. Following the City's Acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request.
- E. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

ARTICLE 40 PROGRESS ESTIMATES AND PAYMENT

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.
- B. The Contractor shall provide an updated project schedule with each payment request.
- C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 - 2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
 4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 5. Damage to another contractor or a third party.
 6. Amounts which may be due the City for claims against Contractor.
 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 8. Failure to provide update on construction schedule as required herein.
 9. Site cleanup.
 10. Failure to comply with Contract Documents.
 11. Liquidated damages.
 12. Legally permitted penalties.
- D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.
- F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

ARTICLE 41 SECURITIES FOR MONEY WITHHELD

Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

ARTICLE 42 CHANGES AND EXTRA WORK.

A. Contract Change Orders.

1. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. Contractor shall promptly execute changes in the Work as directed in writing by the City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation shall be presented in writing. No claim will be considered after the Work in question has been completed unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.
3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.
4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.
5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the work, including Additional Work, promptly and expeditiously.
6. Contractor shall make available to the City any of the Contractor's documents related to the Project immediately upon request of the City, as set forth in Article 52.

7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

B. Contract Price Change.

1. Process for Determining Adjustments in Contract Price.

- a. Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the City, unless the City requests that proposals be submitted in less than seven (7) Days.
- b. Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the City.
- d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the City, including but not limited to estimates and quotations from subcontractors or material suppliers, as the City may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.
- e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the City has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the City's estimate. If the change is issued based on the City's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the City's estimate was in error.

2. Unit Price Change Orders.

- a. When the actual quantity of a Unit Price item is found to vary from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents. Contractor shall immediately inform the Engineer when the actual quantities vary from estimated quantities.

- b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.
 - c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.
 - d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in City's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.
3. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:
- a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
 - b. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the City shall determine the materials cost, at its sole discretion.
 - c. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates

prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

4. Time and Materials Change Orders.

a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

b. Timely and Final Documentation.

i. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's Representative for an approval signature **each day** Additional Work is performed. Failure to get the City's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The City's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of City's agreement to Contractor's entitlement to the cost.

ii. T&M Daily Summary Sheets. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within **three (3) Days** of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.

iii. T&M Total Cost Summary Sheet. Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within **seven (7) Days** following completion of City approved Additional Work. Contractor's total actual

cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

- c. Labor. The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State, or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.
 - i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
 - ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
- d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
 - i. Trade discounts available to the purchaser shall be credited to the City notwithstanding the fact that such discounts may not have been taken by Contractor.
 - ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the City's Representative.
 - iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the

purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.

- iv. If, in the opinion of the City's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project site less trade discounts.
- v. The City reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on City furnished materials.

e. Equipment.

- i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.
 - (a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - (b) Computation Method. The following shall be used in computing the rental time of equipment on the Project site.
 - (i) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 - (ii) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

- ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the City for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the City's Representative. Contractor may furnish cost data which might assist the City's Representative in the establishment of the rental rate.
- iii. Contractor-Owned Equipment.
 - (a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.
 - (b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then City shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to the City that the equipment could be actively used on another project.
 - (i) All equipment shall, in the opinion of the City's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
 - (ii) Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.

- (iii) Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
- f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
 - i. Invoices for Special Services. When the City's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the City's Representative.
 - ii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.
 - iii. When the City determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.
- g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
 - i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

- ii. Office Expenses. Expenses of Contractor's principal and branch offices;
 - iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
 - iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
 - vi. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
 - vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
 - ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
 - x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
- i. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor

shall provide City with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as City may reasonably request.

- ii. For Work performed by the Contractor's forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
 - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor's Net Cost.
 - iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
 - v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.
6. For added or deducted Work by subcontractors, the Contractor shall furnish to the City the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors
7. For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the City a detailed record of the cost to the Contractor, signed by such vendor or supplier.

8. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
9. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's change order form in an attempt to reserve additional rights.
10. If the City disagrees with the proposal submitted by Contractor, it will notify the Contractor and the City will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the City, a Change Order will be issued by the City. If no agreement can be reached, the City shall have the right to issue a unilateral Change Order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the City within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the City may require.

C. Change of Contract Times.

1. The Contract Times may only be changed by a Change Order.
2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.
3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless City's Representative allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.
4. City may elect, at City's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.

5. Use of Float and Critical Path.

- a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the City or the Contractor.
- b. Contractor shall not be entitled to compensation, and City will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.

6. Contractor's entitlement to an extension of the Contract Times is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the City-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.

- a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by the City), Acts of God, acts or failures to act of utility owners not under the control of City, or other causes not the fault of and beyond control of City and Contractor, then Contractor shall be entitled to an time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.

c. Utility-Related Delays.

- i. Contractor shall immediately notify in writing the utility owner and City's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.
- ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.

7. Content for Requests for Contract Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:
 - a. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension. Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.
 - b. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.
8. No Damages for Reasonable Delay.
 - a. City's liability to Contractor for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
 - b. City and City's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices City's and City's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.

10. Contractors submission of daily construction reports and schedule updates in accordance with these Contract Documents is required for the evaluation of the merits of time extension request. Failure of the Contractor to submit daily construction reports and schedule updates shall constitute a waiver of its right to seek a time extension or additional compensation.

ARTICLE 43 FINAL ACCEPTANCE AND PAYMENT

- A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Acceptance. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as-builts), and other documents required by the Contract Documents, the City shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.
- C. Final Payment.
 1. Application for Payment. Upon execution of the Notice of Completion, Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by: all documentation called for in the Contract Documents, including but not limited to a fully completed Conditional Waiver and Release on Final Payment
 2. City's Review of Application and Acceptance. If, on the basis of the City's observation of the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the City is satisfied that the Work has been completed and Contractor has satisfied all other requirements for final payment, the City will process the final payment application. Otherwise, the City will return the payment application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application for payment.
 3. Payment Becomes Due. Within sixty (60) Days after the presentation to the City of the proper and complete final application for payment and accompanying documentation, the amount recommended by the Engineer, less any sum the City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by the City to Contractor.

- D. Waiver of Claims. The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against the City other than those previously made in accordance with the requirements herein and expressly acknowledged by the City in writing as still unsettled.

ARTICLE 44 OCCUPANCY

The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

ARTICLE 45 INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, officials, officers, agents, employees, and representatives, and each of them from and against:

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.
- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the City Council's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

ARTICLE 46 PROCEDURE FOR RESOLVING DISPUTES

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 42, Changes and Extra Work, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 42 "Changes and Extra Work" has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 42, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.
- C. **Supporting Documentation.** The Contractor shall submit all claims in the following format:

1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
 2. List of documents relating to claim:
 - Specifications
 - Drawings
 - Clarifications (Requests for Information)
 - Schedules
 - Other
 3. Chronology of events and correspondence
 4. Analysis of claim merit
 5. Analysis of claim cost
 6. Time Impact Analysis in CPM format
- D. **City's Response.** Upon receipt of a claim pursuant to this Article, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement.
1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
 2. Within 30 Days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- E. **Meet and Confer.** If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in

writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

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

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

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

H. **Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- I. **Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**
- J. **Non-Waiver.** The City's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

ARTICLE 47 CITY'S RIGHT TO TERMINATE CONTRACT

A. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within

such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its Surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. In the event that the City serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the City written notice of Surety's intention to take over and commence performance of the Contract within 15 calendar days of the City's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the City's service of said notice upon Surety; then the City may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
3. In the event that the City elects to obtain an alternative performance of the Contract as specified above: (1) the City may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the City in the event of such suspension is hereby created against any property of Contractor taken into the possession of the City under the terms hereof and such lien may be enforced by sale of such property under the direction of the City Council without notice to Contractor. The proceeds of the sale after deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the City against Contractor, the balance will be paid to Contractor or Contractor's legal representatives.); and (2) Surety shall be liable to the City for any cost or other damage to the City necessitated by the City securing an alternate performance pursuant to this Article.

B. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the City determines that a termination is in the City's interest.
2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the Effective Date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice.
 - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
 - f. Submit to the City's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience."
4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
5. In the event that the City exercises its right to terminate this Contract pursuant to this clause, the City shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:
 - a. All actual reimbursable costs incurred according to the provisions of this Contract.
 - b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of

the City's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.

- c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.
- C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

ARTICLE 48 WARRANTY AND GUARANTEE OF WORK

- A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.
- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.
- C. In addition to the warranty set forth in this Article, Contractor shall obtain for City all warranties that would be given in normal commercial practice and assign to City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that

such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final Acceptance of the Project by the City as required.

- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.
- F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- H. Acceptance of Defective Work.
 - 1. If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
 - 2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by City.
 - 3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.

4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to City.
- I. City May Correct Defective Work.
1. If Contractor fails within a reasonable time after written notice from City's Representative to correct Defective Work, or to remove and replace rejected Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.
 2. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the Defective Work.
 3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price.
 4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
 5. If the Change Order is executed after all payments under the Contract have been paid by City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
 6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to City.
 7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting Defective work.
- J. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 49 DOCUMENT RETENTION & EXAMINATION

- A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.
- C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

ARTICLE 50 SEPARATE CONTRACTS

- A. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- B. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- C. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 51 NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to City shall be addressed to the City as designated in the Notice Inviting Bids unless City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever

is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

ARTICLE 52 NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

ARTICLE 53 STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 54 INTEGRATION

- A. **Oral Modifications Ineffective.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- B. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire agreement of the City and Contractor.

ARTICLE 55 ASSIGNMENT OF CONTRACT

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

ARTICLE 56 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect City's rights under the Contract, including but not limited to the bonds.

ARTICLE 57 ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Public Contract Code section 7103.5, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all

causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

ARTICLE 58 PROHIBITED INTERESTS

No City official or representative who is authorized in such capacity and on behalf of the City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

ARTICLE 59 CONTROLLING LAW

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

ARTICLE 60 JURISDICTION; VENUE

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Santa Clara County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

ARTICLE 61 LAWS AND REGULATIONS

- A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

ARTICLE 62 PATENTS

Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

ARTICLE 63 OWNERSHIP OF CONTRACT DOCUMENTS

All Contract Documents furnished by the City are City property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the City on request at completion of the Work.

ARTICLE 64 NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

ARTICLE 65 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

00 73 13 – SPECIAL CONDITIONS

1.1 Engineer of Record.

A For purposes of this Project, the Engineer of Record or Engineer shall be:

Christian Di Renzo, Public Works Director

1.2 Location of the Project.

A The Project is located **Milpitas Sports Center, 1325 E. Calaveras Blvd., Milpitas, CA 95035.**

1.3 Status of the Project Area and Rights-of-Way.

A City, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Contractor shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Caltrans or Southern Pacific Railroad Company, before Contractor enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.

B City has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.

C If such permits are required, all operations of Contractor shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.

D Contractor may be required, as a condition for receiving final payment, to obtain, and provide City's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by City.

E Contractor shall, also, as a condition for receiving final payment, obtain, and provide City's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by City.

1.4 Site Data.

A The data provided herein is for the information of Contractor and is subject to all limitations and conditions set forth in the Contract Documents.

B Subsurface Exploration Data. The following data are included in the Project Manual:

1. [Not applicable to this project]

C Other Site Data. The following data are available for inspection at City's office:

1. [Not applicable to this project]

Copies of these reports, drawings and other materials may be examined at City's office during regular business hours.

1.5 Pre-Purchased or Pre-Negotiated Material.

The City will provide the roofing materials and specifications through Tremco. Contractor will be responsible for coordinating with Tremco for the materials. See Exhibit C for material list and specification sheets.

1.6 Designation of City's Representative.

- A Unless otherwise modified by City, City's Representative shall be Samu Tiumalu, Public Works Manager.

1.7 Project Retention

In accordance with Public Contract Code § 7201, City will withhold 5% of each progress payment as retention on the Project.

1.8 Liquidated Damages Due to Contractor Delay.

- A Time is of the essence. Should Contractor fail to complete all or any part of the Work within the time specified in the Contract Documents, City will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, City shall therefore be entitled to **One Hundred Dollars and Zero Cents (\$100.00)** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.
- B Liquidated damages may be deducted from progress payments due to Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent City, in case of Contractor's default, from terminating the Contractor.

1.9 Utility Outages – Notices to Residents.

- A Should Contractor's operations require interruption of any utility service, Contractor shall notify City at least ten (10) Days prior to the scheduled outage. Contractor will notify all impacted residents on a form provided by City at least seven (7) Days prior to the scheduled outage.
- B Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Schedule Constraints.

- A City has considered these Schedule Constraints when determining the Contract Times and no additional time or compensation will be added to the Contract due to these Constraints.

1.11 Safety Programs.

[RESERVED]

1.12 Coordination with Other Contractors.

[RESERVED]

END OF SPECIAL CONDITIONS

01 00 00 – GENERAL REQUIREMENTS

PART 1 GENERAL

1.1 DESCRIPTION

Contractor shall provide the equipment, tools, and personnel for the rehabilitation of the roof and all necessary HVAC duct work to meet Title 24 requirements at the Milpitas Sports Center (1325 E. Calaveras Blvd)

1.2 SPORTS CENTER ROOF REHABILITATION PROJECT

1.3 RELATED REQUIREMENTS SPECIFIED ELSEWHERE

- A. Attachement A 24-029 SOW MSC Roof Rehabilitaion

PART 2 [RESERED]

PART 3 EXECUTION

3.1 LAYOUT OF WORK AND QUANTITY SURVEYS

- A. General. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

City and/or the Engineer of Record has established primary control to be used by the Contractor for establishing lines and grades required for the Work.

Primary control consists of benchmarks and horizontal control points in the vicinity of the Work. A listing and identification of the primary control is provided on the Drawings. Before beginning any layout work or construction activity, the Contractor shall check and verify primary control, and shall advise the City Representative of any discrepancies.

- B. Quantity surveys. The Contractor shall perform such surveys and computations as are necessary to determine quantities of Work performed or placed during each progress payment period, and shall perform all surveys necessary for the City Representative to determine final quantities of Work in place. The City Representative will determine final quantities based upon the survey data provided by the Contractor, and the design lines and grades. If requested by the City Representative, the Contractor shall provide an electronic copy of data used for quantity computations.

All surveys performed for measurement of final quantities of Work and material shall be subject to approval of City's Representative. Unless waived by City's Representative in each specific case, quantity surveys made by the Contractor shall be made in the presence of City's Representative.

- C. Surveying

1. Accuracy. Degree of accuracy shall be an order high enough to satisfy tolerances specified for the Work and the following:
 - (a) Right-of-way and alignment of tangents and curves shall be within 0.1 foot.
 - (b) Structure points shall be set within 0.01 foot, except where operational function of the special features or installation of metalwork and equipment require closer tolerances. When formwork has been placed and is ready for concrete, the Contractor shall check the formwork for conformance with the drawings and to ensure that the forms are sufficiently within the tolerance limits for the completed work.
 - (c) Cross-section points shall be located within 0.1 foot, horizontally and vertically.
 - (d) Aerial Mapping shall meet National Mapping Standards for 2-foot contour intervals.
- D. Records. Survey data shall be recorded in accordance with recognized professional surveying standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be of sufficient quality to enable the Contractor to prepare accurate record drawings as required by the Contract Documents.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work and quantity surveys shall be included in the Schedule of Pay Items for items of work requiring the surveys. No additional compensation shall be made to the Contractor for this Work.

3.2 SCHEDULE

- A. Estimated Schedule. Within 21 Days after the issuance of the Notice of Award, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.
- B. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the

Contractor's judgment are needed to complete the Project within the time specified for completion. The overall Project Schedule duration shall be within the Contract time.

- C. Weather Allowance. The schedule shall allow adequate time for inclement weather.
- D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Engineer monthly when requested to do so by Engineer. Contractor shall also submit schedules showing a three week detailed look-ahead at bi-weekly meetings conducted with the City. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

3.3 TEMPORARY FIELD OFFICE

NOT USED.

3.4 PROTECTION OF WORK AND PROPERTY

- A. All traffic detector loops, fences, walls, culverts, monuments, or other obstructions (except property line monuments within five (5) feet of the centerline of the mains) which are removed, damaged, or destroyed in the course of the Work, shall be replaced or repaired to the original condition at no additional cost to City. Contractor shall be responsible for the cost to repair, replace, relocate, and replacement of utilities whether or not those obstructions have been shown on the Plans, unless otherwise stated herein. It is then the Contractor's responsibility to employ at its expense a Licensed Land Surveyor to restore all property line monuments located more than five (5) feet from the centerline of the mains, which are destroyed or obliterated. Property line monuments located within five (5) feet of the centerline of the mains will be replaced by the City at no expense to the Contractor, provided the City is notified at least 48 hours before the property line monuments are damaged.
- B. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
 - 1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Project site over a route designated by the Engineer.
 4. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the City shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.
 5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
 6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.
 7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.
 8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
 9. At the completion of work each day, leave the Project site in a clean, safe condition.
 10. Comply with any approved stage construction and traffic control plans. Access to residences and businesses shall be maintained at all times, unless otherwise permitted in writing by the City.
 11. Cover and or protect work and project site as may be required to prevent or mitigate schedule delay and to allow work to proceed during wet weather or wet conditions.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefore.
- E. Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

3.5 SITE CONDITIONS SURVEYS

A. Work Included.

Contractor shall conduct thorough pre-construction and post-construction site condition surveys of the entire project area. Site Conditions surveys shall include written documentation of the conditions found, as well as photographs and video recordings of the area within at least 80 feet of any construction area and staging area. The written notes, photographs, and video shall be suitable for forensic purposes to resolve any damage claims that may arise as a result of construction.

B. Submittals.

1. Written documentation of site condition survey at pre-construction and post-construction.
2. Photographs as described herein of pre-construction and post-construction conditions.
3. Video recordings as described herein of pre-construction and post-construction conditions.
4. Submittals shall be made within three days of the surveys. All post-construction data shall be submitted prior to the final project inspection.

C. Site Condition Written Documentation.

Written documentation shall include the time, date, and conditions under which the site survey was made. The documentation shall note the condition of structures, pavement, sidewalks, utilities, fences, and etc. within the work areas.

D. Photographs & Video Recording.

1. General – Prior to starting Work, Contractor shall provide a video recording of the project site. Contractor shall take enough photographs during each site survey to provide a record of conditions existing prior to construction and conditions after construction. Pre-construction video and photographs shall be taken prior to any construction or mobilization of equipment, but not more than one week prior to actual start of work. The pre-construction photographs may be staged at different times to match the progression of the Work.
2. The photographs shall document existing damage to public and private facilities, both prior to and after construction. Conditions to be documented include, but are not limited to: sidewalk cracks, broken curbs, separated property walls, improvements within public right-of-ways, access roads used, utility covers and markings, signs, pavement striping, pavement, unique or unusual conditions, adjacent driveways, landscaping, survey markers, and any feature directed by the Engineer. Private property that is adjacent to the public right-of-way shall be documented to the extent visible from the public right-of-way.

3. Photographs shall include items to indicate scale, as needed. In particular, scales or other items shall be laid next to close ups of structural cracks and other damaged areas being recorded. Scaling shall also be used to document elevation differences, as needed.
4. One set of color prints and the preconstruction site video shall be submitted. Additional sets shall be available for reviewing in settling any construction disputes. A set of photos shall also be furnished in electronic format. The resolution shall be at least equal to 7 mega-pixels. All photos shall be documented as to time and date taken, photographer, project number, location, and orientation. Documentation shall include a brief description of objects photographed.

E. Video Recording.

1. Video recordings shall document the conditions of the entire area affected by construction, as well as nearby structures and facilities. The general documentation requirements for videos are the same as for photographs. Video recorders shall accurately and continuously record the time and date.
2. Video recordings shall include an audio portion made simultaneously during the videoing. The audio recording shall describe the location, time, orientation, and objects being recorded. Special commentary shall be provided for unusual conditions or damage noted.
3. Video equipment shall be capable of producing high resolution images and shall have zoom capabilities.
4. Video recordings shall provide an overall picture of the sites and shall provide detailed images of damaged areas. Video shall extend to the maximum height of structures.
5. The Engineer shall have the right to reject any audio video recordings submitted with unintelligible audio, uncontrolled pan or zoom, or of poor quality. Video recordings shall be repeated when rejected.
6. Video recordings shall be submitted with labels indicating the project, date, recorder, and other pertinent information. Recordings shall be submitted on standard DVDs in a standard format.

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures pavement. Contractor shall provide the Engineer with an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

I. Soils Compaction Testing.

1. All soils compaction testing will be done by a licensed geotechnical engineer furnished by the City. Soils compaction testing will be done for all footings and foundations prior to placement of rebar or concrete.
2. For pipeline construction, soil compaction testing will be done at 100-foot intervals or as ordered by the project soils/geotechnical report at the bottom of the trench prior to placement of pipe bedding; at the top of the pipe bedding above the pipe; every two vertical feet of trench backfill or as otherwise ordered by the project soils/geotechnical report; at the top of the trench backfill, which could be the bottom of the pavement section; and at the top of the aggregate base prior to pavement construction.

3.6 SUBMITTAL REQUIREMENTS FOR MANUALS AND RECORD DRAWINGS

A. General. The Contractor shall furnish all materials and perform all Work required for furnishing submittals to City in accordance with Contract Documents. The Contractor shall submit Project Record Drawings, Technical Manual, Spare Parts, and other required items within 5 days following completion of project construction, and prior to Contractors request for Project Acceptance.

B. Technical Manuals.

1. The Contractor shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff.
2. The Technical Manual shall be subdivided first by specification section number; second, by equipment item; and last, by "Category." The Contractor shall furnish to City four (4) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.

C. Spare Parts List - The Contractor shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare

parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The Contractor shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

D. Record Drawings

1. The Contractor shall maintain one record set of Drawings at the Site. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
2. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.
3. Record drawings shall be accessible to City's Representative at all times during the construction period. The record drawings shall be kept up to date and will be checked by the City prior to each progress payment. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.
4. Upon Completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to City's Representative. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals and Record Drawings shall be included in Contractor's bid and distributed in the Schedule of Pay. No additional compensation shall be made to the Contractor for this Work.

3.7 MATERIALS

A. Materials to be Furnished by the Contractor

1. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by City's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.
2. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform City's Representative, in writing, the date the material is to be manufactured.
3. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate City's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

3.8 LOCAL CONDITIONS AND REQUIREMENTS

A. Access to Work and Haul Routes

1. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Contractor. Contractors anticipated Haul Routes shall be in compliance with the City's approved Truck Routes available from the Engineer.
2. Access, Damage, Restoration. The Contractor shall make his own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site.
3. The Contractor shall maintain and repair any damage arising out of Contractor's operations to all roads used during construction of the Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Contractor shall conduct a photograph and/or video survey of the roadway with a copy submitted to City's Representative.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.
- B. Power. Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of the Engineer to perform in a safe and satisfactory manner the Work required by the contract.
- C. Construction Water.
1. Construction water shall not be used for purposes other than those required to satisfactorily complete the contract.
 2. Construction recycled water will be made available to the contractor from one of three fill locations within the city limits. If there is a need for construction recycled water during construction, the contractor shall apply for a city construction recycled water meter at the city hall finance counter prior to the beginning of work. A security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. if the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 3. Construction potable water will only be made available to the contractor if it can be demonstrated that recycled water cannot be used for the construction activities. potable water will be made available from existing city fire hydrant(s) nearest the proposed construction site as approved by the engineer, or by such other means as may be expressly approved in writing by the engineer. If there is a need for water during construction, the contractor shall apply for a city construction water meter at the city hall finance counter prior to the beginning of work. a security deposit of \$2,000 is required for the construction water meter from which the meter rental fee and cost of water will be deducted. If the rental fee and the water costs exceed the \$2,000.00 deposited, an invoice will be issued to the contractor for payment.
 4. All required water, all work and materials required for obtaining, pumping, transporting and applying and otherwise disposing of said water shall be in an approved manner and shall be performed by, and at the expense of the contractor and no extra or separate compensation will be made thereof.
- D. Operation of Existing Water Facilities
1. The Contractor shall not operate any of the existing water systems, including pumps, motors, valves, and hydrants, but shall contact the City two (2) working days in advance with a list and location of the water system facilities that will require operating, opening, stopping, or closure by the City.

2. At the option of the Engineer, the Contractor may be permitted to operate valves for the purpose of making connections to existing mains. The City will perform all notification to existing customers regarding temporary loss of service.
3. Contractor shall submit a request on City's standard form for any shut-down of existing water facilities.

E. Construction at Existing Utilities

1. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities.
2. Permission, Notice and Liability. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Traffic Control

1. General. Contractor shall abide by traffic control plans approved by the City.
2. Protections. Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and maintained by the Contractor. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Contractor has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.

3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

G. Cleaning Up

1. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment, including all USA markings. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the duration of the project, and/or use of temporary hoses and pipelines to convey water.
2. Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, the City may do so and the cost of such clean up shall be charged back to the Contractor.

3.9 ENVIRONMENTAL QUALITY PROTECTION

A. Environmental Conditions

[RESERVED]

B. Landscape and Vegetation Preservation

1. General. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

C. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any State or Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

3. False Siting. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

D. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation

of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

3. Contractor's Liability. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

E. Dust and Pollution Control

1. Contractor shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site. Contractor shall remove construction caused debris from streets and sidewalks as directed by the Engineer.
2. Contractor shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Management of Storm, Surface and Other Waters

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

2. The Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to the San Francisco Bay Regional Water Quality Control Board Order No. R2-2015-0049 (NPDES Permit No. CAS 612008), and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof ("Construction General Permit"). Contractor must perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.
3. Compliance with Construction General Permit. Contractor must comply with all aspects of the Construction General Permit, State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, and any amendment or renewal thereof (NPDES CAS000002), for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common plan of development or sale.
 - (a) Permit registration. Unless otherwise specified in the Special Conditions, Contractor must prepare the Notice of Intent for coverage under the Construction General Permit and all Permit Registration Documents (PRDs), including but not limited to the Storm Water Pollution Prevention Plan (SWPPP), as those terms are defined in the Construction General Permit. Contractor must coordinate submittal of all PRDs with the City's Legally Responsible Person and/or Authorized Signatory, as those terms are defined in the Construction General Permit. The Contractor must submit the PRDs, including the SWPPP to the City Representative for review not less than fifteen (15) Days prior to the start of on-site construction work. City will file the Notice of Intent and PRDs and pay the filing fee.
 - (b) Before any Construction General Permit related documents may be submitted to the State Board or implemented on the Project site, they must first be reviewed and accepted by City. Acceptance by the City does not relieve the Contractor from ensuring such documents comply with all laws applicable laws, regulations, and orders.

- (c) Contractor must ensure that the SWPPP is developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Permit. Contractor must implement the SWPPP and all other provisions of the Construction General Permit, including the monitoring and reporting requirements, preparing and submitting all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. The SWPPP must include industry standard requirements for water quality control including but not be limited to the following:
- (1) Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
 - (2) Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
 - (3) Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.
 - (4) Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.

- (5) Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
 - (6) Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
 - (7) Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
 - (8) Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.
 - (9) Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
 - (d) City retains the right to procure and maintain coverage under the Construction General Permit for the Project site if the Contractor fails to draft a SWPPP or other Construction General Permit related document, or fails to proceed in a manner that is satisfactory to City. City reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Construction General Permit shall be City's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Construction General Permit, any costs or fines incurred by City in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.
4. For those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing construction industry best management

practices to eliminate or reduce the discharge of pollutants from construction sites, such as the best management practices set forth in the CASQA Construction BMP Handbook.

5. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
6. Contractor violations.
 - (a) Failure to implement the SWPPP or otherwise comply with the Construction General Permit or local state and federal laws is a violation of this Contract. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend – with counsel acceptable to the City – and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.
 - (b) City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.
 - (c) City may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the the laws, regulations and policies described in this Article, or any other relevant water quality law, regulation, order, or policy.
 - (d) If noncompliance with any relevant law, regulation or permit, order, or policy occurs, the Contractor shall report this to the City Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in City stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective

measures required to bring activities into compliance shall be at the Contractor's expense.

7. Oil storage tanks management.
 - (a) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
 - (b) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
 - (c) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
 - (d) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Contractor shall prepare an SPCC Plan. The Contractor shall submit the SPCC Plan to the Engineer at least 30 days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112
8. Underground tank prohibition. The Contractor shall not use underground storage tanks.
9. Construction safety standards. The Contractor shall comply with the sanitation and potable water requirements of Section 7 of United States Bureau of Reclamation's publication "Reclamation Safety And Health Standards."
10. Other Permits.
 - (a) Other permits applicable to the Project are listed in the Special Conditions. The Contractor shall obtain all other necessary licenses and permits.
 - (b) Monitoring. The Contractor is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.

- (c) Recordkeeping. The Contractor shall retain all records and data required by the permits for the time specified in the contract.
- 11. Cost. Except as specified herein, the cost of complying with this section shall be included in the Schedule of Pay Items for work which necessitate the water pollution prevention measures required by this paragraph.

END OF GENERAL REQUIREMENTS

EXHIBIT "A"
CHANGE ORDER FORM



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

CONTRACT CHANGE ORDER NO. ____

Date: [INSERT]

To: [CONTRACTOR NAME]

[ADDRESS]

[ADDRESS]

Attn: [CONTRACTOR REP]

Project: [INSERT]

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

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1			
2			
	Totals	\$	

Original Contract Amount:	\$XX.00
Change by Previous Change Order(s):	\$XX.00
Contract Price Prior to this Change Order:	\$XX.00
Current Change Order Amount:	\$XX.00
Revised Contract Amount including this Change Order:	\$XX.00

The Contract Price and Contract Time shall be adjusted as set forth above. The undersigned Contractor approves the foregoing Change Order as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the City.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

	_____ (Signature) Contractor's Authorized Representative	_____ Date
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Recommended:

	_____ (Signature) **INSERT NAME, TITLE**	_____ Date
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Approved:

	_____ (Signature) **INSERT NAME, TITLE**	_____ Date
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This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the City of Milpitas.

Contract Change Order #

TECHNICAL SPECIFICATIONS

[Begins on Following Page]

EXHIBIT A
SCOPE OF SERVICES
Milpitas Sports Center – Roof Rehabilitation

I. PROJECT OVERVIEW

The City is seeking a certified, licensed contractor to provide the equipment, tools, and personnel for the rehabilitation of the roof and all necessary HVAC duct work to meet Title 24 requirements at the Milpitas Sports Center (1325 E. Calaveras Blvd)

II. FACILITY

The Milpitas Sports Center is the City's fitness center that operates Monday-Sunday with hours ranging from 6:00am-12:00am. During the construction, the Sports Center will need to remain open to the public so appropriate measures must be taken to continue to provide access to the public.

III. CURRENT CONDITION

The roof at the Milpitas Sports Center is nearing the end of useful life requiring rehabilitation. The City conducted an infrared scan of the roof to identify areas of water intrusion (see Exhibit D for the Infrared Scan report). In addition to the roof rehabilitation, replacement of HVAC duct work will also be required to meet Title 24 requirements.

IV. GENERAL

Contractor shall furnish all certified labor, tools, equipment, transportation, and supervision necessary for the completion of the identified work in a workmanlike manner as customary for the Contractor's License (C-39 Roofing Contractor and C-20 – Warm Air, Heating, Ventilating and Air Conditioning) and the type of work.

The Contractor shall ensure that they are qualified and experienced and have the necessary resources for the successful completion of the work including any amendments/change orders (which are to be previously approved in writing) as they may occur during the execution of the work.

All equipment, and labor utilized, and all workmanship shall comply with all current codes, standards, regulations, City ordinances, and statutes pertaining to the services.

When requested, the Contractor shall provide proposal(s) for work using the rate sheet provided by the Contractor to provide the city with formal estimates for review.

V. MATERIALS

The City will provide the roofing materials and specifications through Tremco. Contractor will be responsible for coordinating with Tremco for the materials. See Exhibit C for material list and specification sheets.

VI. PLANS AND SPECIFICATIONS

See Exhibit B for specifications.

VII. PERMITTING

The Contractor shall be responsible for submitting all Building Permits related the project and the City shall be responsible for all fees associated with the Building Permits. Visit the City of Milpitas' website for more information on the Building Permitting process:

VIII. DUST CONTROL

The provisions of Section 10 of the State Specifications shall govern, except that the water is not a pay item, and the entire cost of preventing dust nuisance shall be at the expense of the Contractor. Safety Compliance Contractor accepts responsibility for determining that all necessary safeguards and PPE for protection of contractor's employees are available or will be furnished to employees. All work performed must conform to CAL-OSHA standards. If the Contractor is observed failing to meet these requirements, the City reserves the right to issue a "Stop Work" notice at which point the Contractor will cease operations at the work site until safety compliance is implemented and formal notice to resume operations by the City Supervisor has been issued. The Contractor is responsible for any cost(s) associated with the disruption of operations as a result safety noncompliance delay. The Contractor shall inform the City Project Manager immediately if a safety hazard is discovered within a City public right of way.

IX. HOURS OF WORK

Contractor to work with City's Project Manager to schedule all work related to the project. Work hours will be Monday-Friday between the hours of 8:00am-5:00pm. The Sports Center will remain operational during construction.

X. INSPECTION

- a) All services provided shall be subject to inspection and shall meet the approval of the City. If they are not approved, the City shall have the right to reject them or to require correction.
- b) Acceptance or rejection of the work shall be made as promptly as practical, but failure to accept or reject the work shall not relieve the Contractor from responsibility for services provided not in accordance with the contract.
- c) The City will not be deemed to have accepted the services by virtue of a partial or full payment for it.
- d) The City shall be the final judge of all services and its decisions of all questions in dispute will be final.

EXHIBIT B
Specifications

EXHIBIT C
Material Details

Exhibit D
Infrared Scan Report

**EXHIBIT B
SPECIFICATIONS**

[SPECIFICATIONS ON FOLLOWING PAGE]

**EXHIBIT C
MATERIAL DETAILS**

[MATERIAL DETAILS ON FOLLOWING PAGE]

**EXHIBIT E
INFRARED SCAN REPORT**

[INFRARED SCAN REPORT ON FOLLOWING PAGE]

ADDENDA

[ADDENDA TO SOLICITATION 24-029 ON FOLLOWING PAGE]

**ADDENDUM #1
MILPITAS SPORTS CENTER AS-BUILT DRAWINGS 2015**

[AS-BUILT DRAWING ON FOLLOWING PAGE]

**ADDENDUM #1
MSC ROOF DETAILS**

[MSC ROOF DETAILS ON FOLLOWING PAGE]

SECTION 070150.72 - REHABILITATION OF BUILT-UP ROOFING

PART 1 - GENERAL

1.1 SUMMARY

A. This Section includes the following:

1. Roof re-coating preparation.
2. Application of reinforced fluid-applied roof membrane and flashings over existing built-up asphalt roofing.

B. Scope of work:

1. Pressure wash roof at areas to receive fluid applied restoration.
2. Repair any blisters, fish mouths, splits or tears in (e) roofing.
3. Replace any areas of wet insulation.
4. Replace all sealant on penetrations and surface mounted counterflashings.
5. Build up any low areas in roof by installing an additional layer of Powerply Standard FR HW.
6. Install AlphaGuard MTS Base Coat at 4 gallons per square.
7. Install 1 ply Permafap in wet base coat.
8. Install AlphaGuard MTS Top Coat at 2 gallons per square over cured base coat.
9. Install 500 lf of slip resistant walk-way.

C. The work to be performed under this contract includes the installation of Owner Supplied roofing materials consisting of the following:

1. Roof refurbishment consisting of the installation of AlphaGuard MTS fluid applied roofing, including all labor, miscellaneous materials, tools, transportation, equipment, services, and facilities necessary to, and reasonably incidental to, the completion of the work as shown on the drawings and/or described in the specifications.
2. The City of Milpitas will provide Tremco roofing materials in the quantities listed below and referred to as "Supplied by Owner".
3. These materials will be delivered directly to the awarded Contractor's yard.
4. The materials will be the responsibility of the Contractor for storage, security, transportation to the job-site, handling and security at the job-site.
5. The contractor will be responsible for purchasing all materials not "Supplied by Owner" and all materials required in excess of the quantities being supplied by the City.
6. All materials supplied by contractor must be approved for use by manufacturer.

D. Supplied By Owner Materials

1. 70 pails: ALPHAGUARD MTS BASE COAT (5 gal)
2. 36 pails: ALPHAGUARD MTS TOP COAT (5 gal)
3. 9 rolls: PERMAFAB (40" x 324')
4. 2 rolls: PERMAFAB (12" x 300')

1.2 MATERIALS OWNERSHIP

- A. Demolished materials shall become Contractor's property and shall be removed from Project site.

1.3 DEFINITIONS

- A. Roofing Terminology: Refer to ASTM D 1079 and glossary in NRCA's "The NRCA Roofing Manual" for definition of terms related to roofing work in this Section.
- B. Roofing Re-Coating Preparation: Existing roofing that is to remain and be prepared to accept restorative coating application.
- C. Patching: Removal of a portion of existing membrane roofing system from deck or removal of selected components and accessories from existing membrane roofing system and replacement with similar materials.
- D. Remove: Detach items from existing construction and legally dispose of them off-site unless indicated to be removed and reinstalled.
- E. Existing to Remain: Existing items of construction that are not indicated to be removed.
- F. Construction Waste: Building and site improvement materials and other solid waste resulting from construction, remodeling, renovation, or repair operations. Construction waste includes packaging.
- G. Demolition Waste: Building and site improvement materials resulting from re-roofing preparation, demolition or selective demolition operations.
- H. Disposal: Removal off-site of demolition and construction waste and subsequent sale, recycling, reuse, or deposit in landfill or incinerator acceptable to authorities having jurisdiction.
- I. Recycle: Recovery of demolition or construction waste for subsequent processing in preparation for reuse.
- J. Salvage: Recovery of demolition or construction waste and subsequent sale or reuse in another facility.
- K. Salvage and Reuse: Recovery of demolition or construction waste and subsequent incorporation into the Work.

1.4 ROOFING CONFERENCES

- A. Roofing Rehabilitation Preinstallation Conference: Conduct conference at Project site. Review methods and procedures related to roofing system.
 - 1. Meet with Owner, Architect, roofing re-coating materials manufacturer's representative; roofing re-coating Installer including project manager and foreman; and installers whose work interfaces with or affects re-coating including installers of roof accessories and roof-mounted equipment requiring removal and replacement as part of the Work.

2. Review methods and procedures related to re-coating preparation, including rehabilitation roofing system manufacturer's written instructions.
3. Review drawings and specifications.
4. Procedures for salvaging and recycling of demolition and construction waste.
5. Review temporary protection requirements for existing roofing system that is to remain, during and after installation.
6. Review roof drainage during each stage of re-coating and review roof drain plugging and plug removal procedures.
7. Review and finalize construction schedule, and verify availability of materials, Installer's personnel, equipment, and facilities needed to make progress and avoid delays.
8. Review base flashings, special roofing details, drainage, penetrations, equipment curbs, and condition of other construction that will affect re-coating.
9. Review HVAC shutdown and sealing of air intakes.
10. Review shutdown of fire-suppression, -protection, and -alarm and -detection systems.
11. Review governing regulations and requirements for insurance and certificates if applicable.
12. Review procedures for asbestos removal or unexpected discovery of asbestos-containing materials.
13. Review existing conditions that may require notification of Owner before proceeding.

1.5 ACTION SUBMITTALS

- A. Product Data: For each type of product specified.
- B. Sustainable Design Submittals:
 1. Product Test Reports: For roof coating, indicating that coated roof will comply with solar reflectance index requirement.
 2. Indicate CRRC Compliance.
 3. Indicate Energy Star compliance.

1.6 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For Installer, Manufacturer, and Roofing Inspector.
 1. Letter written for this Project indicating manufacturer approval of Installer to apply specified products and provide specified warranty.

- B. Proposed Protection Measures: Submit report, including Drawings, that indicates the measures proposed for protecting individuals and property, for environmental protection, and for dust control. Indicate proposed locations and construction of barriers.
- C. Product Test Reports: Upon request, submit reports based on evaluation of comprehensive tests performed by manufacturer and witnessed by a qualified testing agency, for components of roofing rehabilitation system.
- D. Contractor's Product Certificate: Submit notarized certificate, indicating products intended for Work of this Section, including product names and numbers and manufacturers' names, with statement indicating that products to be provided meet the requirements of the Contract Documents.
 - 1. Provide manufacturer's UL listing certificate for roofing system.
- E. Warranties: Unexecuted sample copies of special warranties.
- F. Existing Conditions Photographs: Show existing conditions of adjoining construction and site improvements, including exterior finish surfaces adjacent to the Work, which might be misconstrued as having been damaged by re-coating operations. Submit before Work begins.
- G. Inspection Reports: Daily reports of Roofing Inspector. Include weather conditions, description of work performed, tests performed, defective work observed, and corrective actions required and carried out.

1.7 CLOSEOUT SUBMITTALS

- A. Maintenance Data: To include in maintenance manuals.
- B. Warranties: Executed copies of approved warranty forms.

1.8 QUALITY ASSURANCE

- A. Installer Qualifications: An employer of workers trained by manufacturer, including a full-time on-site supervisor with a minimum of three years' experience installing products comparable to those specified, able to communicate verbally with Contractor, Architect, and employees, and the following:
 - 1. Installer qualified by the manufacturer to install manufacturer's products and furnish warranty of type specified.
- B. Manufacturer Qualifications: Primary product manufacturer that is UL listed for roofing system identical to that used for this Project, with minimum five years' experience in manufacture of comparable products in successful use in similar applications, and able to furnish warranty with provisions matching specified requirements.
 - 1. Approval of Other Manufacturers and Comparable Products: Submit the following in accordance with project substitution requirements, within time allowed for substitution review:

- a. Product data, including certified independent test data indicating compliance with requirements.
 - b. Samples of each component.
 - c. Sample submittal from similar project.
 - d. Project references: Minimum of five installations of specified products with Owner and Architect contact information.
 - e. Sample warranty.
- C. Roofing Inspector Qualifications: A technical representative of manufacturer not engaged in the sale of products and experienced in the installation and maintenance of the specified roofing system, qualified to perform roofing observation and inspection specified in Field Quality Control Article, to determine Installer's compliance with the requirements of this Project, and approved by the manufacturer to issue warranty certification. The Roofing Inspector shall be one of the following:
 - 1. An authorized full-time technical employee of the manufacturer.
 - 2. An independent party certified as a Registered Roof Observer by the Roof Consultants Institute, retained by the Contractor or the Manufacturer and approved by the Manufacturer.
- D. Manufacturer's Installation Instructions: Obtain and maintain on-site access to manufacturer's written recommendations and instructions for installation of products.

1.9 PROJECT CONDITIONS

- A. Weather Limitations: Proceed with rehabilitation work only when existing and forecasted weather conditions permit Work to proceed without water entering into existing roofing system or building.
 - 1. Store all materials prior to application at temperatures recommended by manufacturer.
 - 2. Apply coatings within range of ambient and substrate temperatures recommended by manufacturer.
 - 3. Do not apply roofing in snow, rain, fog, or mist.
- B. Protect building to be rehabilitated, adjacent buildings, walkways, site improvements, exterior plantings, and landscaping from damage or soiling from rehabilitation operations.
- C. Maintain access to existing walkways, corridors, and other adjacent occupied or used facilities.
- D. Daily Protection: Coordinate installation of roofing so insulation and other components of roofing system not permanently exposed are not subjected to precipitation or left uncovered at the end of the workday or when rain is forecast.

- E. Owner will occupy portions of building immediately below re-coating area. Conduct re-coating so Owner's operations will not be disrupted. Provide Owner with not less than 72 hours' notice of activities that may affect Owner's operations.

1.10 WARRANTY

- A. Manufacturer: Manufacturer's standard warranty form, covering work of this Section, in which manufacturer agrees to repair or replace components of roofing system that fail in materials or workmanship within warranty period.
 - 1. Warranty Period: 25 years from date of completion.
- B. Installer Warranty: Installer's warranty signed by Installer, covering the Work of this Section, on form acceptable to Roofing Manufacturer and Owner.
 - 1. Warranty Period: 2 years from date of completion.
- C. Manufacturer Inspection and Preventive Maintenance Service: To report maintenance responsibilities necessary for preservation of Owner's warranty rights and to perform periodic routine maintenance required, as described in Manufacturer's standard form. The cost of manufacturer's inspections and preventive maintenance is included in the Contract Sum.
 - 1. Inspections to occur in following years: 2, 5, 10, 15, 20 following completion.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. Basis-of-Design Manufacturer/Product: The roof system specified in this Section is based upon the Alphaguard MTS system manufactured by Tremco, Inc., Beachwood, OH, (800) 562-2728, www.tremcoroofing.com (Local Rep: Dan Lajeunesse 408-910-2083) that are named in other Part 2 articles. Provide specified products or Owner approved equal.
- B. Source Materials: Obtain roofing materials from single source from single manufacturer.

2.2 PERFORMANCE REQUIREMENTS

- A. General Performance: Rehabilitated roofing shall withstand exposure to weather without failure or leaks due to defective manufacture or installation.
 - 1. Accelerated Weathering: Roofing system shall withstand 2000 hours of exposure when tested according to ASTM G 152, ASTM G 154, or ASTM G 155.
- B. Material Compatibility: Provide roofing materials that are compatible with one another under conditions of service and application required, as demonstrated by roofing manufacturer based on testing and field experience.
- C. Exterior Fire-Test Exposure: Roofing system exterior fire-test exposure performance following application of rehabilitation coating shall be not be less than that of the prerehabilitated roof

performance when tested in accordance with ASTM E 108, based upon manufacturer's tests of identical applications.

- D. Energy Performance: Provide rehabilitated roofing with an initial Solar Reflectance Index of not less than 78 when calculated according to ASTM E 1980, based on testing identical products by a qualified testing agency.
- E. Energy Performance: Provide rehabilitated roofing that is listed on the EPA/DOE's "ENERGY STAR Roof Product List."
- F. Energy Performance: Provide rehabilitated roofing according to one of the following when tested according to CRRC-1:
 - 1. Three-year, aged solar reflectance of not less than 0.55 and emissivity of not less than 0.75.

2.3 MATERIALS

- A. General: Rehabilitative re-coating materials recommended by roofing system coating manufacturer for intended use and compatible with components of existing membrane roofing system.
- B. Infill Materials: Where required to replace test cores and to patch existing roofing, use infill materials matching existing membrane roofing system materials, unless otherwise indicated.
- C. Temporary Roof Drainage: Design and selection of materials for temporary roof drainage are responsibilities of the Contractor.

2.4 FLUID-APPLIED ROOFING MEMBRANE

- A. Polyurethane Elastomeric Fluid-Applied System: Two-coat fluid-applied roofing membrane formulated for application over prepared existing roofing substrate.
 - 1. Polyurethane roof coating system base coat, single-part moisture-curing, for use with a compatible top coat.
 - a. Basis of design product: Tremco, AlphaGuard MTS Base Coat.
 - b. Combustion Characteristics, UL790: Class A, for two-coat system.
 - c. Volatile Organic Compounds (VOC), maximum, ASTM D3960: <35 g/L.
 - d. Accelerated Weathering, 5000 hours, ASTM G154: Pass.
 - e. Hardness, Shore A, minimum, ASTM D2240: 80.
 - f. Solids, by volume, ASTM D2697, minimum: 87 percent.
 - g. Minimum Thickness, Base Coat on Granular MB: 64 mils (1.62 mm) wet.
 - 2. Polyurethane roof coating system top coat, low odor low VOC single-part, for application over compatible base coat.
 - a. Basis of design product: Tremco, AlphaGuard MTS Top Coat.
 - b. Combustion Characteristics, UL790: Class A, for two-coat system.
 - c. Volatile Organic Compounds (VOC), maximum, ASTM D 3960: <40 g/L.

- d. Solar Reflectance Index (SRI), ASTM C1549: 86 percent.
 - e. Accelerated Weathering, 5000 hours, ASTM G154: Pass.
 - f. Hardness, Shore A, minimum, ASTM D2240: 85.
 - g. Solids, by volume, ASTM D2697: 87.
 - h. Minimum Thickness: 32 mils (0.81 mm) wet over cured base coat.
- 3. Primer for Non-Porous Surfaces: Single-part, water based primer to promote adhesion of urethanes to metals, PVC and other non-porous surfaces.
 - a. Basis of design product: Tremco, AlphaGuard M-Prime.
 - b. Volatile Organic Compounds (VOC), maximum, ASTM D3960: 22 g/L.
 - c. Nonvolatile Content, minimum, ASTM D2369: 5 percent.
 - d. Density at 77 deg F (25 deg C): 8.3 lb/gal (1kg/L).
- 4. Primer for Intercoat and Substrate Adhesion: Single-part, quick-drying primer to promote adhesion of urethane products to previous urethane coats and to other approved surfaces.
 - a. Basis of design product: Tremco, Geogard Primer.
 - b. Volatile Organic Compounds (VOC), maximum, ASTM D3960: 5 g/L.
 - c. Coverage Rate, 400 sq. ft/ gal.: 4 mils (0.10 mm) wet.

2.5 AUXILIARY MATERIALS

- A. General: Auxiliary materials recommended by roofing system manufacturer for intended use and compatible with existing roofing system and fluid-applied roofing system.
- B. Reinforcing Fabric:
 - 1. Polyester Reinforcing and Protection Fabric: 100 percent stitch-bonded mildew-resistant polyester fabric intended for reinforcement of compatible fluid-applied membranes and flashings and as a protection layer under pavers or stone aggregates.
 - a. Basis of design product: Tremco, Permafab.
 - b. Tensile Strength, Minimum, ASTM D1682: 50 lbf (23 kg) avg..
 - c. Elongation, Minimum, ASTM D1682: 60 percent.
 - d. Tear Strength, Minimum, ASTM D1117: 16 lbf (7.3 kg) avg..
 - e. Weight: 3 oz./sq. yd (102 g/sq. m).
- C. Joint Sealant: Elastomeric joint sealant compatible with applied coating, with movement capability appropriate for application.
 - 1. Joint Sealant, Polyurethane: ASTM C920, Type S, Grade NS, Class 50 single-component moisture curing sealant, formulated for compatibility and use in dynamic and static joints; paintable.
 - a. Basis of design product: Tremco, TremSEAL Pro.
 - b. Volatile Organic Compounds (VOC), maximum, ASTM D3960: 40 g/L.
 - c. Hardness, Shore A, ASTM C661: 40.
 - d. Adhesion to Concrete, ASTM C794: 35 pli.
 - e. Tensile Strength, ASTM D412: 350 psi (2413 kPa).

f. Color: White.

- D. Miscellaneous Accessories: Provide miscellaneous accessories recommended by roofing system manufacturer.

2.6 WALKWAYS

- A. Walkway Product: Compatible slip-resistant fluid-applied walkway product.

1. Polyurethane Top Coat, Slip-Resistant: Second top coat with broadcast slip-resistant aggregate.
 - a. Basis of design product: Tremco, AlphaGuard MT Top Coat Slip-Resistant.
 - b. Minimum Thickness: 20 wet mils, (0.50 mm) wet; over cured top coat.
 - c. Silica sand aggregate: 20 to 30 lb/100 sq. ft..
 - d. Color: As selected from manufacturer's standard colors.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine existing roofing substrates, with Installer present, for compliance with requirements and for other conditions affecting application and performance of roof coatings.
1. For the record, prepare written report, endorsed by Installer, listing conditions detrimental to performance.
 2. Verify compatibility of approved re-coating system with and suitability of substrates.
 3. Verify that substrates are visibly dry and free of moisture.
 4. Verify that roofing membrane surfaces have adequately aged to enable proper bond with re-coating system base coat.
 5. Verify that existing roofing membrane is free of blisters, splits, open laps, indications of shrinkage, and puncture damage or other indications of impending roof system failure.
 6. Commencing application of fluid-applied re-coating membrane indicates acceptance of surfaces and conditions.

3.2 PREPARATION

- A. Protect existing roofing system that is indicated not to be rehabilitated, and adjacent portions of building and building equipment.
1. Mask surfaces to be protected. Seal joints subject to infiltration by coating materials.
 2. Limit traffic and material storage to areas of existing roofing membrane that have been protected.

3. Maintain temporary protection and leave in place until replacement roofing has been completed.
- B. Pollution Control: Comply with environmental regulations of authorities having jurisdiction. Limit spread of dust and debris.
 1. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
 2. Remove debris from building roof by chute, hoist, or other device that will convey debris to grade.
- C. Shut down air intake equipment in the vicinity of the Work in coordination with the Owner. Cover air intake louvers before proceeding with re-coating work that could affect indoor air quality or activate smoke detectors in the ductwork.
 1. Verify that rooftop utilities and service piping affected by the Work have been shut off before commencing Work.
- D. Maintain roof drains in functioning condition to ensure roof drainage at end of each workday. Prevent debris from entering or blocking roof drains and conductors. Use roof-drain plugs specifically designed for this purpose. Remove roof-drain plugs at end of each workday, when no work is taking place, or when rain is forecast.
 1. Do not permit water to enter into or under existing membrane roofing system components that are to remain.

3.3 ROOFING COATING PREPARATION

- A. Membrane Surface Preparation:
 1. Remove loose granular aggregate from granular aggregate-surfaced built-up bituminous roofing with a power broom.
 2. Remove walkway pads, pavers and accessories from roofing membrane. Discard damaged pavers.
 3. Remove blisters, ridges, buckles, roofing membrane fastener buttons projecting above the membrane, and other substrate irregularities from existing roofing membrane that would inhibit application of uniform, waterproof coating.
 4. Trim back roofing at all metal edge, scupper, raised perimeter edges, and gravel stop locations to expose minimum of 2" of underlying metal flanges.
 5. Broom clean existing substrate.
 6. Substrate Cleaning: Clean substrate of contaminants such as dirt, debris, oil, and grease that can affect adhesion of coating by power washing at maximum 2,000 psi.

- a. Dispose of waste water in accordance with requirements of authorities having jurisdiction.
7. Verify that existing substrate is dry before proceeding with application of coating. Spot check substrates with an electrical capacitance moisture-detection meter.
8. Verify adhesion of new products.
- B. Existing Flashing and Detail Preparation: Repair flashings, gravel stops, copings, and other roof-related sheet metal and trim elements. Reseal joints, replace loose or missing fasteners, and replace components where required to leave in a watertight condition.
 1. Do not damage metal counterflashings that are to remain. Replace metal counterflashings damaged during removal with counterflashings of same metal, weight or thickness, and finish.
 2. Roof Drains: Remove drain strainer and clamping ring. Grind metal surfaces down to clean, bare, metal.
- C. Surface Priming: Prime surfaces to receive fluid-applied coating using coating manufacturer's recommended product for substrate material. Apply at application rate recommended by manufacturer.
 1. Ensure primer does not puddle and substrate has complete coverage.
 2. Allow to cure completely prior to application of coating.

3.4 FLUID-APPLIED FLASHING APPLICATION

- A. Fluid-Applied Flashing and Detail Base Coat Application: Complete base coat and fabric reinforcement at parapets, curbs, penetrations, and drains prior to application of field of fluid-applied membrane. Apply base coat in accordance with manufacturer's written instructions.
 1. Apply base coat on prepared and primed surfaces and spread coating evenly. Extend coating minimum of 8 inches up vertical surfaces and 4 inches onto horizontal surfaces.
 2. Back roll to achieve minimum coating thickness as follows, unless additional thickness is recommended by manufacturer; verify thickness of base coat as work progresses.
 3. Fabric Reinforcement: Embed fabric reinforcement into wet base coat. Lap adjacent flashing pieces of fabric minimum 3 inches along edges and 6 inches at end laps.
 - a. Roll surface of fabric reinforcing to completely embed and saturate fabric. Leave finished base coat with fabric free of pin holes, voids, or openings.
 4. Roof Drains: Install base coat onto surrounding membrane surface and metal drain bowl flange. Install target piece of fabric reinforcement immediately into wet base coat and roll to fully embed and saturate fabric. Reinstall clamping ring and strainer following application of top coat. Replace broken drain ring clamping bolts.

3.5 FLUID-APPLIED MEMBRANE APPLICATION

- A. Fluid-Applied Membrane Base Coat Application: Apply base coat to field of membrane in accordance with manufacturer's written instructions.
 - 1. Apply base coat on prepared and primed surfaces and spread coating evenly.
 - 2. Back roll to achieve minimum coating thickness as follows, unless greater thickness is recommended by manufacturer; verify thickness of base coat as work progresses.
 - 3. Fabric Reinforcement: Embed fabric reinforcement into wet base coat. Lap adjacent flashing pieces of fabric minimum 3 inches along edges and 6 inches at end laps.
 - a. Roll surface of fabric reinforcing to completely embed and saturate fabric. Leave finished base coat with fabric free of pin holes, voids, or openings.
- B. Top Coat Application: Apply top coat to field of membrane and flashings uniformly in a complete, continuous installation.
 - 1. Following curing of base coat and prior to application of top coat, sand raised or exposed edges of fabric reinforcement.
 - 2. Allow base coat to cure prior to application of top coat.
 - 3. Prime base coat prior to application of top coat if top coat is not applied within 72 hours of the base coat application, using manufacturer's recommended primer.
 - 4. Apply top coat extending coating up vertical surfaces and out onto horizontal surfaces. Install top coat over field base coat and spread coating evenly.
 - 5. Apply top coat and back roll to achieve not less than minimum coating thickness indicated in Part 2 product listing, unless greater thickness is recommended by manufacturer. Verify application thickness as work progresses.
 - 6. Avoid foot traffic on new fluid-applied membrane for a minimum of 24 hours.
- C. Joint Sealant: Apply joint sealant at terminations of coating application and in locations required for complete weathertight application.
- D. Slip-Resistant Walkway Top Coat: Apply walkway second top coat following application and curing of top coat. Locate walkways as indicated on Drawings.
 - 1. Mask walkway location with tape.
 - 2. Prime first top coat prior to application of walkway top coat if walkway top coat is not applied within 72 hours of the first top coat application, using manufacturer's recommended primer.

3. Apply walkway top coat and back roll to achieve not less than minimum coating thickness indicated in Part 2 product listing, unless greater thickness is recommended by manufacturer. Verify application thickness as work progresses.
4. Broadcast Slip-Resistant Top Coat Aggregate in wet top coat at rate indicated in Part 2 product listing or as otherwise recommended by coating manufacturer.
 - a. Back roll sand and top coat creating even dispersal of sand. Remove masking immediately.

3.6 FIELD QUALITY CONTROL

- A. Roof Inspection: Engage roofing system manufacturer's technical personnel to inspect roofing installation and measure coverages rates on a daily basis using a wet film gauge. Submit daily reports to Owner.
- B. Repair fluid-applied membrane where inspections indicate that they do not comply with specified requirements.
- C. Arrange for additional inspections, at Contractor's expense, to verify compliance of replaced or additional work with specified requirements.

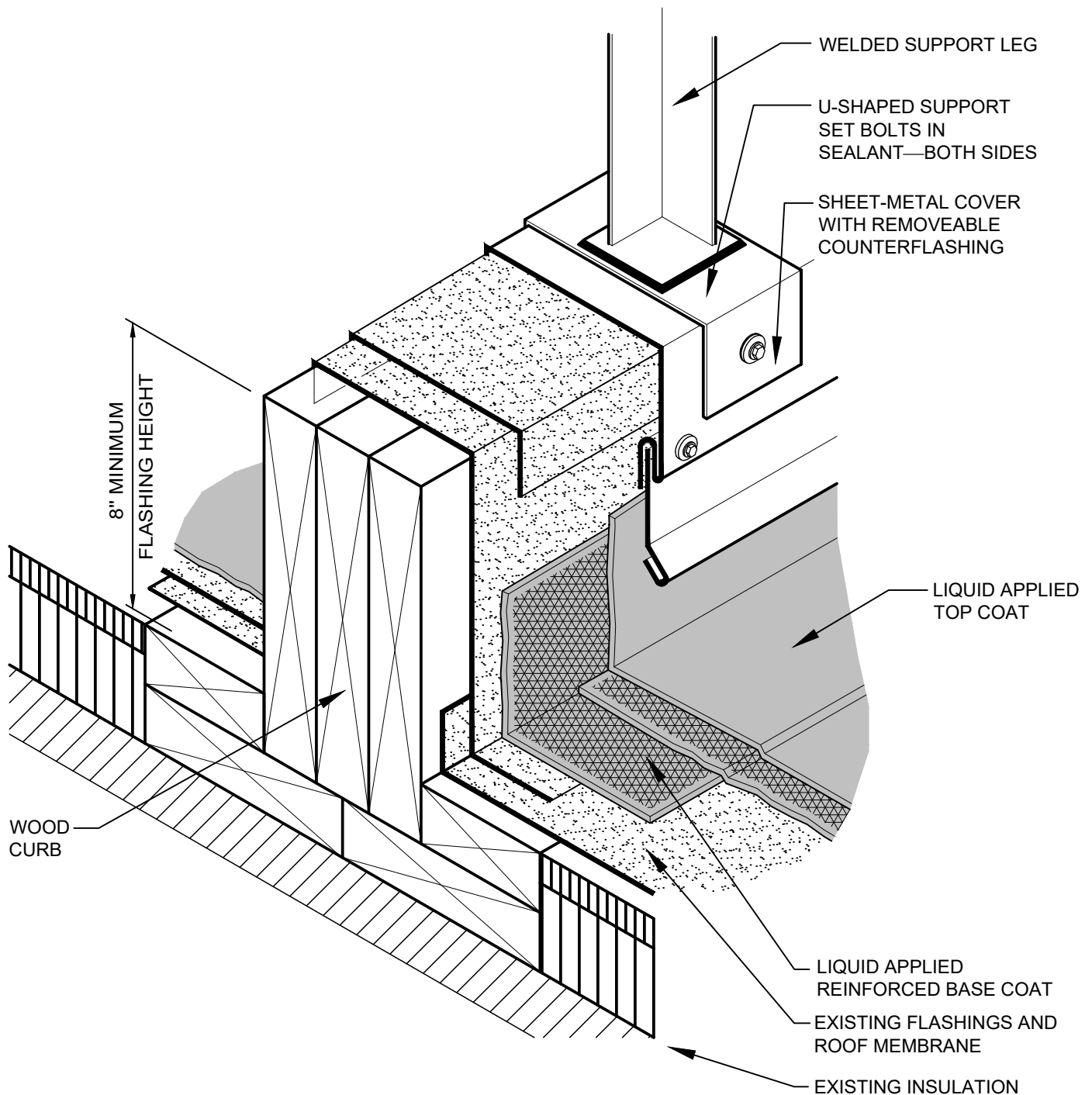
3.7 DISPOSAL

- A. Transport and legally dispose of demolished materials off Owner's property.

3.8 PROTECTING AND CLEANING

- A. Protect roofing system from damage and wear during remainder of construction period.
- B. Correct deficiencies in or remove coating that does not comply with requirements, repair substrates, and reapply coating.
- C. Clean overspray and spillage from adjacent construction using cleaning agents and procedures recommended by manufacturer of affected construction.

END OF SECTION 070150.72



NOTES

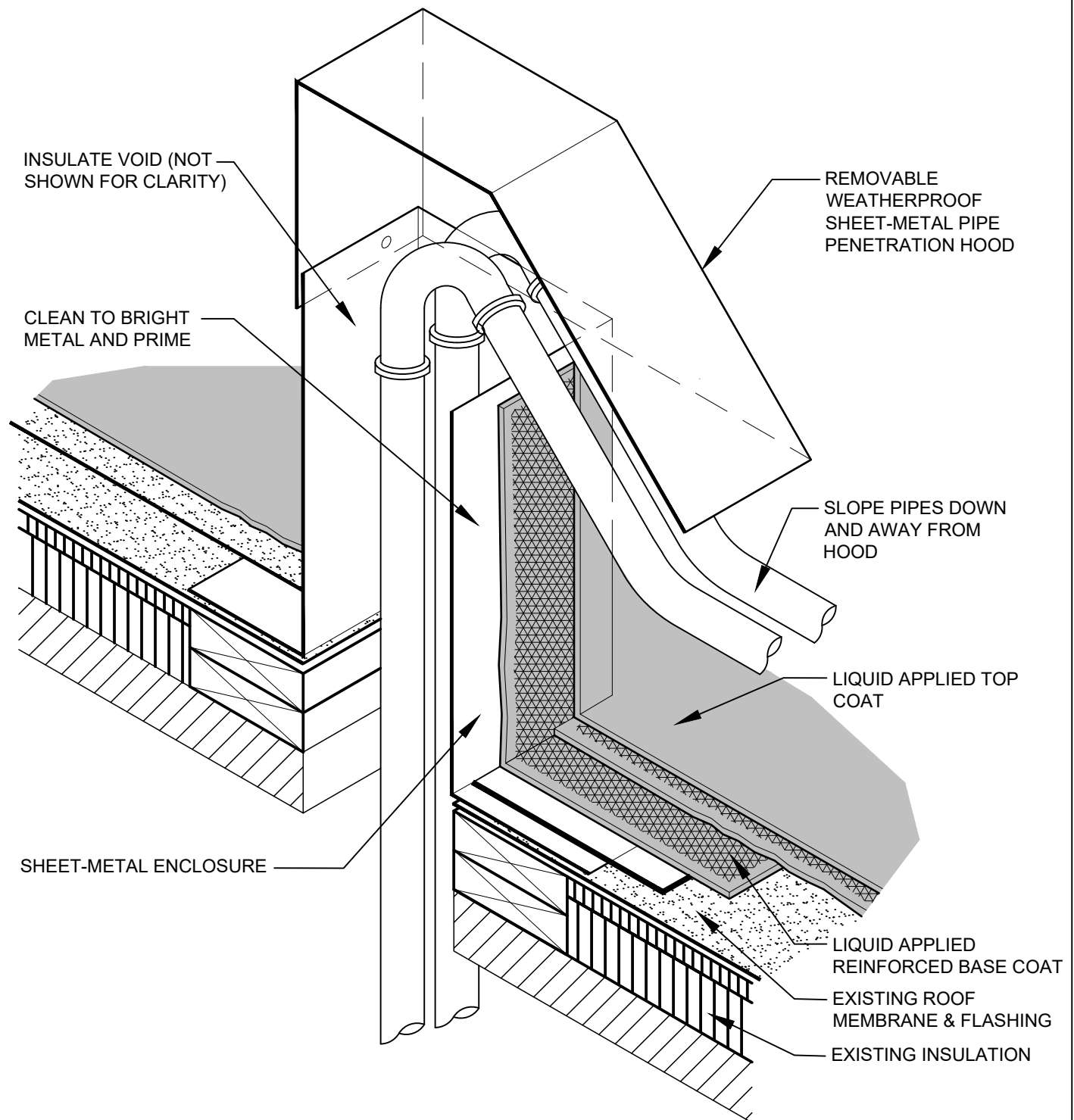
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING AT LIGHTWEIGHT
EQUIPMENT SUPPORT CURB
FULLY REINFORCED RESTORATION**

LA-FR-10

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

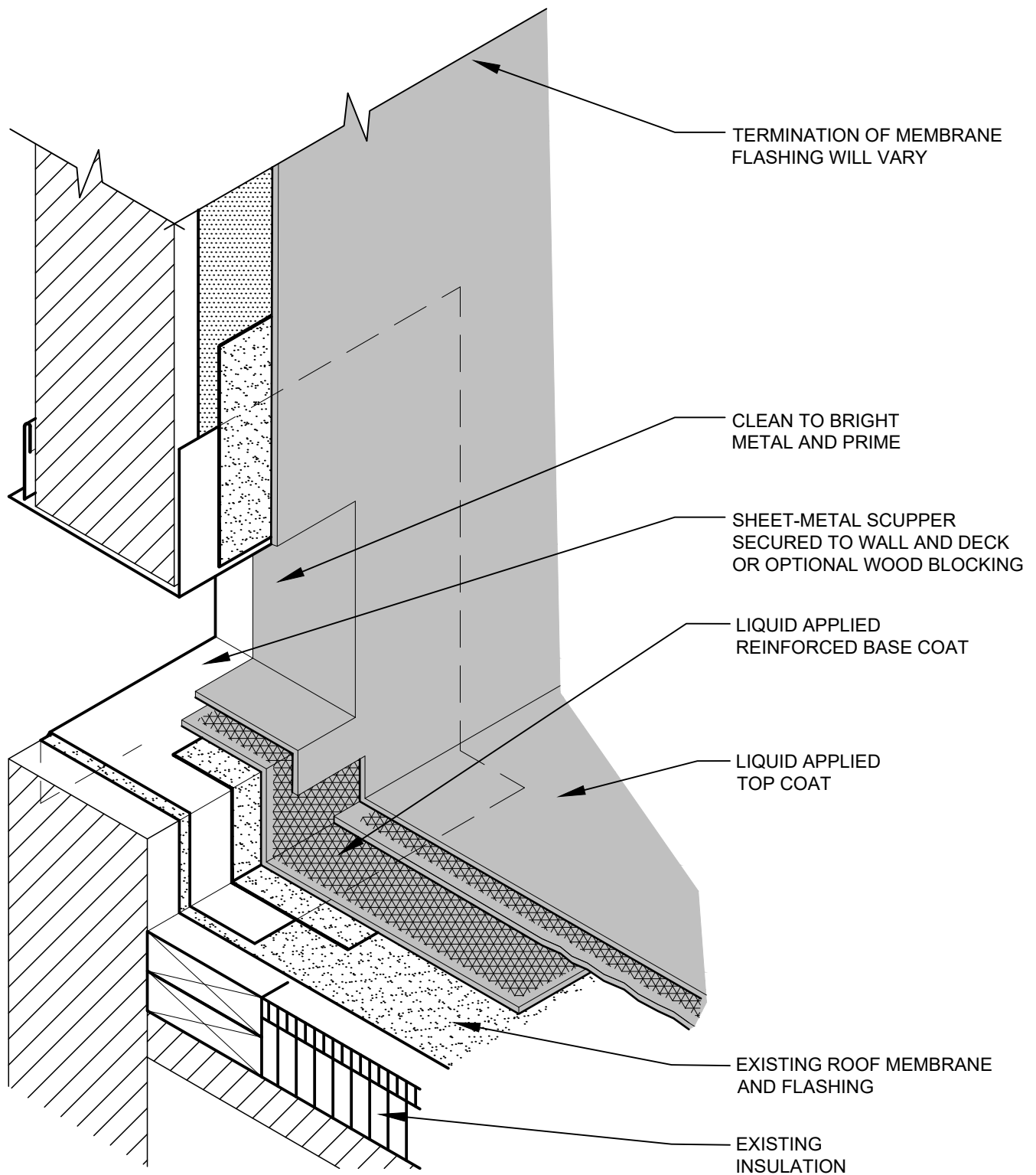
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2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING AT
MEMBRANE-COATED SHEET-METAL HOOD
FOR PIPING THROUGH ROOF DECK
FULLY REINFORCED RESTORATION**

LA-FR-16

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

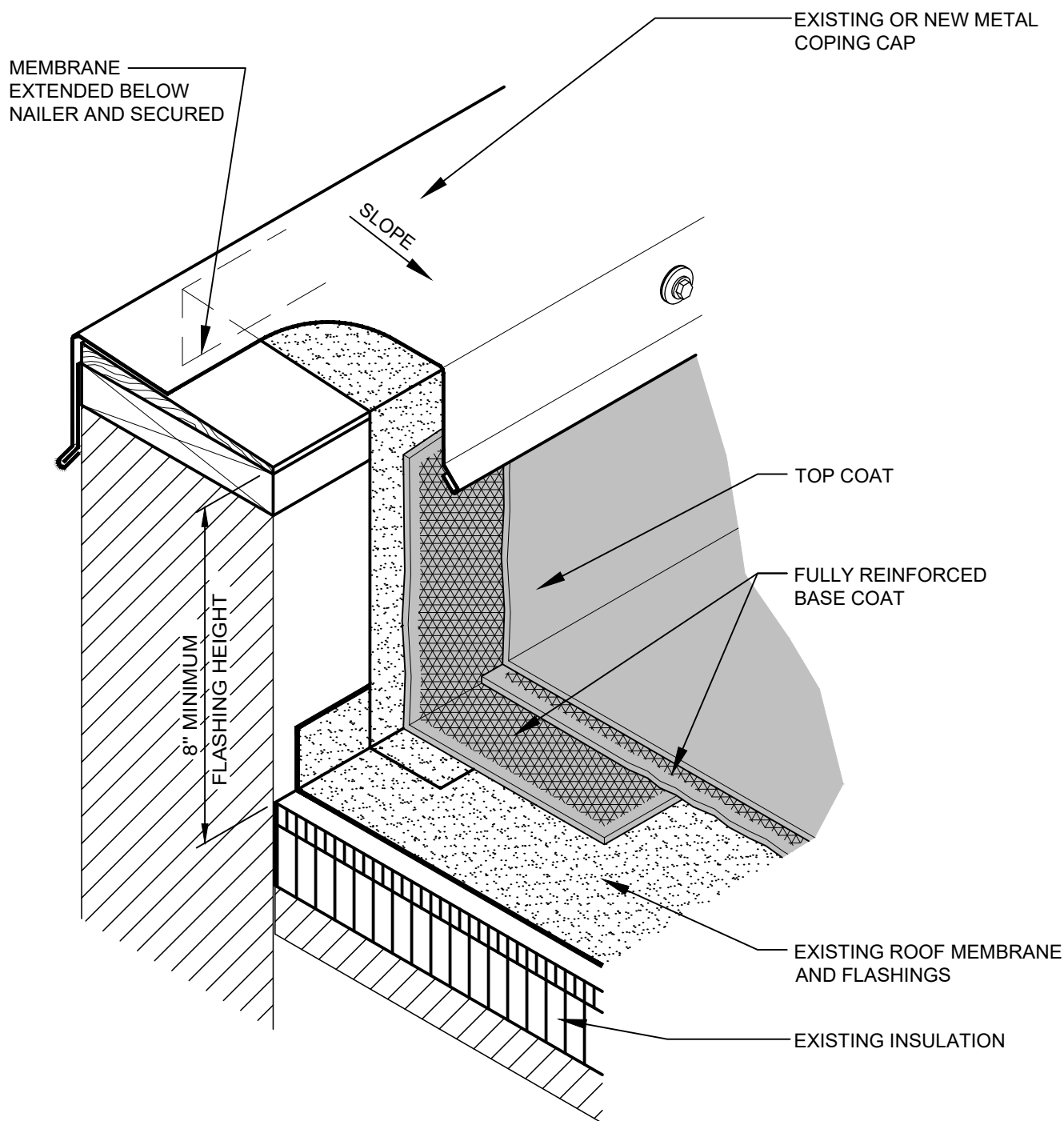
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2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.
3. TRIMMING BACK ROOF MEMBRANE TO EXPOSE SHEET METAL FLANGE IS REQUIRED.

BASE FLASHING AT OVERFLOW SCUPPER FULLY REINFORCED RESTORATION

LA-FR-26

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

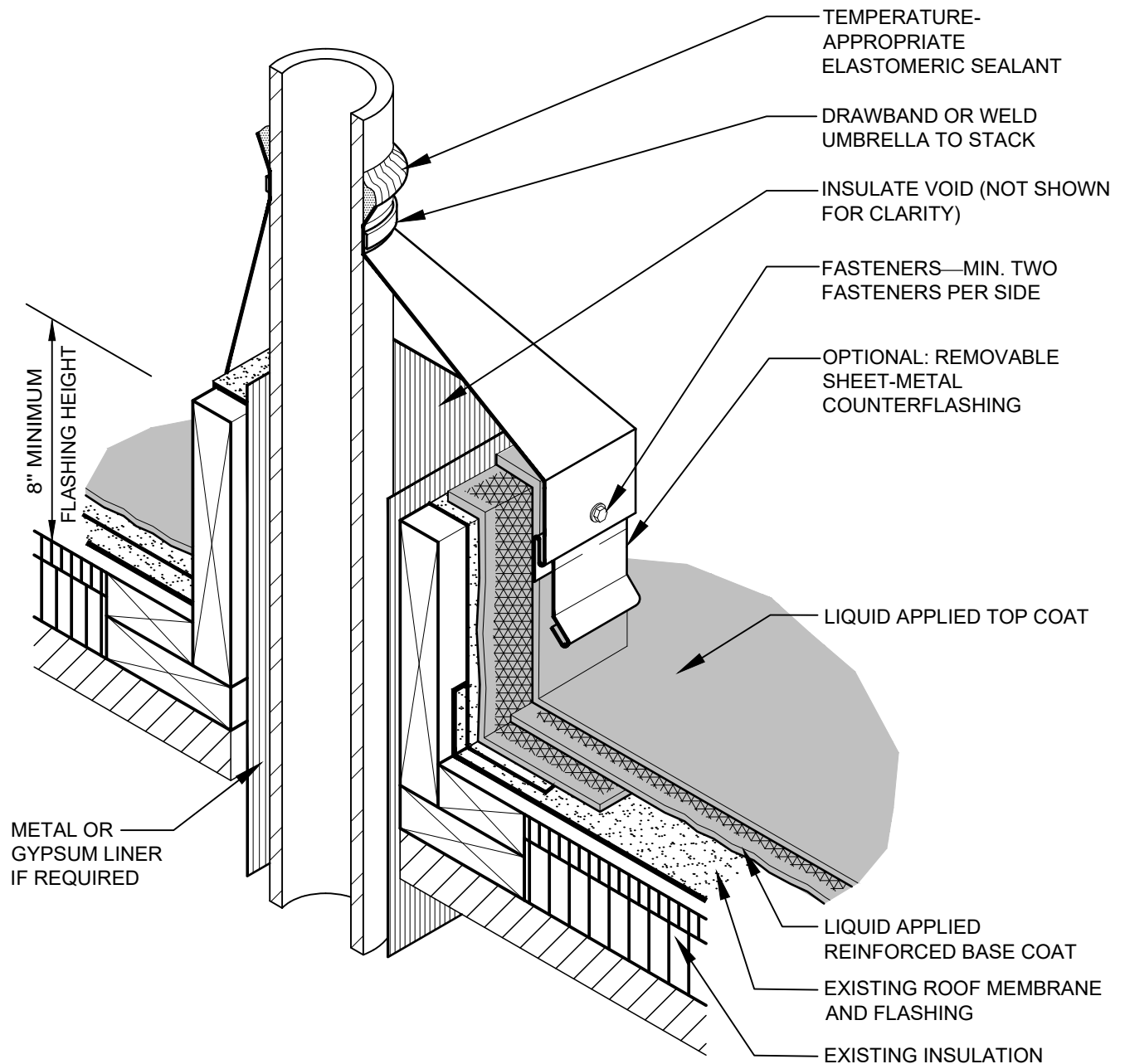
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2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING AT PARAPET WALL
WITH METAL COPING
FULLY REINFORCED RESTORATION**

LA-FR-1

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

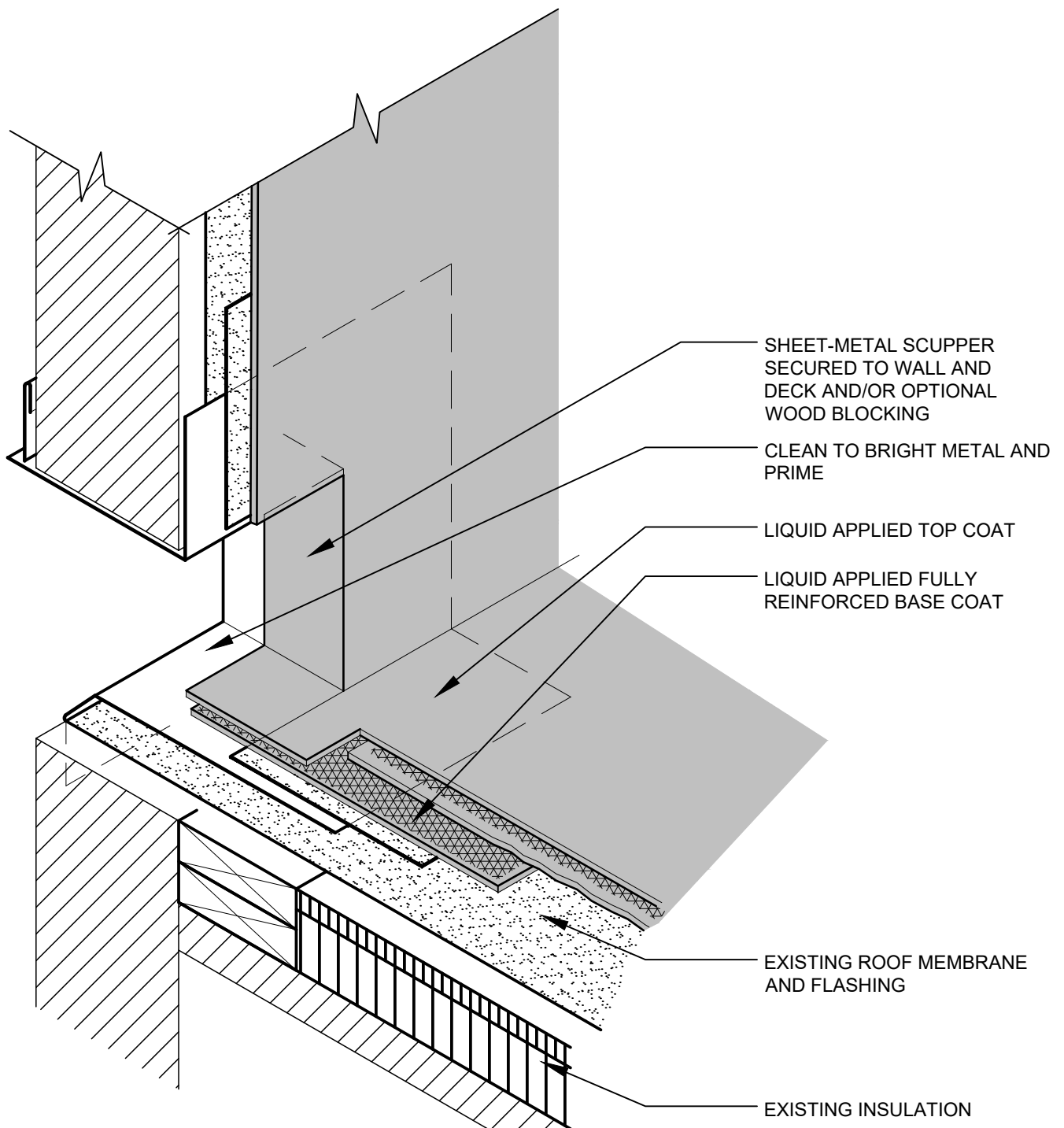
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING AT STACK
VENT WITH CURB [HOT OR COLD]
FULLY REINFORCED RESTORATION**

LA-FR-17

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

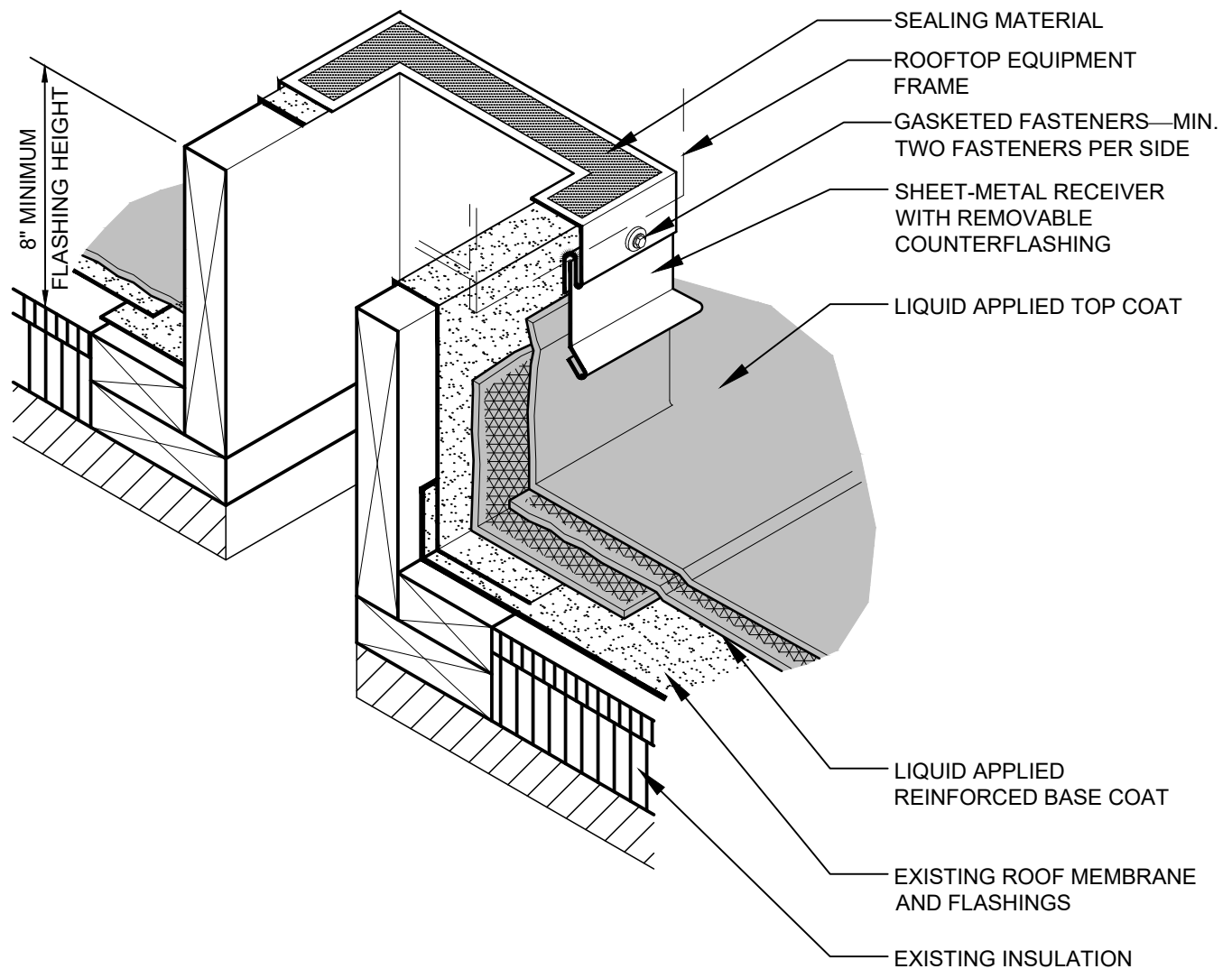
1. CONDUCTOR HEAD TO BE 1 INCH MINIMUM BELOW BOTTOM OF THROUGH-WALL SCUPPER.
2. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
3. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.
4. TRIMMING BACK ROOF MEMBRANE TO EXPOSE SHEET METAL FLANGE IS REQUIRED.

BASE FLASHING AT THROUGH-WALL SCUPPER FULLY REINFORCED RESTORATION

LA-FR-25

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

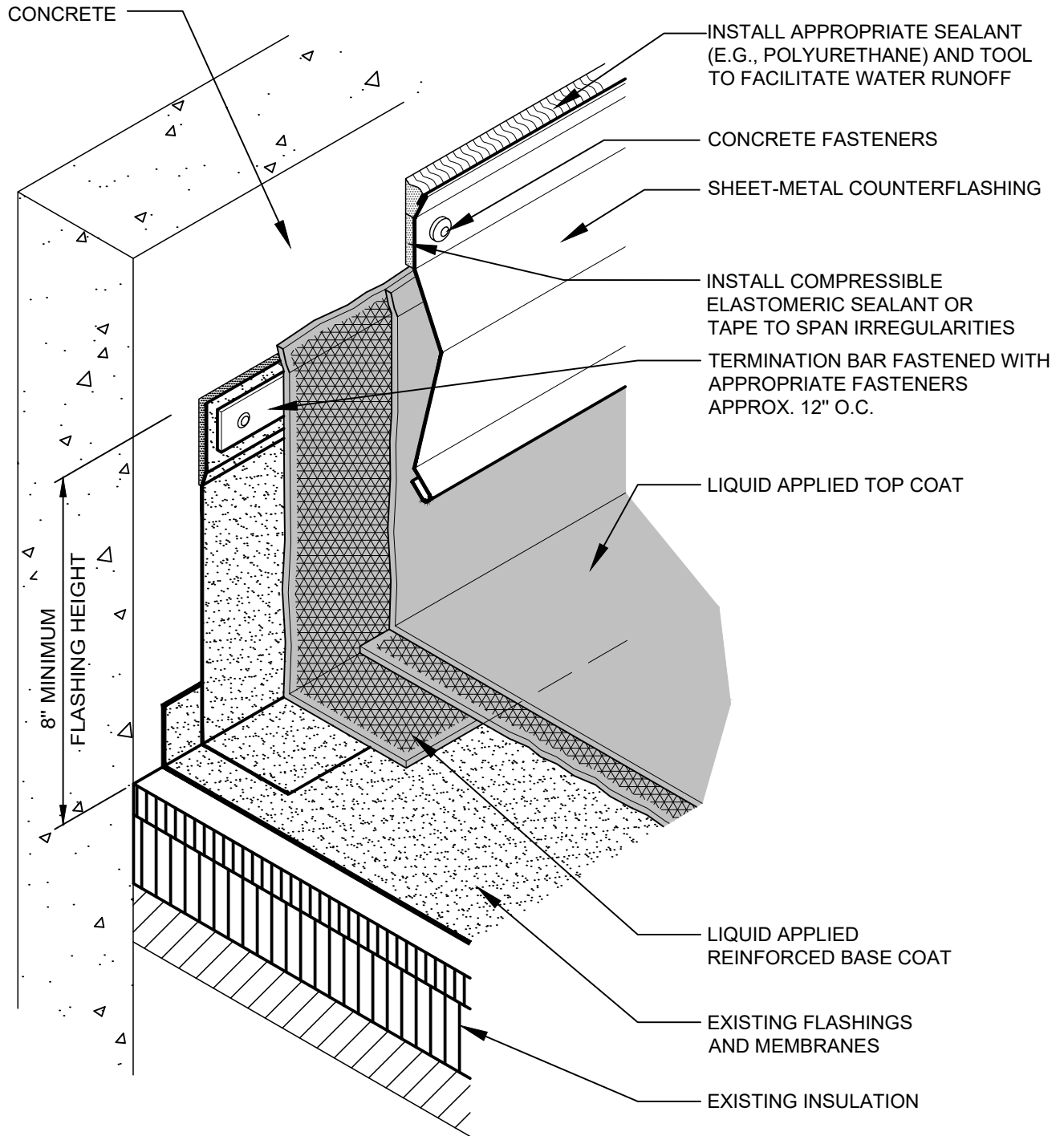
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING AT WOOD CURB
FULLY REINFORCED RESTORATION**

LA-FR-13

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

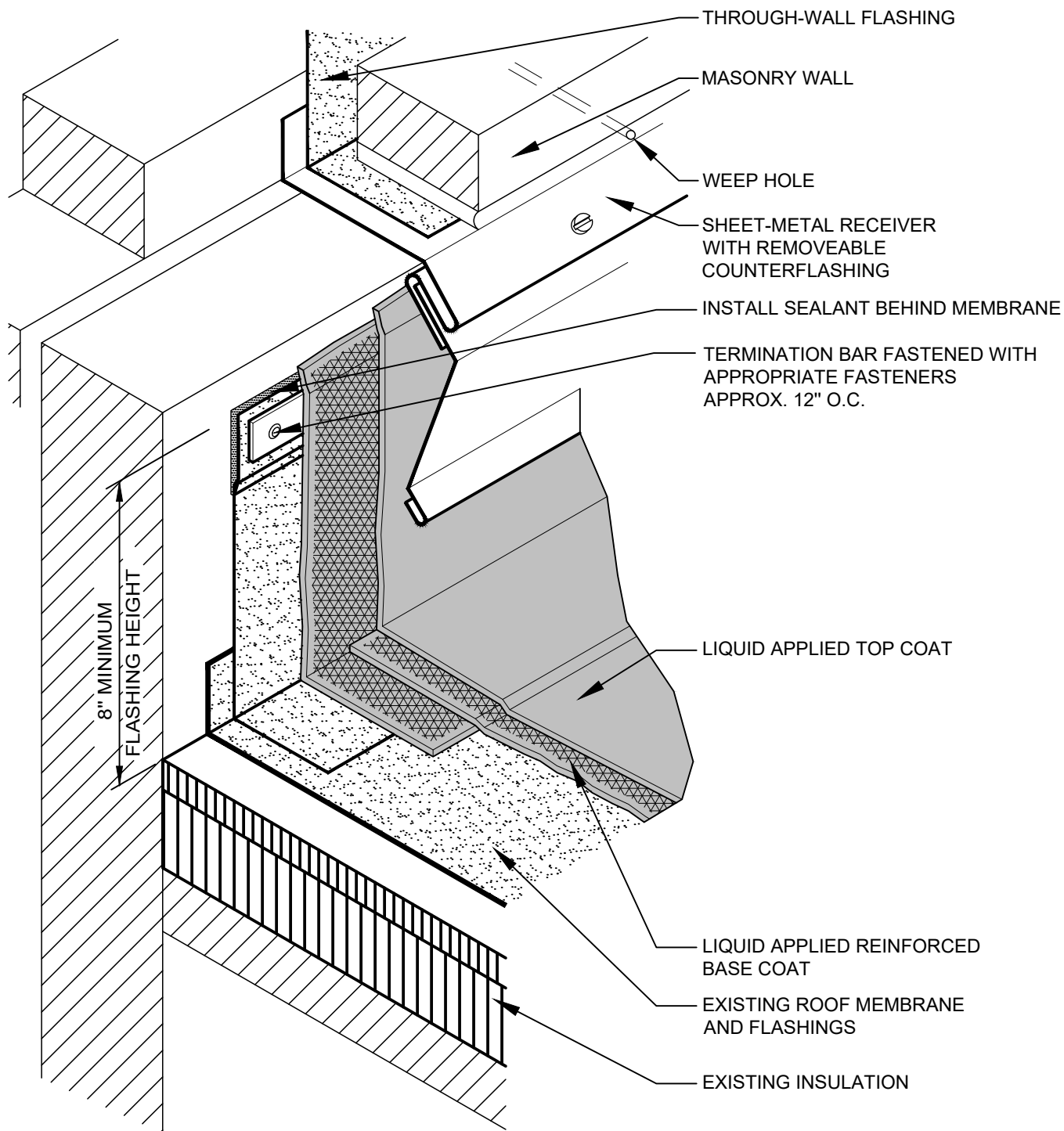
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

BASE FLASHING WITH SURFACE-MOUNTED COUNTERFLASHING AT CONCRETE WALL FULLY REINFORCED RESTORATION

LA-FR-5

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

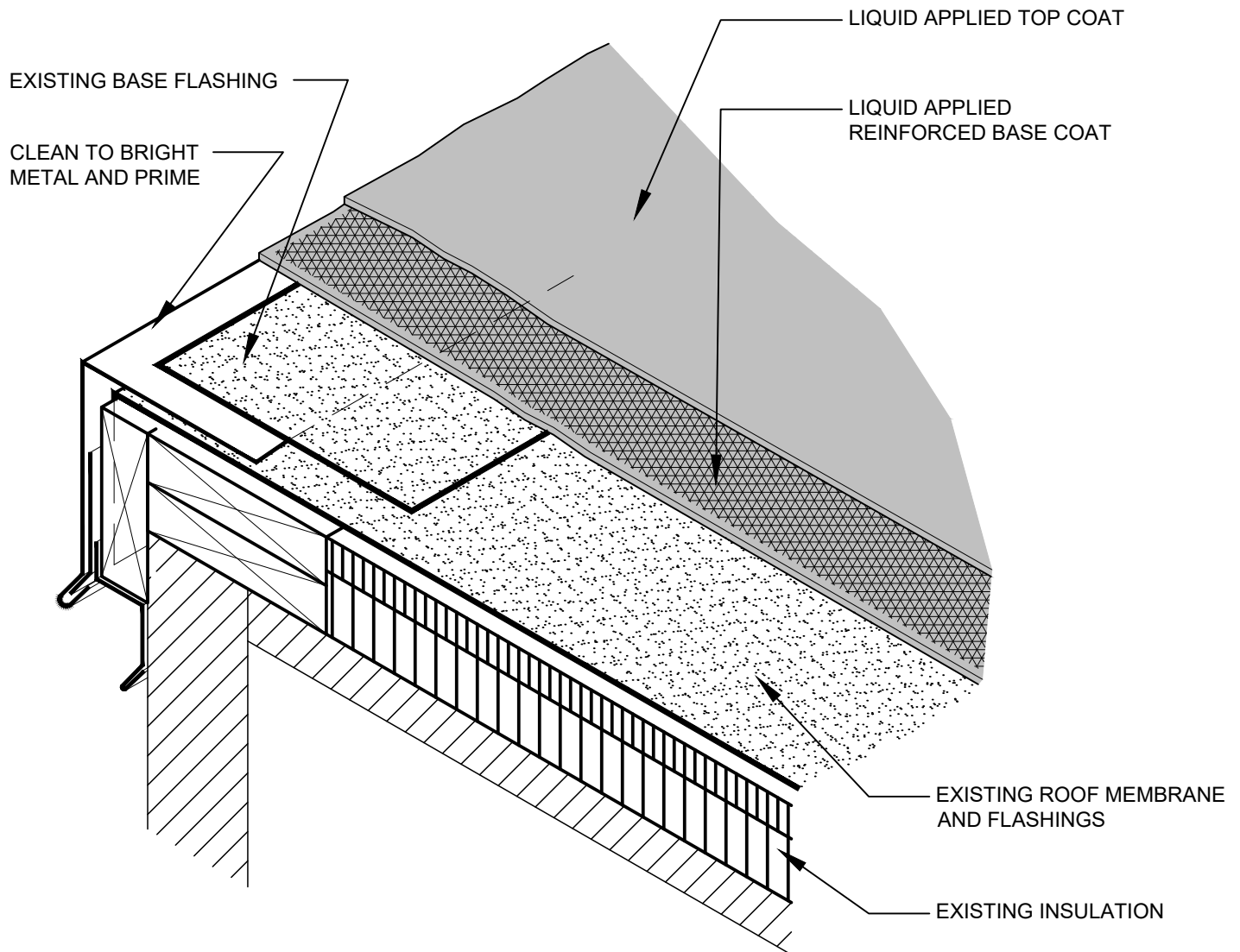
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

**BASE FLASHING WITH TWO-PIECE
SHEET-METAL COUNTERFLASHING
FULLY REINFORCED RESTORATION**

LA-FR-6

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

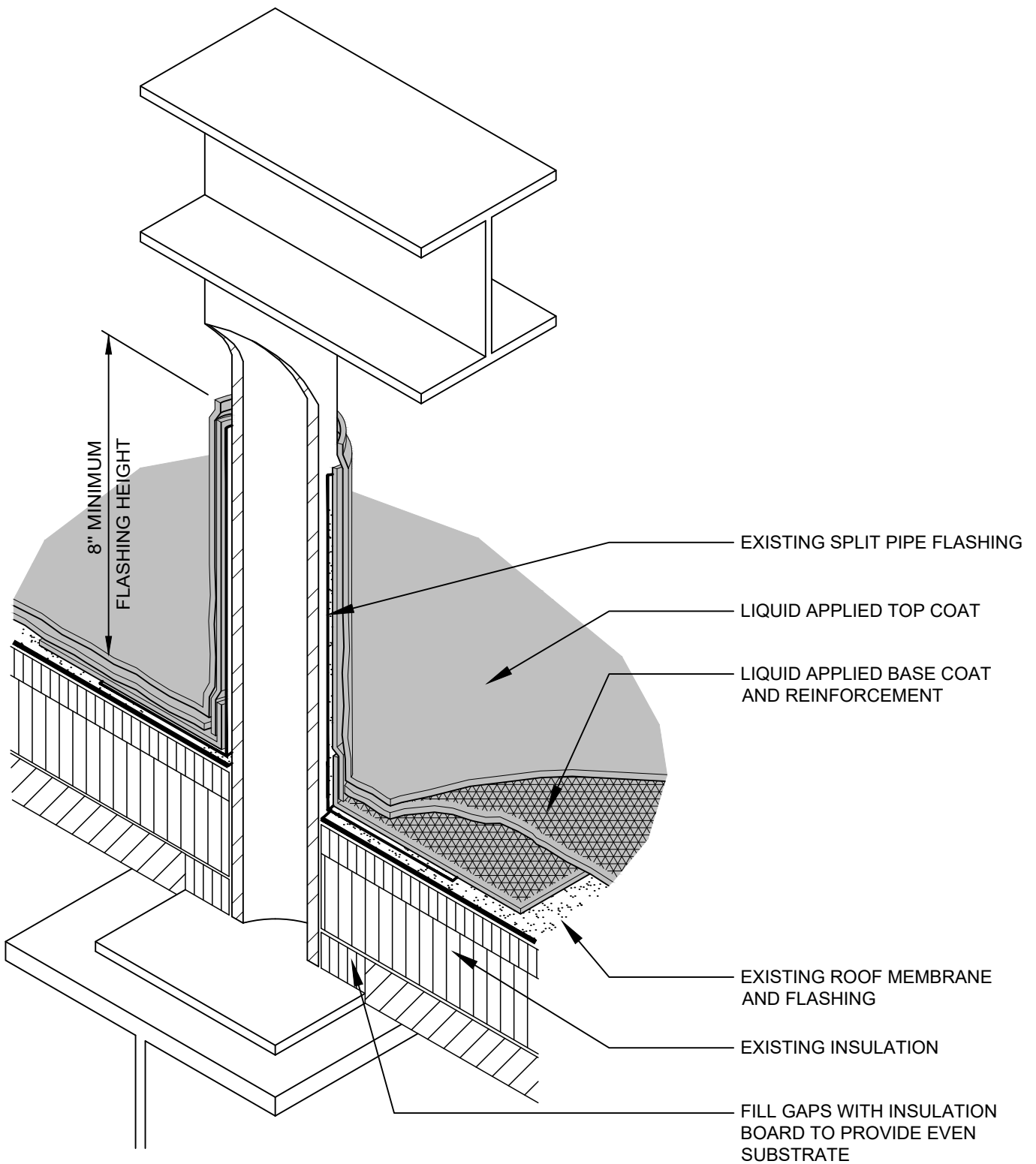
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.
3. CUTTING BACK ROOF MEMBRANE TO EXPOSE SHEET METAL FLANGE IS REQUIRED.

DRAINING PERIMETER EDGE METAL FULLY REINFORCED RESTORATION

LA-FR-4

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

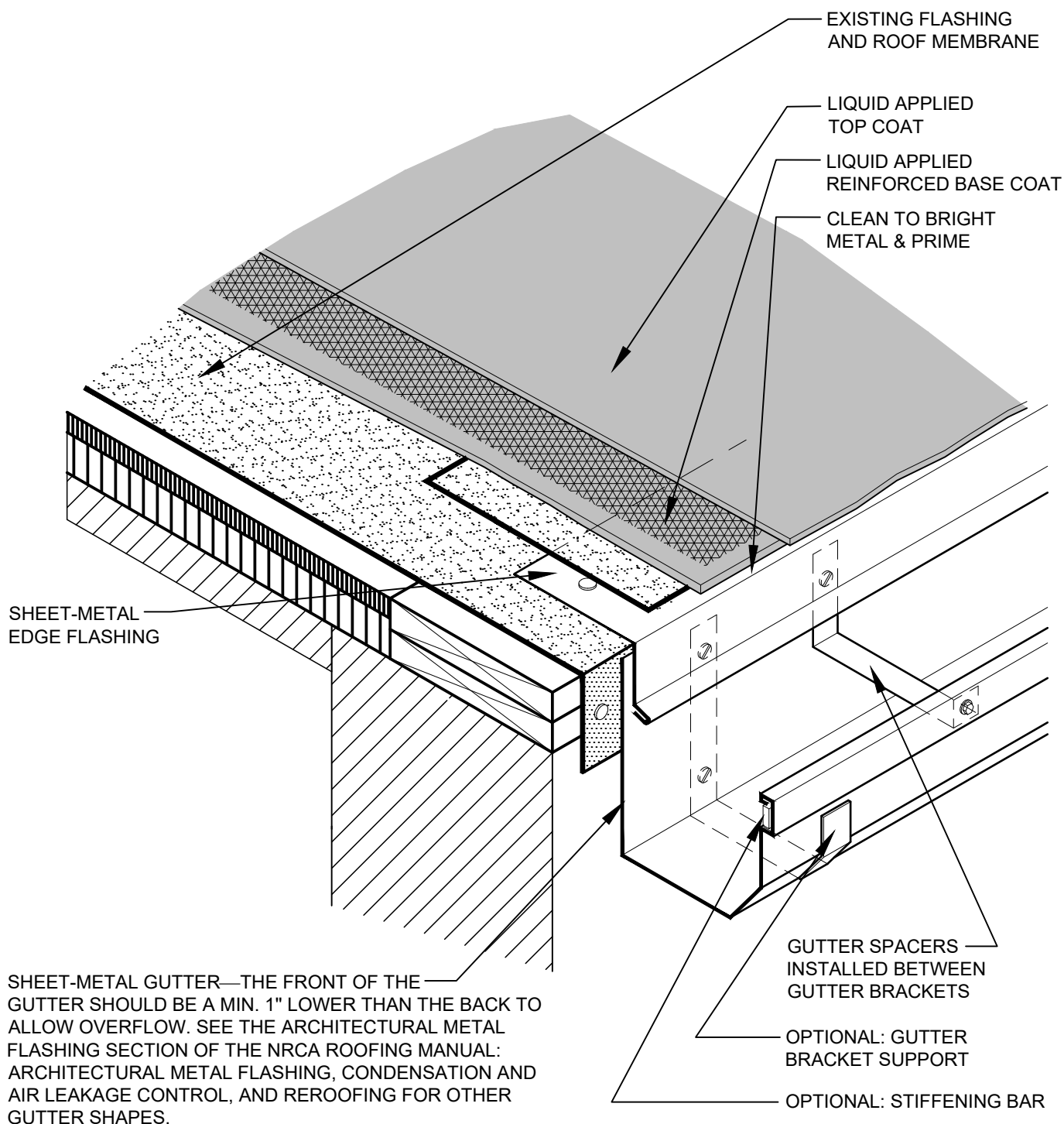
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

EQUIPMENT SUPPORT STAND LEG FULLY REINFORCED RESTORATION

LA-FR-11A

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

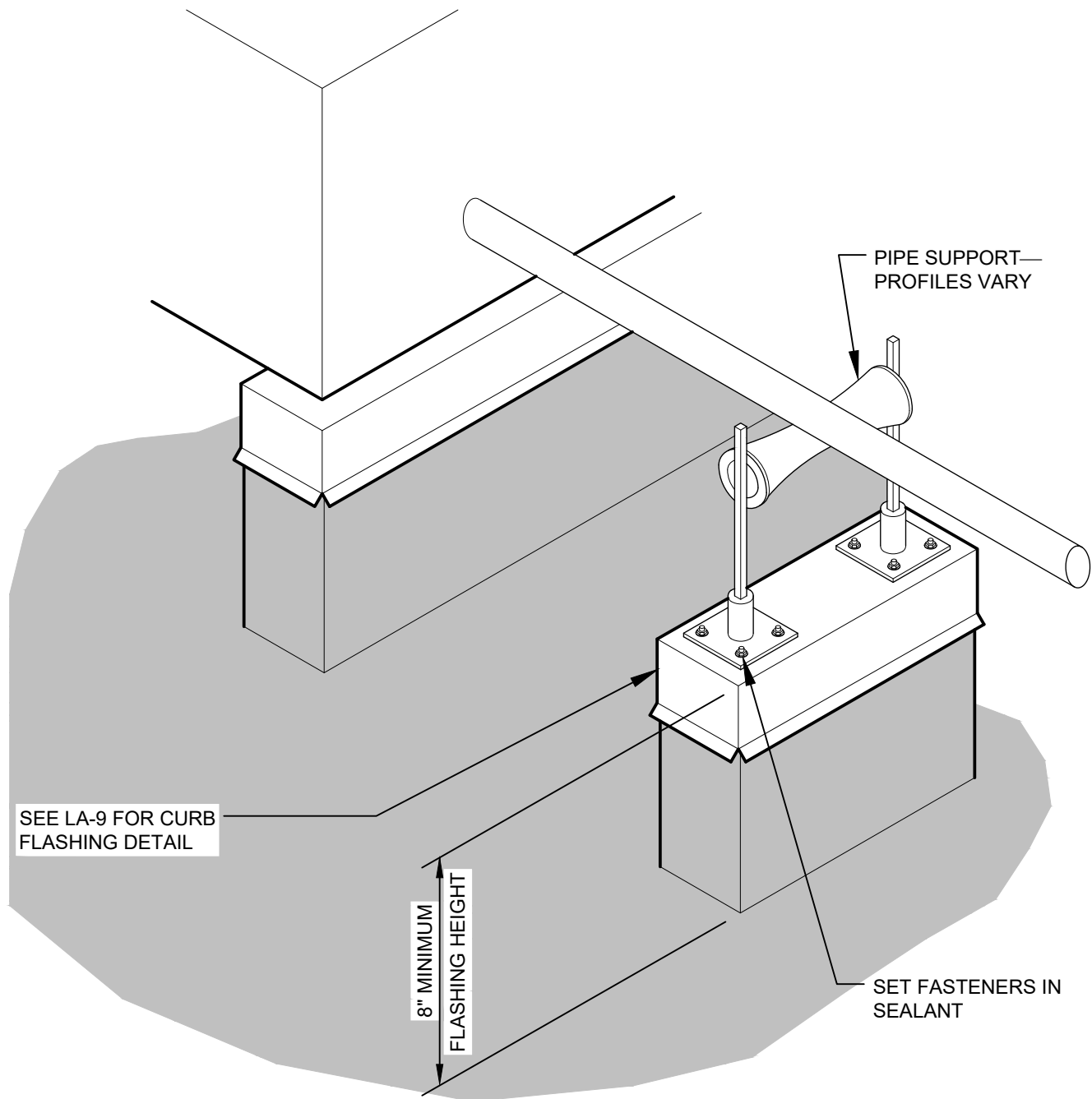
1. GUTTER BRACKETS ARE RECOMMENDED TO BE AT LEAST ONE GAUGE HEAVIER THAN GUTTER STOCK.
2. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
3. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.
4. CUTTING BACK THE EXISTING ROOF MEMBRANE TO EXPOSE THE METAL FLANGE IS REQUIRED.

GUTTER WITH PERIMETER EDGE METAL FULLY REINFORCED RESTORATION

LA-FR-27

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

PIPE SUPPORT CURB
FULLY REINFORCED RESTORATION
LA-FR-21

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE

MEMBRANE PROTECTION PLY
FLEECE BACKED WHITE SINGLE
PLY (LOOSE LAID ON ROOF)

PIPE SUPPORT
SET IN SEALANT—SEE NOTE 2

NOTES

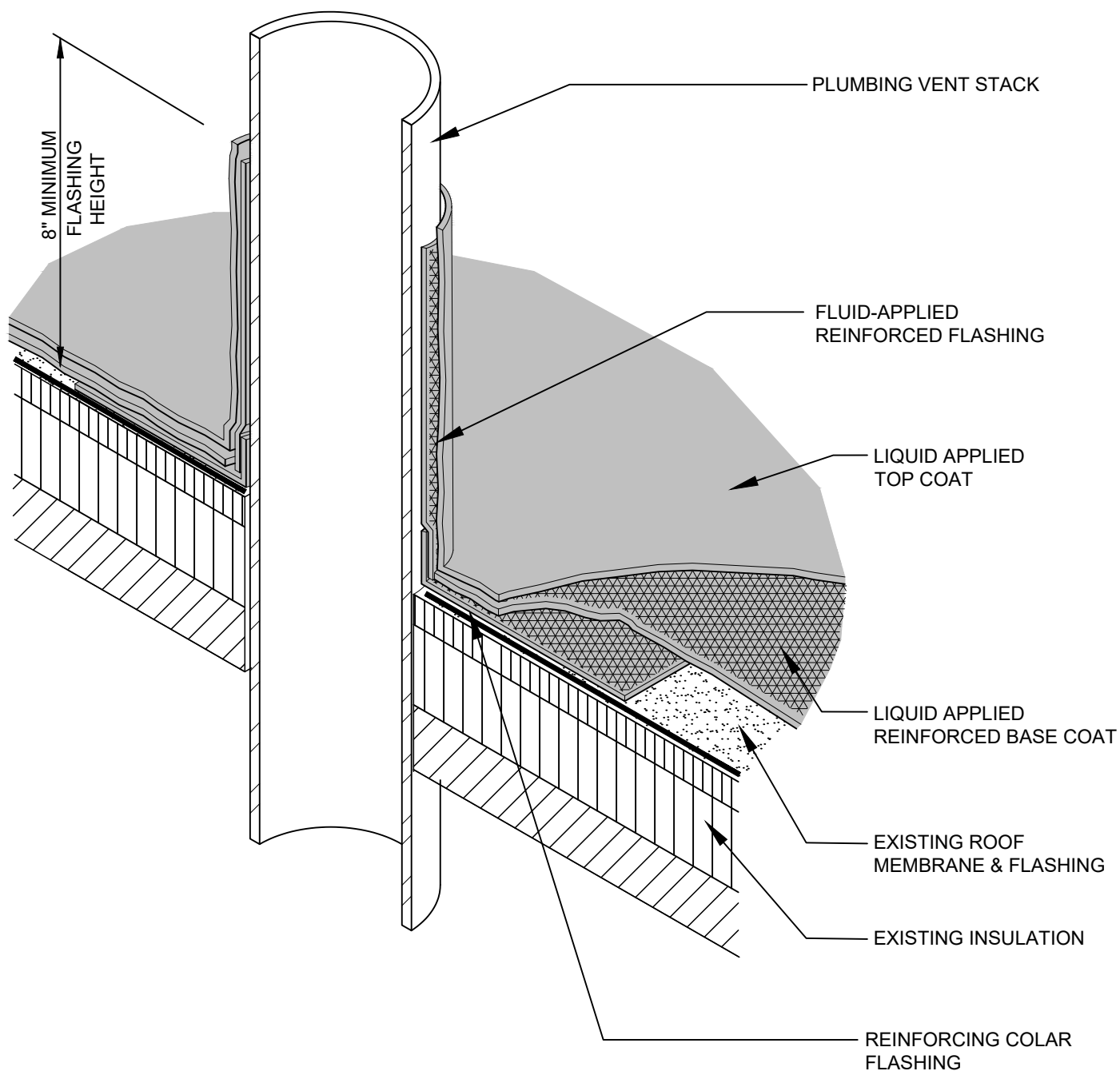
1. THIS DETAIL IS DESIGNED TO ELIMINATE ROOF DAMAGE DUE TO EXPANSION AND CONTRACTION OF PIPES.
2. PIPE SUPPORT PROFILES VARY. REFER TO THE MANUFACTURER FOR LOAD CAPACITY AND RECOMMENDED SPACING OF SUPPORTS.
3. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
4. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

PIPE SUPPORT FULLY REINFORCED RESTORATION

LA-FR-21A

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

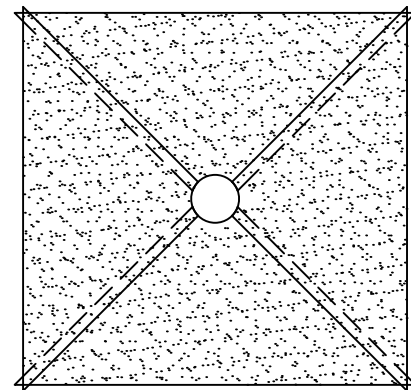
PLUMBING VENT OR PIPE PENETRATION FULLY REINFORCED RESTORATION

LA-FR-19

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE

DRAIN STRAINER



CUT REINFORCEMENT INTO TRIANGLES
AND OVERLAP INTO BOWL.

CLAMPING RING

TRIM EXISTING FLASHINGS TO
WHERE BOWL TURNS DOWN.
ENSURE NEW FLASHINGS FULLY
ENCAPSULATES OLD FLASHINGS.

DECK CLAMP

EXTEND LIQUID APPLIED
SYSTEM INTO DRAIN

CAST-IRON DRAIN BOWL

CLEAN TO BRIGHT
METAL AND PRIME

LIQUID APPLIED
REINFORCED BASE COAT

EXISTING INSULATION SUMP

EXISTING ROOF MEMBRANE

NOTES

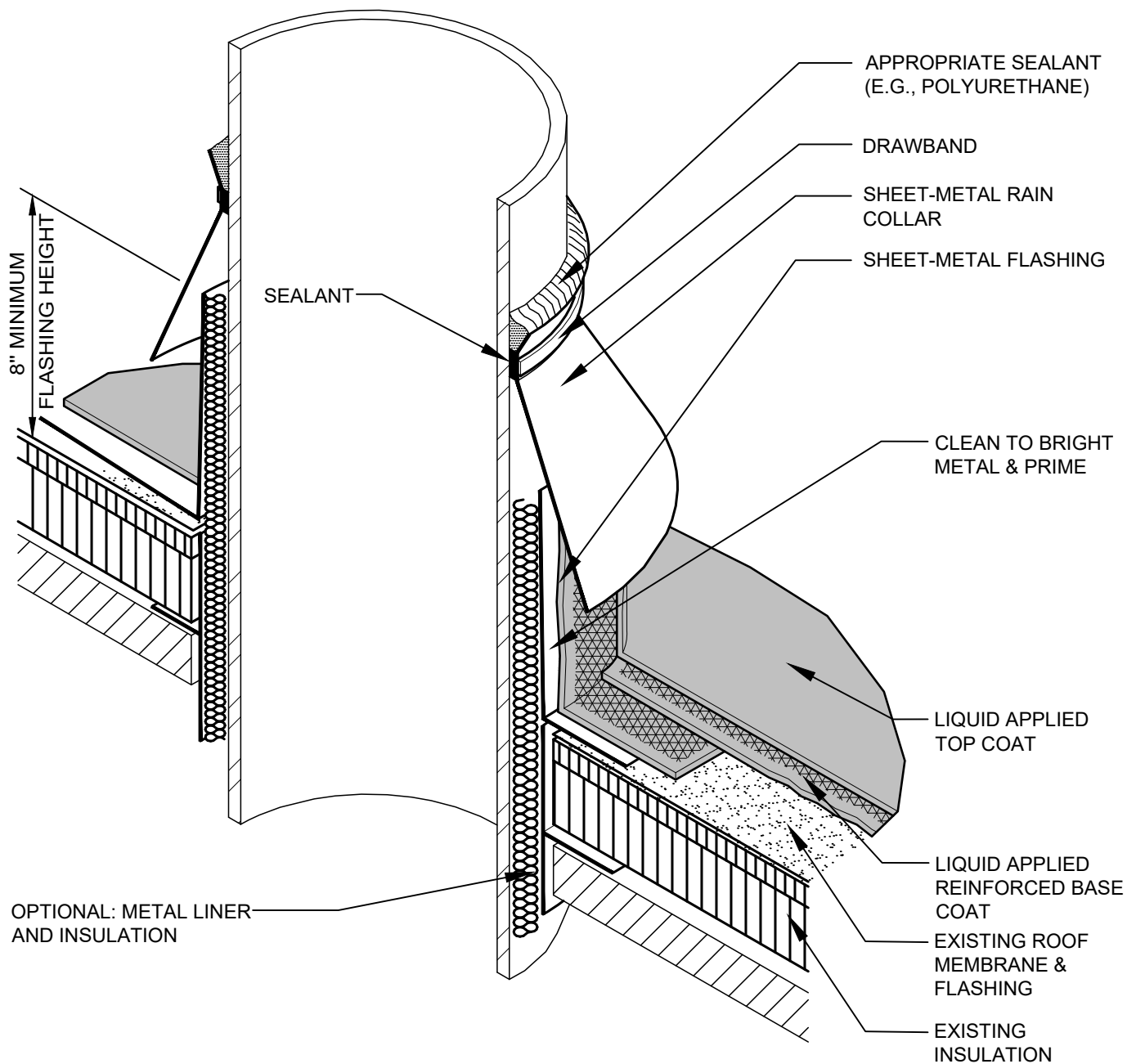
1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.
3. REMOVE EXISTING FLASHINGS PRIOR TO INSTALLATION OF NEW FLUID APPLIED SYSTEMS.

ROOF DRAIN FULLY REINFORCED RESTORATION

LA-FR-24

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE



NOTES

1. PRIMING OF THE SUBSTRATE MAY BE REQUIRED, FOLLOW SPECIFICATIONS AND MANUFACTURER RECOMMENDATIONS.
2. REINFORCEMENT MUST BE FULLY SATURATED OR ENCAPSULATED IN BASE COAT AS DESCRIBED IN SPECIFICATIONS.

SHEET-METAL STACK VENT [HOT OR COLD]
FULLY REINFORCED RESTORATION

LA-FR-18

N.T.S.

TREMCO
ROOFING & BUILDING MAINTENANCE

0 4 8 16 32
SCALE 1/16"=1'-0"

0 4 8 16
SCALE 1/8"=1'-0"

0 4 8
SCALE 1/4"=1'-0"

0 2 4
SCALE 3/8"=1'-0"

0 2 4
SCALE 1/2"=1'-0"

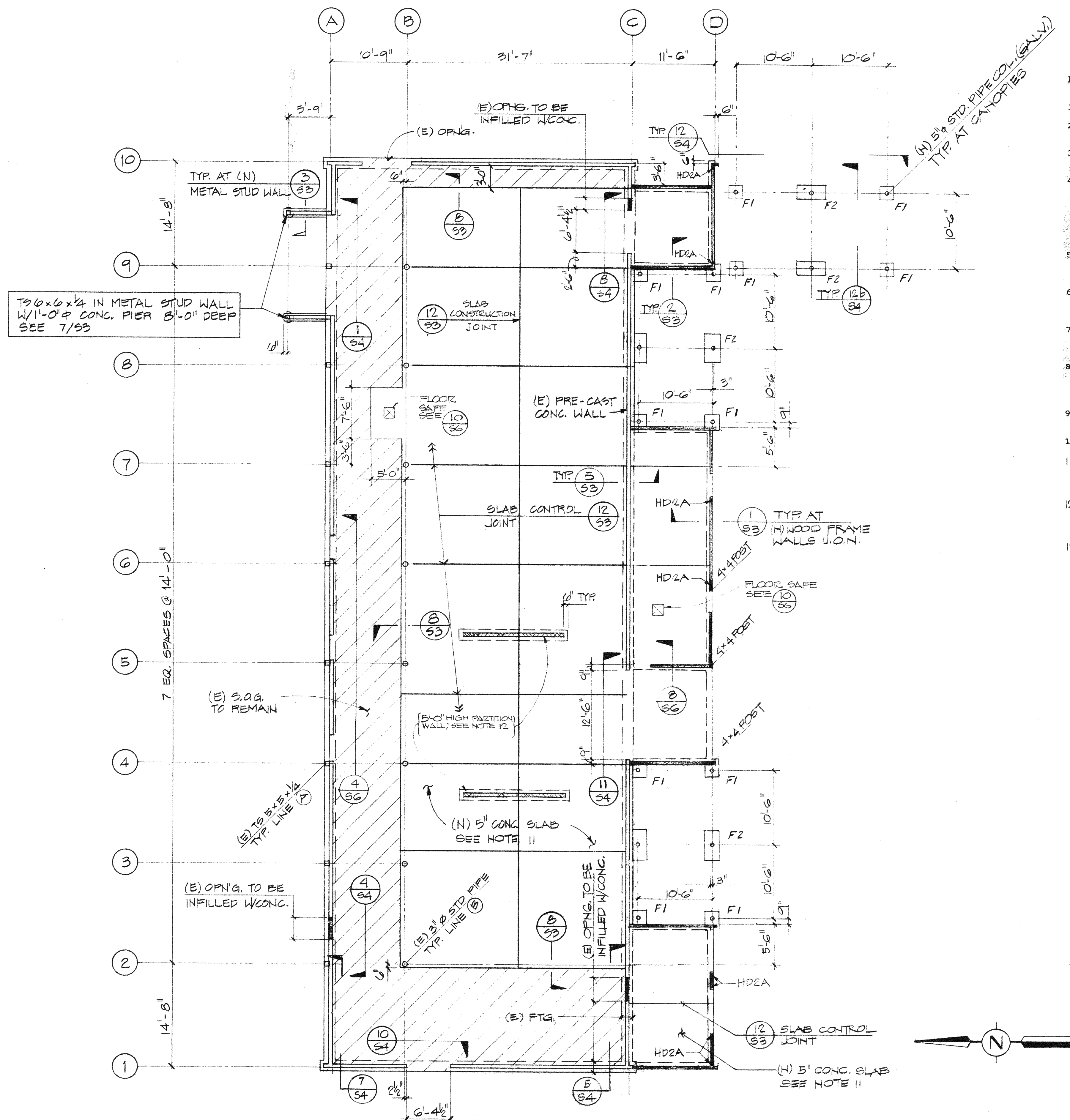
0 6" 1 2
SCALE 3/4"=1'-0"

0 6" 1 2
SCALE 1"=1'-0"

0 3" 6" 9" 1 2
SCALE 1 1/2"=1'-0"

0 3" 6" 9" 1
SCALE 3"=1'-0"

IF THIS SHEET IS NOT 24"x 36" IT IS A
REDUCED PRINT - SCALE ACCORDINGLY



FOUNDATION PLAN NOTES

- SEE GENERAL NOTES AND TYPICAL DETAILS ON SHEET S3.
- NOMINAL GROUND LINE IS AT ELEVATION 0'-0". REFER TO ARCHITECTURAL DRAWINGS FOR DATUM.
- FOUNDATION PLAN IS TAKEN ABOVE SLAB ON GRADE. TOP OF SLAB IS AT NOMINAL GROUND FLOOR LINE.
- WHEREVER PRACTICABLE, EXCAVATIONS SHALL BE MADE AS NEAR AS POSSIBLE TO THE NEAT LINES REQUIRED BY THE SIZE AND SHAPE OF THE STRUCTURE. NO MATERIAL IS TO BE EXCAVATED UNNECESSARILY. AS EXCAVATION PROGRESSES, CONDITIONS MAY DEVELOP REQUIRING CHANGES IN THESE ELEVATIONS AND/OR FOOTINGS. SUCH CHANGES SHALL BE MADE ONLY AS DIRECTED BY THE STRUCTURAL ENGINEER.
- VERIFY LOCATIONS OF (E) UNDERGROUND UTILITIES BEFORE EXCAVATION. NOTIFY ARCHITECT PRIOR TO EXCAVATION IN THE EVENT OF ANY CONFLICTS WITH (N) FOOTINGS.
- ALL FOUNDATION EXCAVATIONS MUST BE REVIEWED AND APPROVED BY A SOILS ENGINEER RETAINED BY THE CITY OF MILPITAS PRIOR TO PLACEMENT OF CONCRETE.
- FOR DRAINING DETAILS, DAMP-PROOFING, CURBS, EXTERIOR WALKWAYS, UTILITIES, EQUIPMENT DETAILS, ETC. SEE DRAWINGS OTHER THAN STRUCTURAL.
- ~~EXISTING~~ DENOTES (N) STRUCTURAL WALLS COMPRISED OF 2x4 STUDS @ 16" O.C. UNLESS OTHERWISE NOTED. SEE DETAILS 1/55 AND 4/55. SEE ARCHITECTURAL FOR OTHER WALLS AND DIMENSIONS NOT SHOWN.
- MARKS HD2A ETC. DENOTE "HOLD DOWNS" BY SIMPSON STRONG TIE COMPANY OR EQUAL. SEE 2/55.
- DENOTES EXISTING SLAB ON GRADE TO REMAIN.
- (N) 5" CONCRETE SLAB TO BE UNDERLAIN W/ 6" COMPACTED GRANULAR BASE AND TO BE REINFORCED W/ #3 @ 18" O.C. F.W. & MID-DEPTH OF SLAB.
- ~~EXISTING~~ DENOTES (N) 5'-0" HIGH 6" FULLY GROUTED CMU WALL. (SEE 9/56 FOR DETAIL) SEE ARCH. DWG'S. FOR DIMENSIONS AND DETAILS NOT SHOWN.
- SEE ARCH. DWG'S. FOR LOCATION AND ELEVATIONS OF SLAB DEPRESSIONS AND SLOPES. SEE DET. 11/56 FOR TYPICAL SLAB DEPRESSION.

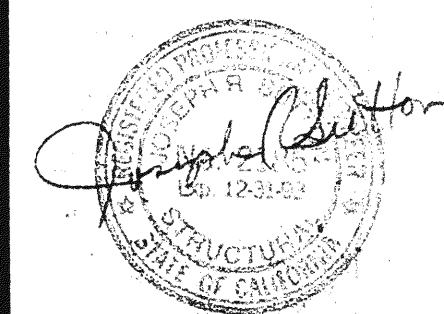
FOUNDATION PLAN
SCALE: 1/8" = 1'-0"

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MILPITAS SPORTS CENTER
NORTH LOCKER ROOM RENOVATION
FOR THE CITY OF MILPITAS
PROJECT #8017



THORNTON
ANDERSON
ARCHITECTS

60 Federal Street - Suite 555
San Francisco, CA 94107
Telephone 415-243-9555

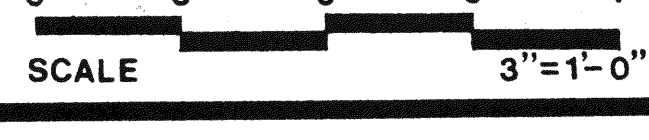
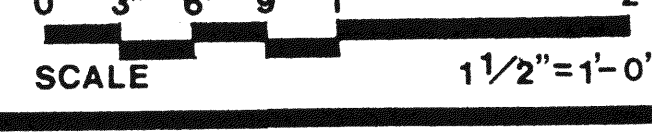
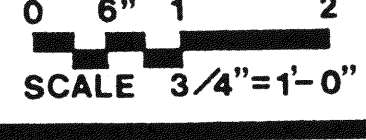
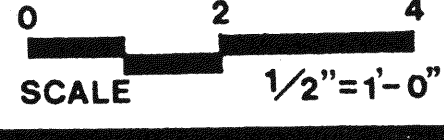
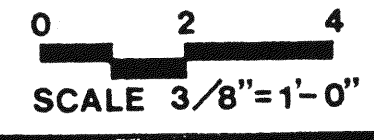
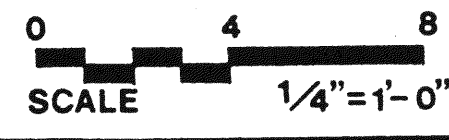
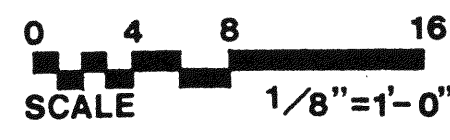
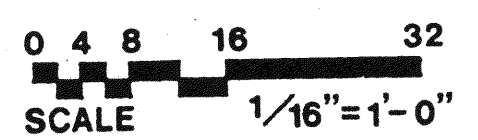
FOUNDATION PLAN

SHEET NO.

S1

OF
PROJECT
DATE

2-1349



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GENERAL STRUCTURAL NOTES

I. GENERAL:

- SEE DRAWINGS OTHER THAN STRUCTURAL FOR: KINDS OF FLOOR FINISH AND THEIR LOCATION, FOR DEPRESSIONS IN FLOOR SLABS, FOR OPENINGS IN WALLS AND FLOORS REQUIRED BY ARCHITECTURAL AND MECHANICAL FEATURES, FOR ROADWAY PAVING, WALKS, RAMPS, STAIRS, CURBS, ETC.
- HOLES AND OPENINGS THROUGH WALLS AND FLOORS FOR DUCTS, PIPING AND VENTILATIONS SHALL BE CHECKED BY THE CONTRACTOR WHO SHALL VERIFY SIZES AND LOCATION OF SUCH HOLES OR OPENINGS WITH THE MECHANICAL, PLUMBING, AND ELECTRICAL DRAWINGS AND THESE SUB-CONTRACTORS.
- NO PIPES OR DUCTS SHALL BE PLACED IN SLABS OR WALLS UNLESS SPECIFICALLY DETAILED OR APPROVED BY THE ARCHITECT.
- DRAWINGS AND SPECIFICATIONS REPRESENT FINISHED STRUCTURE. CONTRACTOR SHALL BE RESPONSIBLE FOR MEANS AND METHODS OF CONSTRUCTION INCLUDING BUT NOT LIMITED TO SHORING AND TEMPORARY BRACING. THE CONTRACTOR SHALL TAKE ALL NECESSARY MEASURES TO INSURE SAFETY OF ALL PERSONS AND STRUCTURES AT THE SITE AND ADJACENT TO THE SITE. OBSERVATION VISITS TO THE SITE BY THE ARCHITECT, ENGINEER OR CONSTRUCTION MANAGER SHALL NOT RELIEVE THE CONTRACTOR OF SUCH RESPONSIBILITY.
- CONTRACTOR SHALL VERIFY ALL DIMENSIONS AT JOB SITE BEFORE COMMENCING WORK AND SHALL REPORT ANY DISCREPANCIES TO THE ARCHITECT.
- OMISSIONS OR CONFLICTS BETWEEN VARIOUS ELEMENTS OF THE DRAWINGS, NOTES, AND DETAILS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT AND RESOLVED BEFORE PROCEEDING WITH THE WORK.
- DO NOT USE SCALED DIMENSIONS; USE WRITTEN DIMENSIONS WHERE NO DIMENSION IS PROVIDED, CONSULT THE ARCHITECT FOR CLARIFICATION BEFORE PROCEEDING WITH THE WORK.

II. DESIGN BASIS:

- APPLICABLE CODE: UNIFORM BUILDING CODE (UBC), 1985 EDITION.
- VERTICAL LIVE LOADS:
 - ROOF: 20 PSF PLUS MECHANICAL
- LATERAL LOADS:
 - DESIGN WIND PRESSURE = 19 PSF, $C_e = 1.2$, $C_s = 1.3$, $q_s = 13$, $I = 1.0$
 - SEISMIC: $V = .185 W$; $Z = 1.0$, $I = 1.0$, $K = 1.33$, $CS = .14$

III. MATERIALS

A. CONCRETE

- REINFORCING STEEL:
 - BAR: ASTM A615, GRADE 60.
 - ALL CONCRETE SHALL BE REINFORCED UNLESS SPECIFICALLY MARKED 'NOT REINFORCED'.
- CONCRETE CLASSES: SEE SPECIFICATIONS FOR REQUIREMENTS.

CLASS	USE	WT	STRENGTH
A.	FOUNDATIONS, SLABS-ON-GRADE (E) WALL INFILL	145 PCF	3000 PSI

3. MINIMUM CONCRETE COVER FOR REINFORCING STEEL:

- SURFACES PLACED AGAINST EARTH 3"
- FORMED SURFACES BELOW GRADE 2"
- SURFACES EXPOSED TO WEATHER 2"
- BEAM AND COLUMN BARS (INCLUDING STIRRUPS OR TIES) 1-1/2"
- EXTERIOR WALL AT EXTERIOR FACE 1-1/2"
- SLABS AND WALLS NOT EXPOSED TO WEATHER 1"

B. WOOD

- FRAMING LUMBER - DOUGLAS FIR:
 - JOISTS AND RAFTERS: NO. 2
 - POSTS, BEAMS, AND HEADERS: NO. 1
 - STUDS, PLATES, BLOCKS, LIGHT FRAMING AND MISC: NO. 2
- ALL LUMBER IN CONTACT WITH CONCRETE OR MASONRY TO BE PRESERVATIVE TREATED.
- PLYWOOD SHEATHING:
 - ROOFING SHEATHING: 1/2 INCH C-D EXTERIOR APA RATED 32/16.
 - WALL SHEATHING: 1/2 INCH C-D, INTERIOR WITH EXTERIOR GLUE.
- FRAMING HARDWARE: AS MANUFACTURED BY SIMPSON CO. OR APPROVED EQUAL. SIMPSON DESIGNATIONS USED.
- NAILS: COMMON WIRE GAGE U.N.O. NAILING TO CONFORM TO UBC TABLE 25-Q U.N.O.
- BOLTS: ASTM A307.

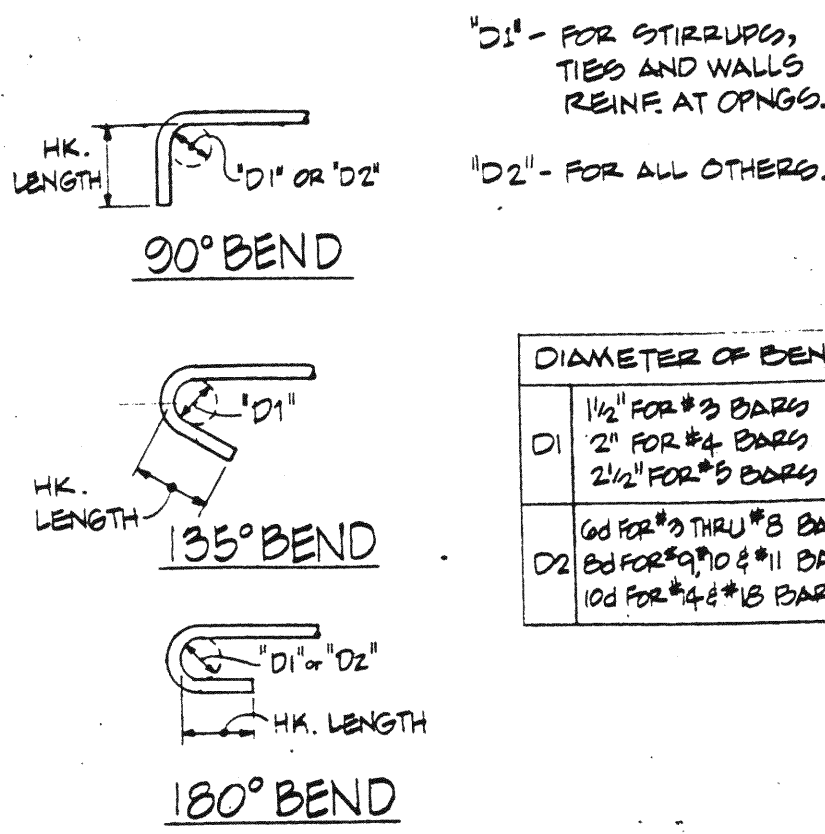
C. STEEL

- SHAPES AND PLATES: ASTM A36; TUBES: ASTM A500, GRADE B; PIPES: ASTM A53, GRADE B.
- BOLTS: ASTM A307.
- WELDING ELECTRODES: E-70.
- ANCHOR BOLTS: ASTM A307.
- WELDED STUDS: HEADED ANCHORS TYPE H4L BY NELSON OR EQUAL.

IV. INSPECTION

SPECIAL INSPECTION SHALL BE PROVIDED PER UBC SECTION 306.

BAR SIZE	90°	135°	180°
#3	6"	4"	4"
#4	8"	6"	6"
#5	10"	8"	8"
#6	12"	10"	10"
#7	14"	12"	12"
#8	16"	14"	14"
#9	18"	16"	16"
#10	20"	18"	18"
#11	22"	20"	20"

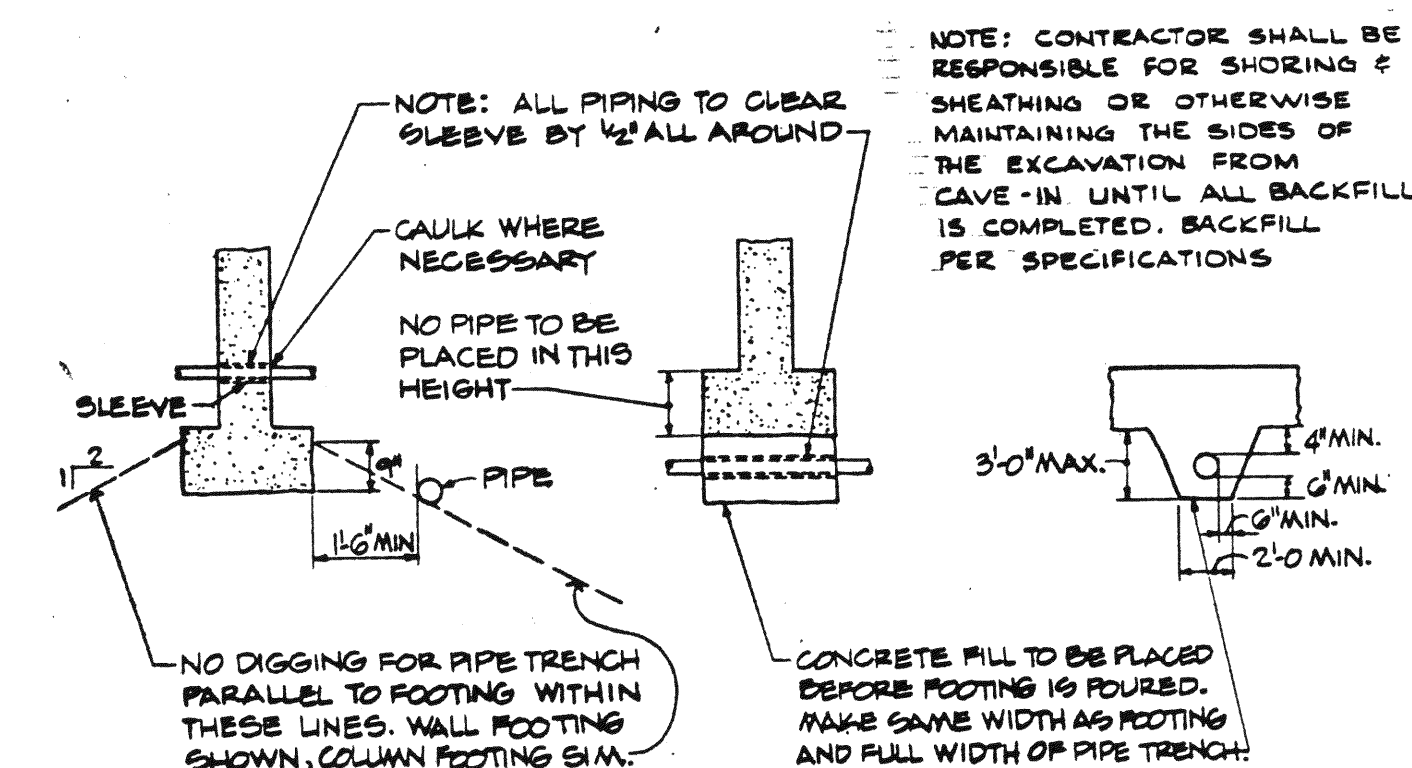


9 STANDARD HOOKS

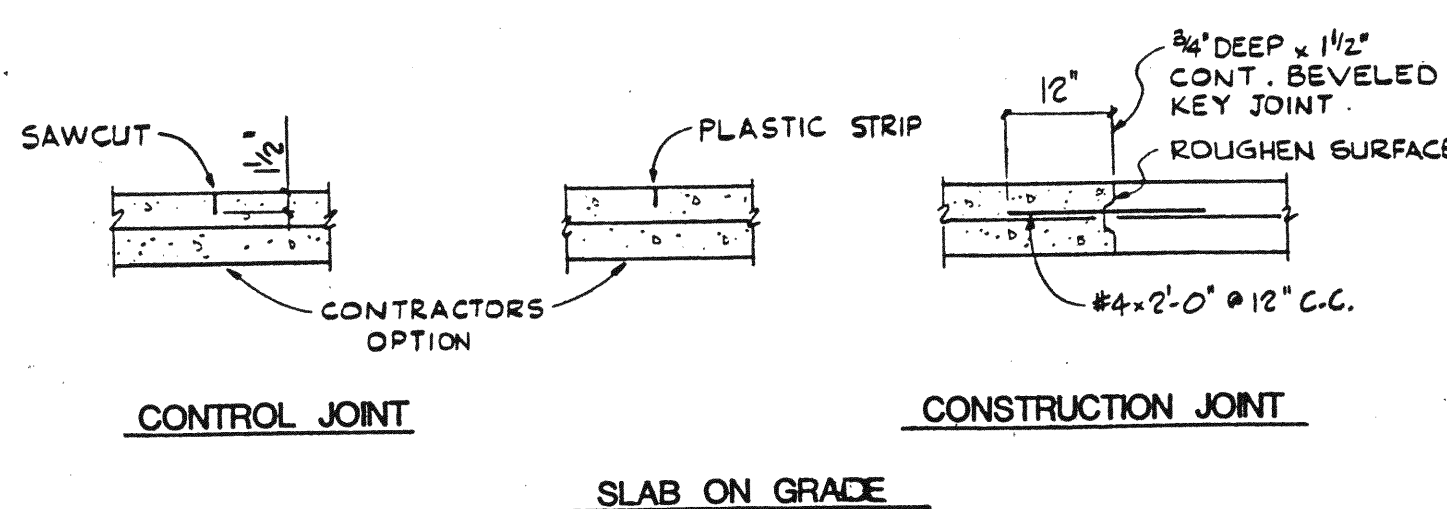
BAR SIZE	CLASS SPLOICE		
	A	B	C
#3	1'-1"	1'-4"	1'-9"
#4	1'-3"	1'-10"	2'-3"
#5	1'-4"	2'-3"	2'-10"
#6	2'-3"	2'-11"	3'-10"
#7	2'-4"	4'-0"	5'-2"
#8	4'-0"	5'-9"	6'-10"
#9	5'-1"	6'-8"	8'-8"
#10	6'-8"	8'-6"	11'-0"
#11	8'-0"	10'-4"	13'-7"

USE CLASS B SPLOICE U.N.O.

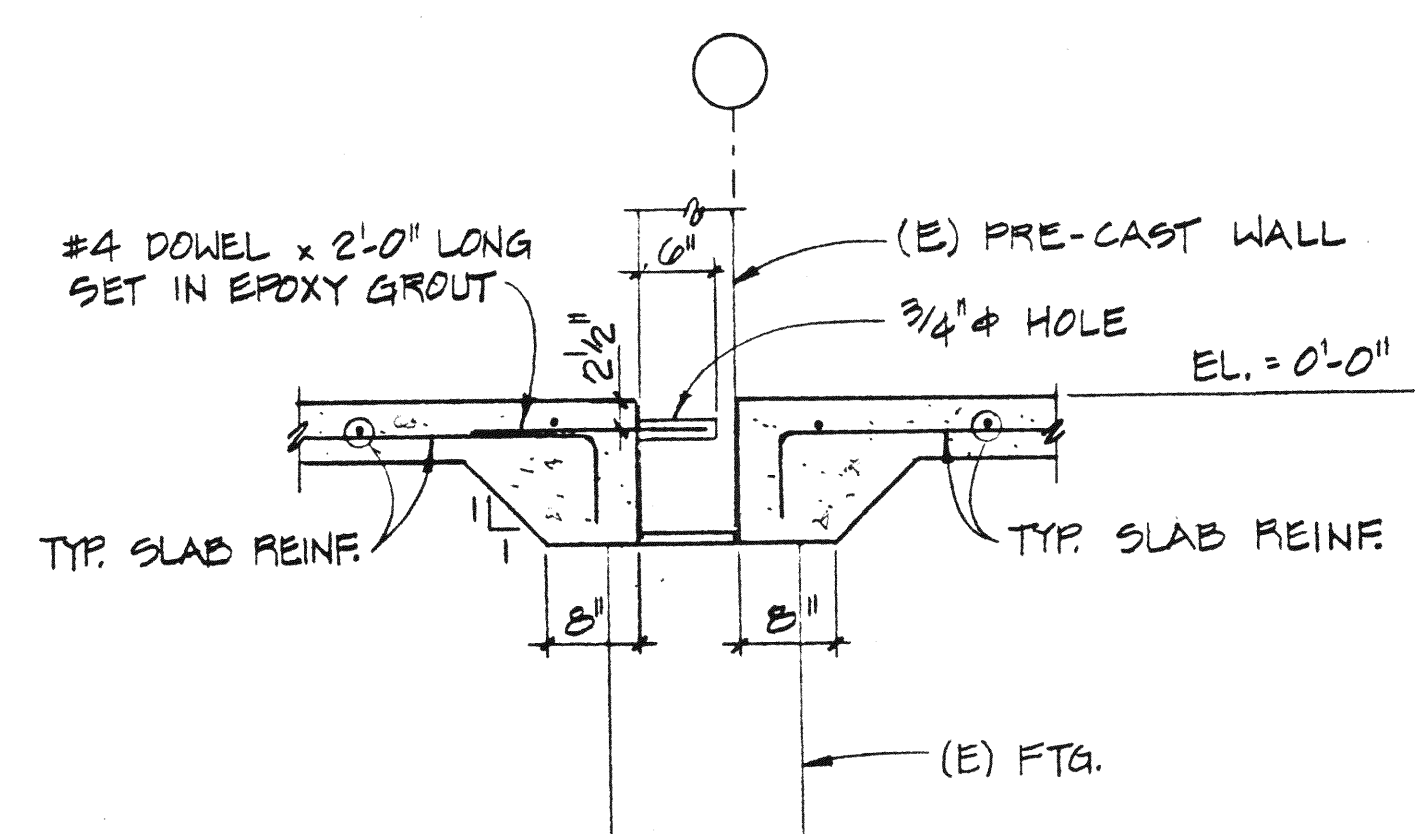
10 TYP. OFFSET & TYP. LAP SPLOICE



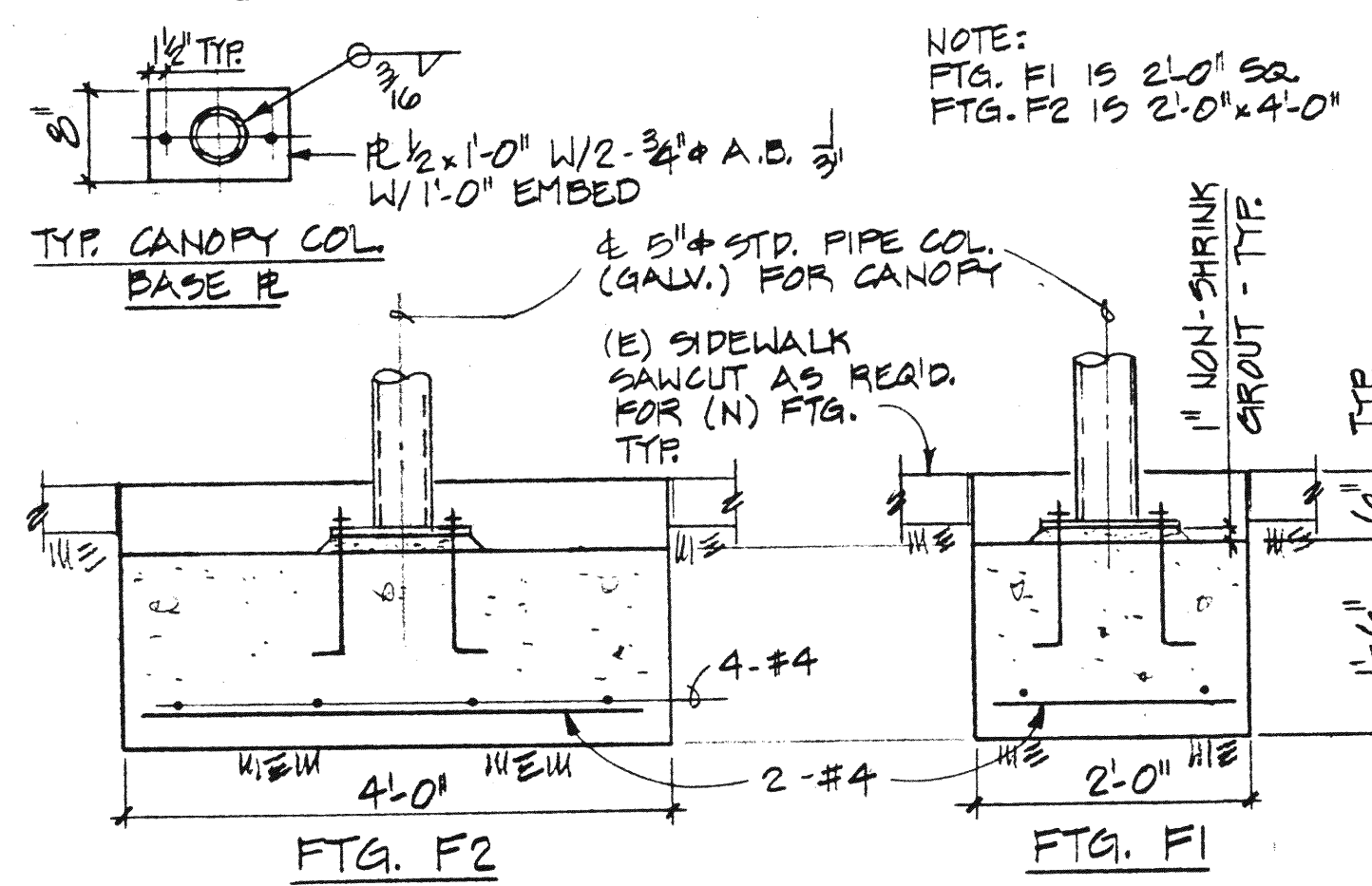
11 TYP. PIPE CLEARANCE AT FOOTINGS



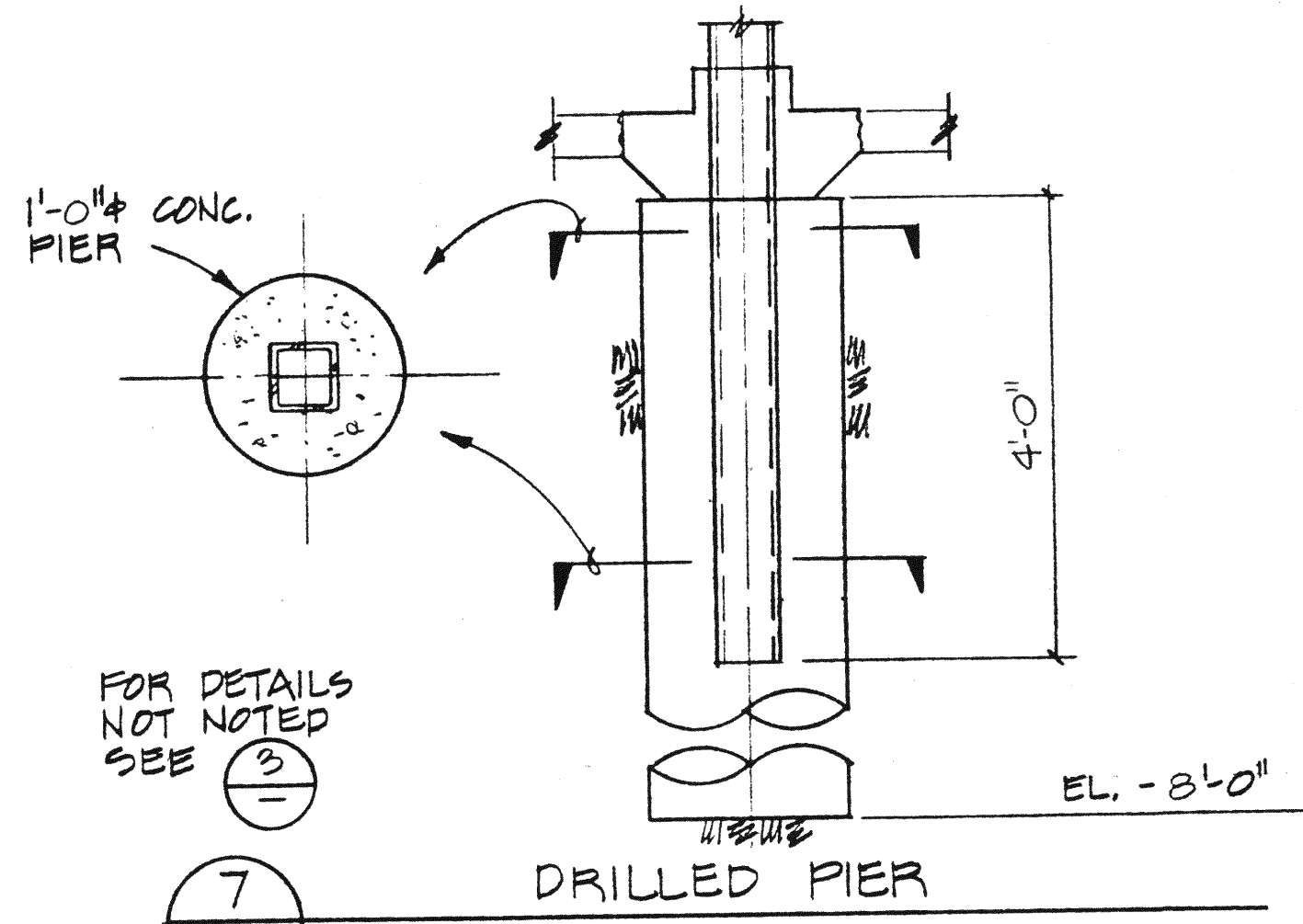
12 TYP. SLAB ON GRADE JOINTS



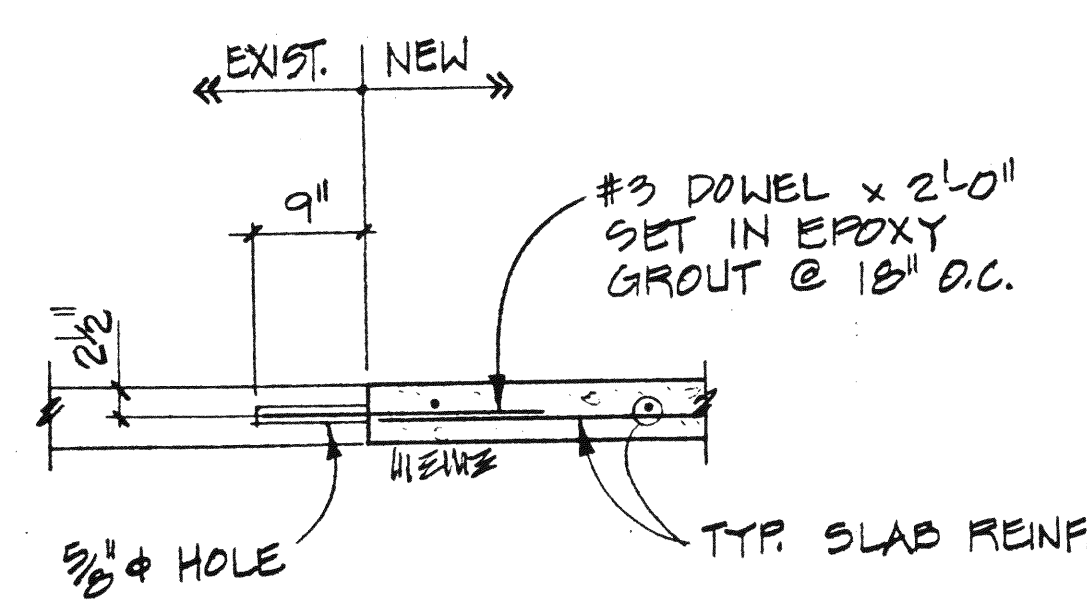
5 SLAB DETAIL AT (E) WALL



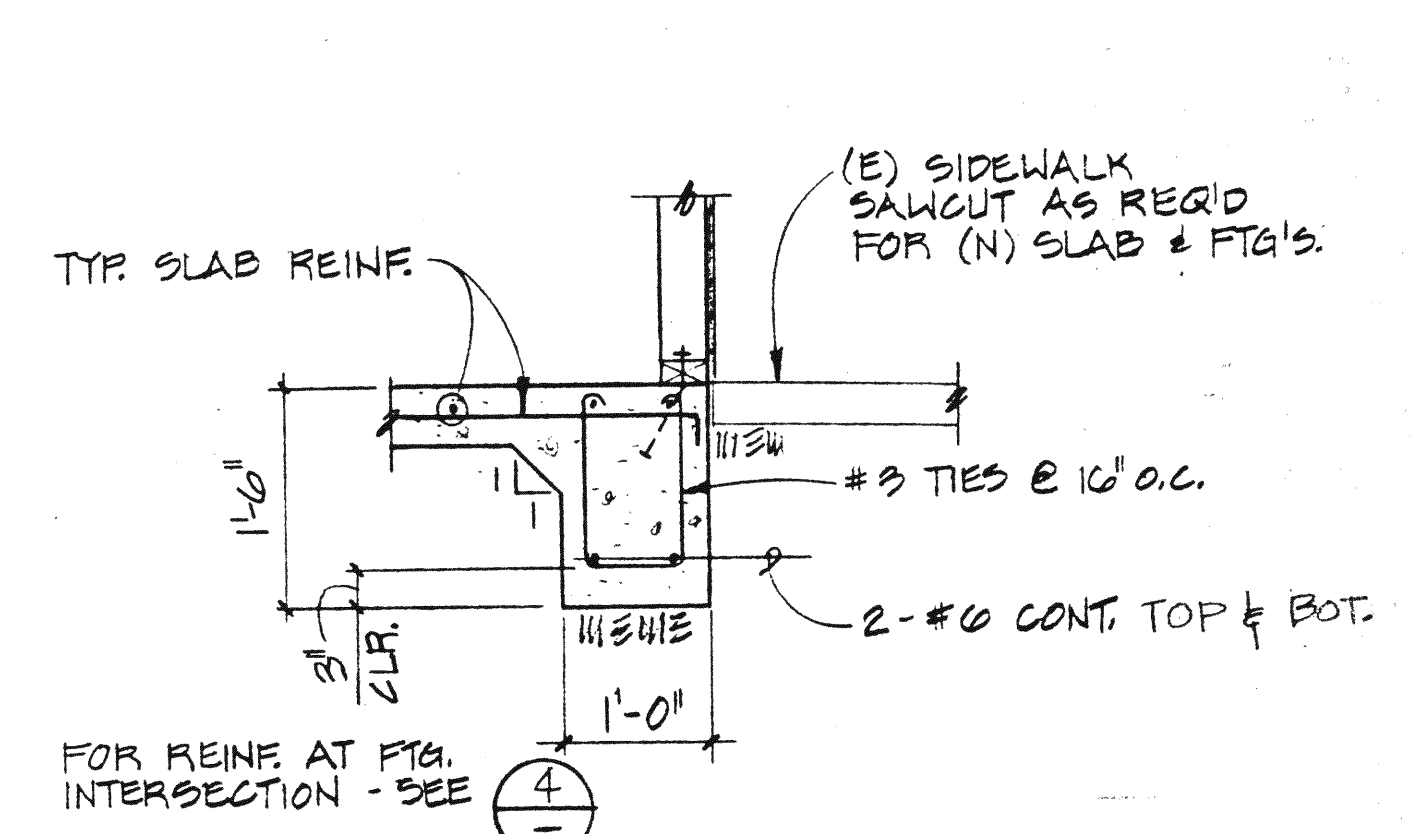
6 FTG. DETAIL AT CANOPY COLUMNS



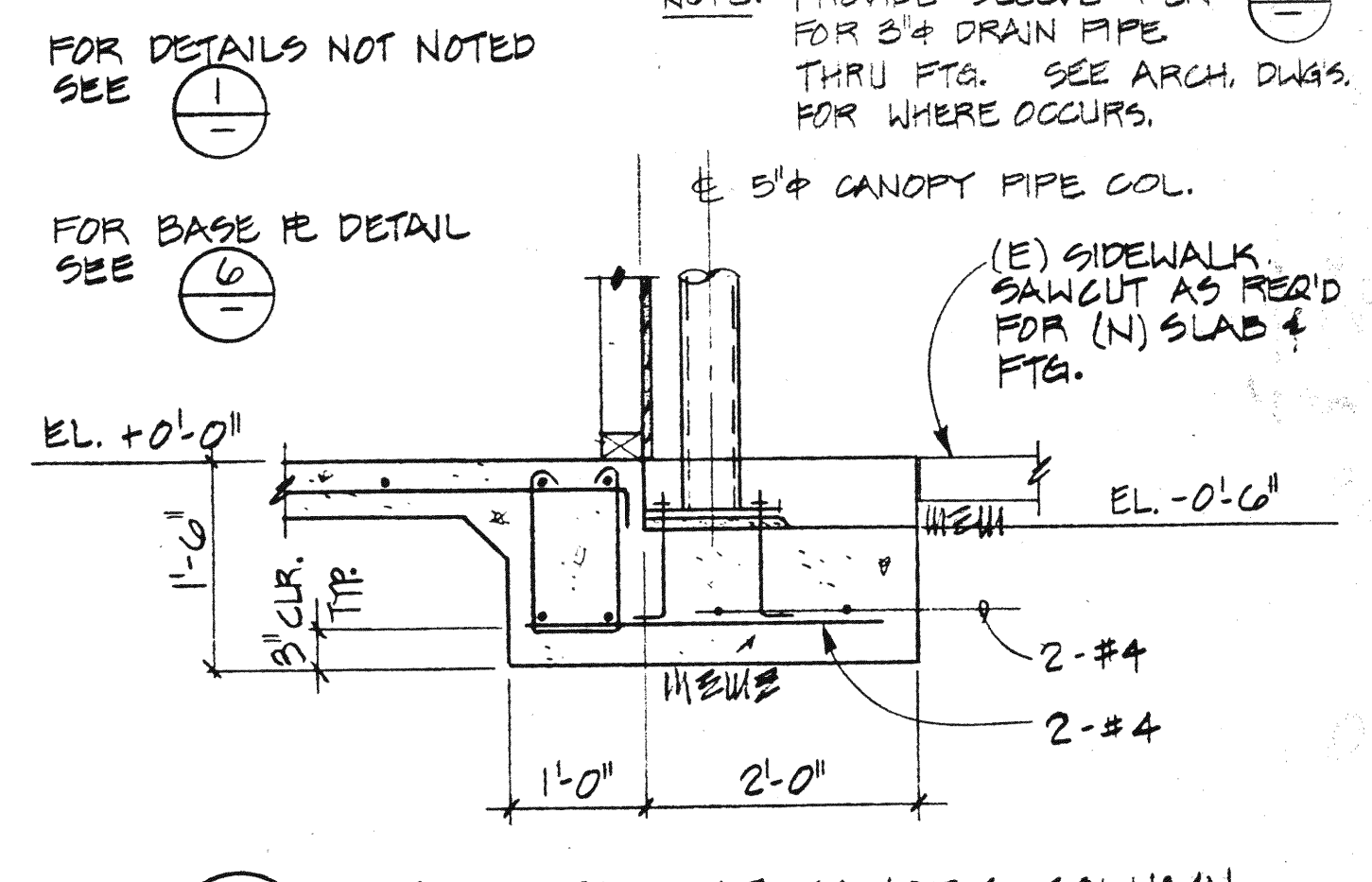
7 DRILLED PIER



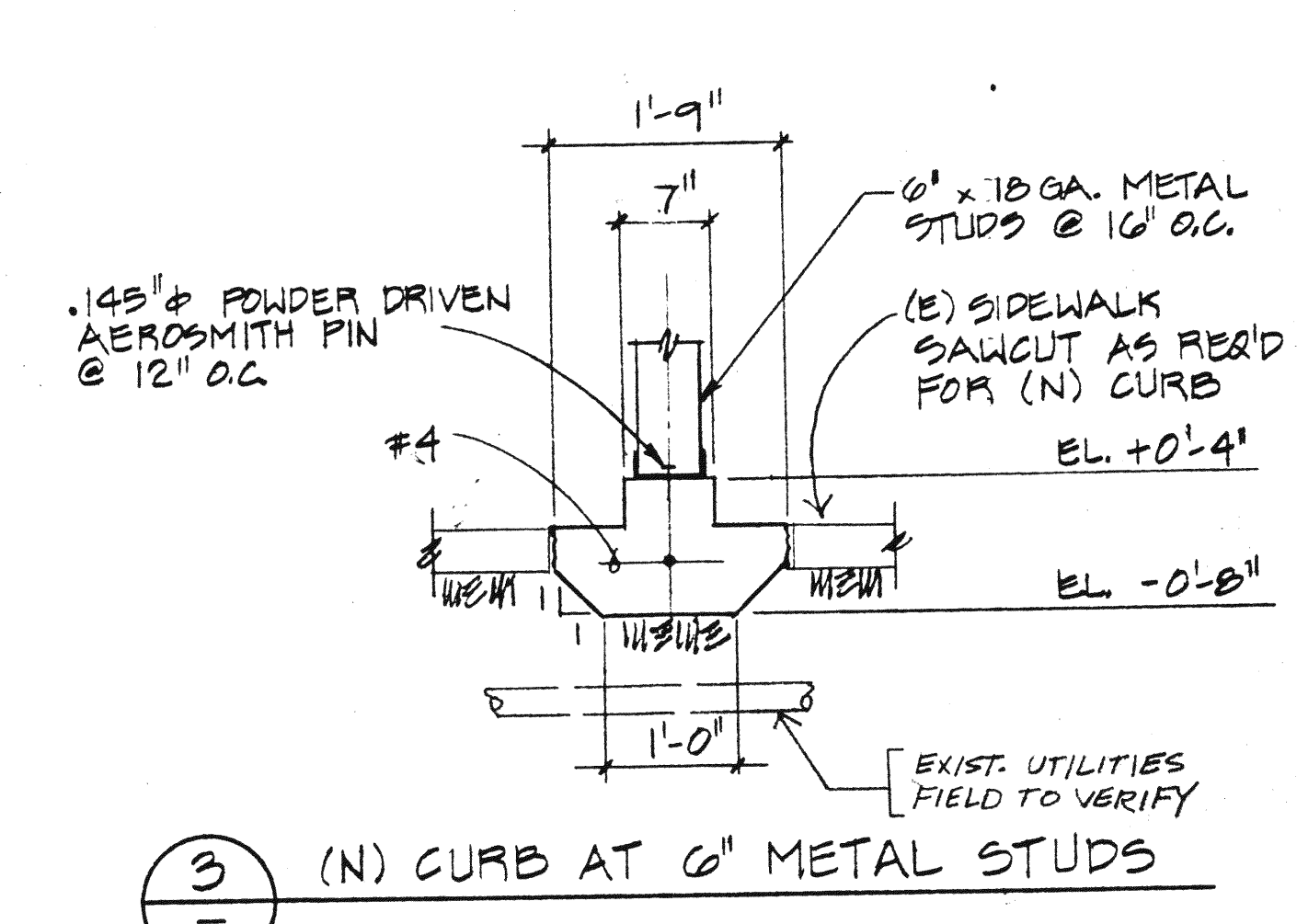
8 DETAIL AT NEW/EXIST. SLAB INTERFACE



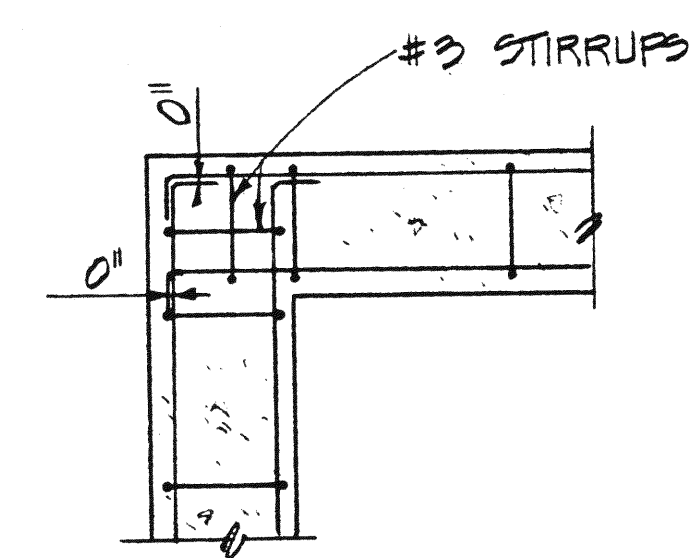
1 TYP. FTG. AT WOOD STUD WALL



2 FTG. DETAIL AT CANOPY COLUMN



3 (N) CURB AT 6\"/>



4 TYP. REIN. AT 90° INTERSECTION

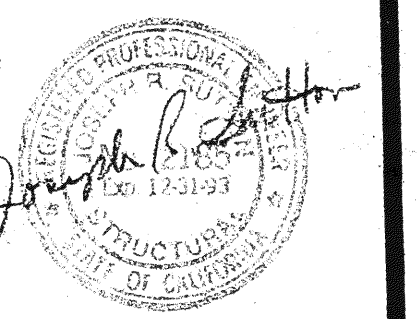
PLAN 2-1349

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NORTH LOCKER ROOM RENOVATION
FOR THE CITY OF MILPITAS
PROJECT #8017



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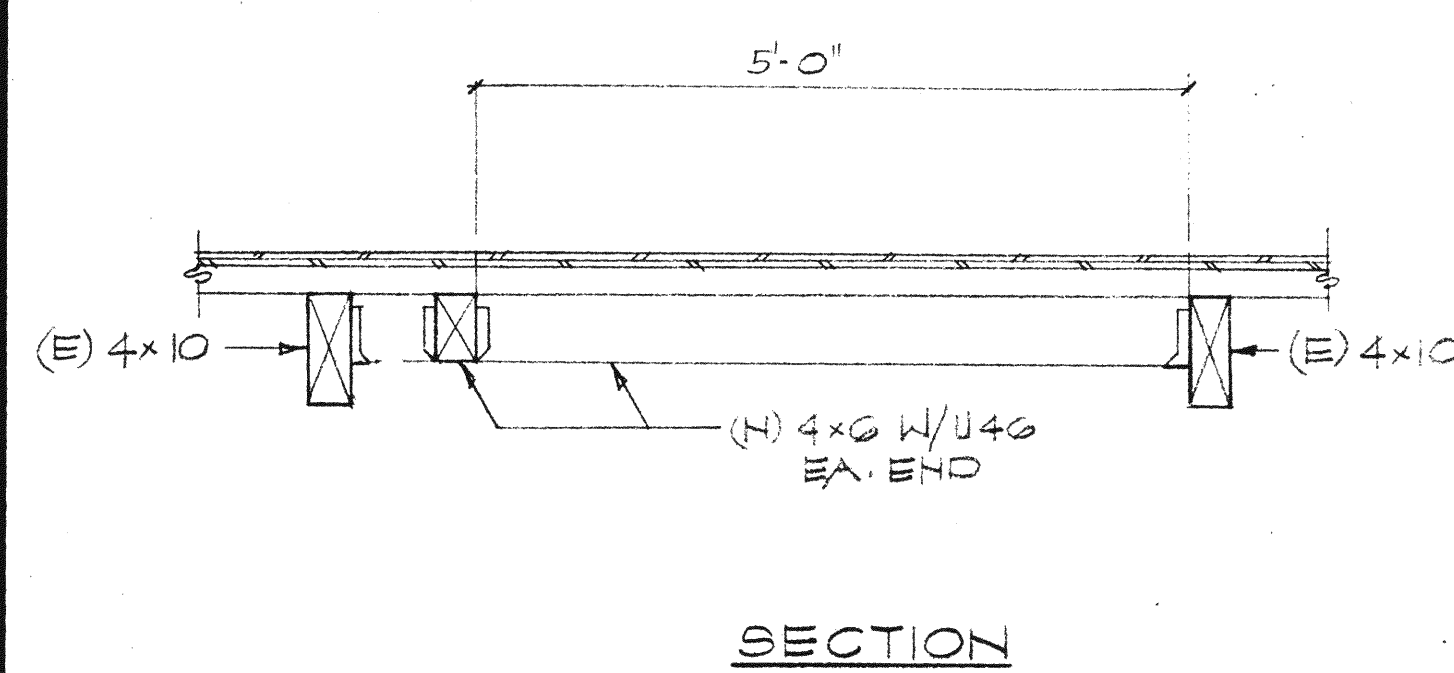
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GENERAL NOTES & FDN. DETAILS

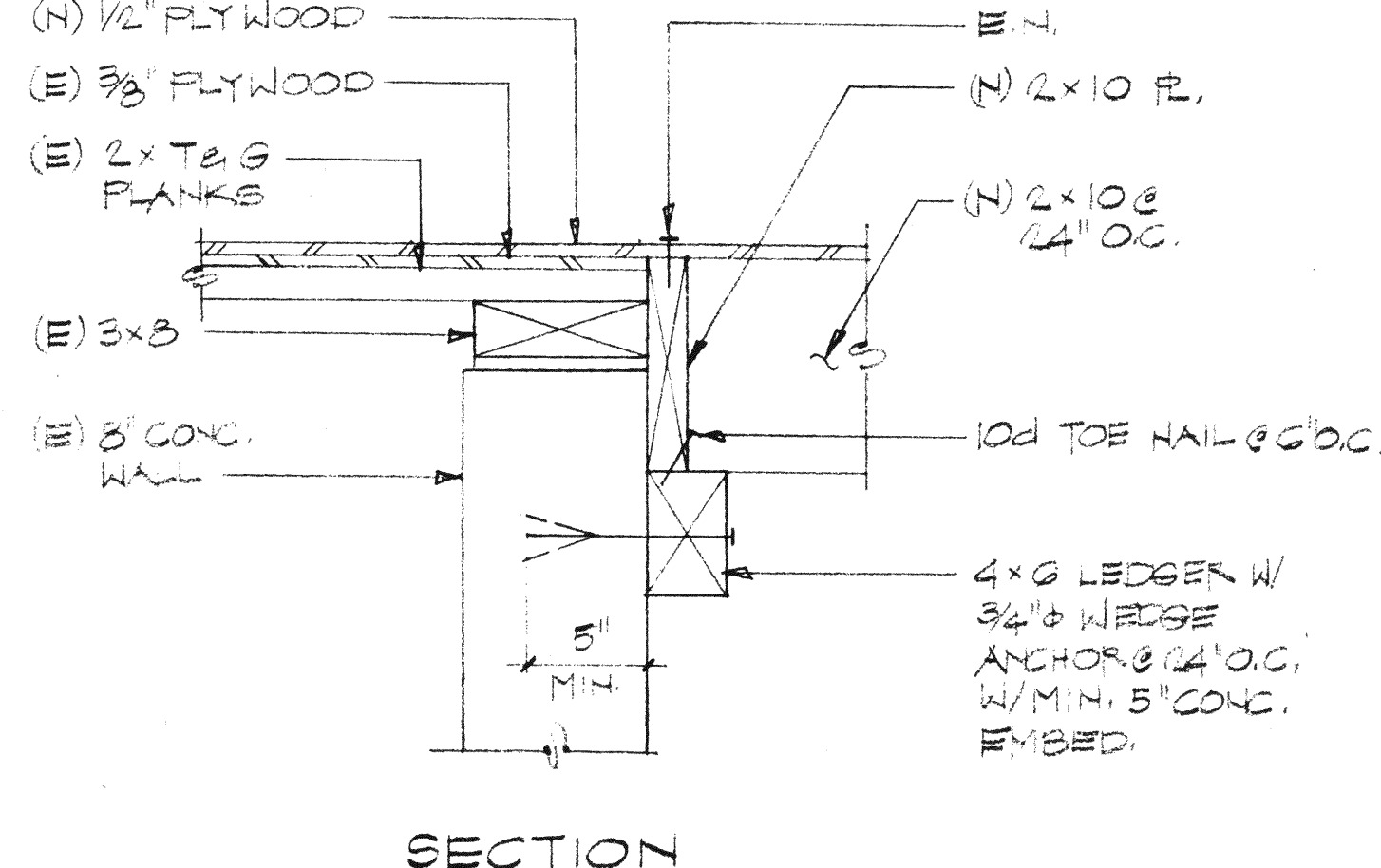
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S3

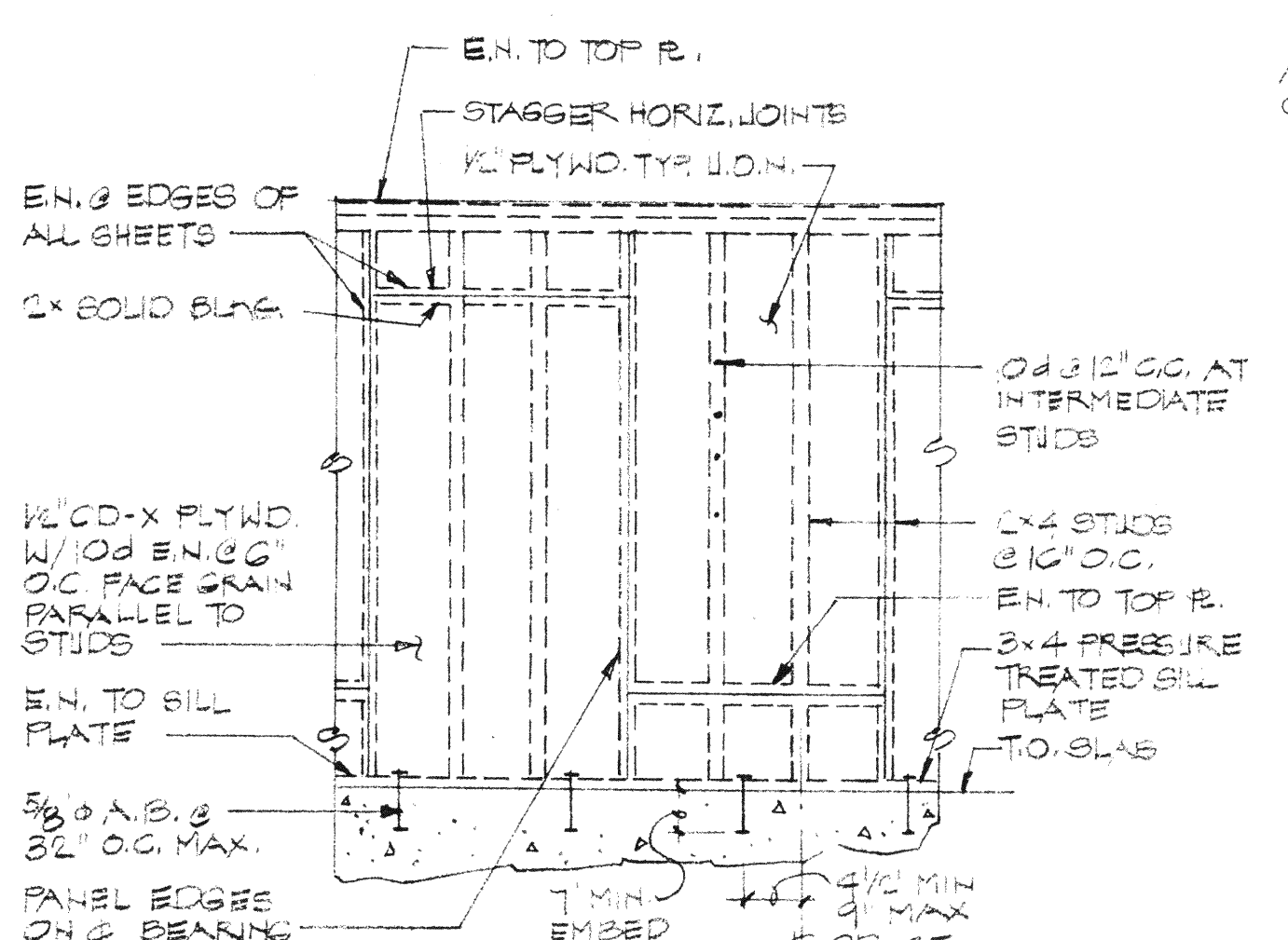
OF
PROJECT
DATE



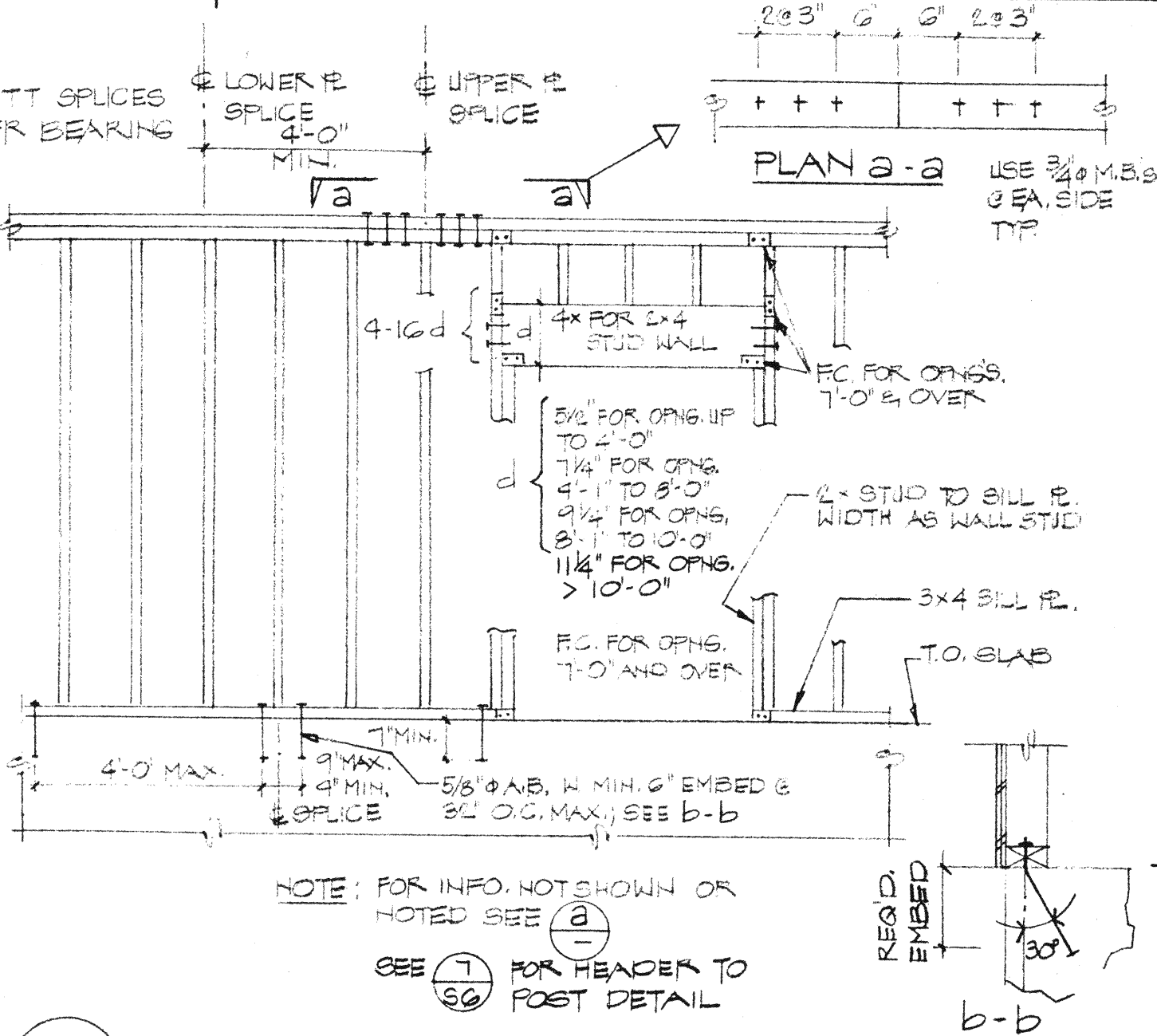
10 FRAMING DETAIL @ (N) SKYLIGHT



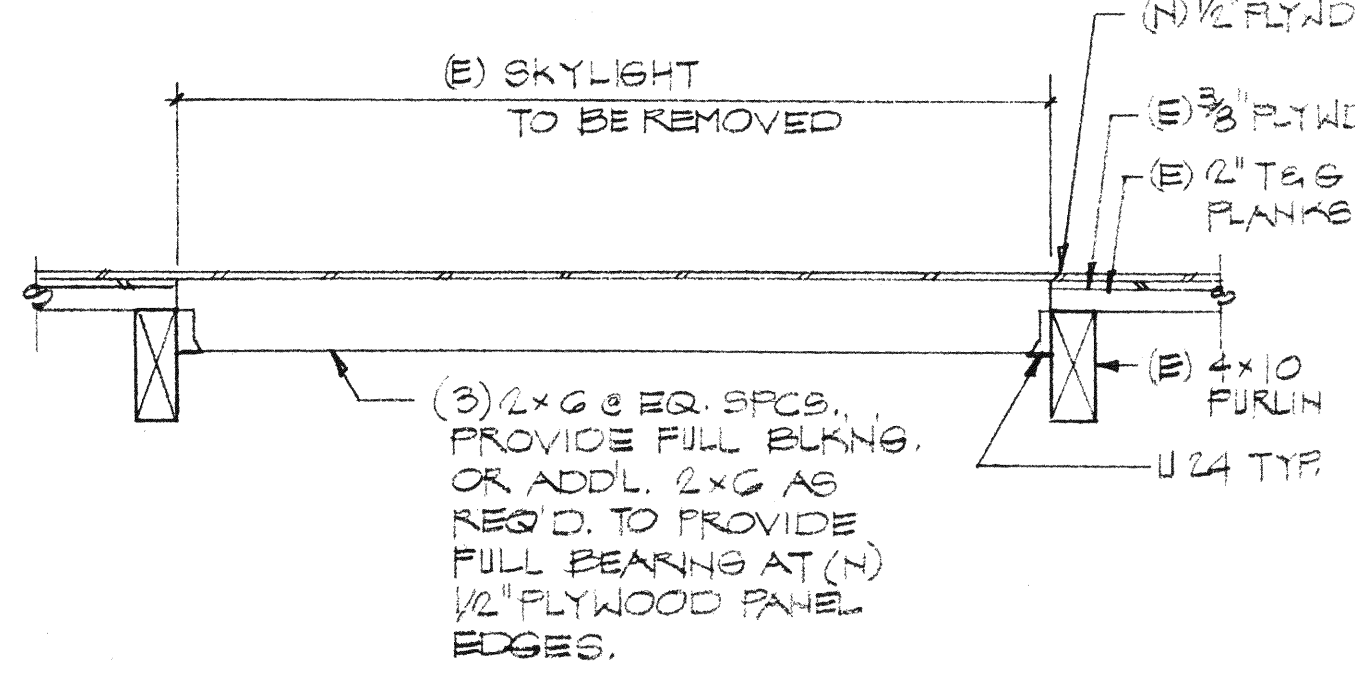
7 LEDGER DETAIL



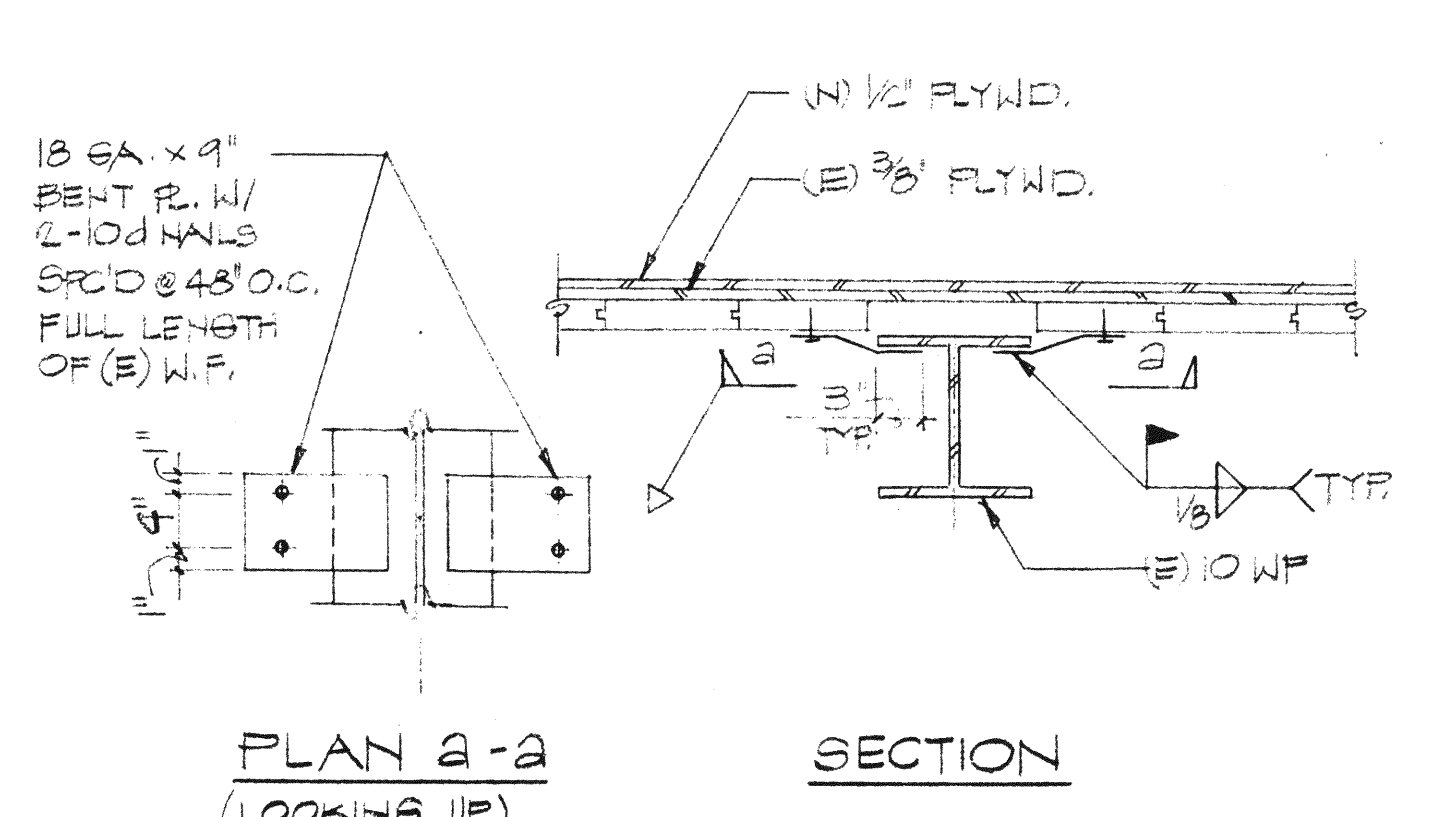
4 TYPICAL PLYWOOD SHEATHED WALL



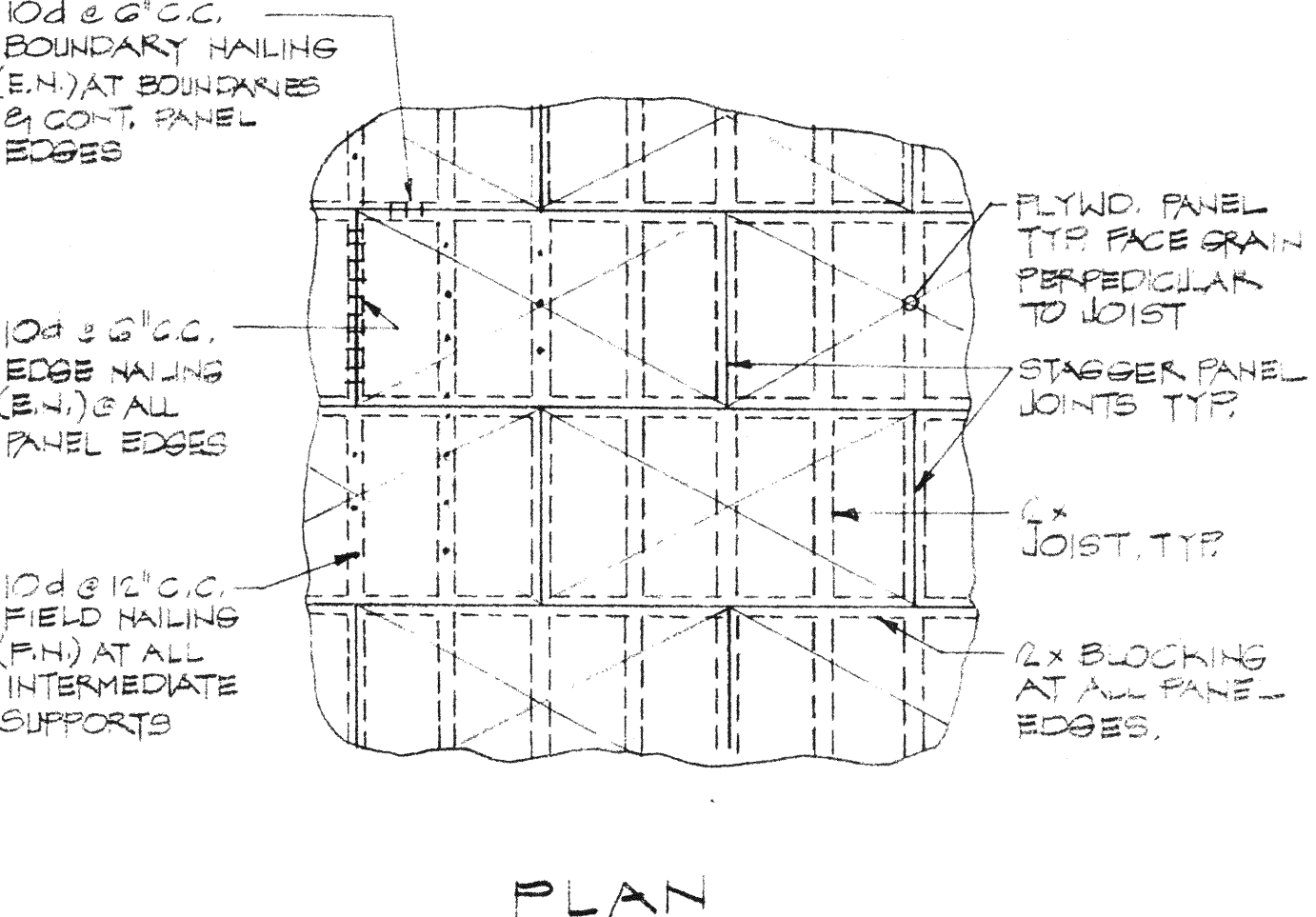
1 TYP. WOOD FRAMING



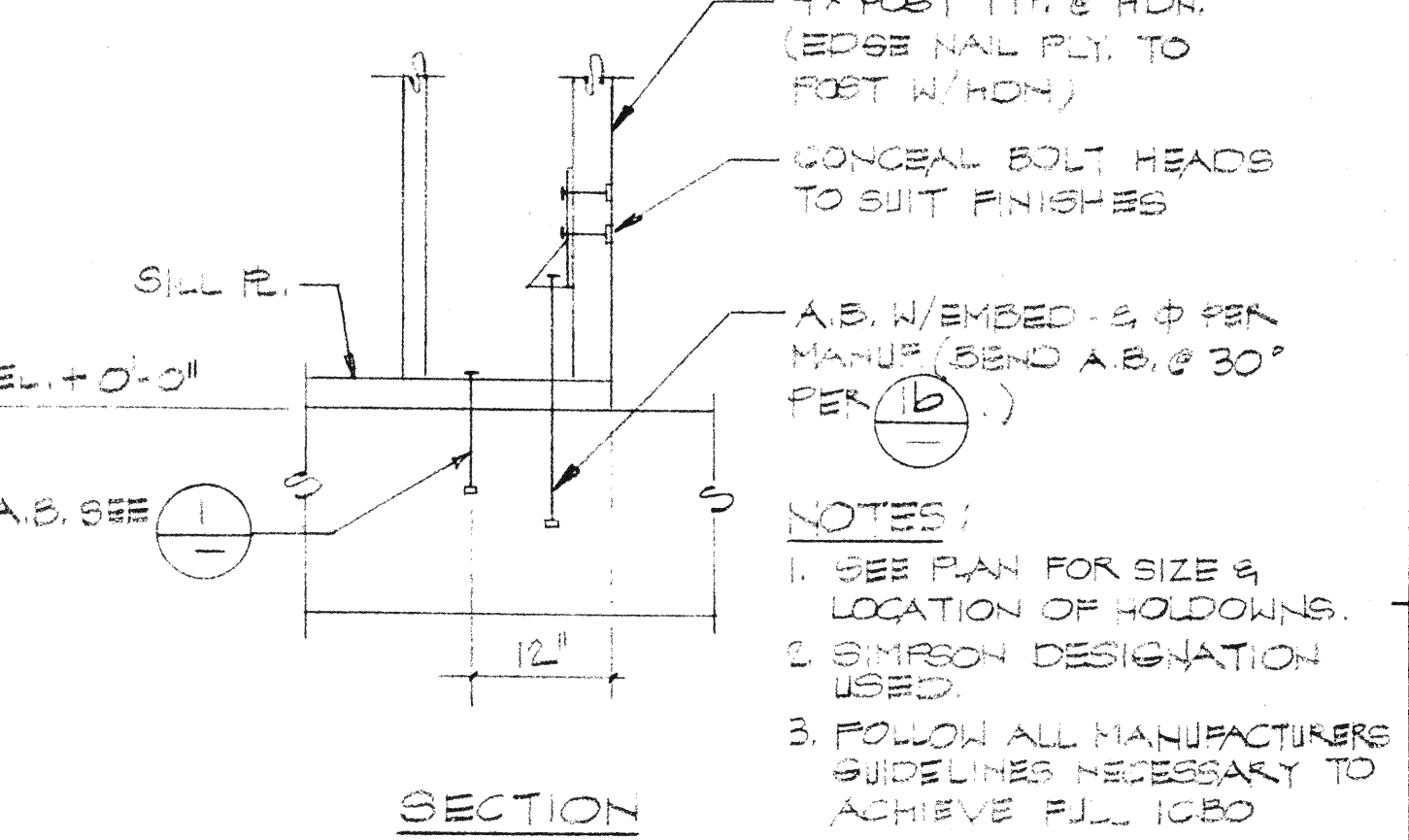
11 TYP. (N) FRAMING @ (E) SKYLIGHTS TO BE REMOVED



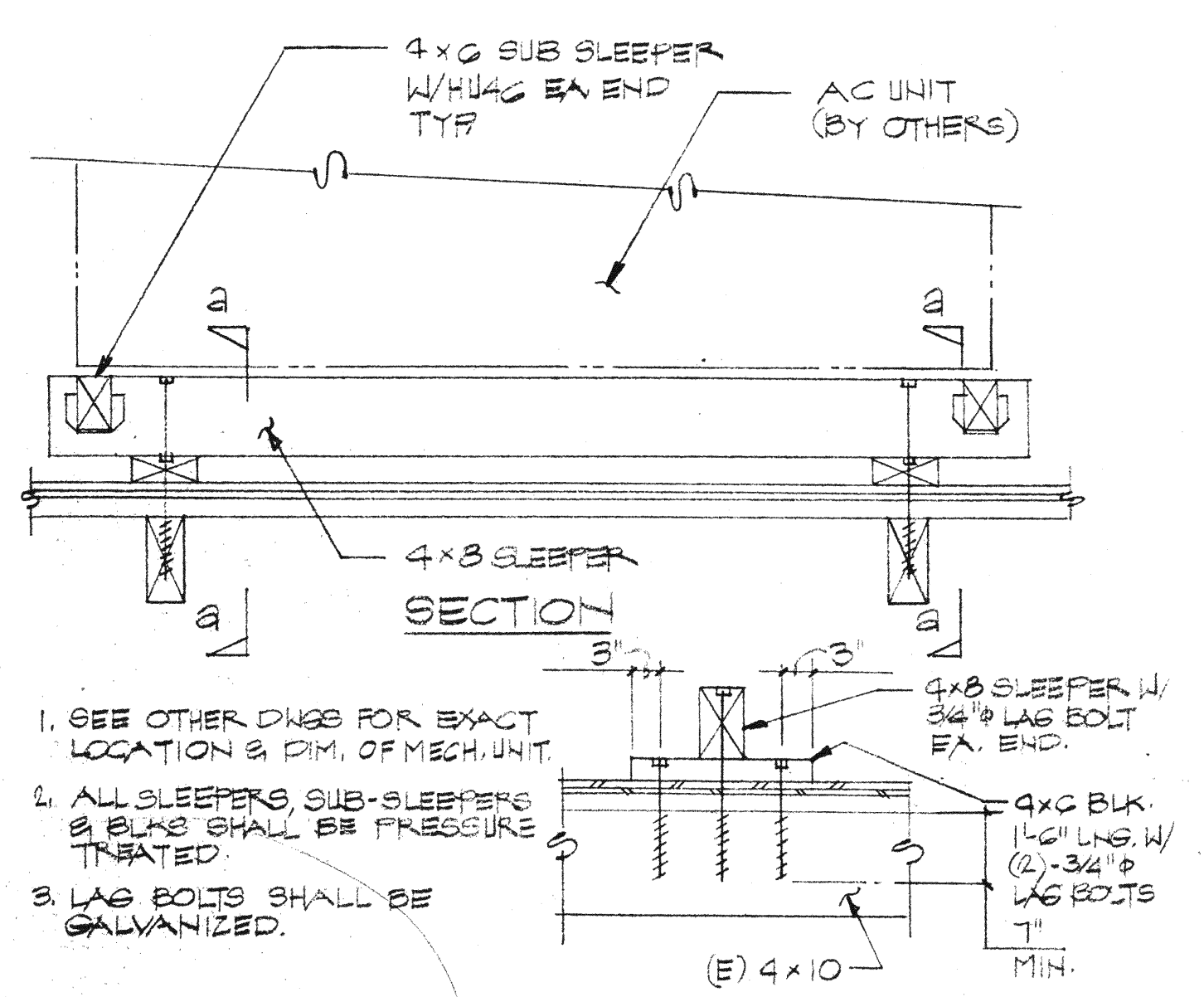
8 TYPICAL SHEAR CLIPS @ (E) 10 WF



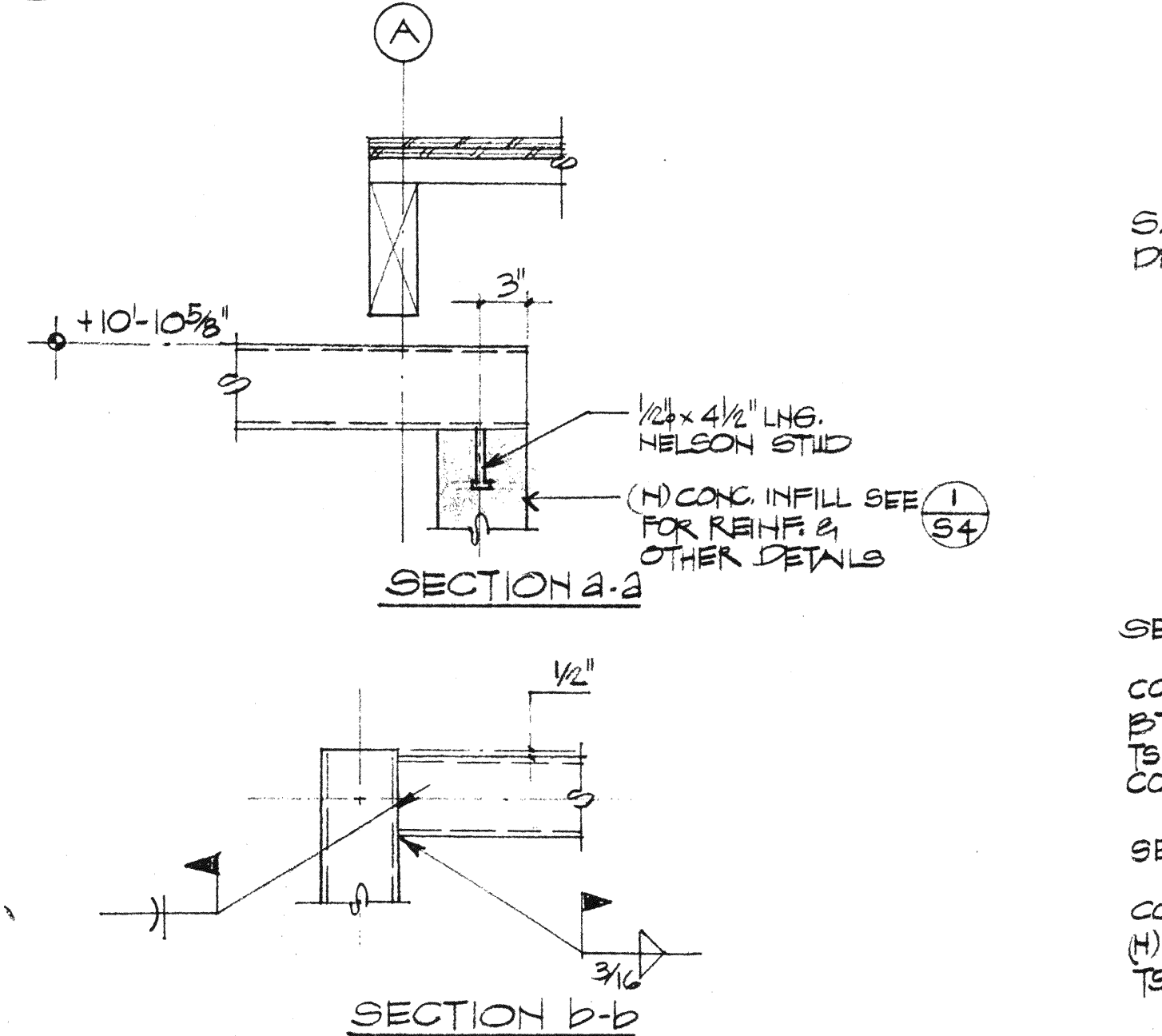
5 (N) PLYWOOD @ ROOF



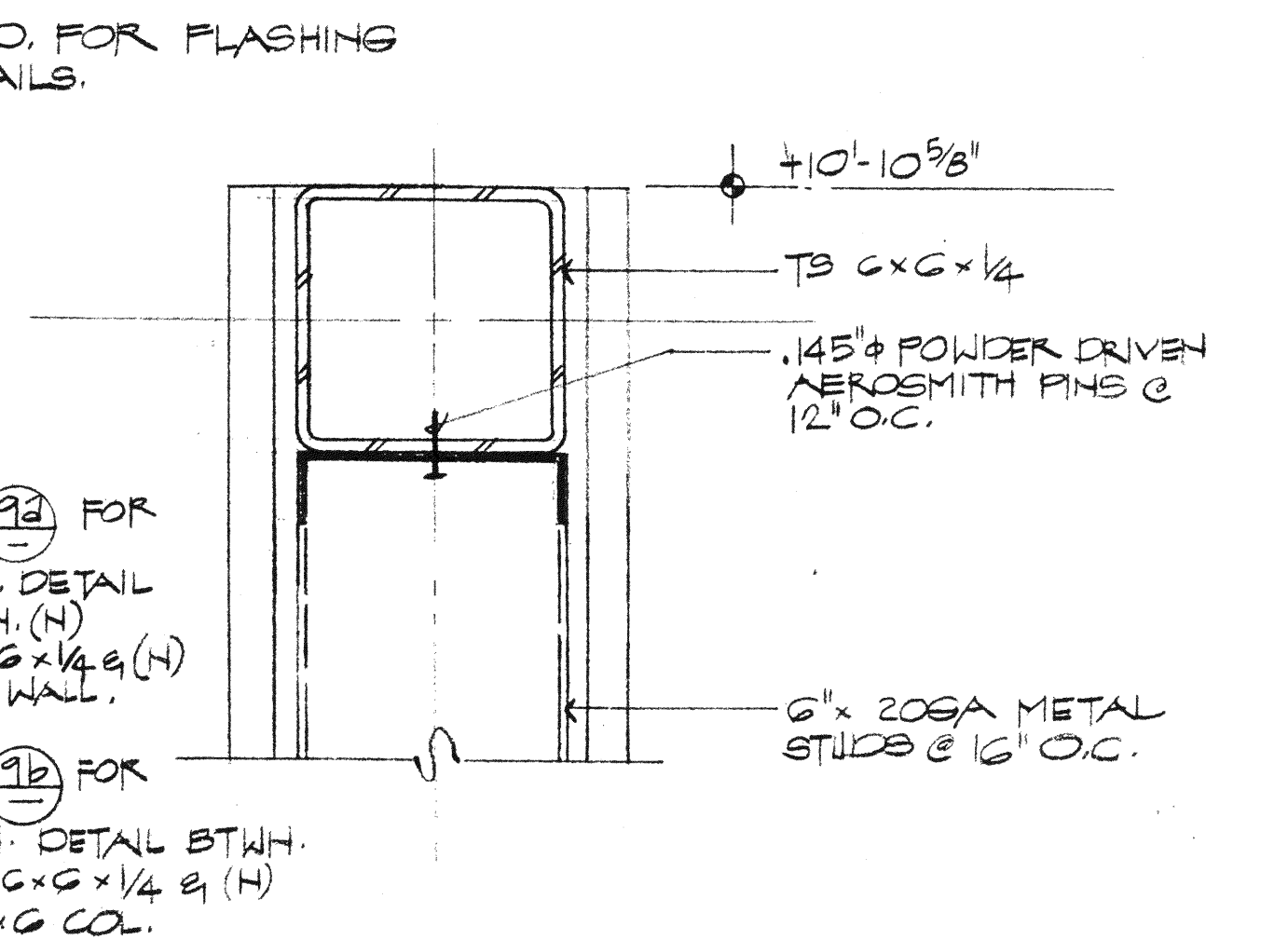
2 HOLDOWN DETAIL



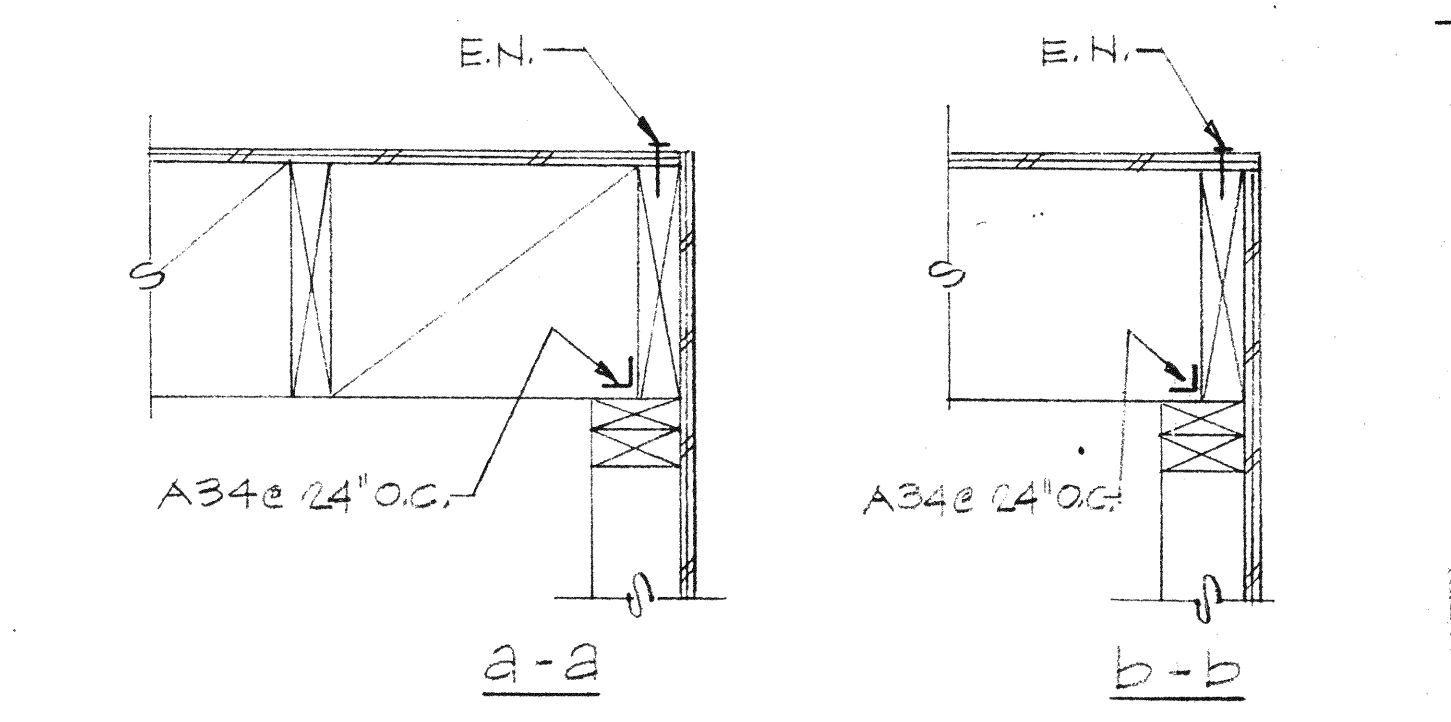
12 MECH. UNIT SUPPORT DETAIL



9 TS CONN. DETAILS



6 DETAIL @ WING WALL



3 FRAMING DETAILS

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NORTH LOCKER ROOM RENOVATION
FOR THE CITY OF MILPITAS
PROJECT #8017**

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FRAMING DETAILS

SHEET NO. S5

OF PROJECT DATE

ROOF TOP FURNACE SCHEDULE													
MARK	MFR	MODEL No.	SUPPLY FAN		ELECTRICAL				HEATING MBH		OPER. WT. LBS	REMARKS	
			CFM	S.P.	H.P.	V	Ø	HZ	FLA	INPUT	OUTPUT		
AH-1	REZNOR	CRXE-H75	1600	1.0	1	208	3	60	4.53	75	60	584	(2) 20x20 FILTERS
AH-2	REZNOR	CRXE-H250	4200	1.0	3	208	3	60	11.53	225	180	933	(2) 20x20 & (2) 20x25 FILTERS
AH-3	REZNOR	CRXE-H75	1200	1.0	1	208	3	60	4.53	75	60	584	2 POSITION ECONOMIZER (2) 20x20 FILTERS

EXHAUST FAN SCHEDULE													
MARK	MFR	MODEL No.	CFM	S.P.		RPM	TYPE	ELECTRICAL			OPER. WT. LBS	REMARKS	
								H.P.	VOLTS	Ø			
EF-2	ACME	PL135E2	800	.25		987	CENTRIFUGAL BELT DRIVE	1/4	120	1	83	BACKDRAFT DAMPER & BIRDSCREEN	
EF-3	ACME	V-150	100	.25		1550	CEILING MTD FAN	1.0A 100W	120	1	35	BACKDRAFT DAMPER & ROOF DISCHARGE	
EF-4	ACME	PL135E3	1000	.25		1228	CENTRIFUGAL BELT DRIVE	1/4	120	1	83	BACKDRAFT DAMPER & BIRDSCREEN	
EF-5	ACME	PL135E3	1050	.25		1228	"	1/4	120	1	83	"	
EF-6	ACME	PL135E2	800	.25		987	"	1/4	120	1	83	"	
EF-7 EF-8	ACME	V-100	75	.25		1200	CEILING MTD FAN	.8A 80W	120	1	35	BACKDRAFT DAMPER & ROOF DISCHARGE	

EF-2, 4, 5 & 6 INTERLOCKED W/ AH-1
EF-3, 7, & 8 INTERLOCKED W/ LIGHTS.

AIR OUTLETS SCHEDULE					
MARK	SERVICE	MFR	MODEL NO.	FINISH	REMARKS
CD	CEILING DIFFUSER	METAL*AIRE	5500	OFF-WHITE	OBD, 24x24-PANEL, T-BAR*
CR	CEILING RETURN	"	CC-5	"	OBD, T-BAR
ECT	EXHAUST GRILLE	"	CC-5	"	SURFACE MTD, FRAME M-15
WSR	WALL SUPPLY	"	H4004	"	OBD
WRR	WALL RETURN	"	H4002R	"	OBD

* CD @ SHOWER RMS TO BE SURFACE MTD W/O PANEL, FRAME M-15.

BASEBOARD HEATER SCHEDULE		
MARK	MFR & MDL	DESCRIPTION
BB-1 BB-2	CHROMOLOX BB-C-41	ELECTRIC BASEBOARD HEATER; 1000 WATTS, 120V/1Ø, 8.4 AMPS, 3413 BTUH, 48" LONG W/ WALL MOUNTED T'STAT.

GENERAL NOTES

- ALL DUCT SIZES ARE INSIDE CLEAR DIMENSIONS.
- THE MECHANICAL CONTRACTOR SHALL VERIFY ALL SECTIONS AND ELEVATIONS PRIOR TO DUCTWORK FABRICATIONS.
- THE MECHANICAL CONTRACTOR SHALL COORDINATE ALL AIR TERMINALS WITH REFLECTED CEILING PLAN AND ALL DUCTWORK LOCATIONS WITH WORK OF OTHER TRADES BEFORE PROCEEDING WITH FABRICATION.
- THE MECHANICAL CONTRACTOR SHALL COORDINATE WITH GENERAL CONTRACTOR FOR ACCESS TO ALL DAMPERS AND EQUIPMENT.
- THE MECHANICAL CONTRACTOR MAY USE (1) SIZE LARGER ROUND DUCT WHERE ODD SIZE ROUND IS INDICATED AND WHERE SPACE PERMITS.
- ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE APPLICABLE CODES.
- THE MECHANICAL CONTRACTOR SHALL COORDINATE WITH THE GENERAL CONTRACTOR ALL EQUIPMENT PLATFORM AND CURB LOCATIONS.
- INSTALL MANUAL VOLUME DAMPER AT EACH DIFFUSER BRANCH AND AS POSSIBLE FAR FROM THE DIFFUSER AS POSSIBLE.
- THE MECHANICAL CONTRACTOR MAY USE FLEXIBLE DUCT AT LAST 4 FEET OF RUN TO THE AIR TERMINAL IN CONCEALED AREAS ONLY.
- EXCEPT AS OTHERWISE NOTED ON DRAWINGS, ALL CONCEALED SUPPLY AND RETURN SHALL BE INSULATED WITH 1-1/2" FOIL-SCRIM-KRAFT.
- ALL DUCTWORK INDICATED 'SOUND LINED' SHALL HAVE 1" OF J-M LINACOUSTIC FOR THE LENGTH OF THE DUCT AS NOTED ON DRAWINGS.
- ALL VISIBLE INTERIOR PORTIONS OF DUCTWORK AND AIR TERMINALS SHALL BE PAINTED FLAT BLACK BY MECHANICAL CONTRACTOR.
- ALL LOW VOLTAGE SHALL BE FURNISHED AND INSTALLED BY MECHANICAL CONTRACTOR.
- ALL LOW VOLTAGE WIRING SHALL BE ENCLOSED IN CONDUIT OR EMT.
- MECHANICAL CONTRACTOR SHALL BALANCE SYSTEM TO WITHIN +/- 5% OF THE AIR QUANTITIES SHOWN.
- THE MECHANICAL CONTRACTOR SHALL COORDINATE WITH THE GENERAL CONTRACTOR FOR ACCESS TO ALL VALVES AND EQUIPMENT.
- MECHANICAL EQUIPMENT VIBRATION ISOLATION MANUFACTURER SHALL PROVIDE SEISMIC CALCULATIONS FOR EQUIPMENT TO BE ISOLATED.
- ALL DUCTS SHALL BE SOUND LINED A MINIMUM OF TWENTY (20) FEET DOWNSTREAM OF ALL FANS.
- MECHANICAL CONTRACTOR TO REMOVE ALL LEFTOVER DUCTWORK, SCRAPS, ETC. (IF ANY) AND LEAVE PREMISES CLEAN AND FREE OF ANY TRASH OR DEBRIS DUE TO HIS WORK.
- MECHANICAL CONTRACTOR IS TO REPORT TO THE OWNER'S ENGINEER ANY OBSERVATIONS OR CONDITIONS WHICH ARE DISCOVERED IN THE BUILDING WHICH WOULD PREVENT THE CORRECT INSTALLATION OF THE HVAC SYSTEM.
- MECHANICAL CONTRACTOR SHALL ARRANGE, OBTAIN AND PAY FOR ALL NECESSARY FEES, PERMITS, INSPECTIONS AND PLAN CHECK REQUIRED BY COVERING AUTHORITIES, ETC. CONCERNING HIS WORK.
- EACH EXHAUST FAN SHALL BE EQUIPPED WITH A BACK-DRAFT DAMPER.
- A MAINTENANCE LABEL MUST BE AFFIXED TO MECHANICAL EQUIPMENT. TWO COPIES OF A MAINTENANCE MANUAL FOR THE EQUIPMENT ITEMS SHALL BE PROVIDED TO THE OWNER BY THE CONTRACTOR.
- COORDINATE LOCATION OF ALL AIR OUTLETS W/ REFLECTED CLGT PLAN.
- TIME CLOCK REQUIRED TO START/STOP AIR HANDLING UNITS. TIME CLOCKS TO HAVE START/STOP/AUTO POSITIONS. TWO TIME CLOCKS ARE REQUIRED, ONE FOR AH-1 AND ONE FOR AH-2 & 3. ALL WIRING CONTROL WIRING IS BY MECHANICAL CONTRACTOR.

MECHANICAL LEGEND

SYMBOLS	ABBR.	DESCRIPTION
	TH	ROOM THERMOSTAT
		SUPPLY DUCT - SECTION
		RETURN DUCT - SECTION
		EXHAUST DUCT - SECTION
		SOUND INSULATED DUCT, DIMENSIONS SHOWN NET INSIDE AIR EXTRACTOR
		DUCT TURNING VANES
	FC	DUCT FLEXIBLE CONNECTION
	MVD	MANUAL VOLUME DAMPER
	FD	FIRE DAMPER WITH DUCT DOOR
		ROUND TO RECTANGULAR TRANSITION
	R D	GRADUAL DUCT RISE DROP IN DIRECT. OF FLOW
	DL	DOOR LOUVER
	UC	DOOR UNDERCUT
	CD	CEILING SUPPLY DIFFUSER
	CRR CRG	CEILING RETURN REGISTER CEILING RETURN GRILLE
	CER CEG	CEILING EXHAUST REGISTER CEILING EXHAUST GRILLE
	WSR WSG	WALL SUPPLY REGISTER WALL SUPPLY GRILLE
	WRR WRG	WALL RETURN REGISTER WALL RETURN GRILLE
	WER WEG	WALL EXHAUST REGISTER WALL EXHAUST GRILLE
	FSR FSG	FLOOR SUPPLY REGISTER FLOOR SUPPLY GRILLE
	FRR FRG	FLOOR RETURN REGISTER FLOOR RETURN GRILLE
	TG	TRANSFER GRILLE
		FLEXIBLE DUCT

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Robert H. Braun

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**SCHEDULES,
NOTES &
LEGEND**

SHEET NO.

M-1

OF

PROJECT
DATE MAR 2, 1990

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SCALE 1/8"=1'-0"

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SCALE 1/4"=1'-0"

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SCALE 3/8"=1'-0"

0 2 4
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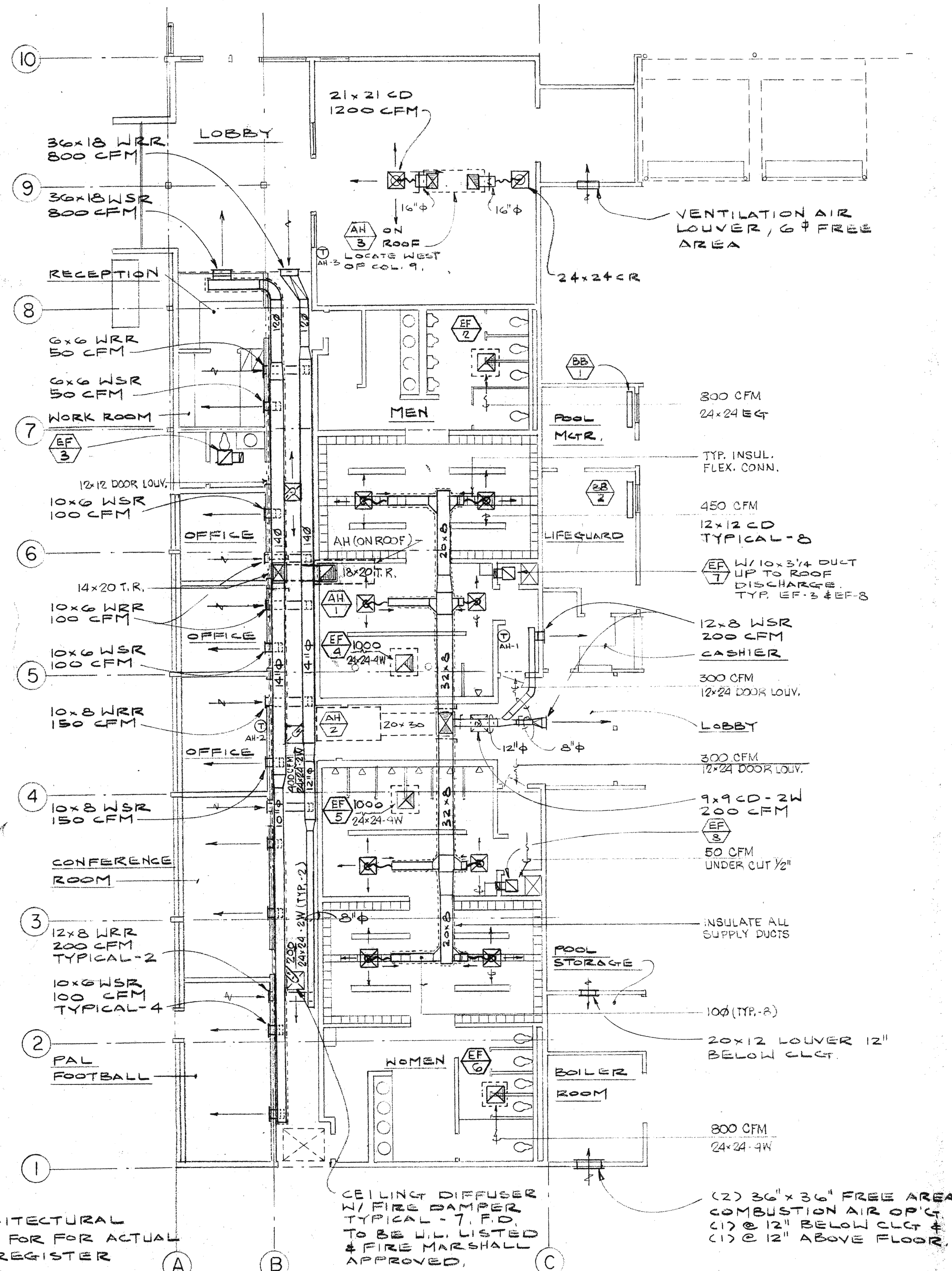
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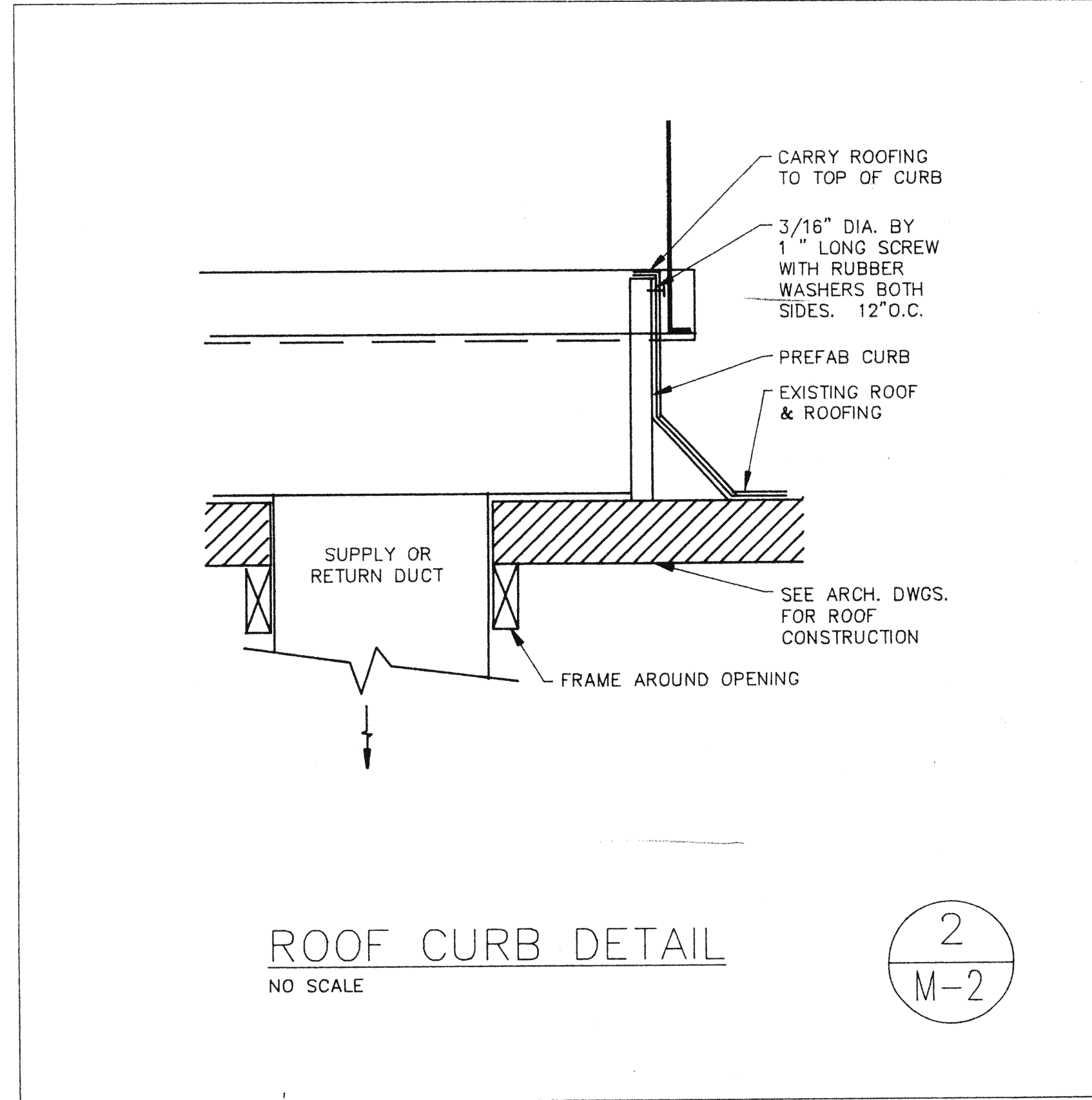
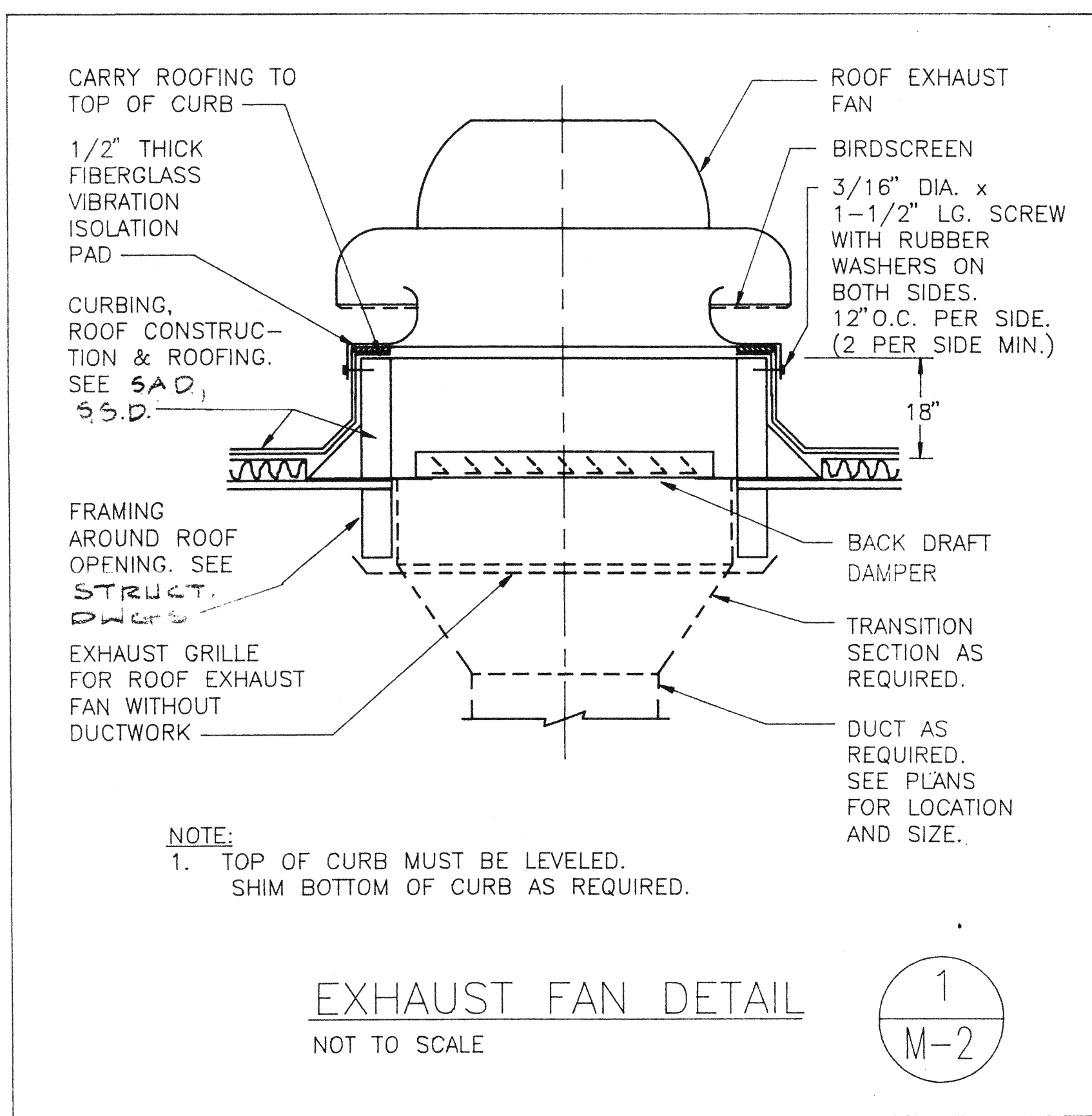
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MECHANICAL FLOOR PLAN
SCALE: 1/8" = 1'-0"



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THORNTON ANDERSON
ARCHITECTS
60 Federal Street, Suite 555
San Francisco, CA 94107
Telephone 415-343-9555

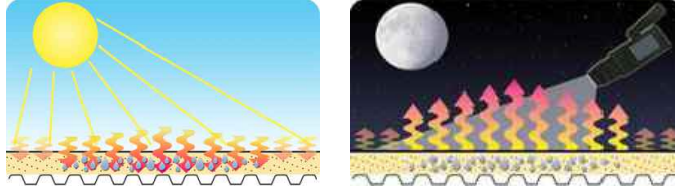
FLOOR PLAN
& DETAILS

SHEET NO.
M-2
OF
PROJECT
DATE MAR. 2, 1990

2-1349

PRELIMINARY DIAGNOSTIC SURVEY

How An Infrared Survey Works:



During the daytime, wet roof insulation absorbs more solar energy from the sun than dry roof insulation. During the nighttime, after the roof surface cools, the wet roof insulation will retain more solar energy than dry insulation and these temperature differences are detected by the infrared camera.

Preliminary Process

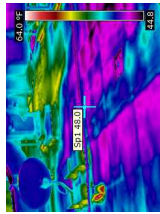
- Roofs are scanned with a mid-wave infrared camera.
- Thermograms (infrared photographs) are taken of suspected wet areas (anomalies).
- The suspected wet areas are marked out on the roof with visible paint outlines.
- Suspected wet areas are not field measured.
- No secondary verification such as; core cuts, readings from a moisture meter, Tramex, nor a moisture probe are used during a preliminary scan.
- All secondary/confirmation of wet area(s) is the responsibility of others.
- The preliminary diagnostic report will not show suspected wet areas due to lack of confirmation by secondary verification.
- The report will indicate the general location of all thermograms that were taken.
- Thermograms will be shown on the report.



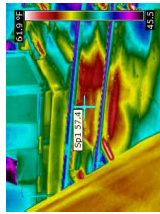
Roofing & Building Maintenance

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TREMCO'S INFRARED INSPECTIONS ARE PERFORMED BY CERTIFIED (EXPERIENCED) INFRARED THERMOGRAPHERS UTILIZING STATE-OF-THE-ART EQUIPMENT. ALL WORK CONFORMS WITH CURRENT INDUSTRY BEST PRACTICES, AND IS PERFORMED IN ACCORDANCE WITH STANDARDS PUBLISHED BY ASTM INTERNATIONAL AND INFRASPECTION INSTITUTE.

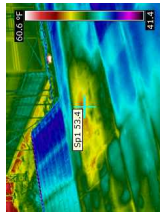
(PRELIMINARY IR SCAN, SECONDARY VERIFICATION MUST BE COMPLETED)



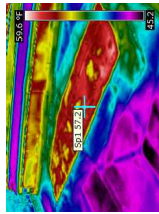
Thermogram T-01



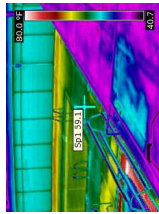
Thermogram T-02



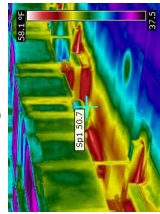
Thermogram T-03



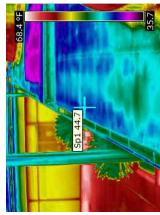
Thermogram T-04



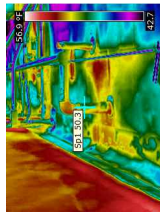
Thermogram T-05



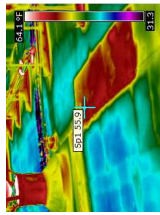
Thermogram T-06



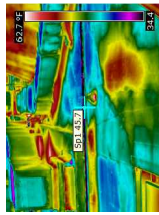
Thermogram T-07



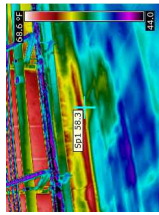
Thermogram T-08



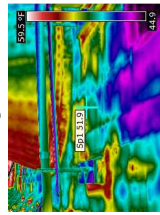
Thermogram T-09



Thermogram T-10

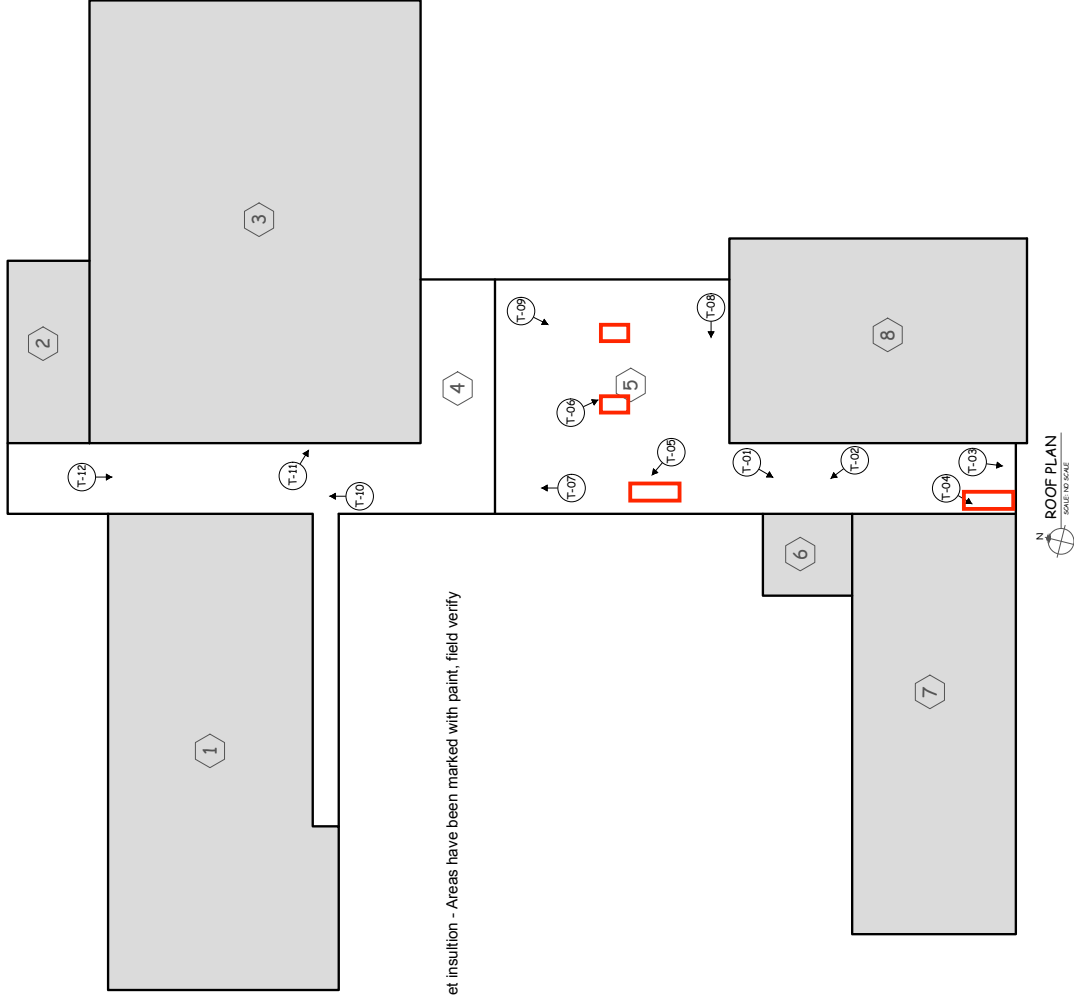


Thermogram T-11



Thermogram T-12

General location of wet insulation - Areas have been marked with paint, field verify size and location.



ROOF PLAN
SCALE TO SCALE

TREMCO Roofing & Building Maintenance	wtj	CITY OF MILPITAS CALIFORNIA RECREATION CENTER 455 EAST CALAVERAS BOULEVARD MILPITAS, CALIFORNIA 95035	PROJECT NO: 0704130 SHEET NO: A DATE: 4/13/2023
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CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider One Fee Waiver from Kiwanis Club of Milpitas Foundation and one Donation Request from Knights of Columbus St. John's Council 5796 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	11/14/2023
Recommendation:	(1) Approve a Fee Waiver of \$900 for the Kiwanis Club of Milpitas Foundation's 20th Annual MUSD Crab Feed and Auction Event scheduled for February 9, 2024. (2) Approve a Donation request of \$500 for the Knights of Columbus St. John's Council 5796 for their 45 th Annual Free Thanksgiving Dinner event at the St. John the Baptist Catholic Church on Thursday, November 23, 2023.

BACKGROUND:

On October 18, 2023, staff received a Donation and Fee Waiver/Reduction Policy request from the Kiwanis Club of Milpitas Foundation for their 20th Annual MUSD Crab Feed and Auction event scheduled for February 9, 2024 at the Milpitas Community Center. The request is for a \$900 fee waiver for the event space rental costs.

On November 8, 2023, staff received a Donation and Fee Waiver/Reduction Policy request from the Knights of Columbus St. John's Council 5796 for their 45th Annual Thanksgiving dinner event at the Pavalkis Hall of the St. John the Baptist Church on November 23, 2023. The request is for a \$500 donation for costs associated with hosting free Thanksgiving dinners for the unhoused, senior and low-income families.

ANALYSIS:

The Recreation and Community Services Department received two (2) Donation and Fee Waiver/Reduction Policy request applications.

Donation

The Knights of Columbus St. John the Baptist Church Council 5796 submitted their required application and documentation for their cultural language event:

- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

Fee Waiver

The Kiwanis Club of Milpitas Foundation (Kiwanis) submitted the required applications and documentation for the Crab Feed and Auction event which includes:

- Indoor Space Rental Application for Milpitas Community Center Auditorium
- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

Kiwanis is requesting that City Council waive eligible fees for the Indoor Space Rental in the amount of \$900. Fees ineligible for waiver include the rental application fee of \$31 and refundable security/damage deposit of \$500. Refundable security/damage deposits are refunded within 30 days of the rental.

Milpitas City Council adopted an updated “City Council Donation and Fee Waiver/Reduction Policy” on June 21, 2022. Per the policy, eligible organizations can request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. Eligible organizations are defined as “a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency; Non-discriminatory, and non-political in nature.” Fee Waiver or Donation requests for events must provide a community benefit within the City of Milpitas proper. Applying organizations must provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board.

As required, the Kiwanis Club of Milpitas Foundation and the provided a copy of its determination letter from the Internal Revenue Service stating it is a tax-exempt organization and meets the requirements as outlined in the Council adopted Fee Waiver Policy.

The Knights of Columbus St. John the Baptist Church Council 5796 requests that the City Council donate \$500 to offset the costs associated with hosting the non-profit event.

Milpitas City Council adopted an updated “City Council Donation and Fee Waiver/Reduction Policy” on June 21, 2022. Per the policy, eligible organizations can request the City for a donation amount of up to \$500 to be granted upon request. Eligible organizations are defined as “a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency; Non-discriminatory, and non-political in nature.” Fee Waiver or Donation requests for events must provide a community benefit within the City of Milpitas proper. Applying organizations must provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board.

As required, the Kiwanis Club of Milpitas Foundation and the Knights of Columbus St. John the Baptist Church Council 5796 provided a copy of their respective determination letters from the Internal Revenue Service stating they are a tax-exempt organization. Both applicants meet the requirements as outlined in the Council-adopted Donation and Fee Waiver/Reduction Policy.

POLICY ALTERNATIVE(S):

Alternative: Do not approve the donation application as requested.

Pros: The City’s General Fund will not incur the costs of the fees waived.

Con: Denial of the request may not allow the non-profit organizations to hold their events.

Reason not recommended: This request is consistent with the Council-approved Policy.

FISCAL IMPACT:

\$25,000 was approved and included in the FY 2023-24 City budget for the City Council’s Unallocated Community Promotions with a current balance of \$22,055. If the City Council approves this request, then \$20,655 would remain in that line item of the current year’s budget.

CEQA

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

- 1) Approve a Fee Waiver of \$900 for the Kiwanis Club of Milpitas Foundation’s 20th Annual MUSD Crab Feed and Auction Event scheduled for February 9, 2024; and
- 2) Approve a Donation request of \$500 for the Knights of Columbus St. John’s Council 5796 for their 45th Annual Free Thanksgiving Dinner event at the St. John the Baptist Catholic Church on Thursday, November 23, 2023.

Attachment(s):

1. Kiwanis Club of Milpitas Foundation Application

2. Kiwanis Club of Milpitas Foundation Internal Revenue Service (IRS) non-profit letter
3. Knights of Columbus St. John the Baptist Council 5796 Application
4. Knights of Columbus St. John the Baptist Council 5796 Internal Revenue Service (IRS) non-profit letter
5. City Council Donation and Fee Waiver/Reduction Policy

#16

Name of Organization	Kiwanis Club of Milpitas
Is there a Milpitas Branch or Affiliation?	- Yes
Organization Address (as listed on your 501 (c) 3)	PO Box 360730 Milpitas, Calif 95035 United States
Organization Web Site	http://www.facebook.com/KiwanisClubofMilpitas
Organization Contact Name	Dennis Grilli
Organization Contact Phone	(408) 205-7103
Organization Contact Email	kiwanisclubofmilpitas@gmail.com
Request Type	- Fee Waiver (up to \$1,500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	fee waiver Of \$1,500
Description of Use of Funds/Fees to be Waived	fee waiver adds to the success of our fundraiser
Event Name	The Milpitas Kiwanis Presents the 20th Annual MUSD Crab Feed and Auction
Event Date(s)	Feb 09, 2024
Event Location (Facility Name and Address)	Milpitas community Center
Is your Event Open to the Public	No
What is the purpose of the Event? Annual fundraisers to support our yearly programs that support the youth of Milpitas.	
How will the Milpitas Community Benefit from this Event? We use all the profits from our Annual event for programs to support financially disadvantaged youth.	
What is you anticipated Event attendance?	250
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	60% or more
How will the City's contribution (if approved) be recognized in event media and publicity? We thank and publish the donation from the City of Milpitas on our social media , the Crab Feed brochures and list it at the event with a Sponsor Sign.	
Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)	

KAMALA D. HARRIS
Attorney General

Foundation
State of California
DEPARTMENT OF JUSTICE



1200 I Street
P. O. Box 90447
Sacramento, CA 95830-4470
Telephone: (916) 445-2021 Ext. 4
Fax: (916) 444-7653
E-Mail Address: Registration@doj.ca.gov

January 6, 2014

KIWANIS CLUB OF MILPITAS FOUNDATION
PO BOX 360730
MILPITAS CA 95036

CT FILE NUMBER: CT0202706

RE: CONFIRMATION OF REGISTRATION WITH THE ATTORNEY GENERAL'S REGISTRY
OF CHARITABLE TRUSTS

The captioned entity is now registered with the Registry of Charitable Trusts and has been assigned the registration ("CT") number set forth above.

The RRF-1 must be filed annually four months and 15 days after the end of the organization's accounting period. If an extension was requested from IRS, please file the RRF-1 with the completed IRS informational return together with a copy of all extension requests.

The organization's address of record is used to mail reporting forms at the end of each accounting period. Please advise us, in writing, of any address change.

If the captioned organization contracts with a commercial fundraiser for charitable purposes or fundraising counsel, that entity must also register and file annual reports with the Registry.

All forms and instructions are available on our website at <http://oag.ca.gov/charities>.

Directors of nonprofit corporations are required to adhere to the provisions of the California Nonprofit Corporation Law (Corporations Code section 5000, et seq.).

Trustees for charitable purposes are required to adhere to the provisions of California Probate Code (commencing with section 15000).

Doc CT-410 Registration Confirmation

[Scan 13.jpeg](#)

Within 60 days after completion of the event for which a donation was received or a fee waiver was granted by the City of Milpitas, your organization will provide a report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Failure to abide by the rules and procedures set forth in the City Council Donation/Fee Waiver Policy will result in the organization being denied for funding and/or fee waiver in the future. Draw your signature into the box below.

Dennis Grilli



Entity Status Letter

Date: 1/5/2023

ESL ID: 3462328779

Why You Received This Letter

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 3504918

Entity Name: KIWANIS CLUB OF MILPITAS FOUNDATION

- ☒ 1. The entity is in good standing with the Franchise Tax Board.
- ☐ 2. The entity is **not** in good standing with the Franchise Tax Board.
- ☒ 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 d.
- ☐ 4. We do not have current information about the entity.
- ☐ 5. The entity was administratively dissolved/cancelled on _____ through the Franchise Tax Board Administrative Dissolution process.

Important Information

- This information does not necessarily reflect the entity's current legal or administrative status with any other agency of the state of California or other governmental agency or body.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or if the entity did business in California at a time when it was not qualified or not registered to do business in California, this information does not reflect the status or voidability of contracts made by the entity in California during the period the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
- The entity certificate of revivor may have a time limitation or may limit the functions the revived entity can perform, or both (R&TC Section 23305b).

Connect With Us

Web: **ftb.ca.gov**
Phone: 800-852-5711 from 7 a.m. to 5 p.m. weekdays, except state holidays
916-845-6500 from outside the United States

California

Relay Service: 711 or 800-735-2929 (For persons with hearing or speech impairments)

#18

Name of Organization	Knights of Columbus of Saint John Council 5796
Is there a Milpitas Branch or Affiliation?	- Yes
Organization Address (as listed on your 501 (c) 3)	279 S Main Street [REDACTED] Milpitas, California 95035 United States
Organization Web Site	http://kofcmilpitas.org
Organization Contact Name	Ray Maglalang
Organization Contact Phone	[REDACTED]
Organization Contact Email	[REDACTED]
Request Type	- Donation (up to \$500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	\$500.00
Description of Use of Funds/Fees to be Waived	Serving foods and deliveries to all in need
Event Name	45th Annual Free Thanksgiving Day Dinner
Event Date(s)	Nov 23, 2023
Event Location (Facility Name and Address)	Pavalkis Hall 279 So. Main St. Milpitas CA 95035
Is your Event Open to the Public	Yes

What is the purpose of the Event?

Feeding the hungry: Homeless, Seniors, Low income and deliveries to all in need.
See our flyer. Everyone is Invited.

How will the Milpitas Community Benefit from this Event?

Since our KofC are the only one serving Free Thanksgiving Dinner in our city,
The aforementioned attendees will have a safe environment to enjoy the Thanksgiving holiday, reassuring them that they are not alone or forgotten.

What is you anticipated Event attendance? 400-500 plus hot meal deliveries

What percentage of your event fundraising proceeds will benefit the Milpitas Community? 60% or more

How will the City's contribution (if approved) be recognized in event media and publicity?

KofC will have a video presentation at the hall during the entire Thanksgiving Day. Showing all the donors. Santa Clara board had already made their donation. including their representatives to volunteer in this event.

Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name) [Draft of solicitation for Thanksgiving dinner November 23 2023 Charity Bingo Ned Thomas.docx](#)

Within 60 days after completion of the event for which a donation was received or a fee waiver was granted by the City of Milpitas, your organization will provide a report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Failure to abide by the rules and procedures set forth in the City Council Donation/Fee Waiver Policy will result in the organization being denied

for funding and/or fee waiver in the future.
Draw your signature into the box below.

Ray Maglalarang



Entity Status Letter

Date: 11/8/2023

ESL ID: 8398089926

Why You Received This Letter

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 9773945

Entity Name: 5796 ST JOHN'S COUNCIL KNIGHTS OF COLUMBUS

- ☒ 1. The entity is in good standing with the Franchise Tax Board.
- ☐ 2. The entity is **not** in good standing with the Franchise Tax Board.
- ☒ 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 I.
- ☐ 4. We do not have current information about the entity.
- ☐ 5. The entity was administratively dissolved/cancelled on _____ through the Franchise Tax Board Administrative Dissolution process.

Important Information

- This information does not necessarily reflect the entity's current legal or administrative status with any other agency of the state of California or other governmental agency or body.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or if the entity did business in California at a time when it was not qualified or not registered to do business in California, this information does not reflect the status or voidability of contracts made by the entity in California during the period the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
- The entity certificate of revivor may have a time limitation or may limit the functions the revived entity can perform, or both (R&TC Section 23305b).

Connect With Us

Web: **ftb.ca.gov**
Phone: 800-852-5711 from 7 a.m. to 5 p.m. weekdays, except state holidays
916-845-6500 from outside the United States

California

Relay Service: 711 or 800-735-2929 (For persons with hearing or speech impairments)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report on Manufacturing Day 2023 and Issue Certificates of Commendation to Event Collaborators (Staff Contact: Alex Andrade, Director of Economic Development, 408-586-3046; and Michael Thomas, Economic Development Specialist, 408-586-3045)
Category:	Community Development
Meeting Date:	11/14/2023
Recommendation:	Receive report on Manufacturing Day 2023 and issue certificates of commendation to event collaborators.

BACKGROUND:

[Manufacturing Day](#) is an initiative of The Manufacturing Institute to inspire and build the future manufacturing workforce and generate awareness about the manufacturing industry. This event is celebrated on the first Friday of October, but communities around the country celebrate Manufacturing Day (MFG Day) throughout October via various events including facility tours, educational fairs, hiring events, and classroom visits.

The City of Milpitas and Milpitas Unified School District (MUSD) hosted Milpitas' first MFG Day event in 2017 in partnership with Flex, KLA Corporation and Cordis to bring together students, educators, and Milpitas-based manufacturers. This event introduces high school students to career opportunities in the manufacturing industry and exposes employers to members of Milpitas' future labor force. The City and MUSD have collaborated with local manufacturers and industry partners as outlined below. While MFG Day has been held annually since 2017, 2023 marked the first in-person event since 2019 due to COVID-19 pandemic restrictions resulting in webinars from 2020 to 2022.

Previous Site Hosts & Collaborators

2017: Cordis, Flex & KLA, MUSD

2018: Nanosys. View Inc., MUSD

2019: Flex, Onanon, TDK Headway Technologies, MUSD

2020: Onanon, Flex, Evergreen Valley College, MUSD

2021: NOVAworks, TDK Headway Technologies, SEMI Foundation, MUSD

2022: Flex, NOVAworks, SEMI Foundation, MUSD

The Office of Economic Development has implemented *Action 17.1* of the City Council-adopted [Economic Development Strategy and Implementation Actions](#) which includes continued support for MFG Day and to introduce youth to potential social and economic mobility opportunities through jobs in manufacturing.

This Agenda Report summarizes the planning, preparation, execution, and results of the MFG Day 2023 event, and recognizes the collaborators for their contributions to this successful event.

ANALYSIS:

On October 13, 2023, the Office of Economic Development in collaboration with MUSD, KLA Corporation and Flex LTD hosted approximately 100 people including 60 high school students, City and school district officials, teachers, Chamber of Commerce, and community members during Milpitas' seventh annual MFG Day event. City representatives included Mayor Carmen Montano, Vice Mayor Evelyn Chua, Economic Development and Trade Commissioners Chris Norwood and Lynne Rice, City Manager Ned Thomas, Deputy City Manager Matt Cano, Public Information Officer Charmaine Angelo and communications team, as well as the Office of Economic Development.

This year's event featured presentations, panel discussions and Q&A sessions with company representatives. In addition, facility tours and product and/or process demonstrations were also part of MFG Day. Students also wore "bunny suits" when touring the clean room at KLA Corporation to prevent contamination in the lab. Students participated in a simulated manufacturing activity at Flex to learn about Six Sigma as a method and tool used to improve processes by reducing defects, minimizing variation, and increasing quality and efficiency.

Over a 10-week period, City staff collaborated with MUSD, The Manufacturing Institute, as well as KLA and Flex and local businesses on the following tasks in preparation, planning, and executing the 2023 event:

- Drafting, issuing, and collecting documentation to attend the event
- Student transportation
- Event scheduling, logistics, and materials
- Designing and ordering event t-shirts and banners
- Coordinating catered box lunches
- Photography and videography

City staff captured testimonials from students and attendees of what MFG Day means to them during the event. Testimonials included appreciation for the unique opportunity to learn how to prepare for future prospective employment in the manufacturing industry. Students also learned that product and component engineering are one part of manufacturing companies' operations. Other job functions include human resources, legal, finance, brand security, quality control, supply chain management, and distribution. Photographs capturing MFG Day activities are provided in Attachment A.

Some students expressed their appreciation for learning about the products and services provided by KLA and Flex, as well as the manufacturing processes both companies utilize at the MUSD School Board meeting held on October 24 when City, KLA, and Flex representative were recognized for their MFG Day contributions.

As a gesture of the City's appreciation, staff recommends that the City Council issue certificates of commendation to MUSD, KLA Corporation, and Flex LTD for their professional, efficient, and collaborative management and execution to successfully engage MUSD students on Manufacturing Day 2023.

FISCAL IMPACT:

While there are no costs associated with adopting the recommended action, minimal costs were realized for student t-shirts, box lunches and event banners with costs shared among the event's four collaborators. The final total of the City's share of these event costs was \$867.00 and were covered by Office of Economic Development's budget. Two local Milpitas businesses, Best Sandwiches and Huntford Printing and Graphics, assisted with box lunches and event banners.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378.

RECOMMENDATION:

Receive report on Manufacturing Day 2023 and issue certificates of commendation to event collaborators.

ATTACHMENT(S):

Attachment A - 2023 Manufacturing Day Event Photos

Manufacturing Day Event Photos



1. Group photo at Flex
2. Group photo at KLA
3. Mayor Montano delivering remarks at KLA
4. Flex directors speaking to students
5. Students participating in a manufacturing activity at Flex
6. Students wearing "bunny suits" in the clean room at KLA



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Presentation on Proposed Mixed-Use Development at 70 N. Main St. and Provide Direction on Preferred Alternative regarding Shared Parking Agreement (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Michael Fossati, Senior Planner, 408-586-3274)
Category:	Community Development
Meeting Date:	11/14/2023
Recommendation:	(1) Receive a summary of a pre-application to demolish an existing vacant restaurant and develop a mixed-use building without on-site parking. (2) Provide direction on the preferred alternative to provide exclusive access to City-owned land and facilitate a shared parking agreement with the property owner.

BACKGROUND:

On June 22, 2023, Terry Prius (Applicant) submitted a pre-application to demolish an existing one-story, 1,150-square foot vacant restaurant building and develop a new two-story, 5,000-square foot mixed-use building (Project) on a 0.06-acre lot located at 70 North Main Street. The proposed Project would include a 2,100-square foot ground-floor retail/restaurant area and two apartment units on the second floor. Apartment one would be 1,085 square feet and have two bedrooms. Apartment two would be 1,317 square feet and also have two bedrooms. The Project would have no on-site parking. A conceptual design of the mixed-use building is shown as Figure 1 below:

Figure 1: Southeast Street View of 70 N. Main Street



The Project includes an 800-square foot proposed outdoor seating area that would be used in conjunction with the ground-floor restaurant. The area is located on land owned by the City of Milpitas (City). The existing condition and general location of the City-owned land is highlighted in yellow in Figure 2 below:

Figure 2: Outdoor Area Adjacent to 70 N. Main owned by the City



On August 8, 2023, the City provided the Applicant with written comments from all development-related departments in response to the pre-application and conceptual plans. Staff identified that the Project would require a Site Development and Conditional Use Permit to allow development of the proposed mixed-use building. Staff also requested a meeting to discuss the outdoor seating area proposed location and lack of on-site parking..

On August 31, 2023, Economic Development Director Alex Andrade and Senior Planner Michael Fossati met with the Applicant to discuss the written comments provided by the City. City staff informed the Applicant that an agreement for exclusive access to City-owned land for the outdoor seating area and a shared parking agreement to use the public parking lot would be required as part of the approvals for the Project. Staff also informed the Applicant that the City Council would need to direct City staff to engage in such an agreement.

ANALYSIS:

As previously stated, the ground floor restaurant area includes an 800-square foot outdoor seating area that would be located on City-owned property. Furthermore, the Project has no on-site parking spaces. For this development to materialize, the City Council would need to consider and approve the following:

- A formal agreement to allow exclusive use of City-owned property by the Applicant for outdoor seating area; and
- A shared parking agreement with the Applicant to utilize parking spaces in the adjacent City-owned parking lot.

The adjacent City-owned parking lot was acquired through a condemnation process for the purpose of constructing the Calaveras Overcrossing in the late 1960's and early 1970's. The 0.49-acre parking lot includes 800 square feet of land between 70 N. Main Street and the public parking lot encumbered by a storm drain inlet that cannot be built on and three rows of uncovered, standard-size, vehicle parking spaces. There are 35 total parking spaces. Seven additional spaces within the parking lot are owned by the existing bar/restaurant (Tequila Shots) located at 38 N. Main Street. A right-of-way through the City-owned parking lot provides access to the seven private spaces..

According to Milpitas Municipal Code (MMC) Section 53 (Off-Street Parking Regulations), the Project could require up to 26 parking spaces to develop the mixed-use building. The parking ratio for restaurants is 1 space per 39 square feet of seating area. The indoor restaurant space is 800 square feet but the application does not indicate how much of that area will be dedicated for seating. Although unlikely, the indoor seating area could be up to 800 square feet in size. The outdoor dining area will also be 800 square feet in size, for a total seating area of 1,600 square feet. 21 parking spaces would be required for the restaurant use after applying the 50 percent parking reduction for restaurants with outdoor dining ($1,600/39 \times 0.5 = 20.5$). The residential units would require 4 covered spaces and 1 guest space for a total of 5 parking spaces. Under a more realistic scenario, if the indoor seating area is 400 square feet in size, the total parking requirement for the project would be 21 spaces.

Since the Project design repurposes the 800 square feet of land and requires parking for its development, the City may consider a shared land use and parking agreement. A shared land use and parking agreement would support the Applicant's ability to redevelop the vacant property on Main Street and foster cooperation between the City of Milpitas and a new private business. A public-private partnership such as shared parking agreement is consistent with following Milpitas General Plan policies:

- **ED 4-1** - Consider leveraging public investments to enhance the City's economic vitality and ensure that Milpitas is a prosperous, healthy and safe community that is attractive to business
- **ED 4-2** – Encourage change and revitalization of Main St. and other commercial corridors in need of maintenance and/or modernization.

However, the Santa Clara Valley Transportation Authority (VTA), in cooperation with the City of Milpitas and California Department of Transportation (Caltrans), initiated a capital project to widen Calaveras Boulevard between Abel Street and Milpitas Boulevard to improve regional mobility and safety and provide important bicycle and pedestrian facilities. The widening, which is expected to start construction in 2027, may impact the availability of the City-owned public parking lot. Therefore, if the City were to explore a shared parking agreement with the applicant, the applicant would have to work with staff to propose a long-term parking solution that addresses the potential loss of these parking spaces either as a result of the Calaveras Widening project or for any other reason for which the City may choose to cancel or not renew the parking agreement. In this scenario, while the required commercial parking could be provided through a shared parking agreement with another property, street parking, or a future public parking structure, the residential parking would pose a significant challenge. At this time, a resolution to this challenge has not been identified by staff. However, if the City Council provides direction to pursue a potential shared parking arrangement on this property, staff would return to the City Council at a later date with further analysis of this potential scenario.

If a shared land use and parking agreement does not serve the City's interest, the City could consider allowing the following alternatives.

POLICY ALTERNATIVE(S):

Alternative 1: Do not execute a shared land use and parking agreement.

Pros: By not executing a shared parking agreement, all parking spaces in the City-owned parking lot would remain free for use by the public, and there would be less potential impact from future widening of Calaveras Blvd.

Cons: By leasing parking spaces to private businesses, the City would support redevelopment of a small commercial site on Main Street and generate additional revenue to fund nearby public parking facilities or other community services, including infrastructure improvements along Main Street. By not executing a shared parking agreement, the City would miss out on this revenue and opportunity to invest in public improvements.

Reason for Not Recommending: The City has an opportunity to maximize the use of existing land and infrastructure and support redevelopment of a small commercial site on Main Street. This potential shared parking agreement is consistent with Economic Development goals and policies.

FISCAL IMPACT:

This is an informational item. As such, there is no fiscal impact. However, the City would receive planning and building development fees if the Project was approved. Additionally, if the City were to lease parking spaces to private businesses, the City would generate additional revenue, which can be reinvested in improving and maintaining the public parking facilities or used to fund other community services.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The proposed Project would be categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15332 (In-fill Development Projects) in that the Project is consistent with the General Plan and zoning designation, is located in an urban area that has either been previously developed or adjoins existing qualified urban uses on all of the site's perimeter and is under five-acres in size, has no value to endangered, rare, or threatened species, would not result in any significant effects related to traffic, noise, air quality, or water quality, and the site can be adequately served by all required utilities and public services.

RECOMMENDATION:

- (1) Receive summary of a pre-application to demolish an existing vacant restaurant and develop a mixed-use building without on-site parking.
- (2) Provide direction on the preferred alternative to provide exclusive access to City-owned land and facilitate a shared parking agreement with the property owner.

ATTACHMENT(S):

- (a) Conceptual Project Plans – 70 N Main St.

DIRECTORY

CLIENT

COMPANY | TERRY PRIES
ADDRESS AND STREET
CITY, STATE, ZIP CODE
PHONE:
EMAIL:

ARCHITECTURE

TOPA ARCHITECTURE | GENO CATALANO
1150 N. 1ST ST. STE 140
SAN JOSE, CA 95112
PHONE: (408)320-0248
EMAIL: geno@topaarchitecture.com

NEW CONSTRUCTION

70 N MAIN ST. NEW BUILD

70 N MAIN ST. MILPITAS, CA 95035

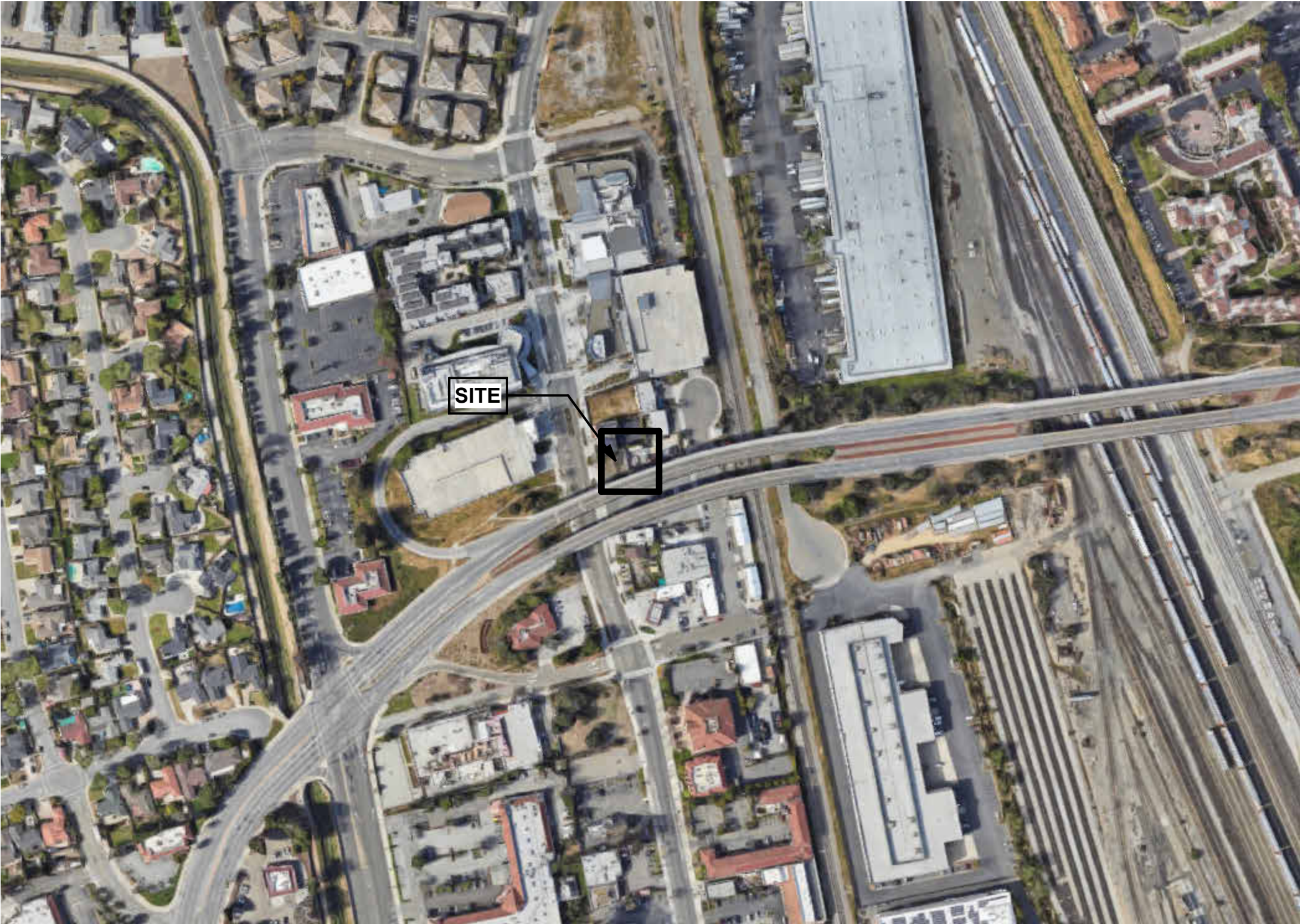
PROJECT DESCRIPTION

1. NEW 2-STORY MIXED USE BUILDING
2. GROUND FLOOR RETAIL/RESTAURANT ±2,100 SQFT WITH A SEATING CAPACITY OF ±79
3. (2) 2 BEDROOM APARTMENT UNITS ON 2ND FLOOR
4. 800 SQFT OF OUTDOOR SEATING

OCCUPANCY LOAD

OCCUPANCY SCHEDULE				
Number	Name	Area	Load Factor	Count
16	HALLWAY	70 SF		
17	UNIT A	1085 SF		
18	UNIT B	Not Placed		
19	TENANT SPACE	2111 SF		
20	RESTROOM 2	57 SF		
21	ELECTRICAL ROOM	96 SF		
22	GARBAGE ROOM	160 SF		
23	RESTROOM 1	60 SF		
24	STAIRS	143 SF		
31	UNIT B	1317 SF		
Grand total		5098 SF		0

VICINITY MAP



PROJECT SUMMARY

topa

architecture

1150 North First St. Ste. 140,
San Jose, CA 95112
Tel: 408.320.0248

GENERAL NOTES:

1. THIS SHEET IS PART OF A SET & IS NOT TO BE USED ALONE.
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STAMP:

PROJECT:

70 N MAIN ST BUILDING

70 N MAIN ST. MILPITAS, CA 95035

CONTRACTOR

PRELIMINARY PLANS
NOT FOR CONSTRUCTION

SHEET TITLE:

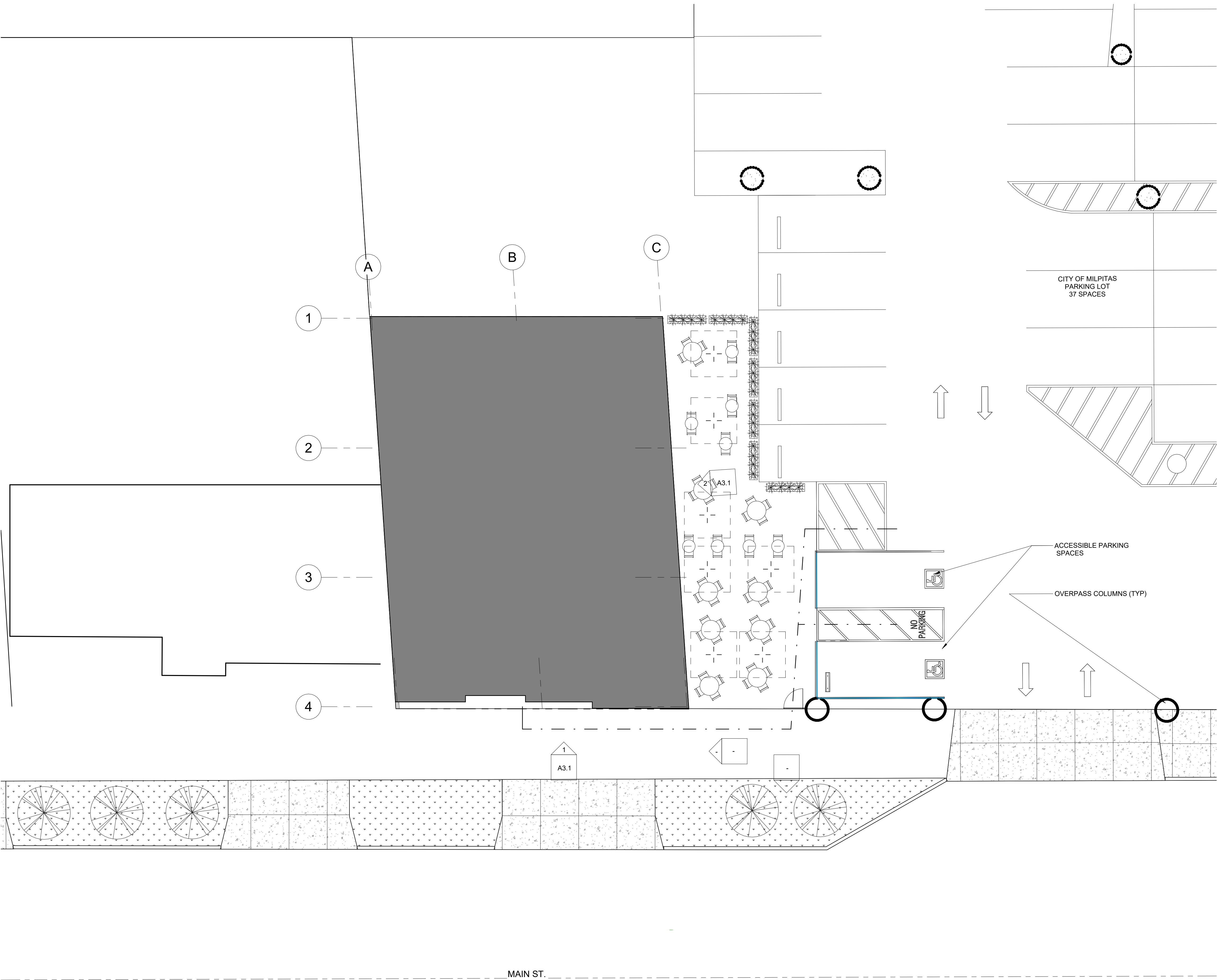
COVER SHEET

REVISIONS

No.	Description	Date

DRAWN: Author
CHECKED: Checker
DATE: Issue Date
SCALE:
JOB No.: 23-1-05-PRIESTONMAIN
SHEET No.:

A0.1



GENERAL NOTES

ACCESSIBLE PATH OF TRAVEL, PER CBC 11B-403

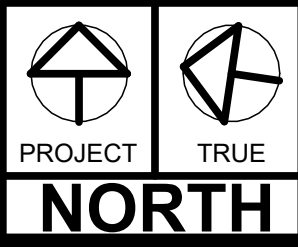
NOTES:

- MUST BE CONTINUOUSLY ACCESSIBLE W/ WALKING DIRECTIONAL SLOPE MAX OF 5% AND CROSS SLOPE MAX OF 2%
- MUST HAVE MAX SLOPE OF 2% IN ANY DIRECTION IN LOADING AREAS AND AT EACH TURN OF INTERSECTION OF PATHS OF TRAVEL
- HAVE A MAX OF 1/4" CHANGE IN ELEVATION W/O BEVELED EDGE. 1/2" CHANGE IN ELEVATION W/ BEVELED EDGE NOT STEEPER THAN 1:2
- IS MIN 48" IN WIDTH
- WHERE NECESSARY TO CHANGE ELEVATION AT A SLOPE EXCEEDING 5%, SHALL HAVE PEDESTRIAN RAMPS

SITE PLAN KEYNOTES

Note Number	Note Text
1	TEST NOTE

1 SITE PLAN
1/8" = 1'-0"



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STAMP:

PROJECT:

70 N MAIN ST
BUILDING

70 N MAIN ST. MILPITAS, CA 95035

CONTRACTOR

PRELIMINARY PLANS
NOT FOR CONSTRUCTION

SHEET TITLE:

SITE PLAN

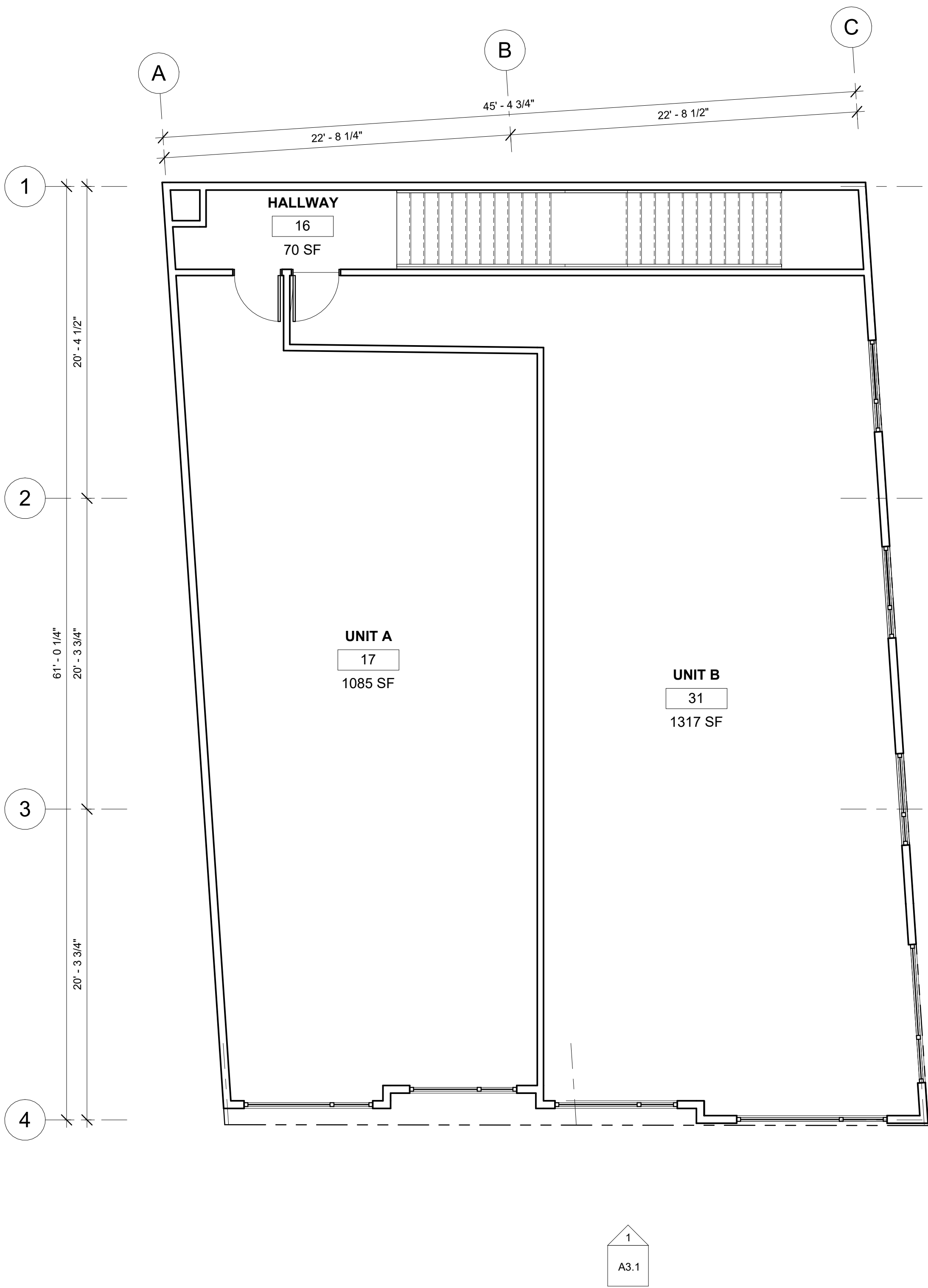
REVISIONS

No.	Description	Date

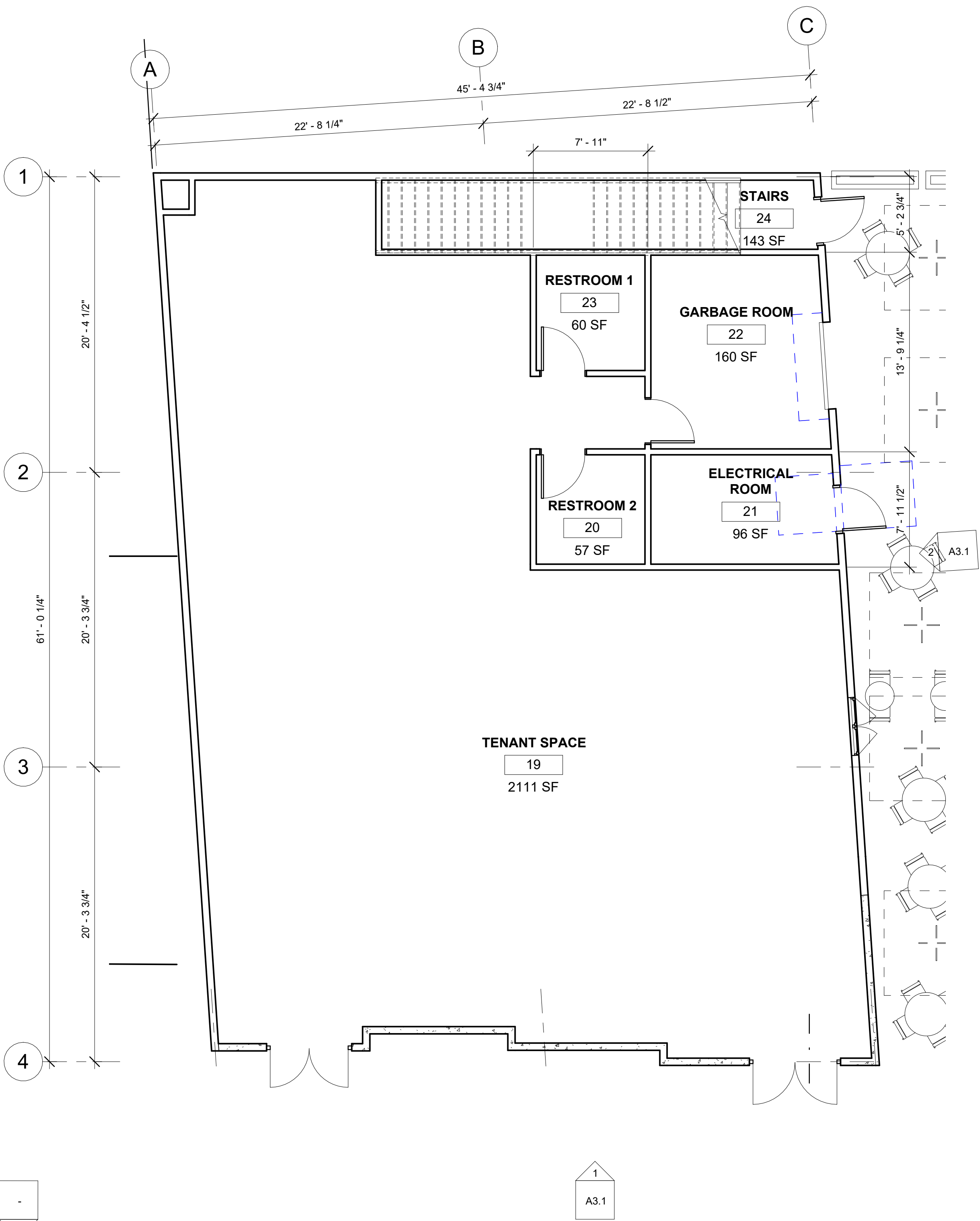
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CHECKED:	Checker
DATE:	Issue Date
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JOB No.:	23-1-05-PRIESTONMAIN
SHEET No.:	

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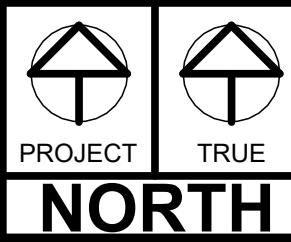
WALL LEGEND	
	(N) 6" CMU WALL
	(N) INTERIOR 3 5/8" METAL STUD
	(N) NEW STOREFRONT SYSTEM W/ 2.5"X5" MULLIONS



2 2ND FLOOR FFL
3/16" = 1'-0"



1 1ST FLOOR PROPOSED PLAN
3/16" = 1'-0"



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STAMP:

PROJECT:

70 N MAIN ST
BUILDING

70 N MAIN ST. MILPITAS, CA 95035

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PRELIMINARY PLANS
NOT FOR CONSTRUCTION

SHEET TITLE:

PROPOSED FLOOR PLAN

REVISIONS

No.	Description	Date

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CHECKED:	Checker
DATE:	Issue Date
SCALE:	As indicated
JOB No.:	23-1-05-PRIESTONMAIN
SHEET No.:	

A2.1



3 FRONT PARKING LOT STREET VIEW



2 SOUTHWEST STREET VIEW



4 BACK PARKING LOT STREET VIEW



1 SOUTHEAST STREET VIEW

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STAMP:

PROJECT:

70 N MAIN ST
BUILDING

70 N MAIN ST, MILPITAS, CA 95035

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EXTERIOR PERSPECTIVES

REVISIONS

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SHEET No.:

A3.0

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STAMP:

PROJECT:

70 N MAIN ST
BUILDING

70 N MAIN ST. MILPITAS, CA 95035

CONTRACTOR

PRELIMINARY PLANS
NOT FOR CONSTRUCTION

SHEET TITLE:

EXTERIOR ELEVATIONS

REVISIONS

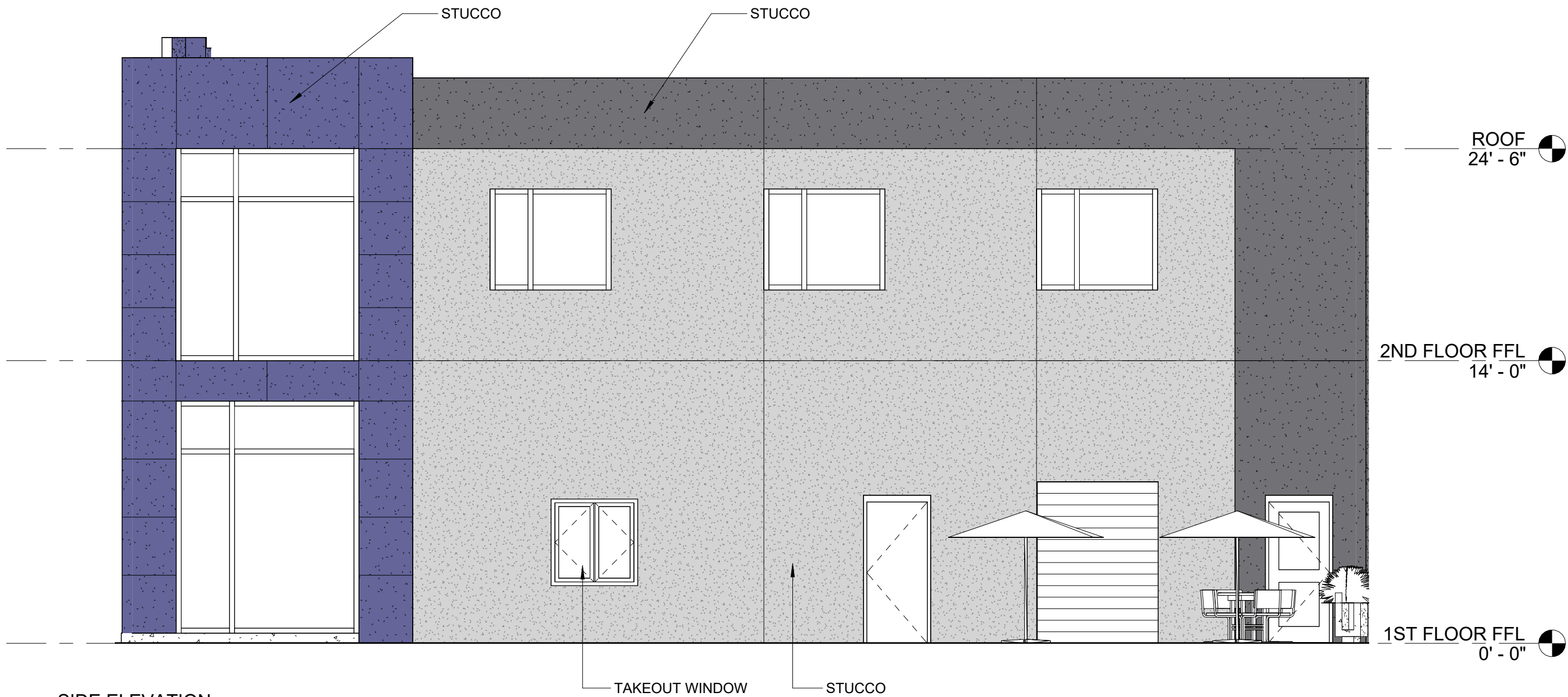
No.	Description	Date

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CHECKED:	Checker
DATE:	Issue Date
SCALE:	3/16" = 1'-0"
JOB No.:	23-1-05-PRIESTONMAIN
SHEET No.:	

A3.1



① STREET ELEVATION
3/16" = 1'-0"



② SIDE ELEVATION
3/16" = 1'-0"



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Presentation from Staff and Applicant and Provide Direction Regarding Conceptual Plans for Proposed Development (“600 Valley Way”) to subdivide three existing lots into two parcels totaling 7.22 acres to facilitate up to 104 townhome units and 140 rental affordable units, for a total of 244 residential units at 461, 538, and 602 Valley Way (APNs 022-28-022, -024, and -025) (Staff Contact: Jay Lee, Planning Director, 408-586-3077 and Lillian VanHua, Senior Planner, 408-586-3073)
Category:	Community Development
Meeting Date:	11/14/2023
Recommendation:	(1) Receive presentations from staff and the applicant; (2) Receive public comment; and (3) Provide feedback on the Preliminary Review Application and staff's recommendation on how to accommodate the Project through the Gateway-Main Street Specific Plan process.

BACKGROUND:

The applicant submitted preliminary project plans to the Planning Department on September 26, 2023. Project plans were circulated to internal departments for review and comment, and on October 31, 2023, City staff sent a letter to the applicant outlining potential issues raised by the Project, including those related to allowable density and compliance with the Affordable Housing Ordinance.

The project site is currently zoned C2 General Commercial, with a General Plan designation of GNC General Commercial. However, as part of the Midtown Specific Plan Update, which will be renamed the Milpitas Gateway-Main Street Specific Plan (MGSP), the project site will be annexed into the Plan area. The project site will be located within the new Calaveras Gateway zoning district of the MGSP, which is envisioned as a regional destination and gateway to Milpitas with higher-intensity mixed-use and residential development reaching four to five stories in height. Staff anticipates Plan adoption in Summer 2024.

The project site is also designated as a “rezone site” within the City’s current Housing Element. Rezone sites are parcels identified on the housing Sites Inventory list that can be rezoned to allow residential uses or greater residential densities. The rezone sites are currently zoned C2 General Commercial within the MGSP or designated NCMU Neighborhood Commercial Mixed Use in the General Plan and various sites in the Metro Specific Plan. The Housing Element anticipated that the rezone sites within the MGSP area would be rezoned to MXD Mixed Use (up to 30 du/ac) or MXD2 High-Density Mixed-Use (up to 40 du/ac). However, the MGSP will implement new zoning districts and densities.

The Project would require, at minimum, a potential Zoning Map Amendment, Site Development Permit, Conditional Use Permit, Tentative Tract Map, and environmental review under the California Environmental Quality Act (CEQA). This agenda report has been drafted to solicit feedback from the City Council on the project’s density, compliance with the City’s Affordable Housing Ordinance, and overall design concept. As part of the preliminary review process, the Council may wish to comment on the design of the proposed project as well as its compatibility within the context of surrounding uses within the MGSP area.

ANALYSIS:

Project Description

The preliminary Project proposed scope includes the subdivision of three existing lots into two parcels to construct up to 244 units, with an average density of 33.8 dwelling units per gross acre. Lot A will be approximately 1.60 acres and Lot B will be 5.62 acres. Lot B will consist of 104 townhome condominium units, with a maximum height of three stories. Each unit will have “tuck-under” parking arrangements accessed by alleys, providing a parking ratio of two spaces per dwelling unit. Unit front doors will face green spaces, connected by walkways to paseos and streets. Vehicle access to the site will be through Valley Way, connecting to the internal streets and alleys. Emergency vehicles will have access from Valley Way and Heath Street, facilitated by removable bollard control mechanisms. The Project site features a picnic area and a playground. An integral part of the Project site is the central paseo, weaving through the site to provide opportunities for walking, running and passive recreation. The paseo also offers a pedestrian-friendly connection for the adjacent residential neighborhood to the existing retail center at South Abbott Avenue and West Calaveras Boulevard. Additionally, approximately 2,600 square feet of community serving space will be located at the southern end of a central paseo to provide community amenities and a leasing office function. Lot A may be dedicated by the Silicon Valley Community Foundation to the City for future affordable housing development.

Affordable Housing Ordinance (AHO)

The City’s Affordable Housing Ordinance (AHO) requires all new residential development projects of ten units or more designed and intended for permanent occupancy to construct 15 percent of the total number of dwelling units within the development as affordable units. In order to comply with the AHO, the ordinance requires the applicant to provide 16 townhome units at the moderate-income level and 21 apartment units at the low-income level. In lieu of building affordable housing units on site, the applicant proposes to dedicate Lot A to the City to build up to 140 affordable units. The City Council may permit an applicant to dedicate land within the City of Milpitas to the City or a City-designated local non-profit housing developer in lieu of construction of some or all of the required affordable units pursuant to MMC XII-1-4.02.

If the City Council accepts the land dedication, the City’s General Fund would incur operations, maintenance and capital infrastructure costs associated with the existing building until a development partner is selected for the site. A funding source would need to be identified to pay for these operations, maintenance and capital infrastructure costs of the existing property as part of the conditions of approval for the project. It would be necessary for the City to conduct due diligence with regard to the state and value of the lot prior to acceptance, including that the property dedicated meets all of the requirements of Milpitas Municipal Code section XII-1-4.02, including the additional grant necessitated by section 4.02(3)(b). Moreover, a project that satisfies its affordable housing requirement by means of land dedication will not be entitled to concessions or incentives under the City’s density bonus ordinance, though it may still be entitled to reduced parking standards and waivers and modifications of other development standards. The land transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The City may require that the land be transferred to a developer instead of the city.

General Plan/Specific Plan and Zoning Designation for Project Site

The subject property’s anticipated General Plan designation is Milpitas Gateway-Main Street Specific Plan (MGSP). Within the MGSP, the subject site will be rezoned to a new implementing zoning district, the Gateway Mixed-Use (GW-MU) zone, as part of the new Gateway District. The GW-MU zone will require a minimum density of 18 dwelling units per gross acre and a maximum density of 65 dwelling units per gross acre. The Gateway District will be a highly visible community commercial node along Calaveras Boulevard, with opportunities for freeway-oriented retail and services, neighborhood shopping and hotel and convention space. The GW-MU zone supports a freeway and commercial corridor service orientation along Calaveras Boulevard and I-880, transitioning to a neighborhood-oriented residential focus to the north, and a commercial/mixed-use focus adjacent to Crossroads Mixed-Use. Moreover, multi-family dwellings will be a permitted use within the GW-MU zone.

If the project qualifies for a density bonus, the Project could be eligible for up to 27.5 percent increase of the maximum allowable density. If the Project provides additional affordable units at varying affordability levels, it could be eligible for additional density, up to a 50 percent increase.

Under the current zoning ordinance, since the Project is requesting 33.8 dwelling units per gross acre, the subject site will need to be rezoned to a different zoning classification to allow for the higher density. The applicant has proposed to rezone the Project site to R3 Multiple Family High Density Residential, which allows for 12-20 dwelling units per gross acre.

If the Project applies for formal entitlements prior to the adoption of the MGSP, the subject site will need to be rezoned to a different zoning classification to allow for the higher density.

If the Project applies for formal entitlements after the adoption of the MGSP, the site will be subject to the new development standards and related density allowances in place.

POLICY ALTERNATIVES:

This item is a Preliminary Review discussion of a conceptual project for Council feedback and direction. As such, no policy alternatives have been identified.

FISCAL IMPACT:

This item is a Preliminary Review discussion of a conceptual project. No fiscal impacts.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The item involves only feasibility or planning studies for possible future actions which the City has not approved, adopted, or funded and does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors pursuant to Cal. Code Regs., tit. 14, § 15262. Upon submittal of a formal application, the Project will be subject to the California Environmental Quality Act (CEQA). After the application is deemed complete, staff will prepare an environmental document (Addendum to the Specific Plan EIR or Initial Study) to determine whether the Project will have a significant impact on the environment. Where significant impacts are identified, project mitigation will be required. Detailed mitigation measures will be identified based on the project specific proposal.

RECOMMENDATION:

- (1) Receive presentations from staff and the applicant;
- (2) Receive public comment; and
Provide feedback on the Preliminary Review Application and staff's recommendation on how to accommodate the Project through the Gateway-Main Street Specific Plan process.

ATTACHMENT(S):

- (a) Preliminary Project Plans for "600 Valley Way"

PROJECT SUMMARY

The 600 Valley Way project proposes to subdivide three (3) existing lots into two (2) parcels. Lot A, approximately 1.60 acres, is intended to be dedicated by the Silicon Valley Community Foundation to the City of Milpitas for future affordable apartment development, as described in Milpitas’ “Affordable Housing Ordinance (AHO) Number 297.” Lot B, approximately 5.62 acres, is intended to be rezoned for Townhomes Condominiums development under the proposed R3 (Multi-Family High-Density Residential) zone. In addition to the subdivision, the project will create the necessary easements for the proposed paseo/development and will vacate/quitclaim existing easements that are no longer needed.

The project envisions a residential development that enhances the local community by offering townhomes, affordable apartments, and interconnected community open spaces to foster a vibrant and diverse residential neighborhood. Situated at the intersection of West Calaveras Blvd and I-880 in the Calaveras Gateway neighborhood, this location offers strong connections to nearby employment centers, shopping districts, transportation hubs, schools, and recreational facilities.

This project falls under the Milpitas Gateway-Main Street Specific Plan which promotes residential infill in the Calavera Gateway neighborhood. In addition, it is designated as a “rezone site” for housing development in the recently adopted 2023-2031 Housing Element of the City of Milpitas. The project residential development aligns with the above city visions and policies and will significantly address the critical need for both market-rate and affordable housing in Milpitas. Therefore, the project proposes rezoning the site from its current C2 (General Commercial) zoning designation to appropriate zones and densities for future residential developments.

The project envisions approximately a total of 244 units on the entire site, with an average density of approximately 33.8 du/ac. It comprises the following two lots:

- Lot A - Affordable Apartments: approximately 140 units of rental affordable apartment housing, approximately 0.85 car per unit parking ratio.
- Lot B - Townhomes Condominiums: Approximately 104 units of townhomes, with a maximum height of up to three stories in Type V-A construction. Each unit will have ‘tuck-under’ parking arrangements accessed by alleys, providing a 2-car per unit parking ratio. Unit front doors will face green spaces, connected by walkways to the paseo and streets. Approximately 2,600 square feet of Community Serving Space will be located at the southern end of the paseo to provide community amenities and leasing office function.

The project’s design prioritizes integration with the existing neighborhood fabric. Lower-density townhomes occupy the northern portion of the site, while higher-density apartments are situated in the southeast, ensuring a compatible density transition with the surrounding neighborhood. The orientation of both the townhomes and affordable housing minimizes exposure to noise from the freeway frontage and on-ramp. The site layout ensures ample setback and a landscape buffer from the neighboring residential neighborhood to the north, effectively preserving their privacy.

An integral aspect of the entire site plan is the central paseo, weaving through the site to provide opportunities for walking, running, passive recreation, and a sense of community. This paseo also offers a pedestrian-friendly connection for the adjacent residential neighborhood to the existing retail center at S Abbitt Ave and W Calaveras Blvd.

Vehicle access to the site is via Valley Way, connecting to internal streets and alleys without impacting the adjacent surrounding neighborhood. Emergency vehicles will have access from Valley Way and Heath Street, facilitated by removable bollard control mechanisms.

ALLOWED AND PROPOSED DENSITY

	DESIGNATION	ALLOWED DENSITY (DU/AC)
CURRENT ZONING	C2 (GENERAL COMMERCIAL)	N/A
LOT A - PROPOSED REZONING	TBD	TBD
LOT B - PROPOSED REZONING	R3 (MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL)	12.0-20.0
PROJECT PROPOSED DENSITY		33.8

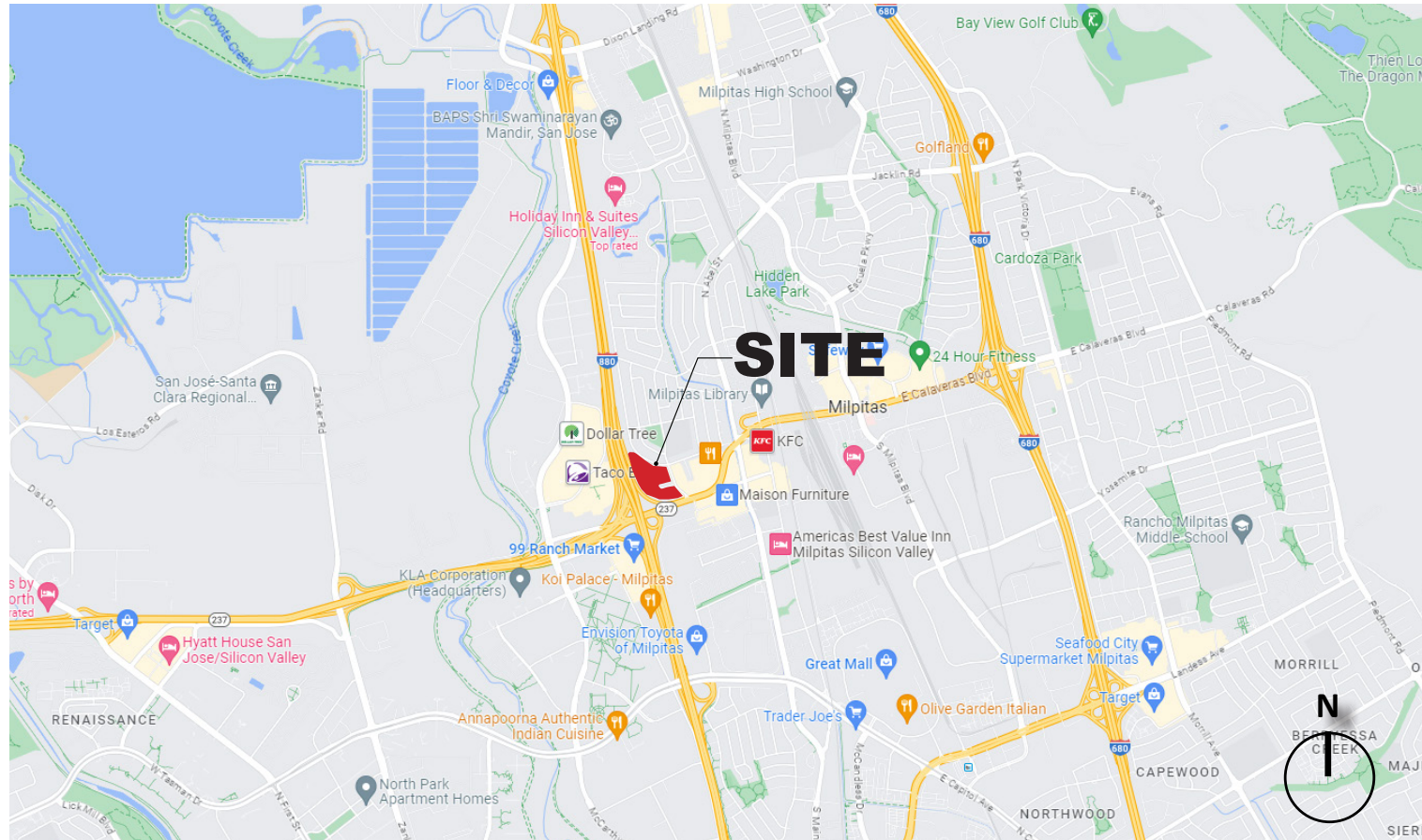
DEVELOPMENT PROGRAM

PARCEL	AREA (AC)	UNIT COUNT (DU)	DENSITY (DU/AC)	COMMUNITY SERVING SPACE/LEASING OFFICE (SQFT)
LOT A - AFFORDABLE HOUSING	1.6	140	87.5	2,600
LOT B - TOWNHOMES	5.62	104	18.5	
TOTAL	7.22	244	33.8	

PARKING

DEVELOPMENT	PARKING SPACE	PARKING RATIO (SPACE/DU)
AFFORDABLE HOUSING	119	0.85
TOWNHOMES	208	2.00
GUEST PARKING ON SITE	25	
TOTAL	352	1.44

VICINITY MAP



SITE SUMMARY

PROJECT ADDRESS: 602, 538, 461 VALLEY WAY, MILPITAS, CA
APN: 2228025, 2228024, 2228022
SITE AREA: +/- 7.22 ACRES

GENERAL PLAN LAND USE: GNC (GENERAL COMMERCIAL)

CURREN ZONING DESIGNATION: C2 (GENERAL COMMERCIAL)

PROPOSED REZONING DESIGNATION: R3 (MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL)

PROPOSED USE: RESIDENTIAL
PROPOSED TOTAL UNITS: 244 UNITS
PROPOSED DENSITY: 33.8 DU/AC

PROJECT TEAM

APPLICANT THE SOBRATO ORGANIZATION 599 CASTRO STREET, SUITE 400 MOUNTAIN VIEW, CA 94041 CONTACT: JEFFREY M. SOBRATO EMAIL: JEFF@SOBRATO.COM PHONE: (408) 691-1125 TIM STEELE EMAIL:TSTEELE@SOBRATO.COM PHONE: (408) 832-4200	ARCHITECT STUDIO T-SQ, INC. 1970 BROADWAY, SUITE 408 OAKLAND, CA 94612 CONTACT: CHEK FONG TANG EMAIL: CTANG@STUDIOT-SQ.COM PHONE: (510) 451-2850 LANDSCAPE ARCHITECT / PLANNER THE GUZZARDO PARTNERSHIP INC. PIER 9, THE EMBARCADERO, SUITE 115 SAN FRANCISCO, CA 94111 CONTACT: NICK SAMUELSON EMAIL: NSAMUELSON@TGP-INC.COM PHONE: (415) 941-2425	CIVIL ENGINEER KIER+WRIGHT 3350 SCOTT BOULEVARD, BLDG 22 SANTA CLARA, CA 95054 CONTACT: RYAN AMAYA EMAIL: RAMAYA@KIERWRIGHT.COM PHONE: (408)714-0678	GENERAL: 1.0 PROJECT SUMMARY 1.1 EXISTING SITE PHOTOS 1.2 EXISTING SITE CONDITIONS 2.0 PRELIMINARY SITE PLAN
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: Architecture
: Planning
: Urban Design

: 1970 Broadway Suite 480,
: Oakland, California 94612
: (510) 451 - 2850

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600 Valley Way
Milpitas, California

THE SOBRATO ORGANIZATION
599 Castro Street, Suite 400, Mountain View, CA 94041

Sheet Title:
PROJECT SUMMARY

Job No. 22029
Date: September 12, 2023
Scale:
Drawn By:

Sheet No:
1.0



HEATH STREET - LOOKING SOUTH TO THE SITE 1



EXISTING SITE CONDITION - LOOKING SOUTH 2



EXISTING SITE CONDITION - LOOKING NORTH 3



SITE ENTRANCE ON VALLEY WAY 4



EXISTING SITE CONDITION - LOOKING SOUTH 5



EXISTING HOTEL TO THE EAST OF SITE 6



SOUTH ABBOTT AVE 7



WEST CALAVERAS BLVD 8

Z:\2019\A18141-1\DWG\SURVEY\TOPO\T5-A18141-1.dwg 9-01-22 03:17:58 PM rallen

NOTES

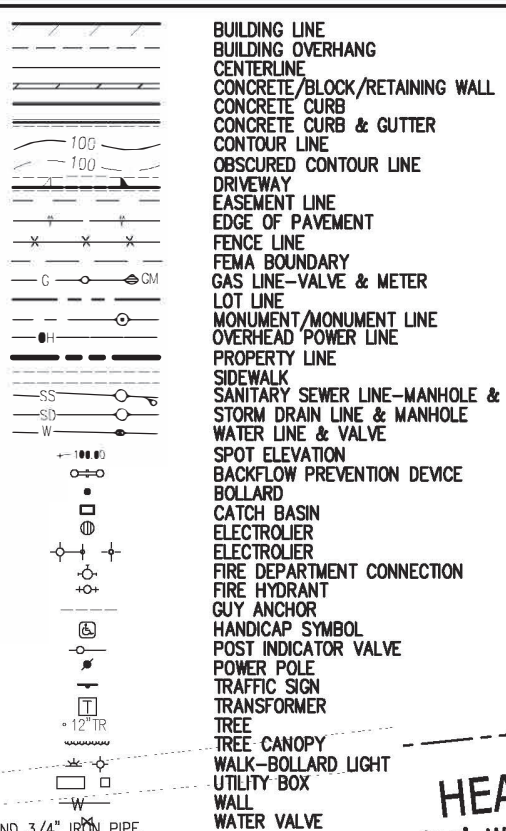
- THIS PLOT WAS PREPARED FROM INFORMATION FURNISHED IN A PRELIMINARY TITLE REPORT, PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY, DATED JUNE 2, 2022, ORDER NUMBER NCS-1133187-SG. NO LIABILITY IS ASSUMED FOR MATTERS OF RECORD NOT STATED IN SAID PRELIMINARY TITLE REPORT THAT MAY AFFECT THE TITLE LINES, OR EXCEPTIONS, OR EASEMENTS OF THE PROPERTY.
- THE TYPES, LOCATIONS, SIZES AND/OR DEPTHS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS TOPOGRAPHIC SURVEY WERE OBTAINED FROM SOURCES OF VARYING RELIABILITY. THE CONTRACTOR IS CAUTIONED THAT ONLY ACTUAL EXCAVATION WILL REVEAL THE TYPES, EXTENT, SIZES, LOCATIONS AND DEPTHS OF SUCH UNDERGROUND UTILITIES. (A REASONABLE EFFORT HAS BEEN MADE TO LOCATE AND DELINEATE ALL KNOWN UNDERGROUND UTILITIES), HOWEVER, THE ENGINEER CAN ASSUME NO RESPONSIBILITY FOR THE COMPLETENESS OR ACCURACY OF ITS DELINEATION OF SUCH UNDERGROUND UTILITIES WHICH MAY BE ENCOUNTERED, BUT WHICH ARE NOT SHOWN ON THESE DRAWINGS.
- BENCHMARK:
CITY OF MILPITAS BM ABB-SPE; BRASS DISK IN MONUMENT WELL AT INTERSECTION, ABBOTT AVENUE AND SPENCE AVENUE.
ELEVATION: 14.652 FEET (DATUM NAVD 88)
- THE SUBJECT PROPERTY IS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) FOR SANTA CLARA COUNTY, CALIFORNIA, MAP NUMBER 0605050066J FOR COMMUNITY NUMBER 060344 (CITY OF MILPITAS), WITH AN EFFECTIVE DATE OF FEBRUARY 19, 2014, AS BEING LOCATED IN FLOOD ZONE "AE (EL=19)" & AE (EL=18)", AND IN FLOOD ZONE "X SHADED".

ACCORDING TO FEMA THE DEFINITION OF ZONE "AE (EL=18)" & AE (EL=19)" IS:
THE FLOODWAY IS THE CHANNEL OF A STREAM PLUS ANY ADJACENT FLOODPLAIN AREAS THAT MUST BE KEPT FREE OF ENCROACHMENT SO THAT THE 1% ANNUAL CHANCE FLOOD CAN BE CARRIED WITHOUT SUBSTANTIAL INCREASES IN FLOOD HEIGHTS.

ACCORDING TO FEMA THE DEFINITION OF ZONE "X-SHADED" IS:
AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE OF FLOOD.

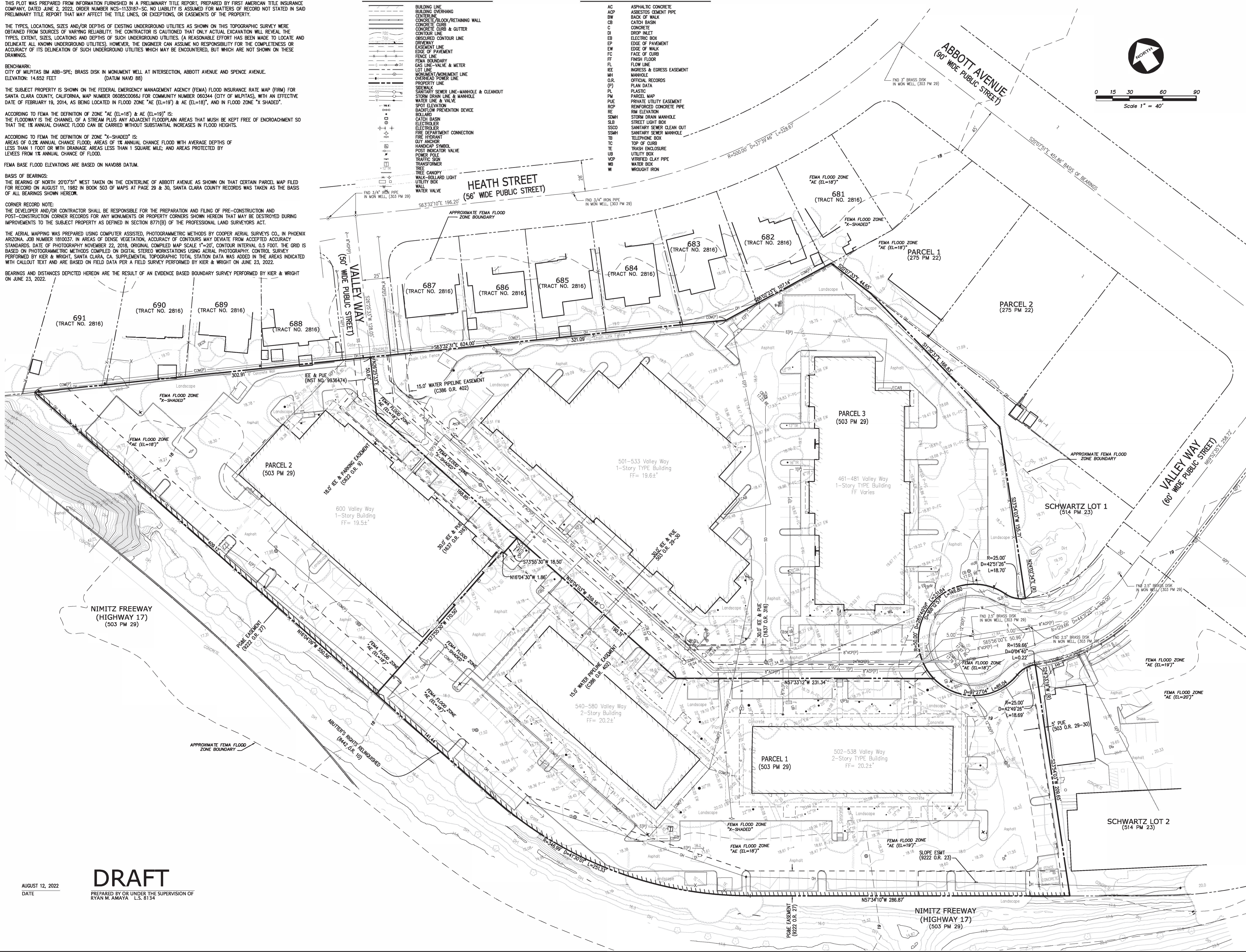
FEMA BASE FLOOD ELEVATIONS ARE BASED ON NAVD88 DATUM.
- BASES OF BEARINGS:
THE BEARING OF NORTH 207°51' WEST TAKEN ON THE CENTERLINE OF ABBOTT AVENUE AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON AUGUST 11, 1982 IN BOOK 503 OF MAPS AT PAGE 28 & 30, SANTA CLARA COUNTY RECORDS WAS TAKEN AS THE BASIS OF ALL BEARINGS SHOWN HEREON.
- CORNER RECORD NOTE:
THE DEVELOPER AND/OR CONTRACTOR SHALL BE RESPONSIBLE FOR THE PREPARATION AND FILING OF PRE-CONSTRUCTION AND POST-CONSTRUCTION CORNER RECORDS FOR ANY MONUMENTS OR PROPERTY CORNERS SHOWN HEREON THAT MAY BE DESTROYED DURING IMPROVEMENTS TO THE SUBJECT PROPERTY AS DEFINED IN SECTION 8771(9) OF THE PROFESSIONAL LAND SURVEYORS ACT.
- THE AERIAL MAPPING WAS PREPARED USING COMPUTER ASSISTED, PHOTOGRAMMETRIC METHODS BY COOPER AERIAL SURVEYS CO., IN PHOENIX ARIZONA, JOB NUMBER 1810037. IN AREAS OF DENSE VEGETATION, ACCURACY OF CONTOURS MAY DEVIATE FROM ACCEPTED ACCURACY STANDARDS. DATE OF PHOTOGRAPHY NOVEMBER 22, 2018. ORIGINAL COMPILED MAP SCALE: 1"=20'. CONTOUR INTERVAL: 0.5 FOOT. THE GRID IS BASED ON PHOTOGRAMMETRIC METHODS COMPILED ON DIGITAL STEREO WORKSTATIONS USING AERIAL PHOTOGRAPHY. CONTROL SURVEY PERFORMED BY KIER & WRIGHT, SANTA CLARA, CA. SUPPLEMENTAL TOPOGRAPHIC TOTAL STATION DATA WAS ADDED IN THE AREAS INDICATED WITH CALLOUT TEXT AND ARE BASED ON FIELD DATA PER A FIELD SURVEY PERFORMED BY KIER & WRIGHT ON JUNE 23, 2022.
- BEARINGS AND DISTANCES DEPICTED HEREON ARE THE RESULT OF AN EVIDENCE BASED BOUNDARY SURVEY PERFORMED BY KIER & WRIGHT ON JUNE 23, 2022.

LEGEND



ABBREVIATIONS

AC	ASPHALTIC CONCRETE
ACP	ASBESTOS CEMENT PIPE
BW	BACK OF WALK
CB	CONCRETE
C	CONCRETE CURB
DI	DROP INLET
EB	ELECTRIC BOX
EP	EDGE OF PAVEMENT
EW	EDGE OF WALK
FC	FACE OF CURB
FF	FINISH FLOOR
FL	FLOW LINE
IEE	INDRESS & EGRESS EASEMENT
MH	MANHOLE
ODC	OFFICIAL RECORDS
PD	PLAN DATA
PL	PARCEL MAP
PUE	PRIVATE UTILITY EASEMENT
RCP	REINFORCED CONCRETE PIPE
RE	RIM ELEVATION
SDMH	STORM DRAIN MANHOLE
SLS	STREET LIGHT BOX
SSCO	SANITARY SEWER CLEAN OUT
SSMH	SANITARY SEWER MANHOLE
TB	TELEPHONE BOX
TC	TOP OF CURB
TE	TRASH ENCLOSURE
UB	UTILITY BOX
VCP	VITRIFIED CLAY PIPE
WB	WALKWAY



DRAFT

AUGUST 12, 2022
DATE
PREPARED BY OR UNDER THE SUPERVISION OF
RYAN M. AMAYA L.S. 8134

TOPOGRAPHIC SURVEY OF 600 VALLEY WAY FOR THE SOBRATO ORGANIZATION

CALIFORNIA

KIER+WRIGHT
3390 South Bascom, Building 22
Santa Clara, California 95054
Phone: (408) 271-6666
www.kierwright.com

NO.	BY	REVISION
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600 Valley Way
Milpitas, California

THE SOBRATO ORGANIZATION
599 Castro Street, Suite 400, Mountain View, CA 94041

Sheet Title:
**EXISTING
SITE CONDITION**

Job No. 22029
Date: September 12, 2023
Scale: 1" = 40'-0"
Drawn By:

Sheet No:

1.2



: Architecture
: Planning
: Urban Design

: 1970 Broadway Suite 480,
: Oakland, California 94612
: (510) 451 - 2850

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600 Valley Way

Milpitas, California

THE SOBRATO ORGANIZATION

599 Castro Street, Suite 400, Mountain View, CA 94041

Sheet Title:

PRELIMINARY
SITE PLAN

Job No. 22029
Date: September 12, 2023
Scale: 1" = 30'-0"
Drawn By:

Sheet No:

2.0



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Review the List of Agenda Item Requests From Individual Councilmembers and Provide Direction to Staff Through the Council-Approved Prioritization Process (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)
Category:	Leadership and Support Services
Meeting Date:	11/14/2023
Recommendation:	(1) Review list of agenda item requests from individual Councilmembers and providedirection to staff, through the prioritization process, on which Group 1 items should be advanced; (2) Provide additional input to staff, if any, on Group 1 items that received Council direction to advance and all Group 2 items (3) Approve recommendations on certain Group 3 items as outlined in the Analysis section of this report.

BACKGROUND:

At City Council meetings, under the Announcements section, Members of the Council request items they would like the full Council to consider. These items are placed on a list for a future Council discussion and action. On January 19, 2021, at a Special City Council meeting, in order to streamline the process, Council provided direction to staff to bring forward individual Council agenda item requests to Council, for prioritization, on a quarterly basis.

On January 10, 2023, City Council approved a City Council Request Prioritization Policy which guides the prioritization process. As part of the January 10, 2023, approval, language was included in this Policy to remove items that had been recommended by prior members of the City Council unless a current City Councilmember chose to sponsor the continuation of those items.

The last prioritization was held on June 20, 2023. Since the beginning of this process, Council has reviewed nearly 200 items. Links to prior prioritization reports and minutes are included under Attachments.

ANALYSIS:

Staff is now bringing forward the next prioritization of items that were requested by Council between June 20, 2023, and November 7, 2023, including the status on items approved previously by Council.

As shown in Attachment 1, a total of 44 items, some of which were discussed during the prior prioritization discussion, have been grouped into four categories differentiated by level of effort and status of the agenda request as outlined below:

Group 1 – Items that have not been initiated; will require more than four hours of staff time; and may require additional funding or resources (6 items).

Group 2 – Items that have not been initiated but will require less than 4 hours of staff work (7 items).

Group 3 – Items that are currently underway and/or already included in workplan (18 items).

Group 4 – Items that have been completed, postponed indefinitely, or withdrawn (13 items).

Prioritization Process

There are a total of 15 new items since June 20, 2023. Of these 15 items, six items are in Group 1, seven items are in Group 2, and two items are in Group 3.

Similar to the prior prioritization process, the new Group 1 agenda item requests are detailed in Attachment

2. Since these requests have not yet been discussed, staff has made an attempt to identify alignment with Council priority areas to the extent possible. As part of Attachment 2, staff provided a brief summary, which includes the lead and supporting departments, estimated resources and cost to complete the work, description of work effort, any actions taken to date, clarification or direction sought from Council, and other additional considerations including impacts on other workplan items. To the extent possible, staff sought clarification from members of the Council sponsoring the request; however, some items may still need additional clarification from the requesting Councilmembers. To facilitate Council prioritization, Group 1 items have been further categorized into three sub-groups: Ordinances and Policies, Projects and Programs, and Miscellaneous.

For the five Group 1 items, the total annual costs are estimated as follows:

Item	Potential Ongoing Costs		Potential One Time Costs	
	Low Range	High Range	Low Range	High Range
CC01 – Charter City Evaluation*	\$0	\$0	\$40,000	\$40,000
CC02 – Affordable Housing Ordinance Change	\$0	\$0	\$50,000	\$75,000
CC03 – Potential Safe Parking Site**	TBD	TBD	\$30,000	\$30,000
CC04 – City Hall Entrance Public Art	\$0	\$0	\$20,000	\$40,000
CC05 – International Festival on Main Street	\$4,000	\$48,000	\$0	\$0
CC06 – Parade on Main Street	\$65,000	\$65,000	\$0	\$0
Total:	\$69,000	\$113,000	\$140,000	\$185,000

* Costs for CC01 – Charter City Evaluation are for the evaluation process only. They do not include a potential citywide resident survey or the costs of a potential ballot measure.

** Costs for CC03 – Safe Parking is for the Phase I outreach only. If it is decided to implement a Safe Parking Program, additional ongoing and one-time costs would be presented to the City Council at a future date.

Since Group 2 items (see Attachment 1) require less than four hours of staff time, these items can be advanced without requiring a majority vote; however, Council may wish to provide additional input or direction on this item. For Group 3 items, which are underway and/or already included in staff workplans, staff provided an update in Attachment 1. A list of Items completed, postponed indefinitely or withdrawn, are presented as a separate attachment (Attachment 3).

Voting Process

In accordance with the adopted City Council Prioritization Policy, existing staff workload and the number of Group 1 items, staff proposes that the Council prioritize no more than two items.

Round 1

Each member of the Council will be asked to prioritize their top two items from Group 1. Councilmembers will receive hard copies to help them review and complete the preliminary prioritization, and electronic voting will be conducted on mobile devices.

All items receiving three or more votes will move forward. If the number of items receiving three or more votes is two or greater, the prioritization process will be deemed complete. If the number of items is less than two, the remaining items will be prioritized as described in Round 2.

Round 2

In case items receiving three or more votes are less than two in number, Councilmembers will be asked to prioritize the remaining items so as to develop a top two list. Each member of the Council will be given the number of votes equivalent to two minus the number of items prioritized for staff work at the completion of Round 1. For example, if after Round 1, the Council agreed on advancing one item, one additional item will require prioritization. Therefore, each Member of the Council will be asked to vote on one item. Any item receiving three or more votes will be added to the prioritized list. If the total number of items on the list is one or greater, the prioritization process will be deemed complete.

Additional Rounds, if needed

If the total number of prioritized items after Round 2 is less than two, all remaining items which received at least one vote will be prioritized through additional rounds of voting. Items which receive zero votes in a round will be eliminated from the subsequent round of voting.

Please note that any items that do not advance through this multi-step prioritization process will be removed from the active list and would have to be resubmitted through Announcements for the next prioritization discussion scheduled for September 2023.

Group 3 Items Needing Additional Council Direction

As discussed above, Group 3 items are those that are already underway and/or identified in staff workplans. There is one Group 3 item that staff is recommending be deemed completed, although the program or project has not necessarily been implemented as originally intended. The below table provides a summary of this recommendation. This recommendation will be deemed as “approved” by Council upon City Council’s acceptance of this report, unless other direction is provided.

Item	Recommended Action	Explanation
CC20: Explore the policy for locking mechanisms on shopping carts for large commercial businesses	Approve closure of this work item	Given the challenges and potential expenses of requiring existing owners install locking mechanisms, staff is recommending closing this item and focusing efforts on (1) the City of Milpitas Cart Retrieval Program and (2) requiring new developments to install locking mechanisms.

Policy Alternative:

Not applicable

Fiscal Impact:

For four Group 1 items, the total annual ongoing costs are estimated to be \$69,000 to \$113,000 and one-time costs would range from \$140,000 to \$185,000. A breakdown of costs per item is included in the analysis section of this report. Based on Council direction, staff will consider prioritized items that require new funding as part of the FY 2024-2025 budget process.

California Environmental Quality Act:

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(4) as it is a government fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Although the use of funding will be discussed, any project scope and potential environmental analysis would be speculative at this time, and future environmental analysis will be conducted for the potential projects prior to the City making any commitment or approval of any project.

Recommendation:

1. Review list of agenda item requests from individual Councilmembers and provide direction to staff, through the prioritization process, on which Group 1 items should be advanced.
2. Provide additional input to staff, if any, on Group 1 items that received Council direction to advance and all Group 2 items.
3. Approve recommendations on certain Group 3 items as outlined in the Analysis section of this report.

Attachments:

1. List of Councilmember Agenda Item Requests
2. Information on Group 1 items
3. List of Completed, Postponed Indefinitely, or Withdrawn Items
4. Links to Prior Prioritization Reports and Minutes
 - [March 16, 2021 Agenda and Minutes](#)
 - [August 9, 2021 Agenda and Minutes](#)
 - [January 11, 2022 Agenda and Minutes](#)
 - [May 3, 2022 Agenda and Minutes](#)
 - [September 6, 2022 Agenda and Minutes](#)
 - [February 7, 2023 Agenda and Minutes](#)
 - [June 20, 2023 Agenda and Minutes](#)

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
Group 1 – Items that have not been initiated; will require more than four hours of staff time; and may require additional funding or resources.								
Ordinances and Policies								
1	Charter City Evaluation	Phan	9/5/2023	Yes	City Manager, City Attorney	Governance & Administration	November 2023 update: see attached writeup	
2	Affordable Housing Ordinance Change	Montano	9/5/2023	Yes	Housing	Neighborhoods & Housing	November 2023 update: see attached writeup	
Projects and Programs								
3	Potential Safe Parking Site	Montano	6/20/2023	Yes	Housing	Neighborhoods & Housing	November 2023 update: see attached writeup	
4	City Hall Entrance Public Art	Montano	9/5/2023	Yes	Recreation & Community Services	Community Wellness & Open Space	November 2023 update: see attached writeup	
5	Main Street International Festival	Lien	10/3/2023	Yes	Recreation & Community Services	Community Wellness & Open Space	November 2023 update: see attached writeup	
6	Parade on Main Street	Montano	11/7/2023	Yes	Recreation & Community Services	Community Wellness & Open Space	November 2023 update: see attached writeup	
Miscellaneous								
	None							
Group 2 – items that have not been initiated but will require less than 4 hours of staff time								
7	Evaluation of Milpitas Sports Center for additional indoor pickleball location	Chua	8/2/2023	No	Recreation & Community Services	Community Wellness & Open Space	November 2023 update: Staff will perform this preliminary evaluation by November 2023 and provide the response in an email to the Mayor and City Council.	
8	Evaluation of Facilities that are not named and CIP Program Update	Phan	9/19/2023	No	City Manager	Community Wellness & Open Space	November 2023 update: Staff will develop an informational memorandum regarding the naming of facilities, including un-named current and future facilities. Additionally, staff will (1) continue to include capital project status in weekly reports to the Mayor and City Council and (2) Include a status of capital projects in the upcoming Capital Improvement Program study session in early 2024.	
9	Explore Ordinance for Residential Home Solicitors	Barbadillo	10/3/2023	No	City Attorney	Public Safety	November 2023 update: The City Attorney's Office will review options and provide the City Councilmembers with briefings. If these briefings result in a desire for a more thorough review or work effort, staff suggests that this item be prioritized at a future city council prioritization meeting.	
10	Retail Theft: Provide review of what is being worked on locally versus State	Barbadillo	10/3/2023	No	Police	Public Safety	November 2023 update: The Police Department will review options and provide the City Councilmembers with briefings. If these briefings result in a desire for a more thorough review or work effort, staff suggests that this item be prioritized at a future city council prioritization meeting.	
11	Provide Information on City's Grey Water Rebate Program and Options	Montano	10/17/2023	No	Public Works	Environment	November 2023 update: The City of Milpitas currently partners with Valley Water to match Valley Water's existing \$200 homeowner rebate for grey water system installation with an additional \$200 for a total potential rebate of \$400. Current participations from City of Milpitas residents in this program is very low due to the expense and return of investment on a grey water system, as opposed to the more popular lawn conversion rebate programs. Staff will provide an informational memorandum to the Mayor and City Council with further details on this program.	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
12	Police Chief to have staff complete analysis if, working with the County, it would be beneficial to have a location where residents can pickup Narcan	Chua	9/5/2023	No	Police	Public Safety	November 2023 update: Staff will provide an update on this analysis to the Mayor and City Council by the end of 2023.	
13	Recreation & Community Services Department to Review of potentially returning additional programs for Bingo and Senior Trips	Chua	11/7/2023	No	Recreation	Community Wellness & Open Space	November 2023 update: Bingo: Senior Center Bingo participation had reduced drastically before the pandemic with an average of 20 people per session. Contributing factors could have been the normal loss of participants due to moving away, moving into care homes, and/or the opening of Milpitas Charity Bingo. Staff has heard from some seniors that the buy-in costs at Charity Bingo are too expensive. Recreation program staff is currently investigating the option of renewing the City's Bingo License and potentially bringing back the program opportunity utilizing volunteers. Staff will report back to the City Council once this analysis is completed. Trips: The Senior Center has monthly meetup trips at local destinations. There is also the "Foodie Club" which is an open club of senior center members that meet once a month at a Milpitas restaurant. The large Senior Center Bus that was previously used to transport Seniors to these destinations is has been de-commissioned as it met the end of it's useful life. The City has funding for a new van. Once this new van is purchased, staff will resume a hybrid trip program that will both meet up with seniors who can drive and transport seniors who cannot to destinations. Given overall nationwide fleet procurement challenges, it is anticipated that the purchase of this van would take up to 9 months.	
Group 3 - Items that are currently underway and/or already included in workplan								
14	City Employment Job Fair at City Hall	Chua	5/2/2023	No	Human Resources	Governance & Administration	November 2023 update: Staff will coordinate with an upcoming community event to staff a table to promote employment opportunities within the City of Milpitas. June 2023 update: Staff is evaluating synergies with existing Economic Development activities and endeavors to which recruiting efforts can be incorporated and creates space for multiple events throughout the year increasing overall exposure to local talent.	
15	Look into possibility of Senior citywide discount from all Milpitas businesses.	Barbadillo	2/7/2023	Yes	City Attorney/City Manager	Community Wellness & Open Space	November 2023 update: Staff have begun preliminary investigation into alternatives and staff anticipates being able to frame potential options and next steps more thoroughly by early 2024. June 2023 update: see attached writeup	
16	Satellite Consulate Office	Montano	2/28/2023	Yes	Economic Development	Economic Development & Job Growth	November 2023 update: The Office of Economic Development is coordinating with the Recreation & Community Services team and the Philippine Consulate General (San Francisco) to coordinate an outreach event at the Milpitas Community Center. The current target date for this outreach is a Saturday in January 2024. June 2023 update: see attached writeup	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
17	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	Yes	Recreation & Community Services	Community Wellness & Open Space	November 2023 update: Staff is conducting a Teen Center User Survey with the teens of Milpitas ages 12 - 18. Feedback from this survey is anticipated to be completed by mid November 2023. June 2023 update: A Teen Center Survey has been released and is currently gathering responses. It is anticipated that data on the use of the center and/or its programs relative to it's proximity to home and/or school, and the type of programming desired will provide the input needed for the resolution to this request.	
18	City Manager to look into implementing a workshop for small businesses on the bidding process for projects in the city.	Chua	8/9/2022	Yes	City Manager/Economic Development/Public Works/Engineering	Economic Development & Job Growth	November 2023 update: Staff presented in August to the Economic Development and Trade Commission. Feedback was received regarding the need for more thorough metrics regarding current local business participation and goals of the program. June 2023 update: Staff was scheduled to provide a report to the Economic Development and Trade Commission on June 12, 2023 however that meeting with postponed due to lack of quorum. Staff will present to the Commission at the next available date. Further analysis on options and alternatives to connect more local and local small City of Milpitas businesses to our procurement processes will continue through 2023.	
19	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe.	Montano	8/16/2022	Yes	Recreation & Community Services/Engineering	Community Wellness & Open Space	November 2023 update: As the survey was completed, this item is on hold pending potential future capital budget allocation. June 2023 update: Staff conducted a survey of residents within an 800 foot radius from Adobe Ave., asking for feedback on potential recreational improvements to the area. Notification was sent via postcard to individual homes, NextDoor, Facebook, and Instagram. The survey was out for 3 weeks and 43 responses were received. Of those received, 16 identified themselves as living in the Adobe Ave/Vasona St. Neighborhood. The majority of residents currently use Adobe Ave to walk to school (Curtner Elementary) and as a pedestrian trail for fitness. Survey takers responded most favorably to turning the area into a parklet with some benches and greenery, followed by interest in a community garden. Residents indicated some concern over new uses of the area creating a noise and loitering issue in the neighborhood. Staff will present consolidate responses to the Mayor and City Council to receive further direction at the next priority setting meeting.	There is currently no budget allocation for improvements to this area. Should the City Council want to move forward with this priority request in response to survey input, direction on the type of improvements are needed so staff can conduct an estimate of costs for those improvements and present this in a future budget process.
20	Police Substation Feasibility Analysis in Metro Area	Montano	2/28/2023	Yes	Engineering	Public Safety	November 2023 update: Feasibility study for PD substation on City Parcels 2 and 3 at Main Street is underway. An informational memorandum with costs developed in the study is planned to be released in October or November 2023. Prior update: Feasibility study for PD substation on City Parcels 2 and 3 at Main Street is underway and is anticipated to be completed by December 2023. Staff is also exploring alternative location for the substation.	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
21	Pickleball Pilot Project	Chua	2/28/2023	Yes	Recreation & Community Services	Community Wellness & Open Space	November 2023: Staff is currently engaged in a community outreach process to determine the potential uses of the City Council allocated \$100,000 to create a permanent pickleball opportunity in Milpitas. Staff anticipates returning to the City Council with a recommendation on this prior to the end of 2023. *Recently the tennis community has engaged of the tennis around this project topic, and so staff anticipates returning to City Council with a recommendation after the first of the year.* June 2023 update: The Pickleball Pilot program concludes at the end of July.	
22	Main Street Infrastructure Projects	Montano	2/28/2023	Yes	Engineering	Transportation & Transit	November 2023 update: As part of the 2023 Federal appropriations process, \$500,000 of the requested \$2.1 million was received for the Main Street lighting project. Staff will work with federal and state representatives to review options for use of this funding over the next several months (often it takes several months after the budget is passed in order for staff to be able to work with the Federal Agency responsible for use of funds received). Prior update: As part of the 2023 State and Federal appropriations processes, both State Assemblymember Alex Lee and Federal Representative Ro Khanna have requested funding for Main Street infrastructure improvements. Further information on whether these appropriation requests are approved will be available in late 2023.	
23	Main Street Flooding at Library	Chua	2/28/2023	Yes	Public Works	Environment	November 2023 update: Staff is reviewing the Technical Memo regarding removal of the weir wall at the Wrigley Ford Pump Station. Once confirmed there would be no adverse impacts to the pump station/trash rack operations, staff will schedule construction to remove the weir wall. June 2023 update: Staff will continue to explore short-term mitigation as part of the FY 23/24 CIP program. Funds have been budgeted in FY 23/24 for the possible replacement/removal of the flap gate, should that be determined to be a viable option. Furthermore, three very small CIPs to address existing undersized pipes have been identified in the Downtown Specific Plan area which could improve flow. Those will be investigated as well in FY 23/24.	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
24	Create a plan for future solar paneling at City facilities	Montano	3/1/2022	Yes	Public Works	Environment	November 2023 update: Staff have recieved word that our request for Federal funding for this project was not selected to move forward. Staff are continuing to look for other sources of funding or other grants for the Public Safety/Public Works solar/battery microgrid project. June 2023 update: As part of the 2023 Federal appropriations process, the City has requested for funding for solar panels and a microgrid system at the Police, Public Works, IT Building. Both Senators Feinstein and Padilla have moved this request to the Federal appropriations committee. Further information on whether this request receives funding will be available in late 2023. Prior Updates: As discussed with the City Council at the 1/31/2023 Budget Study Session, staff will continue to explore grant opportunities to install additional solar panels on City facilities. However, staff will only proceed with further development if this grant funding is identified so work (other than reviewing grant oportunities) is on hold at this time. Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting; Discussed at the May 10 budget meeting and approved funding of \$25,000 in the 2022-23 budget. Discussed at 1/31/2023 Budget Study Session, Council directed staff to seek grant funding to move this item forward.	
25	Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas	Chua	4/5/2022		Police, Economic Development	Public Safety	November 2023 update: The City has seen a reduction of auto burglaries in City of Milpitas shopping centers. Police will continue to collaborate with those shopping centers and business owners that are receptive and will continue to conduct proactive patrols of shopping centers, and will continue to work with regional law enforcement partners by sharing information and working together to identify and arrest criminals affecting our retail sites. June 2023 update: Security measures can be mandated for new or reneaving development projects but cannot be mandated for existing businesses. The Police Department has taken action to partner with existing businesses, including McCarthy Ranch and the shopping center at Barber Lane with regard to educaton and deterance, including placement of signage and cameras. Prior updates: CAO conducting legal review of policies requiring businesses to hire security/install cameras . Item will be brought forward as part of the next City Council additional workplan items prioritization in August/September	Additional Staff Resources and Funding Needed

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
26	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022		Recreation & Community Services	Community Wellness & Open Space	November 2023 update: City staff have performed preliminary evaluations of the Sal Cracolice and Milpitas Community Center Facilities. Based on these preliminary evaluations, significant challenges would likely deter the improvements required to become a licensed childcare facility. However, as a next step, staff will be reaching out to a non profit partner and/or the Santa Clara County Office of Education to receive a third party opinion on staff's preliminary evaluation. June 2023 update: Staff are currently working on this request, identifying the improvements to the Sal Cracolice Recreation Facility that would be required for a licensed childcare provider to operate in the building. Prior updates: No additional funds required to complete the internal review. Internal review can be done by late 2023. Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.	
27	Have a picture of Albert Vogel Sr. put up in the Senior Center & Include Maria Lemire on the Mural in front of the Senior Center	Montano	10/19/2021 & 8/17/2021		Recreation & Community Services	Community Wellness & Open Space	November 2023 update: At this time, staff is proceeding with the original city council approved names - Maria Lemery and Albert Vogel - to add to the mural. Additional names would require City Council direction. June 2023 update: The approved CC request included to add Maria Lemery and Albert Vogel to the Mural at the Senior Center. Staff has spoken to the artist and confirmed that additional images would not fit with the existing piece. However, due to the location of the current mural, additional mural panels featuring additional people could be added to the senior center entry way. Staff received interest from Mayor Montano to add Joanne Souza to this request. Prior updates: No additional funding needed. Need final names from City Council. . Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.	
28	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022		Recreation & Community Services	Community Wellness & Open Space	November 2023: Staff will reach out to the family in Fall to start the process to identify the location and plaque wording. June 2023 update: This request was approved as part of the FY23-24 Budget. Staff will begin working with the family in Fall 2023.	
29	Present Quarterly or Monthly crime statistics on the Homekey Project	Chua	6/7/2022		Housing	Neighborhoods & Housing	November 2023 update: In September 2023, the the City and project partners began a monthly stakeholder meeting on this topic. Prior update: Next presentation is scheduled for June 20, 2023 City Council meeting. Quarterly reporting started in August 2022.	
30	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	4/6/2021		Economic Development	Economic Development & Job Growth	November 2023 update: See update to prior item titled "City Manager to look into implementing a workshop for small businesses on the bidding process for projects in the city." Prior updates: See update to prior item titled "City Manager to look into implementing a workshop for small businesses on the bidding process for projects in the city." At the 8/9/2021 Council meeting, Council voted that	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
31	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021		Recreation & Community Services	Community Wellness & Open Space	November 2023 update: Staff are proceeding with this project. Next steps are finalizing the license agreement with the Valley Transportation Authority and outreach to potential artists. June 2023 update: Staff was able to meet with and get approval from VTA in May 2023. Staff are currently completing the appropriate permits associated with this project for VTA approval. Monies for this project are available in the Public Art Fund.	
Group 4 – items that have been completed, postponed indefinitely, or withdrawn since last City Council update								
32	Establish State historical designation for the Sunnyside community	Tran	6/7/2022		Recreation & Community Services	Community Wellness & Open Space	November 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program so this item is being deemed as closed. June 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program. Prior updates: Based on staff research, the best way to try for a Historical District Designation is at the National Level. This can be wrapped into the approved CIP for the Historic Resources Plan update or through grant consultant California Consulting. Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.	
33	Staff to provide information on a landmark policy for the City of Milpitas	Tran	3/16/2021		Recreation & Community Services	Community Wellness & Open Space	November 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program so this item is being deemed as closed. June 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program. Prior updates: This is part of the CIP for updating the Historic and Cultural Resources Plan. 8/09/2021 Council voted 5-0 to move this item forward; this item will be included for funding consideration in the development of the FY 2023-27 CIP for assessment of historical and cultural resources and development of landmark policy; The funding for the assessment of historical and cultural resources and development of a landmark policy will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. This project will be scheduled to begin in FY 2022-23.	Item was brought to Council during the the 2023-27 5-Year CIP adoption process, however Council determined not to fund or advance this task.

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
34	Explore the policy for locking mechanisms on shopping carts for large commercial businesses (item recommended to be closed)	Tran	4/19/2022		Bldg. Safety & Housing, Planning, Economic Development	Public Safety	November 2023 update: Given the challenges and potential expenses of requiring existing owners to install locking mechanisms, staff is recommending closing this item and focusing efforts on (1) the City of Milpitas Cart Retrieval Program and (2) requiring new developments to install locking mechanisms. Prior updates: MMC V-13-140 Mandatory Plan to Prevent Cart Removal includes requirement for physical measures to prevent cart removal however V-13-120 provides an exemption for cart owner that agrees to enter into a contract with a City-designated retrieval service. Staff suggestion to Council is to review this exemption and repeal it which would require all cart owners to have physical measures to prevent cart removal. Business outreach was conducted to grocery store operators in Q2 of 2022 to inquire about shopping cart removal and theft. Grocery stores contacted were Ocean Supermarket, Seafood City Supermarket, Chung Chou City, Milpitas Grocery Outlet, and 99 Ranch Market.	
35	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork	Tran	2/1/2022		Public Works	Transportation & Transit	November 2023 update: This item is being recommended to be closed as, at this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed. June 2023 update: At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed. Prior update: At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.	
36	Review of commissioner's ability to release funds (New Item)	Chua	9/5/2023	No	Recreation & Community Services/City Attorney	Governance & Administration	On September 19, 2023, Agenda Item C17, the Mayor and City Council approved a change to the Workplan for the Arts Commission. With this change, the authority to approve Milpitas Arts and Culture In-Kind Grants is no longer delegated to the Arts Commission. The City Council will now be the final approval for this grant program.	
37	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	4/5/2022		Police	Public Safety	November 2023 update: This item is completed. In August 2023, the City of Milpitas transitioned management of the crossing guard program to ACMS. The intersection of McCandless and Montague Expressway was included in the list of sites to be staffed as recommended by Council and the November 2022 Traffic Survey. June 2023 update: Program is transitioning to a contract service. This location was recommended for a guard placement in the 11/2022 traffic survey. We will work with the contract service to ensure a guard is placed at this location. Prior updates: Info Memos were sent to the City Council on 6/13/2022 and	
38	Info memo on lessons learned from Maui Fire (New Item)	Chua	8/15/2023	No	Fire	Public Safety	On September 5, 2023, the Fire Department issued an informational memorandum on this topic.	
39	Add larger electronic outdoor sign at Milpitas Library	Montano	2/7/2023	Yes	Engineering	Community Wellness & Open Space	postponed indefinitely at 6/20/2023 city council meeting as it was not prioritized	

Attachement 1
List of Councilmember Agenda Item Requests

No.	Topic	Requested By	Date Requested	Requires more than 4 hours of additional staff time	Department / Office	Council Priority Area(s)	Status	Additional Resources/Funding Needed or Deferral of Council Approved Programs
40	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	2/16/2021	Yes	Economic Development; Finance	Governance & Administration	November 2023 update: The City Attorney's Office has provided the City Council with a confidential memorandum regarding potential legal issue and implementation of food delivery cap. At the June 2023 City Council prioritization hearing, staff requested that further direction be provided to hire a consultant if this item is to continue to be evaluated. There was no specific direction provided to continue this work at the June 2023 City Council hearing.	
41	Request for the City to make the temporary third-party food delivery fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	Yes	Economic Development, Finance, City Attorney	Governance & Administration	November 2023 update: The City Attorney's Office has provided the City Council with a confidential memorandum regarding potential legal issue and implementation of food delivery cap. At the June 2023 City Council prioritization hearing, staff requested that further direction be provided to hire a consultant if this item is to continue to be evaluated. There was no specific direction provided to continue this work at the June 2023 City Council hearing.	
42	Identify a month and day to celebrate an International Cultural Festival on Main Street.	Lien	2/7/2023	Yes	Recreation & Community Services	Community Wellness & Open Space	postponed indefinitely at 6/20/2023 city council meeting as it was not prioritized	
43	Navigation Center	Montano	2/28/2023	Yes	Housing	Neighborhoods & Housing	postponed indefinitely at 6/20/2023 city council meeting as it was not prioritized	
44	Appraise City owned parcels 2 & 3 on Main Street	Montano	4/18/2023	Yes	Economic Development	Governance & Administration	postponed indefinitely at 6/20/2023 city council meeting as it was not prioritized	

Attachment 2 – City Council Referral #01 Charter City Evaluation

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:
Ordinances and Policies, CC01	Charter City Evaluation	Councilmember Anthony Phan
Lead Department/Office	Supporting Department(s)/Office(s)	
City Manager's Office	City Attorney's Office	
Council Priority Areas	Estimated Completion Date	Estimated Cost
Governance & Administration	TBD (1 year from start)	\$40,000 (initial outreach)
		Funding Needed
		\$40,000 (initial outreach)
Description of Required Work Effort		
In 2001, the City of Milpitas completed a Citizen Task Force led effort to evaluate becoming a Charter City. In order to evaluate the potential of becoming a Charter City, staff suggests that a similar process be undertaken. This would include a three phased approach including (1) organize; (2) gather information and (3) develop recommendations. Staff anticipates that the entire process would take approximately 1 year from the start date and take approximately 20% of a management level staff member's time.		
Status Update as of November 2023		
No work has been completed on this at this time, however, reference information is provided in the "other considerations" section of this report with information on the November 6, 2001 City Council meeting where this was discussed.		
Council Clarification/Further Direction Requested		
If the City Council elects to proceed with this City Council priority item, any feedback that the City Council may provide regarding the primary reasons for wanting to investigate becoming a Charter City would be beneficial to staff as further research is performed on this topic.		
Other Considerations		
Past City of Milpitas Work Effort The City of Milpitas formed a Charter City Task Force of 11 residents in the year 2000 to evaluate becoming a Charter City. The Task Force process took 17 months to complete. On November 6, 2001 the Charter City Task Force reported out to the Mayor and City Council. The Task Force recommended that the City should not pursue becoming a Charter City and this recommendation was accepted by the City Council. A copy of the Task Force's final report as well as the minutes from the November 6, 2001 City Council meeting are included as attachments to this update. Additional references		

Attachment 2 – City Council Referral #01 Charter City Evaluation

(requires more than 4 hours of staff time)

The League of California Cities website indicates that there are currently 121 Charter Cities in the State of California as listed here: <https://www.cacities.org/UploadedFiles/LeagueInternet/6b/6bbb4ee3-88f9-4d8f-93ad-0075a7b486c4.pdf>

The following weblink provides a resource from the California League of Cities on comparing a General Law City to a Charter City. It should be noted that the date that this document was created is unclear so it may not reflect current laws, however it provides a general overview:

<https://www.cacities.org/UploadedFiles/LeagueInternet/7b/7b4af40b-c2d6-4584-8fe5-ffe97f2d23ec.pdf>

Attachment 2 - CC01 (continued)

MEMORANDUM

Date: November 6, 2001

To: Honorable Mayor Manayan, Vice Mayor Livengood, and Council
Members Dixon, Esteves, and Lawson

From: Milpitas Charter City Task Force

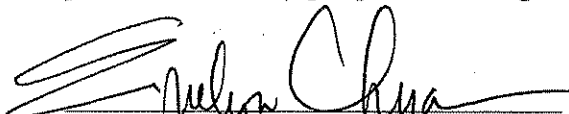
Subject: Final report and recommendation

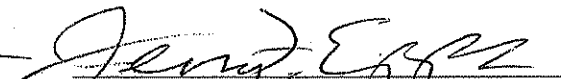
First, we thank you for giving us the honor of serving Milpitas on this important task force. During the past seventeen months each of us has devoted our time and talents to the goal of determining the appropriate direction the city should pursue. We have diligently studied all aspects of the proposal to best of our ability, and now officially present to you our recommendation.

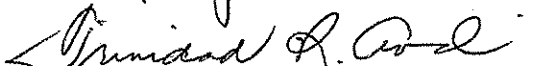
At our regular monthly meeting held on September 10, 2001 we cast our final vote on the matter and the result is:

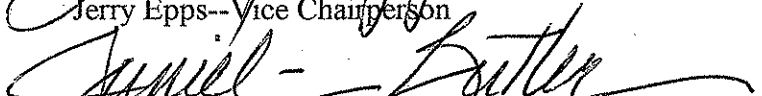
Against Charter City for Milpitas....9 votes
For Charter City for Milpitas.....2 votes

Therefore, The recommendation of this Task Force is that Milpitas should not proceed with any proposal leading to Charter City status.

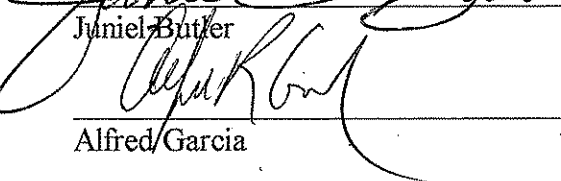

Evelyn Chua--Chairperson


Jerry Epps--Vice Chairperson


Trinidad Aolin

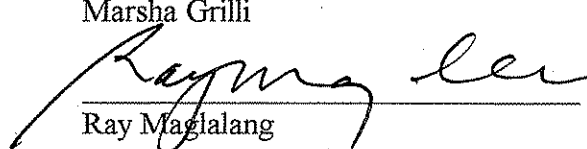

Juniel Butler

Dr. Alex Galang

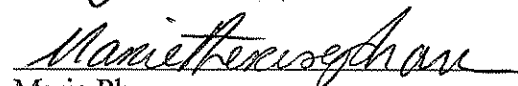

Alfred Garcia

Marsha Grilli

Ronald Lind


Ray Maglalat

Sudhir Mandal


Marie Pham

**MILPITAS CHARTER CITY TASK FORCE
REPORT TO THE CITY COUNCIL**

November 6, 2001

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INTRODUCTION

At the behest of the Milpitas City Council, the Charter City Task Force consisting of eleven duly-appointed Milpitas citizens convened its first meeting on June 15, 2000, to research, study, and analyze the advantages and disadvantages to the citizens of Milpitas of becoming a Charter City and to recommend a course of action to the City Council.

To give focus and direction to our work, and to establish a measurement criterion, our first act was to create and adopt the following mission statement:

"The mission of the Milpitas Charter City Task Force is to research, analyze, and enumerate the advantages and disadvantages of General Law and Charter City forms of government through a combination of work plan development, research, public input, and group discussion and to determine whether there are compelling reasons to alter the City's form of government. Upon the conclusion of its research and deliberation, the Task Force will deliver to the Milpitas City Council a comprehensive report detailing conclusions and specific recommendations."

To effectively utilize our time and resources and to ensure a fair evaluation of all issues, we developed a formal three-phase work plan to organize the task, to gather information, and to reach conclusions and render our recommendation. Throughout the course of our work, we have been ably supported in research, legal, and clerical areas by City Manager Tom Wilson, City Attorney Steven Mattas, Assistant City Attorney John Bakker, and City Clerk Gail Blalock. We thank them for this generous assistance. This is our report.

METHODOLOGY--TASK FORCE WORK PLAN

Phase 1--Organize:

After the initial process of writing our mission statement, we set specific responsibilities and goals for the Task Force; created a schedule of events; defined explicit investigation areas, formats, and methods to pursue; developed a framework for information needs; and determined appropriate questions and issues to address.

Phase 2--Gather Information:

We began this crucial phase by reviewing and discussing information from state publications, specific city charters, and other sources pertaining to the governance of California cities and generally educating ourselves on the differences between the two. Further information and guidance on policy and political provisions under each governance system were provided by speakers Terry Christiansen of the Political Science Department at San Jose State University and Bob Brownstein, political consultant from San Jose.

During this phase our major effort encompassed research on the background and experience of other California General Law and Charter Cities. Two subcommittees were formed and assigned specific cities to research. One team focused on Mountain View and Sunnyvale; the second team focused on San Ramon and Fremont. For this research we used a standardized questionnaire to consult with council members, city officials, and knowledgeable citizens of these cities, either by personal interview or by mail. In addition, a third subcommittee was appointed to interview

Milpitas' Council Members. At the conclusion of our investigations, written subcommittee reports were received and discussed by all members of the Task Force.

An important element in our work during this phase was to gauge the sentiment of Milpitas citizens concerning the issues. To this end, we conducted a public Town Hall meeting on June 20, 2001.

Phase 3--Develop Recommendation:

During this final phase of our work, we analyzed and discussed (in a lively manner) all the information and findings discovered during the data-gathering phase. This was accomplished by examining specific aspects of a 22-point comparison between General Law and Charter cities. These comparisons are detailed below, along with a Task Force evaluation, as to their importance regarding whether or not to move toward Charter City status.

COMPARISON BETWEEN GENERAL LAW AND CHARTER LAW CITIES

1. City Council/City Manager form of government

General Law: Governed by a part-time City Council and administered by a professional administrator (City Manager)

Charter Law: Governed in the manner determined by the charter.

Task Force conclusion: Most California cities retain the City Council/City Manager form of government. No advantage/disadvantage.

2. City Council Qualifications

General Law: Must be registered voter, 18 years old, resident of city for 29 days as set by City Council Qualifications, Govt Code Section 36502.

Charter Law: City may establish criteria, within limitations. Cannot be discriminatory or violate State Constitution.

Task Force conclusion: No advantage/disadvantage.

3. Removal from Office

General Law: Vacancies and termination of office procedures established by Removal from Office, Govt. Code Section 1770, 36502 and 36514

Charter Law: May establish own criteria for vacancies and termination of office procedures.

Task Force conclusion: No advantage/disadvantage.

4. Compensation

General Law: Salary ceiling set by city population City Council Compensation, Govt Code Section 36516 (a). Voters may elect to approve higher salaries. Council Members reimbursed for actual and necessary expenses incurred in performance of duties. Same benefits provided as are available to city employees.

Charter Law: Salaries, expense reimbursement, and benefits set by charter. Prohibition against gifts of public funds is inapplicable.

Task Force conclusion: No advantage/disadvantage.

5. Elected Mayor and City Council

General Law: Mayor elected by City Council OR by vote of the people (Milpitas). Council Members elected by voters. Mayor pro tem selected by City Council.

Charter Law: Rules for election of Mayor and Council Members set by charter provisions.

Task Force conclusion: Comments on this point are presented under the "Summary" section.

6. Term Limitations

General Law: Can impose term limits.

Charter Law: Fixes term limits via charter provisions.

Task Force conclusion: No advantage/disadvantage.

7. Exercise of Legislative Authority

General Law: Ordinances may not be passed within five days of introduction unless it is an urgency ordinance. May only be passed at a regular meeting; must be read in full at time of introduction or passage. All ordinances that are not urgent require three affirmative votes.

Charter Law: May establish method for enactment of local ordinances by charter provisions.

Task Force conclusion: No advantage/disadvantage.

8. Resolutions

General Law: May establish rules regarding the procedure to follow in adopting, amending, or repealing resolutions.

Charter Law: May provide for adoption of resolutions in charter.

Task Force conclusion: No advantage/disadvantage.

9. Quorum and Voting Requirements

General Law: A majority of the City Council constitutes a quorum for transaction of business.

Charter Law: Charter provision may dictate quorum.

Task Force conclusion: No advantage/disadvantage.

10. Rules of Procedure and Decorum

General Law: Brown Act and Conflict of Interest laws applicable.

Charter Law: Brown Act applicable. Charter may have rules related to ethics, conflicts, campaign financing, and incompatibility of office.

Task Force conclusion: No advantage/disadvantage.

11. Personnel Matters

General Law: Civil Service System, Govt. Code Section 45000 et seq. and Meyers-Milias-Brown Act, Govt. Code Section 3500 applicable; residence requirements for public employees.

Charter Law: Meyers-Milias-Brown Act, Govt. Section 3500 applicable. Charter may

establish standards, requirements, and procedures, including compensation terms and conditions of employment, for hiring personnel.

Task Force conclusion: No advantage/disadvantage.

12. Contracting Services

General Law: Have authority to enter into contracts to carry out necessary functions (such as hiring consultants) including functions expressly granted and those implied by necessity.

Charter Law: Contracts must be consistent with charter provisions; may designate mode and method of contracting for services of public works.

Task Force conclusion: No advantage/disadvantage.

13. Elections

General Law: Municipal elections conducted in accordance with California Elections Code Section 12328.

Charter City: Charter Cities can establish own election dates, rules, and procedures.

Task Force conclusion: No advantage/disadvantage.

14. Methods of Election

General Law: Most cities hold at-large elections whereby voters may vote for any candidate on the ballot. May choose to have district elections.

Charter Law: May hold at-large or district elections, in accordance with charter provisions.

Task Force conclusion: No advantage/disadvantage.

15. Public Funds for Candidates in Municipal Elections

General Law: Prohibited from expending public funds to finance campaigns for public office.

Charter Law: Ban against expending public funds to seek elective office does not apply. Public financing of any election campaign is legal.

Task Force conclusion: No advantage/disadvantage.

16. Public Contracts

General Law: Must conduct competitive bidding for public works contracts over \$5,000. Such contracts must be awarded to the lowest responsible bidder.

Charter Law: May not be required to comply with competitive bidding statutes if charter permits. Could negotiate contracts based on other factors.

Task Force conclusion: Discussion and research revealed that most major municipal building contracts for both General Law and Charter Cities are negotiated as design-bid-build contracts.

17. Payment of Prevailing Wages

General Law: Prevailing wage must be paid on public works projects of \$25,000 or less, or \$15,000 or less when work is demolition, repair, alteration or maintenance.

Charter Law: Prevailing wage law inapplicable as long as project is in realm of municipal affairs and not projects of state concern or funded by state or federal grants.

Task Force conclusion: No advantage/disadvantage. State legislation may now apply to both types of cities.

18. Finance and Taxing Power--Power to Raise Local Revenue

General Law & Charter Law: Both types of cities basically have the same taxing and assessment powers subject to Proposition 218.

Task Force conclusion: No advantage/disadvantage.

19. Zoning

General Law: Zoning ordinances must be consistent with the General Plan.

Charter Law: Not subject to consistency requirement. However, inconsistency with General Plan gives rise to presumption that zoning ordinance does not reasonably relate to the community's general welfare.

Task Force conclusion: No advantage/disadvantage.

20. Streets and Sidewalks

General Law and Charter Law: The State of California has pre-empted the entire field of traffic control for all cities.

Task Force conclusion: No advantage/disadvantage.

21. Nuisance Abatement Cost Recovery

General Law: May impose fines, penalties, and forfeitures not exceeding \$1,000.

Charter Law: May enact ordinance providing for penalties; maximum set by charter.

Task Force conclusion: No advantage/disadvantage.

22. Public Utilities/Franchises

General Law: Municipalities empowered to establish, purchase, and operate public works and to furnish inhabitants with electrical power.

Charter Law: May own and operate utilities, water, sewer, and energy pursuant to terms of charter.

Task Force conclusion: No advantage/disadvantage. Although some California cities have previously established utility companies, as a matter of practicality, it is now exceedingly difficult for any city to do so.

SUMMARY OF THE COMPARISON

The Task Force identified one point that required significant discussion by reason of differing views among Task Force members as to its suitability, desirability, and degree of importance to the citizens of Milpitas. The discussion and comments on this subject are summarized below.

Point #5--Elected Mayor and City Council (specifically the number of Council Members)

Pro

Task Force members supporting the position that it would be beneficial for Milpitas to move to a seven-member Council felt that this was a significant issue. They stated that by having two additional Council Members, the work would be spread around more and Council Members might be able to participate in more events. They were very concerned about regional councils and the ability of the Mayor to be represented on them. In addition to just spreading the work equitably, more representation is needed. We should think of the future.

Con

Although previous discussion had touched on having representation from different groups on the Council, having districts or increasing the Council to seven would not insure more ethnic groups are represented. Increasing the number of seats without districting would not work as a practical matter to accomplish this goal. Any advantage to the taxpayer is doubtful. It is questionable that Milpitas is at the level needed to change; most comparable cities are content with five-member councils. The Council-to-resident ratio in Milpitas is low. If the Council feels overworked, nothing precludes them from hiring aides.

Neutral

One Task Force member expressed mixed feelings because the group's job is to focus on the advantages of going either way—Charter or General Law. The argument could be made that the City would have more flexibility with a charter because the City Council could expand without district elections.

OTHER CONSIDERATIONS

Town Hall Meeting—Milpitas Public Response

Our work plan also included gathering input from the citizens of Milpitas. Accordingly, we planned and held a Town Hall Meeting on June 20, 2001. Although citizen attendance and participation were not great, we did get valuable feedback. Most comments from the public expressed a lack of enthusiasm for the Charter City idea. The notes on the meeting, recorded by the City Clerk, are appended. We strongly recommend that each City Council Member read these notes to gauge the public's sentiment on this issue.

Subcommittee Research Results

During the course of our research, subcommittee members met with officials of several Bay Area cities. Reports on this research are appended. In the interest of brevity, however, general comments from the officials interviewed are given here.

FREMONT—General Statements

Council Member Zlatnik

- It is very difficult to get the public aroused and interested on issues so as to make sound and wise decisions on writing or amending a charter.
- Political/business interest groups could be a big problem.
- Not becoming a Charter City has had little effect on the well being of Fremont or its participation in regional matters.
- State has greatly reduced differences between Charter and General cities until now there is not much difference. We should work to get the State law changed.

Council Member Wasserman

- Having a strong City Manager is preferable because it is more efficient and much less subject to corruption.
- In many ways a charter can be more restrictive than General Law.
- There are now no strong reasons to become a Charter City. The Fremont City Council was split on the Charter City issue. If the Milpitas City Council does not support a charter drive 100%, my advice is not to attempt it.

City Manager Jan Perkins (helped write proposed charter)

- Differences between General Law and Charter City are much narrower than some years ago and are limited to (a) determining the size of the Council without district elections, (b) ability to use city work crews to perform work above the \$5,000 limit, and (c) ability to exercise design-build options.
- In creating a charter “less if more” in terms of provisions. A complex charter can create unintended bureaucracy and inflexibility for the city.

City Attorney Harvey Levine (helped write proposed charter)

- A charter is a document of limitations.
- Differences between charter and non-charter cities are not very great.

Newspaper Writer Alex Rosenberg

- Split City Council and lack of public interest/support defeated the measure.

SAN RAMON—General Statements

City Manager Herb Moniz

- San Ramon became a Charter City two years ago due to the push of former Mayor Byron Athan. Council voted for it unanimously because Athan was persuasive.
- Have not encountered many negatives or positives to being a Charter City.
- Difficult to get citizens interested; they did not understand.

- Home rule—Most “local” issues are now considered by courts to be “state” issues. Most cities lose in court when charter issues are contested.

MILPITAS—General Statements

Mayor Manayan

- Charter City can enhance the negotiating power for public contracts.
- Increasing the number of Council Members can represent the different segments of the community with a option of assigned Council seats.
- A four-year term for Mayor will provide continuity of focus.
- Districting is not appropriate for the City due to its size.
- See Council position as a community service; there is no need for salary increase.

Council Member Esteves

- Open to increasing the number of Council Members.
- In favor of a four-year term for Mayor.
- Does not favor districting.
- Increase in salary/compensation is not an issue.

Council Member Lawson

- No difference between Charter City and General Law in terms of negotiating public contracts.
- Open to the increase in the number of Council Members provided there are compelling reasons.
- In favor of four-year term for Mayor.
- May consider districting if there is an increase in the population.
- Being in the city government is not a place to make money. Consider job as community service.

Vice Mayor Livengood

- In favor of increasing number of Council seats.
- In favor of four-year term for Mayor.
- Population too small for districting.
- Favors increasing Council Members salary to attract quality people to serve that otherwise might be turned off due to financial constraints.

Council Member Dixon

- Finds no difference on public contracts between Charter City and General Law.
- Open to increasing the number of Council seats but feels the current City Council represents the community.
- Agrees to the current term of the Mayor but is open to a four-year term.
- Does not see any problem with the City Council’s compensation/salary.

Milpitas Post

- “It ain’t broke, don’t fix it.”
- Charter City benefits are non-existent.
- Charter City opens up to more lawsuits.
- Increasing the number of Council seats opens up to political manipulation.
- Political interest groups can influence the selection of the added Council seats.
- Close associates will likely be urged to run for office.
- Voters are apathetic to Charter City.
- Against four-year term. It is difficult to get rid of a Mayor who is not performing.

RECOMMENDATIONS

At our regular monthly meeting held on September 10, 2001, we cast our final vote on the matter and the result was:

Against Charter City for Milpitas.....	9 votes
For Charter City for Milpitas.....	2 votes

Majority Report

Overview

In fulfilling the responsibility to recommend the future governmental path for Milpitas, the Charter City Task Force examined all aspects of the question from the viewpoint of what is best for our citizens. Our goal was to discover any substantive, compelling reason for Milpitas to alter its form of government. During the course of our work, which encompassed interviews, research, and public input, several recurring themes surfaced.

- Why are we considering going to a Charter City?
- Where is the public support for the idea?
- What’s broken? What is wrong with the way Milpitas runs now?
- Is there a real advantage in changing to a Charter City?
- How much does it cost?
- Public apathy will be a real concern.

Discussion

The Charter City issue was first proposed at a City Council meeting in 1999 and received a lukewarm reception. In May of 2000, the Council decided by a split vote to appoint this Task Force to study the issue. Thus, City Council interest, rather than public interest, constituted the initial driving force in promoting the issue.

In interviews with citizens and officials in other cities, we repeatedly heard comments regarding lack of public interest and division within the City Council as cautionary signposts. These cautions, as they reflect the Milpitas situation, received careful consideration and weight by the Task Force. Absence of public support at the Town Hall meeting, plus the fact that citizens’ comments were overwhelmingly against the idea, were important factors in the Majority’s decision.

During the course of our work, numerous possible Charter City advantages were put forth: flexibility, local control, broader representation, contract savings, among others. Historically, advantages did exist. But over time, State laws changed with the result that these differences basically disappeared.

When initially drafting a charter, a city does have flexibility in structuring its government to suit its citizenry and current conditions. However, as is exemplified by many obsolete provisions in city charters throughout the state, once a charter is adopted, it can be difficult to obtain voter approval to change it in the future. A provision that fits circumstances in one time or era may later prove to be inappropriate, cumbersome, or worse. This is not real flexibility. Further, even though a charter as originally written may carefully limit political powers, in time they frequently are amended to become more complex and more politically oriented. In establishing the rules of governance, California statutes allow General Law cities to exercise the full range of local control that *any* city enjoys, emphasizing a business-like orientation toward city management.

Today, this business-like approach seems more appropriate than ever. When the size of the budgets for small cities such as Milpitas were unimaginable just a few years ago, it seems wise to manage the dollars well. When every citizen has greater and increasing personal commitments, more demands on their time, more involvement in family and work, and less time to devote to public issues, a professional, business-like approach rather than a politically-oriented system is crucial to conducting city affairs effectively. For larger cities such as San Jose, Los Angeles, or San Francisco, a politically active system may serve well. But for Milpitas, the balance we have seems appropriate for now and for the foreseeable future.

General Law cities are structured so that elected officials are charged with establishing policies and direction for the city. The Task Force majority feels that this structure affords each of our elected officials great opportunity and room to express their leadership abilities and their vision for Milpitas, just as the current Council has. True leadership and ideas are not bound either by a General Law *or* a Charter City structure. Within this framework there is room for every segment of our population to be represented.

Conclusion

After 17 months spent studying, researching, and discussing the Charter City question, the Task Force as a whole agreed that no present advantage (including increasing the number of Council Members) was discovered that reached a level of significance compelling enough to warrant altering Milpitas' form of government. In the majority view, upon examination all points that came under discussion faded. As a consequence, we voted against recommending pursuit of Charter City status.

A second and important consideration for the majority was lack of public involvement and support. We interpret this lack of support and the negative input we received not as distrust of local politicians but as an expression of satisfaction with our present governmental form. We recognize that citizens have limited time to devote to political affairs and feel that they are less interested in political activism and more interested in political stability.

A third point we evaluated is the fact that Milpitas is a small city, and it is advisable that we continue to have part-time elected officials with a City Manager/City Council form of government. However, this does not mean that we do not value, and even demand, leadership from our officials. We do expect them to set judicious directions and policies that benefit *all* Milpitas residents, policies that lead to a prosperous future with due regard for every citizen, our environment, and our general welfare.

Minority Report

The members of the Charter City Task Force who voted in favor of recommending that Milpitas change its form of government from General Law to a Charter form wish to thank the majority for allowing a minority report to be added to the report for the Milpitas City Council. This sense of fair play characterized the entire effort by the Task Force.

Overview

While the major arguments against recommending a Charter City form were based on the following factors, the overall perspective was there was no compelling reason to change. The minority vote agrees there is no compelling reason. However, the following perspectives caused us to vote for a Charter City recommendation:

- “If it ain’t broke, there is no need to fix it”—The minority group’s concern was that this was a backward-looking perspective, not a forward-looking perspective to be prepared to better meet future challenges and issues.
- “No advantage to Charter City”—The minority group’s concern was that General Law provided a basis for charter to improve upon and better reflect our city, our community, and our values.
- “Public distrust of local elected officials”—interesting public input that showed a greater trust in elected officials from other parts of California rather than their own officials.

Discussion

Within the context of Milpitas’ geographic location, the pressure of balancing suburban, traffic, industrial, and community issues, and the reality of rapidly changing demographics, the minority group believes that a Charter form of government provides the opportunity to select the best aspects of General Law with the flexibility of self-rule.

- While there is nothing “broken” in Milpitas and the current form of government has served admirably, the need to look to the future necessitates the preparation of a charter for presentation to the voters. Issues of City Council size, signing authority for the City Manager, apportionment of responsibilities, and organizational structure can be handled by General Law; they can also be handled by Charter and perhaps in a manner better suited to Milpitas’ requirements. In addition, future regional and local matters may be better handled in the best interests of Milpitas using the mandate of the voters. Finally, voters can determine what is important to them and change the Charter to meet those concerns. While

both it is good and bad to have this flexibility, the opportunity to have a choice is of value to a community.

- In the past, there was a significant difference between a General Law city and the powers available to a Charter City. That there is no advantage to a charter form over General Law is accurate, because the State Legislature has passed numerous laws that increase the powers and capabilities of a General Law city. However, the advantage of one form over another begs the points of flexibility, of self-rule, and of community values. Milpitas has the opportunity to write a charter that selects the best of General Law, ties itself to General Law developments passed by the legislature, and fits the needs of the community. The charter should be crafted carefully with appropriate limits on powers and taxation and with flexibility on governing Milpitas. While the opportunity to have seven city council members is of interest to many, the “cost” of having seven members has been inaccurately discussed. If the total compensation package for a part time Council Member or Mayor is about \$25,000/year, adding two more Council Members will not materially affect the budget.
- Finally, local mistrust of politicians was apparent from public comment about recommending a charter to the voters. It was interesting to hear that the public commentary has more faith in legislative representatives from Southern California, rural, and agricultural areas than local politicians and leaders. It may be that Milpitas needs leadership as well as professional management. A charter could provide the framework to allow leadership and management. It does not appear that leadership can be provided from a General Law form of government. General Law is optimized to provide professional management of the community. While valuable to have professional management, it is also necessary to have leadership. A charter can better support the best of leadership and management. In addition, issues of costs of putting a charter on a ballot were continually raised, yet the real costs of voting for a charter in a general election was estimated to be less than \$10,000. The lack of informed public input detracted from the overall assessment of a charter.

Conclusion

The Task Force members who voted to recommend a charter came to that conclusion with a view toward the future. We believe that a Charter City can better meet the challenges of the future while adhering to the advantages of a General Law city. We believe that the voters should have more choice in their local government and that the choice should be based on community values.

A FINAL WORD

Upon the completion of our work at the October 8, 2001, meeting, the entire Task Force took a few moments to reflect on and voice its thoughts concerning the experience. A few moments to remind ourselves that we, ordinary citizens, had just performed a simple civic duty that is an impossible dream for most people of the world. Around our table sat representatives from diverse backgrounds, yet we worked in harmony and with the goal of “What is best for all.” To us this represents the true and enduring essence of the American spirit. Thank you, Council Members and citizens of Milpitas for giving us this uniquely American opportunity to serve.

Summary Notes
Charter City Task Force
TOWN HALL MEETING
June 20, 2001, 7:00 p.m.
Milpitas Unified School District
Board Meeting Room

Attendance

Task Force Members Present: Juniel-Butler, Evelyn Chua, Jerry Epps, Al Garcia, Sudhir Mandal, Marie Pham.

Staff Present: City Manager Tom Wilson, City Attorney Steve Mattas, and City Clerk Gail Blalock.

Call to Order

Chair Evelyn Chua called the Town Hall meeting to order at 7:05 p.m.

Pledge of Allegiance

Al Garcia led the audience and Task Force in the Pledge of Allegiance.

Introductions

Chair Chua introduced the Task Force members present and acknowledged the presence in the audience of Councilmember Trish Dixon, School Board President Althea Polanski, and Bicycle Transportation Advisory Committee Member Rob Means.

Chair Chua reviewed the agenda for the evening and along with Vice Chair Epps presented a brief overview of the purpose of the Town Hall meeting, the purpose and work of the Charter City Task Force, general comments on California Cities, General Law Cities, and Charter Cities, and some of the differences.

Public Comments

Chair Chua invited members of the audience to address the group.

Richard Ruth, 1673 Quail Drive, said Milpitas was incorporated in January 1954 under General Law status, since then the City had functioned quite well, built schools and residential neighborhoods, has done all the wonderful things we see, things have worked very well, his questions was what is it that the City council wants to do under Charter law government that they cannot do under General Law? If somebody could convince him that Charter Law was better, he could go along with it but currently he thought General Law city governance was a pretty good system for the citizens of the City of Milpitas.

Art Swanson, 311 Carnegie, said he wondered if the Council and people would deliver some of these thoughts to us as soon as possible, how they view their ideas about it, we want to help them but we want to know why this question came up; years ago he wanted a Charter City but was told by the Mayor and developer for the City it would cost more and at that time, they did not have the money; right now it seems we have the money but in the meantime we have filled up this town; we want to know why they want it; will it be a full time Council; and questioned what will they do eight hours a day.

Rob Means, 1421 Yellowstone Avenue, asked the City Attorney if there was some more flexibility in dealing with our future, which he expected will be rather exciting; one of the biggest things we have to deal with is the influence of money on politics which generally comes from large corporations and wealthy individuals. Mr. Means asked if there was a way of cutting them out of the pie – not allowing any corporate contributions to local political races; is it possible for a Charter City to say we will make up the rules about how we finance elections in our city? Mr. Means said his question was can we do something like that under a General Law arrangement or can we do it under Charter Law?

City Attorney Steve Mattas responded that regarding the issue of campaign financing regulations, General Law cities have specific prohibitions in terms of what they can do, i.e., a General Law cities can't have publicly financed campaigns but Charter Cities can have that option; the real issue of campaign financing in California and across the United States was really handled extensively at the State level (and with Proposition 208) and was impacted by Federal Constitutional Law and the Supreme Court's interpretation with regard to the ability to control free speech.

Isaac Hughes said he had a problem with Charter Cities and the statement on page 3 of the handout regarding police powers; said he was taught to ask questions and asked what rights do you give up when you go to the polls; currently he saw a mess in the City; commented that Mr. Mattas' contract was signed by the Police Chief (who was Acting City Manager at the time); found that the average of donations over \$100 to all the Council exceeds 85% from sources out of town; and commented on the City Hall project, conflict of interest, the restraining order to keep him out of public buildings and the \$16,000 he spent defending himself. Mr. Hughes said if you really want to know what these people do to people who speak out, he could show them; the police have a lot of power; expressed concern that Mr. Mattas' power continues to grow in the area of prosecuting and some of the privileges the DA has; he was not happy with the City Hall project and its budget; he thought all the Council should have set office hours one day a week to see people; and he didn't want to see people not voted in to the Legislature who don't have the State legislative experience to take any positions whatsoever to increase any police powers to the City Attorney locally.

Chair Chua acknowledged the presence of Mayor Manayan in the audience and noted Councilmember Esteves was present for awhile.

Elaine Worthington said she was a 30 year resident, this was her first meeting, and what she was hearing sounded like the cart was being put before the horse; with that in mind and not being exactly sure what will happen with a Charter City, she would like to have that information first and was hopeful the next meeting would be more informative.

City Manager Tom Wilson briefly reviewed the charge given to the Task Force, the work it has done in evaluating cities in the area, their purpose in seeking public input, and the fact that the Task Force hadn't formed any opinion yet.

Ms. Worthington said she would like to know why becoming a Charter City would be a good thing for the City of Milpitas. Mr. Wilson responded that was in the charge to the Task Force and what they were trying to explore. Ms. Worthington said she would like to know what they have found out. Mr. Wilson responded the Task Force was still compiling their findings but was coming to the public without forming an opinion to hear the independent input from the citizens about Milpitas. Ms. Worthington asked how could they give input. Mr. Wilson said the Task Force was soliciting input about the operation of the City, to get data based on the knowledge of the community, and this was just a starting point to get the involvement of the local citizens.

Althea Polanski, 2083 Mesa Verde Drive, said she was present as a 25 year resident and not as President of the School Board; and wanted to know if the committee was aware of SB974 (Thorkelson) which would apply the public contract code to Charter Cities. Ms. Polanski further stated she had never been convinced we need a Charter City; she had heard this on-and-off for over two years; Milpitas has been doing well as a General Law City since 1954; she constantly wondered what the push was to put this to a vote of the public; the only benefit she saw was being able to increase the number of elected officials getting in our face and getting paid as full time employees; and there were a lot of things about Charter Cities that scared her. Ms. Polanski said she preferred a Council that provides policy and having professional staff to operate the City. With respect to districts, Ms. Polanski said she wanted everyone on the Council to represent all 62,000 residents and not special groups. Ms. Polanski questioned what it would cost to go to the voters for a special election, who would write the charter, how will you find 62,000 people to agree, how do you change a charter once it is voted in, what if it is not working, and since not a lot of people vote, she could see a small percentage of the people telling us how we will live our lives. Ms. Polanski shared that publicly funded campaigns scared her, giving the Council more

flexibility scared her, of the 475 cities, 105 are Charter and all are large and she questioned what was considered a large city, who are they. Ms. Polanski commented on School District and the fact that some have five, seven, and even nine member boards. Ms. Polanski said she wanted to know what the benefit would be for her as an individual citizen because right now Milpitas is a very safe city with clean streets, good parks, a good Fire Department, traffic is an issue but must be handled regionally, so what is going to change. Ms. Polanski further stated that what she saw was that it would cost money to put it on the ballot, it would provide her with more elected officials to deal with, it could cost as much as \$700,000 to pay salaries and benefits for Councilmembers, and to her it made no sense.

Chair Chua commented that the question who would write the charter, she didn't know because the Task Force was to make a recommendation to the Council; what the Council does was up to them.

City Clerk Gail Blalock commented on the cost of elections reporting that to add a Charter City question to a regularly scheduled Milpitas election would cost up to an additional \$5,000; to hold a special election without the benefit of consolidation would cost approximately \$80,000.

Laura Riffle, 1909 Grand Teton Drive, said one of the issues was that the Task Force wanted feedback from the public; however, sometimes you don't get the amount of people you want because they don't understand the problem; she thought more advertising needed to be done because nobody understood why there is a Charter City issue, enough wasn't explained, so that was why there weren't more people; they don't know the questions to ask so if you want more input, get more information out there.

City Clerk Blalock read into the record written communications received from the following individuals: (1) postcard from Ruth C. Nelson stating she was against becoming a Charter City, was unable to attend the June 20 meeting, and asked to receive any handouts from the meeting or other information; (2) request from Bob McGuire to have his letter to the Milpitas Post May 2000 opposing becoming a Charter City entered into the record; (3) e-mail from D. Grove to the Mayor and Council opposing the proposal to transition the City to a Charter City; and (4) e-mail from Mel Rose opposing being a Charter City.

Heidi Wolfe Reid, 1397 Yosemite Drive, said she attended the Task Force meeting when Professor Terry Christiansen from San Jose State spoke; it was hard to grasp what were the differences because the State Legislature had eliminated a lot of the differences so her question was how much more benefit can be gained by being a Charter City; there had been ongoing discussions about a full time Council and asked if a General Law City could have a full time Council. City Attorney Mattas responded they couldn't be compensated as a full time Council but they could serve full time. Mr. Mattas went on to explain the formula for setting Council salaries in General Law cities and that Charter Cities could compensate according to whatever is put in the charter.

Ed Riffle, 1909 Grand Teton Drive, commented his question might be a rhetorical one regarding contracting but if General Law cities must take the lowest responsible bidder, did that mean Charter Cities (like San Francisco), could go to the highest irresponsible bidder? Mr. Riffle further commented that as part of the Task Force's information gathering, he thought there should be some statistical information collected on elected officials and City employees showing yearly compensation per 1,000 population (which he felt would be an equalizer) and pension information per 1,000 population (citing the San Jose Council voting themselves a pension regardless of the amount of time served). Mr. Riffle said he thought this information should provide a pretty good idea if this would be good for the City of Milpitas.

There were no further public comments.

Adjournment

Chair Chua, on behalf of the entire Task Force, thanked everyone for coming and sharing and invited everyone to attend the Task Force meetings held at the Community Center on the second Monday each month.

The meeting was adjourned at 8:15 p.m.

SUBCOMMITTEE "A" REPORT

SUMMARY OF FREMONT INTERVIEWS

Committee members: Marsha Grilli, Al Garcia, Sudhir Mandal, Jerry Epps

Incorporated: 1956 **Population:** 215,000 (high % blue collar workers)

Average family income: \$70,000 **Area:** 95 sq. miles (4th largest city "area" in Calif.)

Budget: \$100,000,000

People interviewed: Councilmembers Judy Zlatnik, Robert Wasserman; City Manager Jan Perkins; City Attorney Harvey Levine; Newspaper writer Alex Rosenberg

Questionnaire only: Dennis Wolfe, Charter Committee Chair

The city of Fremont directly elects the Mayor and four Councilmembers at large for four-year terms; these are part time jobs. Each can serve for two terms and could run again after being out of office two years. The Mayor receives a monthly salary of \$1650; Council Members \$1,050. \$450 monthly toward medical. Council pay can be raised after normal discussion. Service on the Council can be applied to PERS retirement.

GENERAL STATEMENTS

Councilmember Zlatnik

- It is very difficult to get the public aroused and interested on issues so as to make sound and wise decisions on writing or amending a charter.
- Political/business interest groups could be big problem
- Not becoming a charter city has had little effect on the well being of Fremont or its participation in regional matters.
- State has greatly reduced differences between charter and general cities until now there is not much difference. We should work to get the State law changed.

Council Member Wasserman

- Having a strong City Manager is preferable because it is more efficient and much less subject to corruption.
- In many ways a charter can be more restrictive than general law.
- There are now no strong reasons to become a Charter City. The Fremont City Council was split on the Charter City issue. If the Milpitas City Council does not support a charter drive 100%, my advice is not to attempt it.

City Manager Jan Perkins (helped write proposed charter)

- Differences between General Law and Charter City are much narrower than some years ago and are limited to (a) determining the size of the Council without district elections, (b) ability to use city work crews to perform work above the \$5,000 limit, and (c) ability to exercise design-build options.

- In creating a charter “less is more” in terms of provisions. A complex charter can create unintended bureaucracy and inflexibility for the city.

City Attorney Harvey Levine (helped write proposed charter)

- A charter is a document of limitations
- Differences between Charter and non-charter city are not very great

Newspaper writer Alex Rosenberg

- Split city Council and lack of public interest/support defeated the measure

12--How do you handle public contracts?

For public works contracts, general law is followed; for public expenditures they follow city ordinance. Minority preference applies. Can declare an emergency and award a contract without bidding.

13-What is contract approval level of City Manager?

\$50,000 capital and supplies; \$100,000 for personal services. Limits periodically adjusted. Council wants City Manager to be free to work efficiently

14--Do you have requirement to contract out all city work?

No. City employees do park maintenance but not street maintenance or janitorial service. Goal is to use city employees efficiently.

15-How are city staff salaries established?

Negotiations with bargaining units; City Manager has authority to establish all salaries except for City Manager and City Attorney.

16-Who does City Manager report to? Job evaluation done how?

City Manager and City Attorney report to the Council. They are evaluated annually; a professional facilitator is used.

17, 18--Special hiring standards? Mayor/council have hiring authority?

Typical hiring practices are followed: competitive exams, comprehensive evaluations. Mayor or council have no say in hiring (or firing). City Manager does inform Council on major appointments and on firings. Mayor and Council members can't interface directly with city employees, must go through City Manager. They can give input on employee problems and concerns however.

19--delete this question

20, 21-- Provisions to pay prevailing wages? Living wage?

Pay prevailing wages for public works projects. State has no prevailing wage for other projects. Could pay living wage through an ordinance, if desired.

22, 23 delete these questions

24--Nuisance abatement cost recovery?

Follow general law code. Could do this by ordinance with no limits.

25--What issues/concerns caused Fremont to consider a charter?

Zlatnik-- A small special interest group pushed it. They wanted to limit the Mayor's power. There was no strong reason to go charter and no popular public demand. Binding, compulsory arbitration, which was a consideration is now general law. Design and build contracting is still an issue.

Wasserman--Mostly special interest group wanted political power and control of the city and were against the mayor, who appoints commissions. One hot button was the idea that the city could take over the schools.

Rosenberg (newspaper)--Issues (1) number of council members, (2) Mayor appoints commission members, (3) School district could be run by the city, (4) Bidding process, (5) Council salaries low, (6) Regional representation.

Perkins (city manager) --Issues: Increase size of city council and design & build restrictions-- even if you are a charter city you cannot get around state mandates.

Wolfe--Size of the city Council; design and build considerations.

26--What problem(s) drove electorate to vote for/against charter?

Zlatnik--The public didn't care--there were no strong arguments for a charter.

Wasserman--City employees opposed charter because they didn't want binding arbitration, but this is now state law. Unions opposed charter. Three city council members opposed the charter; League of women voters opposed; lack of public interest

Rosenberg--No public enthusiasm; city council was split on it. Chamber of Commerce (mostly Republican) was for it; not all of the 10 members of the charter-drafting committee were for it.

Perkins--This was the third time a charter proposal was defeated. There was no clear message/reason. Some people began talking about putting authority to appointment the school board into the charter and this created uncertainty.

27, 28--Did not becoming a charter city solve issues or create problems?

Zlatnik--No. The present city manager gets lots of credit for good management and the form of Fremont government

Wasserman--Fremont has no real issues to solve. Reasons to become charter not strong today. To increase number of councilmembers, general law cities must go to districts. Political considerations:

Perkins--No change.

29--What was position of Mayor, Council, City Manager on charter?

The mayor and one council member were against the charter; three members were mildly for it; one pro member later switched sides. City manager's position unknown, but she did a good job helping to draw up the charter proposal.

30--What other interest groups had a position on the charter

A small, special interest group pushed the drive for a charter city, chamber of commerce was for it. SEIU and League of Women Voters were against it.

31--What was reaction in the community to the charter city idea?

Apathy, didn't care. Newspaper not interested either.

32--Do you have a strong mayor or strong city manager?

Zlatnik--strong city manager

Wasserman--strong city manager, much less subject to corruption and is more efficient.

Rosenberg--present form of city government seems to be pretty efficient.

33--Special rules of procedure, decorum, ethics, conflict of interest, campaign finance, incompatibility of office?

Perkins--Yes, Council rules; local conflict of interest code; election/campaign rules.

Wasserman--charter can be more restrictive here than general law

34--Has community been satisfied with not becoming a charter city?

Answers: "Yes"; "No complaints"; "Indifferent".

35--no responses

36--What were costs of Charter City election?

Perkins--\$10,000 extra to general elections costs; special election would have cost of \$70,000 to \$80,000.

Wasserman--special election could cost up to \$100,000 more

37--Impact of not being a Charter City on County/regional matters?

Zlatnik--mostly nothing

Wolfe--Fewer councilmembers means less representation; council members miss meetings.

Perkins--No impact.

Submitted by Subcommittee "A" June 11, 2001

SURVEY QUESTIONS

TOPIC: Form Of Government	
Does your city have a mayor? 1	
Does your city have a full time or part time mayor and city council? 2	
What is the term for your mayor? 3	
Do the voters elect the mayor directly or does the council? 4	
Do you have district elections for your council members? 5	
How many council members do you have? 6	

Do you have term limits for the mayor/council members? 7	
How do you handle compensation for the mayor and the council members? Expenses, reimbursements, benefits? 8	
Do you have council member qualifications different from that of Govt Code 36502? 9	
Do you exercise legislative authority differently than General Law directs? Ordinances must be read in full at introduction, passage. Ordinances are passed at regular meetings, etc. 10	
What is a quorum at your city council meetings? 11	

TOPIC: Effective Use of Resources	
How do you handle public contracts with respect to size of contract, bidding requirements, negotiation rules, etc? 12	
What is the contract approval level for the city manager? 13	
Do you have a requirement to contract out all city work? 14	
How are city staff salaries established? 15	
Who does City Manager Report to? How is the job performance evaluation done for the City Manager's job function? 16	

Do you have any special standards, requirements, or procedures for hiring city staff personnel? 17	
Does the mayor/council have approval authority of staff appointments? 18	
Does the mayor/council have paid staff assigned for the performance of studies and development of tasks? 19	
Do you have provisions for payment of prevailing wages for services/public works projects? 20	
Do you have provisions for establishing/payment of Living Wage? 21	

SURVEY QUESTIONS

TOPIC: External and Environmental Aspects Has not becoming a charter city impacted Fremont's participation in County or regional matters? Provide some examples. 37	Do you impose taxes or license fees differently than established by code, law, or Prop 218? 22	TOPIC: Issues that Formed Basis for Change What issues/concerns caused the city to consider becoming a Charter City? 25	TOPIC: Political Considerations What was the position on the charter of the mayor, city council, and city manager at the time of the decision? 29	Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office? 33
Do you have any special processes/procedures for establishing taxes or license fees differently than established by general law? 23	What problem, or problems, drove the electorate to vote for/against the Charter City form? 26	What other stakeholders/interest groups had a position on the charter city approach? 30	Has the community been satisfied with the results of not becoming a charter city? 34	Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office? 33
What are your provisions and limits for Nuisance Abatement Cost Recovery and additional fines? 24	Did becoming/not becoming a charter city solve issues? Provide some examples of issues. 27	What was the initial reaction within the community to the idea of a charter city? 31	Have there been unforeseen consequences of not becoming a charter city, including additional costs, special elections, etc? Provide some examples. 35	Has the community been satisfied with the results of not becoming a charter city? 34
TOPIC: External and Environmental Aspects Has not becoming a charter city impacted Fremont's participation in County or regional matters? Provide some examples. 37	Did becoming/not becoming a charter city create new problems? Provide some examples of issues. 28	Do you consider that you have a strong mayor or a strong city manager? 32	What were the costs of considering to change from a general law city to a charter form of government, including legal, election, and conversion costs? 36	Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office? 33

SUBCOMMITTEE "A" REPORT

SUMMARY OF SAN RAMON INTERVIEWS

Committee members: Marsha Grilli, Al Garcia, Sudhir Mandal, Jerry Epps

Incorporated: 1983 **Population:** 49,000 **Average family income:** \$0000
Budget: \$32,000,000 (operating); \$57,000,000 (annual)

People interviewed: City Manager Herb Moniz

Questionnaire only: Mayor David Hudson; Councilmember Curt Kinney

GENERAL STATEMENT: City Manager Moniz

- San Ramon became a charter city 2 years ago due to the push of former Mayor Byron Athan. Council voted for it unanimously because Athan was persuasive.
- Have not encountered many negatives or positives to being a charter city.
- Difficult to get citizens interested; they did not understand.
- Presently, City Council is dysfunctional. Plan to put amendment on ballot to provide for a directly elected Mayor.
- Home rule--Most "local" issues are now considered by courts to be "state" issues. Most cities lose in court when charter issues are contested.
- Police services contracted for and provided by Alameda County Sheriff's Department.

Items

- * Five part time council members elected at large.
- * Mayor selected by the Council for a 1 year term.
- * Do not have districts
- * Does not have term limits
- * Salary is \$400/month plus expenses and medical
- * Contracts let according to state public resources.
- * City Manager has contract approval up to \$50,000
- * No requirement to contract out all city work, but do contract for public works jobs
- * Staff salaries established by Council on a tiered; must be in 70 percentile
- * City Manager reports to Council; job evaluation every 2 years (with a facilitator)
- * City Manager, City Attorney, City Clerk hired by and report to Council
- * City staff job standards set by City Manager
- * Mayor and Council have no staff
- * Have provisions for paying prevailing wages for services/public works projects
- * No provisions for paying living wage
- * Taxes and license fees imposed as per general law code
- * Nuisance abatement cost recovery limit: \$50
- * Issues considered for becoming a Charter City: 1) local control; 2) contracting
- * What problems/issues drove electorate to vote for charter? None
- * Did becoming a Charter City solve issues? Yes--contracting
- * Did becoming a Charter City create problems? Nothing specific

- * What other stakeholders/interest groups had a Charter position? None
- * Do you consider you have a strong Mayor or City Manager? 1) Balanced; 2) City Manager; 3) Both.
- * Special rules of procedure, decorum/ethics, conflicts of interest? Council dysfunctional; City Manager arranged a workshop based on one Sunnyvale had; no formal code of ethics; conflict of interest controlled by State.
- * Community satisfied with results of becoming a Charter City? Yes
- * Unforeseen consequences of becoming a Charter City? We made our City Clerk a Council employee. I would not do that again.
- * Has becoming a Charter City made it possible to participate better in county/regional matters? No
- * Has Charter helped city address unforeseen issues? Can make charter amendments (such as direct election of Mayor)
- * No consequences of becoming Charter City, any items are handled under regular election. No special elections have been held.

Submitted by Subcommittee "A" June 11, 2001

Subcommittee B City manager -
 Charter City Task Force Mountain View Sally Lieber Vice Mayor City of Milpitas

Issues for Consideration
 Query Plan for Information Gathering

Topic and Questions	Charter City Response	General Law City Response	Other comments
Form of Government			
Does your city have a mayor?	yes		
Does your city have a full time or part time mayor and city council?	partime. Mayor is elected from council member.		
What is the term for your mayor?	2 term.		council - 4 year term
Do the voters elect the mayor directly or does the council?	council elect mayor and rotate		
Do you have district elections for your council members?	All at Large		
How many council members do you have?	7 members.		

APP. 4

mv

10/10/2000

Do you have term limits for the mayor/council members?	2 term limit - council 4 yr each mayor term is one year then rotate		
How do you handle compensation for the mayor and the council members? Expenses, reimbursements, benefits?	Regular pay \$600/month cellular phone, computer, travel, restaurant expenses \$2,000/4 yr term \$30 - cell phone/month		
Do you have council member qualifications different from that of Govt Code 36502?			
Do you exercise legislative authority differently than General Law directs? Ordinances must be read in full at introduction, passage. Ordinances are passed at regular meetings, etc.	To pass ordinance, require 2 readings even it doesn't require it		
What is a quorum at your city council meetings?	4		

MV

Effective Use of Resources				
How do you handle public contracts with respect to size of contract, bidding requirements, negotiation rules, etc?	city manager negotiates all contracts			
What is the contract approval level for the city manager?	no limit			
Do you have a requirement to contract out all city work?	NO			
How are city staff salaries established?	city mgr determines according to scales CFW + FOA			
Who does City Manager Report to? How is the job performance evaluation done for the City Manager's job function?	Report to city council evaluation by city council			

MV

Do you have any special standards, requirements, or procedures for hiring city staff personnel?	NO			
Does the mayor/council have approval authority of staff appointments?	NO			
Does the mayor/council have paid staff assigned for the performance of studies and development of taskings?	NO			
Do you have provisions for payment of prevailing wages for services/public works projects?	yes			yes until 1992. Then council got rid of it then recently reinstated it.
Do you have provisions for establishing/payment of Living Wage?	yes			

MV

Do you impose taxes or license fees differently than established by code, law, or Prop 218?	yes		Parking Assessment Downtown Assessment district.
Do you have any special processes/procedures for establishing taxes or license fees differently than established by general law?	NO.. STATE constitutes		
What are your provisions and limits for Nuisance Abatement Cost Recovery and additional fines?	code enforcement		city doesn't charge people - They go out & talk directly to people.

Issues That Formed Basis for Change			
What issues/concerns caused the city to consider becoming a Charter City?	it has been a charter city for fifty years.		
What problem, or problems, drove the electorate to vote for/against the Charter City form?			
Did becoming/not becoming a charter city solve issues? Provide some examples of issues.	charter city - have more power + control. Less state control		
Did becoming/not becoming a charter city create new problems? Provide some examples of issues.	NO		

Political Considerations			
What was the position on the charter of the mayor, city council, and city manager at the time of the decision?	N/A		
What other stakeholders/interest groups had a position on the charter city approach?			
What was the initial reaction within the community to the idea of a charter city?	It's been a charter city since 1950 -		
Do you consider that you have a strong mayor or a strong city manager?	Strong city mgr.		

mv

Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office?				
Has the community been satisfied with the results of becoming a charter city?	yes.			

Have there been unforeseen consequences of becoming a charter city, including additional costs, special elections, etc? Provide some examples.				
What were the costs of changing from a general law city to a charter form of government, including legal, election, and conversion costs?				

External and Environmental Aspects			
Has becoming a charter city enabled the city to participate better in county or regional matters? Provide some examples.			
Has a charter helped the city address new and unforeseen issues? Provide some examples of issues.			

Issues for Consideration
Query Plan for Information Gathering

Topic and Questions	Charter City Response	General Law City Response	Other comments
Form of Government Does your city have a mayor?	Y		
Does your city have a full time or part time mayor and city council?	P/T elect among council members		
What is the term for your mayor?	2 term 4 yr/ea		
Do the voters elect the mayor directly or does the council?	council elect mayor & Rota		
Do you have district elections for your council members?	AT large election		
How many council members do you have?	7		

MV

10/10/2009

Do you have term limits for the mayor/council members?	1 city council			
How do you handle compensation for the mayor and the council members? Expenses, reimbursements, benefits?	monthly rate if don't show up & can be reduced. 30/mo cell phone, phone,		2000/4 yr term - equip - - - - - - - - - - reimbursement, Travel	
Do you have council member qualifications different from that of Govt Code 36502?				
Do you exercise legislative authority differently than General Law directs? Ordinances must be read in full at introduction, passage. Ordinances are passed at regular meetings, etc.	pass ordinance require 2 readings even if deemed if require (9)			
What is a quorum at your city council meetings?	4			

March 21/11

Effective Use of Resources				
How do you handle public contracts with respect to size of contract, bidding requirements, negotiation rules, etc?	contracts went to city - council give city mgr instruction. She can approve but must bring it back to council.			
What is the contract approval level for the city manager?	city council. NO limit	in mil - \$5000		
Do you have a requirement to contract out all city work?	NO			
How are city staff salaries established?	city mgr determine P.F.V. + C.I.	can will email salary		
Who does City Manager Report to? How is the job performance evaluation done for the City Manager's job function?	city council, clerk. atton. apprd by council. city mgr reports to city council			

Do you have any special standards, requirements, or procedures for hiring city staff personnel?	NO		
Does the mayor/council have approval authority of staff appointments?	NO - other than those 3 city managers does it		
Does the mayor/council have paid staff assigned for the performance of studies and development of taskings?	NO		
Do you have provisions for payment of prevailing wages for services/public works projects?	Y til 92 - then council got rid of it. it can't be reinstated they recently re-instituted		
Do you have provisions for establishing/payment of Living Wage?	yes.		

Do you impose taxes or license fees differently than established by code, law, or Prop 218?	yes - parking assessment downtown assessment dist. &		
Do you have any special processes/procedures for establishing taxes or license fees differently than established by general law?	Don't think so		
What are your provisions and limits for Nuisance Abatement Cost Recovery and additional fines?	city doesn't charge people - they go out & talk directly to people - have a fee sofa on lawn		

Don

MV

Issues That Formed Basis for Change			
What issues/concerns caused the city to consider becoming a Charter City?	It has been a charter city for 50 yrs -		A 4 th - amendment to a charter 73 - change data of election / it used to be in April / for lawsuit it's now combine w/ Nov
What problem, or problems, drove the electorate to vote for/against the Charter City form?	people complained about the auditor in charter	char	
Did becoming/not becoming a charter city solve issues? Provide some examples of issues.	have more power + control less state control		
Did becoming/not becoming a charter city create new problems? Provide some examples of issues.			NO

Political Considerations				
What was the position on the charter of the mayor, city council, and city manager at the time of the decision?				
What other stakeholders/interest groups had a position on the charter city approach?				
What was the initial reaction within the community to the idea of a charter city?				
Do you consider that you have a strong mayor or a strong city manager?	The mayor is not elected by people			

Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office?				
Has the community been satisfied with the results of becoming a charter city?				

Have there been unforeseen consequences of becoming a charter city, including additional costs, special elections, etc? Provide some examples.			
What were the costs of changing from a general law city to a charter form of government, including legal, election, and conversion costs?			

External and Environmental Aspects				
Has becoming a charter city enabled the city to participate better in county or regional matters? Provide some examples..				
Has a charter helped the city address new and unforeseen issues? Provide some examples of issues.				

Issues for Consideration
Query Plan for Information Gathering

<i>Topic and Questions</i>	<i>Charter City Response</i>	<i>General Law City Response</i>	<i>Other comments</i>
Form of Government Does your city have a mayor?	YES		
Does your city have a full time or part time mayor and city council?	PART - TIME		
What is the term for your mayor?	1-YR ON ROTATION BASIS FROM COUNCIL		
Do the voters elect the mayor directly or does the council?	COUNCIL		
Do you have district elections for your council members?	NO		
How many council members do you have?	7		

Sunnyvale

10/10/2000

Charter City Task Force

City of Milpitas

Do you have term limits for the mayor/council members?	yes, 2 terms 1 term = 4 years		
How do you handle compensation for the mayor and the council members? Expenses, reimbursements, benefits?	all paid from general fund per charter		
Do you have council member qualifications different from that of Govt Code 36502?	no		
Do you exercise legislative authority differently than General Law directs? Ordinances must be read in full at introduction, passage. Ordinances are passed at regular meetings, etc.	no; yes; yes		
What is a quorum at your city council meetings?	4		

Dunn yule
10/10/2000

Charter City Task Force City of Milpitas

Effective Use of Resources				
How do you handle public contracts with respect to size of contract, bidding requirements, negotiation rules, etc?	staff			
What is the contract approval level for the city manager?	up to \$50K without Council approval			
Do you have a requirement to contract out all city work?	no			
How are city staff salaries established?	market surveys and negotiations			
Who does City Manager Report to? How is the job performance evaluation done for the City Manager's job function?	City Council; CM evaluation done by City Council formally 1 x year			

Sunnyvale
10/10/2000

Charter City Task Force

City of Milpitas

Do you have any special standards, requirements, or procedures for hiring city staff personnel?	no			
Does the mayor/council have approval authority of staff appointments?	no			
Does the mayor/council have paid staff assigned for the performance of studies and development of taskings?	no			
Do you have provisions for payment of prevailing wages for services/public works projects?	yes			
Do you have provisions for establishing/payment of Living Wage?	no			

Sunnyvale
10/10/2000

Charter City Task Force

City of Milpitas

Do you impose taxes or license fees differently than established by code, law, or Prop 218?	no		
Do you have any special processes/procedures for establishing taxes or license fees differently than established by general law?	no		
What are your provisions and limits for Nuisance Abatement Cost Recovery and additional fines?			

Sunnyvale
10/10/2000

Charter City Task Force City of Milpitas

Issues That Formed Basis for Change What issues/concerns caused the city to consider becoming a Charter City?				Sunnyvale was originally incorporated as a charter city.	
What problem, or problems, drove the electorate to vote for/against the Charter City form?	n/a				
Did becoming/not becoming a charter city solve issues? Provide some examples of issues.	n/a				
Did becoming/not becoming a charter city create new problems? Provide some examples of issues.	n/a				

Sunnyvale
10/10/2000

Charter City Task Force

City of Milpitas

Political Considerations				
What was the position on the charter of the mayor, city council, and city manager at the time of the decision?	n/a			
What other stakeholders/interest groups had a position on the charter city approach?	n/a			
What was the initial reaction within the community to the idea of a charter city?	n/a			
Do you consider that you have a strong mayor or a strong city manager?	city manager			

Sunnyvale
10/10/2000

Charter City Task Force

City of Milpitas

Do you have any special rules of procedure and decorum related to ethics, conflicts of interest, campaign financing, or incompatibility of office?	yes		
Has the community been satisfied with the results of becoming a charter city?	n/a		

Sunnyvale
 10/10/2000

City of Milpitas

Charter City Task Force

Have there been unforeseen consequences of becoming a charter city, including additional costs, special elections, etc? Provide some examples.	n/a		
What were the costs of changing from a general law city to a charter form of government, including legal, election, and conversion costs?	n/a		

Charter City Task Force

External and Environmental Aspects Has becoming a charter city enabled the city to participate better in county or regional matters? Provide some examples.	n/a
Has a charter helped the city address new and unforeseen issues? Provide some examples of issues.	n/a

Sunrise

10/10/2000

9

10

APPENDIX 5

August 12, 2001

Ms. Evelyn Chua, Chair
Milpitas Charter Commission
City of Milpitas
Milpitas, CA

Dear Evelyn,

Thank you very much for the invitation to provide input to the Milpitas Charter Commission regarding your important work. While I am unable to attend tonight's meeting, I hope that these brief written comments will be useful. Do let me know if there is any additional information that you or other members of the Commission would like presented in writing or in person.

Background

For your information, I provide the following comments and recommendations not only as a former Milpitas resident and City Manager (1997 - 1999), but also based on my:

1. Academic focus on Political Science, Public Administration, and Organizational Theory at Stanford University and since then;
2. Extensive political and campaign management experience much earlier in my career (including Tom Bradley for Governor, Lt. Gov. Leo McCarthy, Congressman Norm Mineta, San Jose Mayor Tom McEnery, and State Party official Steve Westly);
3. Implementing the City of San Jose Measure J Charter Amendment;
4. Working in 6 different municipal environments (Edmonds & Lynwood, WA; Stanford, San Jose, & Milpitas, CA; and Scottsdale, AZ); and a
5. Broad range of Silicon Valley regional, civic, and private involvements, including Joint Venture Silicon Valley, United Way Silicon Valley, and the American Leadership Forum.

Summary

While I am not aware of the specific proposals or matters under your consideration, I do - in general - strongly support municipal charter efforts as one modest step to strengthen the role and power of local government. However, that support would be mitigated or revoked by the inclusion of any proposals that rip at the very fabric of public accountability and trust for our most sacred institutions.

Specifics

1. **Local government is where it's at!** Local government, and cities in particular, are the best embodiment of our country's cherished democratic traditions and opportunities. Residents can go to City Hall almost any day, and our public officials and servants cannot escape the day-to-day impacts and realities of the difficult decisions they face. I'm for almost anything that strengthens local government.

2. A charter is a very modest step. Given state legislative and constitutional constraints, the incremental power provided by a city charter adopted at this point in time is very modest, at best. Nonetheless, it does set the course for municipal self-determination to the greatest degree possible.
3. City management. Most local communities are best served by a single professional executive reporting simultaneously and publicly to the entire elected leadership of the community. It is only larger jurisdictions that capture a media market (such as San Jose, Seattle, Portland, etc.) that are best served by a directly elected executive or direct political involvement in the day-to-day operations of the jurisdiction; the high degree of media attention provides the public accountability necessary to minimize the abuses of power that have often resulted. The City of Santa Clara stands out as an exemplary model of a professionally run charter city that has performed well during periods of political strife and turmoil as well as during alignment and consensus.

The professional management of the City of Milpitas could be further strengthened not only by specifically including the Strong Council/City Manager structure in any proposed charter, but even more so with any or all of the following:

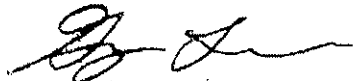
- A. Direction - Explicitly prohibit *individual* Councilmember or Mayoral direction to the City Manager or any member of the municipal staff without approval from a majority of the full City Council;
- B. Sunshine - Require that all City staff provide the same information, both orally and in writing, to every member of the City Council;
- C. Accountability - Require that all City staff report requests and direction from any member of the City Council to the City Manager and/or the City Attorney.

All of these steps would recognize and further strengthen the democratic structure that it is only a majority of the City Council which can set policy direction for the City.

4. Elected leadership. While this subject is well beyond the scope of any professional duties I had in Milpitas, I do believe: 1) that a two-year mayoralty results in a near perpetual campaign that may undermine public leadership; 2) that the rising diversity of Milpitas could well be served by a slightly larger City Council; 3) that successive term limits should be inclusive of service as Mayor or Councilmember to prevent seat-hopping has a "get-around"; 4) that Councilmembers should serve in seats that allow more meaningful electoral debate and choice; and 5) that districts make no sense for a community as small as Milpitas.
5. Staff Appointments. Retain the City Council's sole authority to appoint the City Manager and the City Attorney by majority vote. If desired, partially insulate the City Manager and Attorney from shifting political influence by requiring super-majority votes (e.g., 4 out of 5 or 5 out of 7) to terminate either before the end of their contracts. Last, my strongest recommendation is to avoid any and all efforts to politicize the appointment of the Police and Fire Chiefs (or any department head or other staff member) by leaving those public service appointments at the sole discretion of the City Manager.

Again, thank you for your invitation to provide this input, and I wish you and your colleagues much success in strengthening the fine community of Milpitas.

Sincerely,



Greg Larson

MILPITAS CHARTER COMMISSION 3/12/01

CALIFORNIA HAS 475 CITIES

OF WHICH 105 ARE CHARTER CITIES

21 HAVE MADE THE CHANGE SINCE 1989

IN SANTA CLARA COUNTY: GILROY, MOUNTAIN VIEW, PALO ALTO, SAN JOSE, SANTA CLARA, SUNNYVALE

MOST OTHERS WOULD QUALIFY TO BECOME CHARTER CITIES

MOST DO NOT MAKE THAT CHOICE

WHY?

CALIFORNIA LAW IS GENEROUS TO GENERAL LAW CITIES

IN SOME STATES SUCH CITIES FEEL MORE RESTRICTED BY STATE LAW – FEWER OPTIONS ARE AVAILABLE TO THEM

IN AREAS SUCH AS ELECTION DATES, ELECTED OFFICIALS, TAXES AND OTHER SOURCES OF REVENUES, ETC.

BUT CALIFORNIA GIVES GENERAL LAW CITIES A LOT OF FLEXIBILITY – AND MORE AND MORE SO OVER THE YEARS

SO MOST CITIES THAT COULD HAVE BECOME CHARTER CITIES HAVE NOT FELT THE NEED TO DO SO.

CHARTER CITIES

ADVANTAGES OF CHARTER CITIES

- GENERAL LAW CITIES: RULED BY STATE CODES
- BUT CHARTER CITIES WRITE THEIR OWN CONSTITUTIONS, GIVING THEM GREATER FLEXIBILITY
- CITIES CAN ADJUST STRUCTURES TO CHANGE AS THEY GROW AND THEIR NEEDS CHANGE – SAN JOSE POWERS OF MAYOR, DISTRICT ELECTIONS, CONCURRENT ELECTIONS, TERM LIMITS, FULL-TIME SALARIED COUNCIL, ETC. – AND VOTERS MUST APPROVE

- HAVING A CHARTER ENABLES CITIES TO TAILOR THEIR LAWS TO LOCAL CIRCUMSTANCES AND HAVE A CONSTITUTION WITH GREATER CONTROL OVER EVERYTHING FROM PUBLIC WORKS TO MUNICIPAL ELECTIONS -- NOTE I SAID CONTROL -- CHARTER CITIES CAN GAIN FLEXIBILITY, BUT THEIR CHARTERS CAN ALSO BE USED TO LIMIT LOCAL GOVERNMENT
- CENTRAL ELEMENT OF CITY CHARTERS: FORM OF GOVERNMENT, ELECTIONS -- PREVIOUSLY TAXES AND FEES BUT NOT SO MUCH SO NOW.
- CHARTER MAY PROVIDE FOR THE MANNER, METHOD AND TERMS OF CITY OFFICERS AND EMPLOYEES AND THEIR REMOVAL AND COMPENSATION -- PROTECTIONS FOR CITY EMPLOYEES
- CHARTER CITIES HAVE MORE AUTHORITY ABOUT SCHEDULING ELECTIONS
- ALSO MORE AUTHORITY OVER CAMPAIGN FINANCE REGULATION
- AND OPTION FOR STRONG MAYOR OR OTHER STRUCTURAL CHANGE
- YOU COULD SET UP SUBGOVERNMENTS IN NEIGHBORHOODS OR DISTRICTS AND GIVE THEM SOME POWERS OVER LAND USE OR SERVICES
- CHARTER CITIES HAVE MORE DISCRETION ABOUT CONTRACTING FOR SERVICES -- DEPENDING ON WHAT THEIR CHARTERS SAY
- HISTORIC ADVANTAGE: CHARTER CITIES COULD LEVY TAXES AND FEES THAT GENERAL LAW CITIES COULD NOT: BUT NO MORE
- IN 1982, THE CALIFORNIA LEGISLATURE AND GOVERNOR ALLOWED GENERAL LAW CITIES TO LEVY ANY TAX THAT MAY BE LEVIED BY A CHARTER CITY
- AND PROPS 13 (1978) TO 218 (1996) HAVE LIMITED LOCAL REVENUE OPTIONS SO BEING A CHARTER CITY DOESN'T BRING SO MANY ADVANTAGES THERE
- BEFORE PROPOSITION 218, CHARTER CITIES WERE EXEMPT FROM PROPOSITION 62, WHICH MANDATED A PUBLIC VOTE WHENEVER CITIES WANTED TO RAISE TAXES ON BUSINESS LICENSES, HOTEL ROOMS, AND OTHER ITEMS

- CHANGES IN WHAT GENERAL LAW CITIES CAN DO WITH FORMS OF GOVERNMENT, TOO
- FORMERLY YOU NEEDED TO BE A CHARTER CITY TO OPT FOR A LARGER CITY COUNCIL, DISTRICT ELECTIONS
- NOW STATE ALLOWS GENERAL LAW CITIES TO ADOPT DISTRICT ELECTIONS AND TERM LIMITS
- BUT GENERAL LAW CITIES CAN'T INCREASE THE SIZE OF THEIR CITY COUNCILS WITHOUT GOING TO DISTRICT REPRESENTATION (AND THIS IS SUBJECT TO VOTER APPROVAL) UNLESS THEY BECOME CHARTER CITIES.
- SO CHARTERS PERMIT MORE FLEXIBILITY, ALTHOUGH LESS SO THAN IN THE PAST

BUT CHARTERS CAN ALSO BE RESTRICTIVE

- SAN FRANCISCO HAS A VERY LONG CHARTER THAT IS CONSTANTLY ON THE BALLOT BECAUSE CHANGE TAKES A VOTE
- NEWPORT BEACH'S CHARTER PREVENTS THE CITY FROM CHARGING RESIDENTS FOR TRASH PICKUP – A 45 YEAR OLD PART OF THE CHARTER – NOW MUCH MORE EXPENSIVE FOR CITIES TO DO – BUT A CHANGE WOULD TAKE A VOTE AND PEOPLE AREN'T GOING TO VOTE YES TO CHARGE THEMSELVES
- YOU CAN USE A CHARTER TO CONSTRAIN AND LIMIT YOUR LOCAL GOVERNMENT AND ELECTED OFFICIALS IF YOU WANT TO – SO IT'S NOT ALWAYS A ROUTE TO GREATER LOCAL FLEXIBILITY

BUT THE BOTTOM LINE ON DECISIONS ON THIS COMES TO TWO THINGS:

- VALUES
- COMMUNITY

VALUES

- STAYING GENERAL LAW RETAINS THE ESSENTIAL COUNCIL-MANAGER STRUCTURE
- THIS SYSTEM VALUES PROFESSIONALISM, EFFICIENCY, OBJECTIVE EXPERTISE – PUTS THE TRUST IN THE MANAGERS AND ADMINISTRATORS
- DISTANCES THE POLITICIANS AND THE PUBLIC FROM DECISION MAKING
- THESE ARE GOOD VALUES
- CHARTER CITIES CAN MOVE AWAY FROM THESE BY CHANGING THE CHARTER IN WAYS THAT EMPHASIZE OTHER VALUES, SUCH AS REPRESENTATION AND RESPONSIVENESS – WITH DISTRICT ELECTIONS, FOR EXAMPLE

- CHARTER CITIES CAN PUT MORE POWER IN THE HANDS OF ELECTED OFFICIALS – POLITICIANS WHO ANSWER DIRECTLY TO THE PUBLIC
- THESE ARE GOOD VALUES, TOO
- CHARTER CITIES DON'T HAVE TO MAKE THESE CHANGES, BUT BEING A CHARTER CITY GIVES YOU MORE OPTIONS TO DO SO

YOU HAVE TO CHOOSE WHICH VALUES YOU WANT TO EMPHASIZE

BUT THAT ALSO DEPENDS ON YOUR COMMUNITY

AS COMMUNITIES GROW AND BECOME MORE DIVERSE, IT'S OFTEN MORE DIFFICULT FOR THE PROFESSIONAL ADMINISTRATORS TO MANAGE –

THEY ARE NOT IN A POSITION TO DO CONFLICT RESOLUTION BETWEEN DIFFERENT FACTIONS AND PERSPECTIVES

THEY CAN'T BE PUBLIC LEADERS

LARGER MORE DIVERSE COMMUNITIES HAVE GREATER NEEDS FOR SUCH LEADERSHIP – MAYORS, COUNCIL MEMBERS – WHICH MEANS GIVING THEM MORE POWER IN THE CHARTER AND GIVING VOTERS MORE POWER OVER THEM

SO IT DEPENDS WHAT YOU NEED MOST IN MILPITAS – PROFESSIONAL ADMINISTRATION OR POLITICAL LEADERSHIP

YOU CAN HAVE BOTH BUT AS A GENERAL LAW CITY YOUR GOVERNMENT RIGHT NOW IS WEIGHTED TOWARDS PROFESSIONAL ADMINISTRATION

IF YOU WANT TO SHIFT THE BALANCE A LITTLE BIT OR A LOT TOWARD POLITICAL LEADERSHIP, BECOMING A CHARTER CITY MAY BE THE ANSWER

A FINAL NOTE: THIS ISN'T AN ALL OR NOTHING CHOICE. BECOMING A CHARTER CITY GIVES YOU OPTIONS. YOU DON'T HAVE TO EXERCISE ALL THE OPTIONS – SAN JOSE AND LOTS OF OTHER CITIES HAVE MADE VERY GRADUAL CHANGES OVER TIME TO ADAPT THEIR GOVERNMENTS TO THEIR NEEDS – SO CHANGE CAN BE GRADUAL, NOT RADICAL

AND ALL CHANGE DEPENDS ON VOTER APPROVAL

MAYOR MAKES ALL COMMISSION APPOINTMENTS 'UNLESS OTHERWISE SPECIFICALLY PROVIDED BY STATUTE'

Attachment 2 - CC01 (continued)

APPROVED MINUTES CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	November 6, 2001
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	Milpitas Unified School District Board Room

I. ROLL CALL

Mayor Manayan called to order the regular meeting of the Milpitas City Council at 6:32 p.m. Present were Mayor Manayan, Vice Mayor Livengood, and Councilmembers Dixon, Esteves, and Lawson.

II. CLOSED SESSION

Mayor Manayan publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Pursuant to Government Code Section 54956.9[c])

Initiation of Litigation: Two Cases

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiators: Ed Kreisberg and Cherie Rosenquist

Employee Organization: POA and Protech

Mayor Manayan adjourned the meeting to closed session at 6:33 p.m.

The City Council meeting reconvened at 7:35 p.m. with Mayor Manayan presiding and Vice Mayor Livengood and Councilmembers Dixon, Esteves, and Lawson present.

III. CLOSED SESSION ANNOUNCEMENTS

City Attorney Steve Mattas reported the Council had provided the following direction:

With respect to Conference on Labor Negotiations, the Council provided direction to the Agency's negotiators;

With respect to Conference with Legal Counsel, the Council

- Voted 5/0 to authorize the City to pursue a lawsuit against the PUC related to the EIR certification for the PG&E power lines that would be in the McCarthy area;
- Voted 5/0 to authorize the filing of a formal appeal of the Regional Water Quality Control Board's determination related to the issuance of a MPDS permit for Santa Clara County.

IV. PLEDGE

Members of Cub Scout Troop No. 92 led the Council and audience in the pledge of allegiance.

V. MINUTES

MOTION to approve the City Council minutes of October 16, 2001, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Lawson, Dixon.

Ayes: 5

VI. SCHEDULE

MOTION to approve the Schedule of Meetings as submitted.

M/S: Livengood, Esteves.

Ayes: 5

VII. PRESENTATIONS

Mayor Manayan presented Mike Berryhill and members of Cub Scout Troop 92 with a certificate of appreciation for completing its Higuera Adobe Park "Adopt-a-Spot" project. Mike Berryhill thanked the community for its support, thanked the leaders and members, and recognized Steve Sullivan as the person who spearheaded the project and made it happen.

Mayor Manayan read a proclamation congratulating Rancho Milpitas Middle School teacher Diane Whalen for all her achievements over the years and most especially now as a recipient of the Milken Family Foundation National Educator Award and presented it to Ms. Whalen. Ms. Whalen said the award would not have been possible without the support of the teaching staff she worked with and thanked the principal and current as well as past students.

Mayor Manayan read a proclamation setting November 11, 2001, for a Veterans' Day celebration at 9:00 a.m. at the Milpitas Police Department and presented it to William Hill.

**VIII.
CITIZENS FORUM**

Mayor Manayan invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less unless a public official speaking on behalf of a group.

There were no requests to speak.

**IX.
ANNOUNCEMENTS**

City Manager Wilson reiterated that the Veterans' Day celebration would be held Sunday, November 11, 2001, at 9:00 a.m. at the Police Station, which was the temporary site while the old site was under construction.

Councilmember Dixon commented that we were entering the holiday shopping season, reminded everyone that a woman had been hit in front of Home Depot recently, and asked everyone to be cautious of the cars and to be careful.

Councilmember Esteves congratulated the Chamber of Commerce for sponsoring the kickoff of the "America's Open for Business" campaign with the Children's Harvest Day Festival at the Town Center; thanked Shapell, the Town Center merchants, South Bay School, the Farmer's Market, and the World Journal; reported the "Around the World" porcelain art exhibit was on display in the Great Mall; and congratulated the Milpitas High School for its homecoming football game.

**X.
AGENDA**

MOTION to approve the agenda as submitted.

M/S: Livengood, Dixon.

Ayes: 5

**XI.
CONSENT CALENDAR**

Mayor Manayan inquired if anyone wished to make any changes to the Consent Calendar. There were no changes.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, in accordance with the staff recommendations, as submitted.

M/S: Lawson, Livengood.

Ayes: 5

(Councilmember Esteves said he would be abstaining on Item RA10.)

***10.
A/R Write-Offs**

Approved the recommended FY2000-2001 accounts receivable write-offs.

***14.
Weed Abatement**

Adopted Resolution No. 7126 declaring weeds on specific properties to be a public nuisance and scheduling a public hearing for December 4, 2001.

***15.
DBE Program**

Adopted Resolution No. 7127 approving Disadvantaged Business Enterprise (DBE) program for the 2001/2002 fiscal year.

***16.
CCS Planning
(Project No. 4193)**

Authorized the City Manager to execute a standard consultant services agreement with CCS Planning and Engineering in the amount not to exceed \$64,449, subject to approval as to form by the City Attorney (Project No. 4193).

***17.
Lauderbaugh/Hill Assoc.**

Authorized the City Manager to execute a standard consultant services agreement with Lauderbaugh/Hill Associates, for a not-to-exceed fee of \$41,520, subject to

(Projects 4204 & 4126) approval as to form by the City Attorney.

***18.** Authorized the City Manager to approve a contract change order with Tiburon Inc.,
Tiburon, Inc. for additional Police Records System training in an amount not to exceed \$11,580,
Police Records Training subject to approval as to form by the City Attorney.

***19.** Awarded the bid for the purchase of the two motorcycles to the lowest bidder,
Award Bid/Motorcycles Hayward Kawasaki in the total amount of \$18,344.00.

***20.** Approved the following purchase requests:
Miscellaneous Vendors

1. \$6,125.62 to Bay Cities Diesel for the replacement of the clutch assembly, differential and cooling system repairs and quarterly CHP inspection for the Fire Departments brush truck, unit PT2. (Funds are available from the Public Works Department operating budget for this inspection and repair).
2. \$6,334.03 to Bay Cities Diesel for the replacement of an air compressor and required air conditioning components and quarterly CHP inspection for the Fire Departments Pierce fire engine unit number E-40. (Funds are available from the Public Works Department operating budget for this inspection and repair).
3. \$7,988.03 to Priority Roofing Solutions to re-roof the Fire Prevention trailer located at Fire Station # 1. Three bids were received and Priority Roofing Solutions was the lowest price. (Funds are available from the Miscellaneous City Buildings Improvements project, (Project No. 8135) for this work).
4. \$9,019.25 to Action Trailer Sales, Inc., for a hydraulic planting trailer to be used for landscaping and related beautification activities. Three bids were received and Action Trailer Sales submitted the lowest price. (Funds are available from the Public Works Department capital outlay budget for this purchase).
5. \$5,327.66 to PK Safety Supply for the emergency purchase of safety supplies for the October 10, 2001, Commemorative Remembrance Memorial Ceremony held at the Milpitas Sports Center. (Funds are available from the Public Works Department operating budget for this purchase).
6. \$11,534.37 to Siemens Enterprise Networks for the final equipment maintenance payment of equipment which has recently been replaced with much more cost effective equipment for the Information Service Department. (Funds are available in the Information Services Department operating budget for this service).

***21.** Approved the Payroll Registers for the periods ending October 6, 2001, in the amount of
Payroll Registers \$1,505,558.35 and October 20, 2001, in the amount of \$1,466,494.68 as submitted.

XII. PUBLIC HEARINGS

1. Police Commander Dennis Graham reported that since 1996, the Department of Justice's Bureau of
Law Enforcement Justice Assistance has been awarding law enforcement agencies block grant funds based on
Block Grant Funds population; on August 9, 2001, the Bureau of Justice Assistance awarded \$56,079 to the Milpitas Police Department; the City was required to match \$4,829; LLEBG Program funds must be spent in accordance with one or more of seven areas, which included supporting law enforcement for hiring and training officers, overtime, multi-jurisdictional task forces to prevent and control crimes, and procuring equipment; pursuant to the Government Code, these funds are to supplement and not supplant any existing police services and must be considered separate and apart from the City's General Fund.

Commander Graham further stated that Police staff had committed \$12,618 to support local agency sharing to finance two investigators for the Santa Clara County District Attorney's Sexual Assault Felony Enforcement Team; the remaining \$48,290 would be dedicated to support the Senior Volunteer Program, a less lethal weapon system, an explosive-detecting canine, Police Science Class overtime, Compstat overtime, and the purchase of a laser printer. Commander Graham explained that funds for

the Senior Volunteer Program would be used to purchase uniforms and radios for volunteers; funds for the less lethal system would be used to test and deploy nets fired from a handheld launcher to subdue mental patients and suspects under the influence of drugs who were resistant and non-compliant; the explosive-detecting canine would enhance the police department's ability to verify the validity of bomb threats and provide security for visiting dignitaries; overtime funds for the Police Science Class would allow assurance that the class was staffed with instructors when on-duty officers were not available; funds for Compstat overtime would allow the Police Department to target high crime areas based on crime analysis, without leaving other areas of the City vulnerable; and the laser printer would allow the Police Community Relations Unit to produce in-house, quality color informational pamphlets, flyers, and Neighborhood Watch newsletters.

Commander Graham stated, pursuant to grant conditions, a five-member advisory board comprised of representatives from a local law enforcement agency, local prosecutor's office, local court system, local public school, and local non-profit group had approved this recommendation.

Councilmember Dixon inquired if the funds designated for canines were to be used for a new canine. Commander Graham responded the plan was to train an existing canine. Councilmember Dixon asked why an explosive-detecting canine had been selected and inquired if the City had any canines currently capable of detecting guns. Commander Graham responded currently there were narcotic detecting canines. Police Chief Charlie Lawson added that they could also detect guns.

Councilmember Dixon, addressing the laser printer, inquired what had been done to this point. Commander Graham responded the work was done in-house or sent to an outside printer.

Vice Mayor Livengood, addressing the \$12,618 for the two investigators, inquired if the amount was based on population or some kind of formula. Commander Graham responded there was a disbursement agreement and one of the conditions of the grant was that the Santa Clara agencies divide the money according to population; and the investigators worked under the guidance of the District Attorney's office. Councilmember Dixon commented that this was discussed every time the Child Safety Committee met, it was very critical, and seemed to be very efficient.

Councilmember Esteves said it was his understanding the grant was received on an annual basis and inquired what the long-term goal was in spending the funds. Police Chief Lawson explained that it was not known from year to year if the grant would be received.

Mayor Manayan opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Lawson, Livengood.

Ayes: 5

MOTION to:

1. Approve budget appropriation of \$60,908 from the LLEBG Fund.
2. Approve expenditures as recommended.

M/S: Lawson, Livengood.

Ayes: 5

2. Public Health Goals

Principal Civil Engineer Darryl Wong reported that State law mandates that a water quality report be periodically prepared and that a public hearing be held for the purpose of accepting and responding to any public comments on the report. Mr. Wong further reported the report had been prepared and the City's water supply met all Safe Drinking Water Standards and complied with all requirements of the California Department of Health Services and the Environmental Protection Agency. Mr. Wong noted the report compared the City's drinking water quality to goals adopted by State and Federal authorities; the goals differed from the standards in that they were not enforceable and no action to meet them was mandated. Mr. Wong reported the City's drinking water did not meet the goals for coliform and lead and copper; however, staff was not recommending any changes or further action. Mr. Wong explained that the positive results for coliform were probably due to

sampling or analytical testing errors and lead and copper were not found in the City's water supply but were constituents found in some household plumbing at low levels.

Mayor Manayan opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Lawson, Livengood. Ayes: 5

MOTION to note receipt and file the Public Health Goals (PGH) Report.

M/S: Lawson, Esteves. Ayes: 5

**3.
Ordinance No. 18.31
Park In-Lieu Fees**

Principal Analyst Cindy Maxwell reported the proposed ordinance clarified the existing mathematical formula for calculating household size; modified the time for determining the total number of units for a project; it allowed the sub-divider to submit a study to the development being proposed for the estimated household sizes that the City could consider for use in considering parkland dedication; and it would also provide for the City to annually calculate the fair market value of property in determining any in-lieu fees that might apply to a development. Ms. Maxwell further reported that the Planning Commission had considered the proposed ordinance on October 10, 2001, and recommended approval to the Council.

Vice Mayor Livengood, addressing the developer coming in with a survey/study of sorts, inquired if that study would relate to the particular project being considered for approval; what would the City consider a valid survey that made sense which either supported or did not support the position of the developer. Ms. Maxwell responded staff would be looking for whatever document the developer had prepared specifically for the development being considered used in the developer's financing package for the project. Vice Mayor Livengood said he would like a point to be reached where some type of agreement was made at a very early stage as to what both sides think the project would generate in terms of people and traffic. Director of Planning, Recreation, & Neighborhood Services Valerie Barone responded the proposed amendments should do that as they allow the developer the opportunity to bring the survey in up front.

Councilmember Lawson, addressing the standard of three acres per 1,000 residents, inquired if that included the County parkland in the City. Ms. Maxwell said it did not, it was only City-owned property.

Mayor Manayan opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Lawson, Livengood. Ayes: 5

Ms. Maxwell read the title of Ordinance No. 18.31 amending Sections 9.05 and 9.07, Chapter 1, Title XI of the Milpitas Municipal Code.

MOTION to waive reading beyond the title.

M/S: Lawson, Livengood. Ayes: 5

MOTION to introduce Ordinance No. 18.31.

M/S: Lawson, Livengood. Ayes: 5

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Mayor Manayan called to order the regular meeting of the Milpitas Redevelopment
CALL TO ORDER Agency, meeting jointly with the City Council, at 8:15 p.m.

**RA2.
ROLL CALL**

Present were Mayor Manayan, Vice Mayor Livengood, and Agency/Councilmembers Dixon, Esteves, and Lawson.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of October 16, 2001, including joint meeting with the City Council, as submitted.

M/S: Lawson, Dixon.

Ayes: 5

**RA4.
AGENDA**

Councilmember Esteves stated he would be abstaining from voting on item RA10 as he owned property in the affected area.

MOTION to approve the agenda and consent calendar as submitted.

M/S: Lawson, Livengood.

Ayes: 5

**RA5.
CIVIC CENTER
PROJECT PROGRESS**

Redevelopment Projects Manager Greg Armendariz reported there were three items for consideration: a PowerPoint presentation on updating the construction activities and two action items; the first action item was to approve six contract change orders and the second action item was to rescind a contract award and award a subsequent contract.

Mr. Armendariz distributed an updated contract change order summary, stating none of the figures had changed; the updated summary was being distributed for clarification and identifying the funding sources; the six contract change orders covered work that had been anticipated and were from holds and unboughts or other CIP projects; none of the change orders were unforeseen work; and none had hit the contingency.

Mr. Armendariz, addressing the site concrete, reported the Council had previously awarded the contract to Landavazzo for \$428,150, which involved all the flat work around the parameter of the building; on October 2, 2001, the pond concrete contract had been presented to the Council in the amount of \$863,650; however, it had been over the budgeted amount by \$390,000, and the Council rejected the award recommendation and directed staff to work within the budget. Mr. Armendariz further reported Landavazzo was not interested in renegotiating the pond concrete package nor were they interested in performing the first concrete package; staff then negotiated the entire concrete package (site plus pond concrete) with a new contractor, JJR Construction; staff had value engineered several items with the plans, none of which involved redesign, and was able to successfully negotiate with JJR Construction for the entire package for an amount of \$897,000, which was within the budget.

Mr. Armendariz reported that Ron Thompson of Turner Construction was handing out a CPM requested by Councilmember Esteves at the last Council meeting; the CPM schedule filtered out the critical path items in the entire schedule, showing that the Council Chambers was a critical path item for the completion of the building to get to the move-in date of March 11, 2002.

Mayor Manayan, noting that the Council Chambers was a week behind schedule, inquired if there was a way to catch up on that and still make the schedule. Mr. Thompson said it was planned to make up the time.

Councilmember Esteves requested verification that the critical path activities did not have any early start or late finish. Mr. Thomson responded, for right now, yes.

Mayor Manayan acknowledged Mr. Armendariz' and Ms. Waldron's work in looking at the concrete and saving the City over \$400,000 in the re-engineering of the pond and thanked them for their diligence. Councilmember Dixon echoed Mayor Manayan's acknowledgements of Mr. Armendariz and Ms. Waldron.

MOTION to note, receipt and file Civic Center Project progress report.

M/S: Esteves, Livengood.

Ayes: 5

MOTION to approve contract change orders for:

1. Carrara Marble in the amount of \$2,248;
2. Division II in the amount of \$5,850;
3. JJR Construction in the amount of \$2,937 (Project No. 8143 and Parking Circulation Project);
4. Rollie French in the amount of \$52,000;
5. Sasco Electric in the amount of \$1,657 (Project No. 8143 and Parking Circulation Project); and
6. Furnish and Install the A/V infrastructure per Sasco Electric's and Ove Arup's drawings in the amount of \$175,000 (Project No. 8142 City Hall Technology), and \$48,099 (Project No. 8093 Telecommunications

M/S: Esteves, Livengood.

Ayes: 5

MOTION to rescind award of City Hall Site Concrete Contract to Landavazzo for \$428,150 on September 18, 2001, and award the City Hall Site and Pond Concrete Package to JJR Construction for \$897,000.

M/S: Lawson, Dixon.

Councilmember Lawson inquired if the City were at any risk in rescinding the contract. City Attorney Steve Mattas responded Landavazzo had agreed to the rescinding.

VOTE ON MOTION:

Ayes: 5

Councilmember Dixon said she had received many calls regarding the Flute Player and stated it was in a secure place and would be going into the pond.

**RA6.
ANNUAL AUDITED
REPORTS FISCAL
YEAR ENDED
JUNE 30, 2001**

Finance Director Emma Karlen said she would like to combine the presentation of RA6, RA7, and RA8 as they were all related. Vice Mayor Livengood noted that he had questions for Item RA6.

Ms. Karlen listed the reports that she would be presenting, stated the reports were the result of the annual financial audit conducted for FY 2001; the financial statements of the City, Agency, and Authority and all other related financial reports had received an unqualified opinion from the auditors. Ms. Karlen provided a slide presentation outlining the 2000-2001 audited financial reports. Ms. Karlen stated that staff would be recommending a revised General Fund reserve policy for the Council/Agency's approval.

Vice Mayor Livengood questioned the internal control structure report, which was the one the auditors unfavorably commented on; referring to the second page, item 2 (the Information System Controls) with auditor and staff comments showing a difference of opinion, inquired if staff was doing what the auditors stated the City was not doing or was staff not doing what the auditors say we're not doing and we're going to fix it. Ms. Karlen responded she believed the City was going to fix it; currently there was no off-site storage to store the City data. Chief Information Officer Bill Marion added the comment had been made by the auditors that regular backups were not completed; in actuality, Information Services backed up data every evening and once a week it was sent off site; one comment in the audit report addressed the fact of an off-site redundant processing facility, which would be somewhat expensive; Information Services was looking at something that would be an alternative solution, not quite as costly, whereby if there was a major disaster, there would be another computer of lesser capacity at another City location where the finance system could be brought up; would not be a true hot-site in the sense the auditors reference. Mr. Marion said the daily backup and off-site storage was being done; in terms of having a hot-site, staff was looking at taking an older system, doing some minor upgrades to it and potentially placing it at another City location to be used in the event there was a major disaster that destroyed the data processing facility; data could be recalled from the off-site location and loaded onto the older machine and be able to operate in a somewhat diminished capacity.

Councilmember Lawson inquired if staff had looked at the possibility of a reciprocal agreement with another agency for that purpose rather than creating our own redundant site. Mr. Marion responded the Finance Department had looked into that; the vendor did offer that service through one of its locations; one of the advantages of using the City's existing equipment was the relatively low cost. Councilmember Lawson said it was his experience when looking at redundancy, it was not normally handled in as close a geographic range as the City was and inquired if it would make sense to explore a reciprocal agreement with another municipality (i.e., southern California). Mr. Marion said it certainly could be investigated.

Councilmember Esteves inquired if there were any schedules in mind, stating that normally for it to be realistic, schedules and tests should be considered. Mr. Marion responded currently staff was in the process of upgrading the Finance System and would like to see those upgrades completed and see that the platform was stable prior to looking into the capabilities needed to be put in place to meet the findings in the audit and estimated it would be completed in approximately a year. Mr. Marion explained his experience with a hot site with a former employer was that it would be in excess of 48 hours before one would be operational and there were some considerations that needed to be undertaken.

Councilmember Lawson agreed that a hot site was incredibly expensive and said he felt comfortable with what Mr. Marion was suggesting; exploring the possibility of a reciprocal agreement with another agency physically located at a distance from Milpitas would provide more comfort; and in the event of a large disaster, it would take a while to get things back up to normal.

Vice Mayor Livengood, referring to item 4, Implementation of GASB Statement 34 in the Memorandum on Internal Control Structure that read "this statement will have a profound and far reaching effect on municipal accounting and financial reporting, and its implementation will require planning, preparation, and surprising number of policy decisions," inquired what the statement meant. Ms. Karlen responded the Finance Department was implementing GASB 34 this current year and would be ready and prepared to present the result by the end of FY-2002; what it was referring to was that GASB34 required an entire new reporting format of a financial statement; it also required capturing retroactively 20 years of infrastructure; previously very few cities captured infrastructure and fixed assets as it was not a practice under the Governmental Financing Practice as the infrastructure was only of use to the City, it was not a real asset to anybody else; however, the new statement required that it be retroactively be reviewed. City Manager Wilson explained that the requirement actually created two reporting systems out of one and was costly.

Vice Mayor Livengood inquired if there was a way the City could address this through the State Legislature commenting that he thought this body had a lot of authority he was unaware of. Ms. Karlen responded the State Legislature did not control this body; it was a self-governing board. Assistant City Manager Blair King added the Council was not obligated to follow GASB34; however, if it were not followed, the audit received would be a qualified audit opinion; staff worked very hard to provide to the Council and the public an unqualified audit opinion; the most significant change was the Government Accounting Standards Board stated purpose to make accounting documents more readable to the public; and GASB34 states that we would now operate on full accrual accounting and move away from the modified accrual system.

City Manager Wilson presented the scenario that if the City were to borrow money, the GASB34 standard would be applied and the City would be facing a bond market, for example, in which the qualified report would cost the City more than an unqualified audit; therefore, fundamentally the City was forced to follow GASB34. Mr. Wilson acknowledged that the City's Finance Department had accomplished this and it was noted in the audit that Milpitas was in excellent position with regard to the new requirement.

Councilmember Esteves, referring to page 4 where it was stated that the City failed to have the final report within 120 days, felt that 120 days was a long period, and questioned if there were standards that the City followed as to when the final project should be filed. Ms. Karlen stated, yes, and explained that the project in question was an oversight; it had been completed in 1996 and had not been picked up

that a final audit was needed. City Manager Wilson confirmed that there was a standard of closing out, which was to comply with the 120 day standard.

Councilmember Esteves requested clarification on the inactive funds under the internal control (under findings – the Local Improvement District). Ms. Karlen stated that when the project was finished, there were cash balances in the funds; the normal way to dispose was to transfer to the General Fund if less than a certain amount or credit back to the taxpayer, or the fund could be kept for maintenance; staff would evaluate the balances and make a recommendation to the Council in the near future.

**RA7.
GENERAL FUND
RESERVE POLICY**

Vice Mayor Livengood, referring to the \$21 million undesignated fund balance, questioned what kind of percentage of the General Fund Budget was reflected. Ms. Karlen stated it exceeded more than 30% of the General Fund Budget as this year's budget was \$60 million; roughly \$9.1 million would meet the 15% requirement.

Councilmember Lawson, addressing the designation of money for the Capital Improvement Reserve, suggested part of the sum be specifically designated to the library project as the Transient Occupancy Tax had been declining as of late; the voters had overwhelmingly approved the concept of a new library; felt it kept faith with the voters if a certain percent were specifically designated; and suggested \$5 million.

Councilmember Esteves reported that at the last Library Subcommittee meeting there was mention of alternative or supplemental funding, and felt this could be a good source.

Vice Mayor Livengood inquired what other type of Capital Improvements might be looked at to use some of the \$7 million. Ms. Karlen stated there were a lot of street improvement needs; the street improvement funding was limited to the gas tax, which was not always sufficient to provide all the annual funding for the street improvement projects. City Manager Wilson said the present capital plans for the street improvement projects almost solely relied on gas tax revenues. The City Manager further stated it was often difficult to handle a contingency on some of the existing projects (fund enough contingency to make the project successful).

Councilmember Esteves emphasized that there was an on-going needs assessment for senior capital projects.

Councilmember Dixon said she thought this money should be looked at very carefully as we were in a down turn and it was not known when there would be a resurfacing; she also thought there was enough interest to direct staff to look into the whole issue of Capital Improvements. City Manager Wilson said staff could certainly make an evaluation and the two priorities that the Council would hear would be the library and the streets.

Councilmember Lawson said he was concerned the Transient Occupancy Tax that the library was based on would not be as robust as was originally hoped; he felt this was a one-time opportunity to designate some soft cost funds to begin that project and helped to keep faith with the voters in that regard; he would like to look at other options and alternatives; however, that would get into another reprioritizing; and felt putting it into a reserve for that purpose was a good way to keep faith with the voters.

Vice Mayor Livengood said he agreed with Councilmember Lawson and felt that beyond that he hesitated to get involved in streets versus senior projects versus parks; agreed with the point that Councilmember Lawson made that the library was one project that had the voters stamp of approval, which made it different; would be in favor of supporting some type of a set aside out of the money for the library, putting the rest into the Capital Improvement reserve and then dealing with where those priorities go from there at budget time.

MOTION to approve revisions to the City's General Fund reserve policy as follows:

1. Increase the Public Employees Retirement System Rate Stabilization Reserve to \$7,000,000.
2. Increase the Capital Projects Contingency Reserve to \$7,000,000.

3. Designate \$5,000,000 in the Capital Projects reserve for the Library Project.

M/S: Lawson, Livengood.

Councilmember Dixon requested clarification that the way the Transient Occupancy Tax was worded did not lock it into the library. City Attorney Mattas stated that was correct, it was not locked to the library, the voters approved the companion measure which suggested that the funds could be used for library purposes; and the Council could go in a different direction than that advisory vote and could also re-designate the action the Council was now taking. Councilmember Dixon inquired if the Council were to set aside the money, would it lock it in. City Attorney Mattas responded no. Councilmember Lawson said it was not locked in because it was a reserve fund.

City Manager Wilson said while there wasn't the ability to project the absolute costs right now for any part of the library project other than the consultant contract, all this had to come back to the Council; no monies would be spent without full Council review, time lined, and the analysis, and the Council had the full flexibility of how the money was spent.

Dorsey Wiseman, a 16 year employee with the City of Milpitas, stated as a member of one of the two employee groups now in negotiations with the City, he was requesting that the remaining monies not be allocated but be maintained until the economic adjustments had been made for the two employee groups currently in contract negotiations and the two employee groups that would soon commence negotiations.

Al Bennett, representing Local 270, which represents approximately fifty percent of City of Milpitas employees; said he wanted to bring to the Council's attention that about 50% of the employees were still in negotiations and had been in negotiations for some time; agreements have not been settled, were a long ways from being settled, cautioned the Council on not moving any funds so they would not be available for settlement; and said many employee groups in the City had not kept up with the cost of living.

Vice Mayor Livengood asked when the current budget had been adopted, wasn't an amount included for raises for employees. Ms. Karlen responded that an amount had been included. City Manager Wilson said an amount had been included in expectation of the negotiations.

Councilmember Lawson said he appreciated the comments from the employees and union representatives; felt the City needed to be especially careful with the funds under discussion as it was one-time money; and felt that designating the funds being discussed was in the best interest of the public and the long-term best interest of the employees.

VOTE ON MOTION:

Ayes: 5

**RA8.
FINANCIAL STATUS
FIRST QUARTER 2001**

Finance Director Emma Karlen reported that compared to the same period last year, the General Fund experienced sufficient decreases on some major revenues; sales tax had decreased by 22% (\$702,000); building permit revenue decreased by almost 70% (\$1.56 million); property tax and Transient Occupancy Tax showed increases based on relatively insignificant amounts received to date; the Transient Occupancy Tax (TOT) revenue received during the first quarter was based on 10% TOT while the TOT revenue received last year during the same quarter was based on 8%; overall General Fund revenue decreased by 27.7% or \$2.24 million for the first quarter. Ms. Karlen further reported that on the expenditure side, staff continued to hold to the line as compared the last two fiscal years. Ms. Karlen concluded that sales tax revenue decreased reflecting consumer confidence on the current economy and the slow down of business investment; many major investment projects in the City were on hold which affected the building permit revenue; and staff would be very cautious on its spending, delaying major capital outlay purchases and would continue to monitor revenue and provide updates to the Council.

Vice Mayor Livengood, referring to the first slide reflecting the amount of \$5,859,886 (revenue), inquired how that matched with what had been anticipated and what percentage of that was budgeted for the whole year. Ms. Karlen responded the anticipated revenue for the year was approximately \$62

million. Vice Mayor Livengood inquired if it was too early to tell what the full year's prognosis was for revenues. Ms. Karlen said she felt it was too early, however, based on the information in hand, it was apparent that the revenue tax and building permits had gone down; at this point, she did not anticipate property tax going down as it was normally very stable. Vice Mayor Livengood, addressing the sales and use tax line, inquired if the year were to finish at 22% down, what kind of number would that be. Ms. Karlen said it would be about \$13 million; over \$16 million was projected, leaving a \$3 million shortfall. City Manager Wilson said the numbers were not able to be projected throughout the year; they were incredibly cautionary numbers, particularly the building permits; fundamentally, if the City got through January without seeing a significant change, there would be some shortfall in that area alone; at the staff level, there were cautions moves being undertaken to maintain very low levels of expenditure through January 31, 2002; on the positive side, the next four months could turn the figures around (i.e., a good sales tax season for the holidays and some general recovery in the national economy).

Ms. Karlen clarified that the \$60 million figure included operating transfer; what was projected was approximately \$50 million in revenue.

Councilmember Esteves inquired if it was too early to look at what could be cut or do some value-engineering. City Manager Wilson said staff had been doing that for at least a hard 45 days and would be very cautious about employment, recruitments, and any casual expenditures (capital outlay expenditures within the General Fund budget area that can be delayed/held).

Vice Mayor Livengood cautioned that the last two months a tremendous amount of pressure was put on all the employees, particularly those in the public safety sector, and emphasized the need to keep the police and fire departments at a staffing level that met the demands of the citizens, as they were, rightfully so, very nervous about the environment; he asked that those positions be treated very carefully to make sure the City was at a full staffing level in those departments.

MOTION to note receipt and file.

M/S: Lawson, Esteves.

Ayes: 5

***RA9.** Noted receipt and filed.
INVESTMENT PORTFOLIO
QTR. ENDED SEPT. 30, 2001

***RA10.** Authorized the City Manager/Executive Director to enter into a Professional Services Agreement with Keyser Marston Associates Inc. for an amount not to exceed \$48,000, subject to approval as to form by the City Attorney.
BLIGHT ASSESSMENT SERVICES

VOTE:

Ayes: 4

Abstain: 1 (Esteves)

RA11. There being no further Redevelopment Agency business, Mayor Manayan adjourned the
ADJOURNMENT Redevelopment Agency meeting at 9:20 p.m.

The City Council meeting continued.

XIV. REPORTS OF OFFICERS AND BOARDS

4. Principal Analyst Maxwell reported in July three agencies, the Metropolitan Transportation
Ozone Attainment Plan Commission, the Bay Area Air Quality Management District, and the Association of Bay Area Governments, had approved and submitted a Revised San Francisco Bay Area 2001 Ozone Attainment Plan to the State; it was rejected by the State and not sent on to the EPA; the agencies have since held a number of public workshops and revised the plan to include some additional measures that have satisfied the State; and the item before the Council was to adopt a resolution in support of the revised plan and to indicate the City's support.

Councilmember Esteves asked for some samples of control measures in transportation. Ms. Maxwell responded there were measure that MTC was undertaking that have to do with special studies and transit-oriented development; however, she was not familiar with all the different measure that have been taken through MTC. Principal Transportation Joe Oliva reported the measures were divided into two sources – mobile sources like vehicles and stationary sources like factories and things that disburse particulates into the air; the measures may involve more enhanced smog checks, using more transit-oriented development, and other were more policy related to situating housing next to transportation.

MOTION to adopt Resolution No. 7124 and approve support letter for the Revised San Francisco Bay Area 2001 Ozone Attainment Plan.

M/S: Lawson, Esteves.

Ayes: 5

**5.
Military Leave**

Vice Mayor Livengood said he asked to have this item on the agenda, the resolution was adopted by the Council in 1993 to support City employees called in to active military duty in times of crisis and we certainly were there now; he wasn't suggesting any changes; however, wanted to add two things: The resolution calls for a 180 time frame, which under normal circumstances would work; in this case those called up will probably serve longer; if an employee does go beyond 180 days (six months), Vice Mayor Livengood requested that it be referred back to the Council for review and possible extension if the employee is still being asked to serve in active duty. Vice Mayor Livengood further stated the second thing related to public safety employees and if we begin to lose public safety officers (police officers and firefighters), we somehow compensate for that through the use of overtime or hiring other people because we can't allow public safety to deteriorate. Vice Mayor Livengood said he wanted to show support for employees called into service and make sure that while they are doing that, we don't fall behind in protecting our community.

Councilmember Lawson said he agreed with the comments and thought it well for the public to understand that the City compensates the employee for the difference in salary between the military pay and their existing pay with the City, which was generous and far better than most industries; he agreed if someone was called beyond the 180 days, the Council should look at it, and agreed with being cautious about the number and coverage in the public safety area.

Councilmember Dixon commented that Police Officers are leaving right now for various reasons and she hoped the City administration was looking at ways of retaining them or getting them back. City Manager Wilson responded some folks had taken jobs with other agencies and staff was working to fill those positions and hoping to identify some of the reasons they were leaving.

MOTION to reaffirm support of the provisions of Resolution No. 6163 and directed staff to refer back to the Council any reserve employee exceeding 180 days for possible extension; supported full staffing in the Police and Fire Departments.

M/S: Livengood, Lawson.

Ayes: 5

**6.
Back to Business
Campaign**

Councilmember Esteves said this was a return agenda item from the November 6, 2001, meeting, it made sense, the Milpitas Chamber of Commerce was commencing a "Back to Business" campaign to encourage businesses in the community, and was asking for a \$2,500 contribution from the City.

Gaye Morando, Executive Manager, Milpitas Chamber of Commerce, commented that Mr. DeSmidt was distributing a handout to add to the letter and information in the Council's packets. Ms. Morando showed the cover of the Milpitas Post that contained a picture from their kick-off campaign and said she was pleased with the campaign because it did do what they wanted it to. Ms. Morando said they reached out to the people and families from other cities, the partnership with the Word Journal helped, hopefully this would become an annual event, the Farmers' Market extended its hours, and \$2,500 was raised for the 911 Relief Fund. Ms. Morando further stated another event was planned for December 15 in the Town Center and commented on a survey of six major restaurants in town.

Mayor Manayan said he thought the Council was generally supportive to encouraging people who are going out to do it within the City and help Milpitas merchants. Mayor Manayan further stated that he would like City staff to have some input into the marketing campaign. Vice Mayor Livengood said he was struggling a little with this as he thought the larger malls, like the Great Mall, should pay for the events; the smaller centers were struggling more, usually didn't have marketing budgets, and he would be more comfortable supporting them.

Councilmember Dixon said she agreed with the Vice Mayor, \$675 for two events at the Great Mall was a large amount when looking at just \$2,500, and she would rather have that given to some of the struggling businesses in town.

Mayor Manayan asked that the City Manager and Assistant City Manager, who handle the City's economic development, be involved with the Chamber because the City was providing a substantial amount. Ms. Morando said she thought it should be a community partnership with the Chamber, the City, the School District, and businesses working together to make sure people come into Milpitas and spend their dollars.

MOTION to approve a \$2,500 contribution as a partner to the "Back to Business" campaign with the involvement of the City Manager and City staff in the marketing campaign.

M/S: Esteves, Livengood.

Ayes: 5

XV. NEW BUSINESS

7. Deny Fee Waiver Request

Recreation Supervisor AmyBeth Ogden reported the Guru Nanak Engineering College Charitable Association (GENCO) had requested the waiver of all fees associated with its rental of the Higuera Adobe from December 14th through the 16th of this year and its use of the Sports Center Gymnasium on December 16th; the event would occupy the Adobe from 8:00 a.m. on December 14th through 8:00 a.m. on the 16th then it would move to the Sports Center Gymnasium and be there until 5:00 p.m. on the 16th; City staff would act as building attendants from 8:00 a.m. until 11:00 p.m., and GENCO would provide private security from 11:00 p.m. until 8:00 a.m.; total rental fee for a continuous 57 hour event was \$3,052. Ms. Ogden further reported that staff recommended the fee waiver be denied.

Vice Mayor Livengood inquired if the City had a staff person on site during the entire event. Ms. Ogden responded either there would be a staff person on site or on a pager if a second facility was also being staffed. Vice Mayor Livengood requested clarification that the fees were high due to the necessity of having an attendant. Ms. Ogden said that was correct and stated that rental fees were \$30/hour and staffing fees were \$21.29/hour.

Councilmember Dixon inquired if the 11:00 p.m. to 8:00 a.m. security personnel would be sleeping at the facility. A representative of GENCO said the security personnel would not be sleeping at the facility; the event was to celebrate the birthday of Shri Guru Nanak Dev Ji; and there would always be four members at the facility in two hour shifts reading the Holy Book which takes approximately 48 hours. Councilmember Dixon inquired if there would be any music played in the evening. The representative said there would not be any music until Sunday at the gymnasium. Councilmember Dixon commented that she admired what the group was doing but expressed concern that since their events had been very successful in the past, the number of attendees may have been understated. The representative said the event would also be celebrated at the same time in San Jose and Fremont.

Councilmember Esteves inquired if the event would be classified more as a religious event or a cultural event. The representative said it was more of a religious event than cultural. Councilmember Esteves asked the City Attorney if the City would be supporting a religious sect. Mehar Mahal, from GENCO, said one of the purposes of the event was the perfect opportunity as we are going into the number of events that happened from September 11th and were happening again today (i.e., the hate crimes); felt this would give the opportunity to invite the people from the local community and make them aware of who the Sikh Community is, what its beliefs and values were; he also felt, from a cost point of view, it was very minimal; GENCO would be spending an equal amount of money on food and other activities

being planned for the children; he believed this was education and prevention of any kind of hate crime occurring in the society associated with the incidents that were happening since September 11th.

City Attorney Mattas stated, in terms of the Council's expenditures of public funds, it was appropriate for the Council to expend public funds for cultural events; the Council would want to consider the fair and equal treatment of all cultural groups in terms of its decision making; and it would not be appropriate to spend it for religious activities if that were the express purpose of the event.

Councilmember Esteves questioned the need for 57 hours to expose the Sikh culture to the Milpitas community. Mr. Mahal responded there were two parts to the event; the reading of the Holy Book would be continual and there would be additional people present to talk to the community on a one-on-one basis to share the event's purpose and the culture.

Councilmember Lawson asked what was the justification for the fee waiver request. Mr. Mahal said GENCO was a non-profit organization, had little funds, would be spending what little funds it had (equal amount of about \$3,000) on food and other activities for the program; the event normally takes place in either Fremont or San Jose, but due to all the events happening since September 11th, they believed it was the perfect opportunity for the local community to do the event locally. Councilmember Lawson said he appreciated the point that was being made and the need for the cultural interchange; however, it was very difficult to support one group that was speaking specifically of a religious event at the expense of other groups and thought it would not be a good decision for the Council to make.

Councilmember Dixon, addressing the events scheduled for Sunday, inquired what would be happening. Mr. Mahal said activities for the children were being planned along with sports and other cultural activities and some educational activities. Councilmember Dixon inquired if the request could be bifurcated. City Attorney Mattas advised that if the Council were to consider any kind of bifurcated approach, the waiver would have to be expressly contingent upon the fact that the activity was a cultural activity and not a religious activity; in reviewing the information provided, it was difficult to tell what the Sunday activity was.

City Manager Wilson said staff was hearing for the first time the extra activities being discussed; sports activities had not been brought to staff's attention; he understood the event to be a religious event based upon the founding Guru of the community; it had been presented to staff as a religious ceremony (fundamentally); if it were changing, turnout numbers would be needed; staff had been very cautious in its inquiries and if this was going to be a cultural event at the gymnasium on Sunday, a thorough evaluation and an expectation of how to deal with perhaps thousands of people was needed; and staff was very concerned (without regard to the fee situation) on being able to be staffed appropriately.

Vice Mayor Livengood inquired of the City Manager if it were typical when a group such as GENCO comes in that a use form for the facility was completed. Mr. Wilson said that form had been completed and it addressed no more than 50 people at a time at the Adobe and 200 at the gymnasium; staff was concerned that other events sponsored by the group had resulted in greater numbers and staff had been unprepared. Vice Mayor Livengood inquired as to what the Council's policy was as it related to fee waivers for cultural events. Ms. Ogden stated approximately 50% of the cultural events had been given fee waivers; most had been governmental or cultural programs. Vice Mayor Livengood said that if it was determined that the Adobe process would be religious ceremony (of sorts) and the event at the Sports Center was cultural, then he wanted to treat the cultural part of it the same way other cultural event requests were treated. Ms. Barone said that the majority of groups that rent the facilities don't request fee waivers and there wasn't a policy for fee waivers.

City Manager Wilson said that fundamentally, the majority did not request fee waivers; when there were fee waiver requests, they were approached on a case-by-case basis; his understanding was that the foundation of the entire process was a religious observance of significance in the Sikh community; and cautioned about mixing in a cultural aspect and calling it a cultural event. The City Manager asked that GENCO provide a clarification.

Councilmember Lawson said he agreed with Mr. Wilson's position; felt it was very difficult to put the applicant in a position of suddenly declaring that some of the activities involved were not religious in nature; was concerned with a religious event taking place in one location and then traveling elsewhere as part of the same event; and, since there would be one more Council meeting before the event, suggested the GENCO representatives meet one more time with City staff to iron out what the event was supposed to be and that staff bring back a policy on fee waivers.

Mayor Manayan asked, if it was determined after meeting one more time that the Sports Center event was a purely cultural event, would the Council consent to waiving the rental fees but not the personnel costs. Councilmember Lawson said his difficulty with that was that he needed to have a better understanding of what had been done in the past.

Mr. Mahal said he thought time was being wasted tonight and he was willing to go along with the suggestion of having another meeting.

Mayor Manayan tabled the item to the November 20, 2001, Council meeting, stating that staff and legal counsel would meet with GENCO representatives for one final meeting to work out all the particulars of the event.

8. San Jose Projects

Assistant Planner Troy Fujimoto, using a PowerPoint presentation, explained three major projects planned by the City of San Jose adjacent to the City's western property line: (1) the Los Esteros Critical Energy Facility, a 15.3 acre Calpine project; (2) a PG&E power transmission line and Los Esteros substation bordering McCarthy Ranch; and (3) the KYCY Radio transmitter facility on the Newby Island landfill. City Manager Wilson said staff was looking for direction from the Council to vigorously oppose the projects and come back with further information on how to oppose these projects. Mayor Manayan said he didn't like the fact that the projects were right on the City's border. Councilmember Esteves suggested the City explore all aggressive recourses including legal avenues.

The Mayor asked the City Attorney to comment on the ability of the City to stop these projects. City Attorney Mattas responded that to insure the greatest possibility to vigorously oppose the projects, the City would want to participate to the fullest extent possible in the environmental process to identify the deficiencies and to make sure all alternatives are properly reviewed.

City Manager Wilson said staff would bring back a comprehensive plan of action, including funding needed, to oppose the projects.

MOTION to direct staff to vigorously oppose the three projects proposed by the City of San Jose and to return with a comprehensive plan of action.

M/S: Lawson, Dixon.

Ayes: 5

9. Charter City Task Force Report

City Manager Wilson introduced Evelyn Chua, Chair of the Charter City Task Force. Ms. Chua thanked the Council for the honor of serving on the Task Force for the past 17 months, noting that the members devoted their time and talents to the goal of determining the appropriate direction for the City to pursue and in the process found ways to work together harmoniously in what they felt was the true Milpitas spirit. Ms. Chua reported that at their regular monthly meeting on September 10, 2001, the Task Force voted to recommend that Milpitas not proceed with any proposal leading to Charter City status. Ms. Chua explained the recommendation was based on the Task Force's study, research, and discussion of the Charter City question and the conclusion that no present advantage, including increasing the number of Council Members, was discovered that reached a level of significance compelling enough to warrant altering Milpitas' form of government. Ms. Chua said in the majority view, all points that came under discussion faded; the lack of public involvement and support was interpreted not as distrust of local politicians but as an expression of satisfaction with the current system. Ms. Chua said a third point the Task Force evaluated was the fact that Milpitas is a small city; the Task Force felt it advisable that Milpitas continue to have part-time elected officials with a City Manager/City Council form of government; however, this did not mean that the Task Force did not value, and even demand, leadership from its officials. Ms. Chua thanked City Manager Tom Wilson, City Attorney Steve Mattas, Assistant City Attorney John Bakker, and City Clerk Gail Blalock for their assistance.

throughout the process. Ms. Chua also thanked each member of the Task Force for their hard work, dedication, and commitment, acknowledging the presence of Vice Chair Jerry Epps and Task Force Member Marsha Grilli who were in the audience. Ms. Chua closed by saying that upon completion of its work, the entire Task Force took a few minutes to reflect on and voice their feelings about the experience; they, as ordinary citizens, had just performed a civic duty impossible in many parts of the world which represented the true and endearing essence of the American spirit; and they thanked the Council for giving them this unique opportunity to serve.

Vice Mayor Livengood said he thought it was very clear from both the presentation by Ms. Chua and the report submitted that the Task Force was very deliberate and thorough in its work, which was exactly what he hoped they would do; he was grateful for the work the committee did and while he didn't agree with the ultimate conclusion of the report, he believed the process from the very beginning was designed to give the community its say; it was his intention from the beginning to follow the advice of the committee and felt it was an important exercise for Councilmembers to hear what the committee had to say and to see what the process was in other communities and how it worked out. Vice Mayor Livengood said he was grateful for the work the Task Force did and was ready to move forward with the majority recommendation, which he felt was the appropriate step to take. Vice Mayor Livengood again expressed appreciation to the Task Force for its hard work.

Councilmember Lawson expressed his personal thanks to the Task Force members commenting that in the beginning, he was a little reluctant to see this begin; however, the Task Force had reaffirmed his faith in the citizens of Milpitas and he could not begin to express how profoundly moved he was at the depth of the research and the seriousness with which the Task Force took on the task. Councilmember Lawson said he learned a lesson to never underestimate the power of the people in Milpitas.

Councilmember Esteves said this was really a good moment for him because he was the one who proposed having a task force; he thought the Task Force did an objective job, provided extensive information, and determined what was best for the City of Milpitas; the Task Force clearly indicated no advantages or compelling reasons of being a Charter City; the Task Force provided great information; and he thanked them for their hard work, intelligence, and integrity.

Councilmember Dixon said she echoed the comments that had been made so far; commented that as many knew, she was never in favor of Milpitas becoming a Charter City and had some concerns that the right amount of research would be done; she attended two of the meetings and was pleasantly surprised and amazed at the dialogue and interchange; she thanked the group for their hard work, commenting she knew it took a long time but they had now joined a small group in this community (the Hillside Review Committee that took over two years) in doing their civic duty. Councilmember Dixon further stated she knew there were things the City could do to improve, noting that one thing that ran through the discussions was do you get the right people in public service when the pay was so low, and shared a newspaper article from the Sacramento Bee on a similar subject of Council salaries.

Mayor Manayan thanked the Task Force for the service they had performed.

MOTION to accept with gratitude the report of the Charter City Task Force and to not pursue Charter City status.

M/S: Livengood, Esteves.

Ayes: 5

XVI. ORDINANCES

11. Ordinance No. 43.197 Traffic Code (Introduce)

Traffic Engineer Arlene DeLeon reviewed the proposed changes to the Traffic Code consisting of routine traffic control revisions and updates to provide additional marked crosswalks near schools, at recently constructed sidewalk ramps, and at a horse trail crossing on Calaveras Road.

Traffic Engineer DeLeon read the title of Ordinance No. 43.197 amending Chapter 100, Title V (Traffic) of the Milpitas Municipal Code.

MOTION to waive the reading beyond the title.

M/S: Lawson, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 43.197.

M/S: Lawson, Dixon.

Ayes: 5

**12.
Ordinance No. 218.2
Transient Occupancy
Tax (Introduce)**

Finance Director Emma Karlen reported in an effort to improve the reporting, remittance and collection processes for the transient occupancy tax and to reflect the best practices among the cities, staff had prepared some amendments to the Transient Occupancy Tax Ordinance. Ms. Karlen said the proposed changes were summarized in the staff memo; the draft ordinance was sent to all the hotel/motel operators and based on their comments, staff made further comments, and she believed the changes addressed all the hotel operators' concerns.

City Attorney Mattas noted that a cover sheet for the ordinance had been distributed and called attention to some minor corrections to the ordinance [Section 8.01, add the word "tax" at the end of the first sentence; in the second sentence after the word delinquency add "(defined as failure to remit any delinquent remittance on or before 30 days following the date on which the remittance first became delinquent)" and Section 8.04, the reference at the end to Section III-13-8.04 should be III-13-8.02].

City Attorney Mattas read the title of Ordinance No. 218.2 amending Chapter 13, Title III of the Milpitas Municipal Code relating to Transient Occupancy Tax.

MOTION to waive the reading beyond the title.

M/S: Lawson, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 218.2.

M/S: Lawson, Dixon.

Ayes: 5

XVII. RESOLUTIONS

**13.
Major Investment Study
Silicon Valley Rapid
Transit Corridor Study**

Principal Transportation Planner Joe Oliva recognized his colleagues Traffic Engineer Arlene DeLeon, City Engineer Mike McNeely, and Senior Analyst Cindy Maxwell, and thanked them for their assistance with the Silicon Valley Rapid Transit Corridor Study project. Mr. Oliva briefly reviewed the Major Investment Study process, the project alternatives, and the preferred investment strategy (Alternative 11), a BART system on the Union Pacific railroad alignment. Mr. Oliva said the major issues identified for Milpitas were a central Milpitas station (removing the "optional" status), a BART maintenance facility in Milpitas (removal from consideration), and the Great Mall-Capitol/Montague grade separation improvement. Mr. Oliva noted that the VTA was expected to take action on the recommended Alternative 11 at its November 9, 2001, meeting. Mr. Oliva reviewed the information the Council had received, including the proposed resolution supporting the Study and the staff memorandum outlining an Action Plan.

Mayor Manayan commented that in the joint policy group meetings he attends with San Jose, Fremont, Santa Clara, and Milpitas represented, there did seem to be support from San Jose for a second station in Milpitas because the only projected station would be at the San Jose border. The Mayor said San Jose Councilman Chuck Reed, who represents the Berryessa area, recognized the traffic congestion that would be created with only one station in Milpitas and was very supportive of a second station at Calaveras and Abel. Councilmember Lawson said he thought it was important for the City to preserve that as an option as this moves forward as there were indications the current administration was considering significant additional Federal funding; if this was an identified option, additional funds would be available and this strategy would be the best chance for Milpitas to achieve that ultimate end.

Councilmember Dixon said she wanted to make it clear to the public that the Council was looking at two stations, the station on the border really wasn't a Milpitas station, and questioned the flexibility of the Calaveras location asking if it was committed to that particular location or if there was some

flexibility as the Midtown Plan developed. Councilmember Lawson responded if we start moving it around, we tend to lose some of our credibility; the point we are at now is conceptual and as we enter into the environmental study and environmental document, it will be essential that we at that point identify the precise spot and preserve our ability to build the station there, if the Council chooses. Councilmember Lawson further stated it was important for the Council at this point to be on record supporting the Montague/Great Mall road improvements because of the commitment made to the voters that funds from that transportation measure were going towards transportation, some of the vital roadway projects had to be back-filled, and this was one of the most vital in the County. Councilmember Lawson said he thought we were closer now than we have ever been and given the current climate, the tax support from the people, and indications from the Federal government, we have never looked better.

Mayor Manayan said he wanted to give credit to all of the Transportation Subcommittee because if we hadn't been so vocal and diligent about pursuing the second station, it wouldn't be on these final studies.

Mr. Oliva commented that he was contacted late this afternoon by VTA staff that they were extremely close to an agreement with BART and had scheduled a press conference for tomorrow.

Councilmember Esteves said he strongly opposed the maintenance facility in Milpitas. Councilmember Lawson commented that the maintenance facility had always been planned for San Jose, which was the most likely spot, and he thought to this point discussions had been relatively successful in keeping it over there.

MOTION to adopt Resolution No. 7125 recommending approval of the MIS to the VTA Board and describing Milpitas' position on major issues; approved the proposed Action Plan providing for:

- Conferring with elected officials, management and staff of San Jose and VTA to explain Milpitas' positions and garner support either collectively or individually;
- Conferring with possible allies, such as Fremont, BART, County Supervisors and Alameda County officials to strategize next steps to support common goals;
- Increasing local participation in project planning by developing a public education campaign, conferring with local organizations and business community leaders, holding public meeting with citizens, educating and encouraging City Committee and Commission members to participate in the project planning process, and providing speakers for local organizations and businesses;
- Promoting stronger representation of all cities on the VTA Board; and
- Revising the General Plan to reflect the transit elements planned in the Draft Midtown Specific Plan including the Milpitas BART station at Calaveras.

M/S: Lawson, Dixon.

Ayes: 5

XVIII. ADJOURNMENT

There being no further Council business, Mayor Manayan adjourned the Council meeting at 10:55 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on November 20, 2001.

Gail Blalock, CMC, City Clerk

Date

Attachment 2 – City Council Referral #02 Affordable Housing Ordinance

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:
Ordinances and Policies, CC02	Affordable Housing Ordinance	Mayor Carmen Montano
Lead Department/Office	Supporting Department(s)/Office(s)	
Housing	City Manager’s Office	
Council Priority Areas	Estimated Completion Date	Estimated Cost
Neighborhoods and Housing	TBD	\$50,000 to \$75,000
		Funding Needed
		Funding can be accessed from one of the existing housing funds listed below as part of an upcoming budget action such as the Mid-Year budget process in February 2024. Fund 216 – Affordable Housing Community Benefit Fund; Fund 217 – Affordable Housing Unrestricted Fund; Fund 295 – Housing Authority Fund
Description of Required Work Effort		
At the September 5, 2023, City Council meeting, Mayor Montano requested that staff explore the possibility of amending the Affordable Housing Ordinance to increase the level of affordable housing required from 15% to 20%. To amend the ordinance’s affordability requirement from 15% to 20%, the City Council would need to consider development community input. Community roundtables, stakeholder interviews, and/or other outreach events would be necessary to gauge feedback of such an increase. Additionally, a creation of a financial feasibility document would be recommended. Policy Evaluation and Timing Should the Council desire to proceed with this priority item, a staff analysis would be required. Staff would need approximately 6 months to develop an outreach plan, gather community and stakeholder feedback, make the appropriate recommendations, and finalize the language in the amended ordinance for city council consideration. In order to facilitate the 6-month timeline noted above, staff would require a subject matter expert or consultant who can focus on this project.		

1. If approved, staff anticipates beginning work in February 2024 with an expected completion date of August 2024, this would require an additional staff member and a consultant for a financial feasibility report at an estimated cost of \$50,000 to \$75,000 for a 6-month period.

*It should be noted that if safe parking were to also continue, one of the projects would need to start in Fiscal Year 2024-2025 as the City of Milpitas Housing team does not have the capacity to incorporate both of these work items into the current fiscal year workplan.

Status Update as of November 2023

The Mayor and City Council adopted Affordable Housing Ordinance 297 on June 19, 2018. The ordinance requires any new development of more than 10 units to provide 15% of those units as affordable. Affordable unit is defined as an ownership or rental dwelling unit, including senior housing, that is rented or sold at an affordable housing cost to households with very low, low, or moderate incomes.

In January 2022, Council approved a minor amendment to Affordable Housing Ordinance 297 to encourage more on-site affordable housing production and to add clarity and consistency throughout the ordinance.

Staff has also proposed additional changes to the Affordable Housing Ordinance relating to fractional units, design and distribution of affordable units, clarification of accessory dwelling units, allowing mixed tenure compliance, removing credit transfer option, extending ownership unit affordability from 45 to 55 years, and broadening the criteria for preferences, among others. These proposed changes are for the most part consistent with the existing ordinance and are primarily intended to add clarity and consistency to the ordinance.

No further action has been taken to date.

Council Clarification/Further Direction Requested

If the Mayor and City Council provide staff direction to proceed, feedback in the following areas would be beneficial in order for staff to better define the next steps and work products:

- 1) Do the Mayor and City Council have any feedback on the level and methods of stakeholder feedback that staff should solicit?
- 2) Are the Mayor and City Council open to considering alternatives beyond just increasing the threshold to 20%? An example would be reducing the requirement to 10% if those 10% are all extremely low-income units.

Other Considerations

Comparison to other jurisdictions

Staff performed preliminary research into the level of affordable housing being required in other jurisdictions in the Bay Area. Preliminary data is as follows:

- San Jose, Campbell, Santa Clara, Mountain View: 15%
- Morgan Hill (15% for 2 or more units)
- Sunnyvale (15% for ownership, no requirement for rental)
- No ordinance: Cupertino, Gilroy, Los Gatos, Monte Sereno, Palo Alto, Saratoga
- Los Altos: 5-9 units = 15%, 10 or more – 20% at low income or 15% at very low income

- San Francisco: 21.5% of apartments, 23.5% of condos – looking at 12-16%

Other alternatives

As discussed in the “further clarification” section above, there are other alternatives that may be available for considerations. Some of these alternatives are listed below:

City Council could consider any of the following or a combination:

1. Increase the level of affordable housing required to 20% if affordability is based on moderate income, 15% if low income, and 10% if very/extremely low income
2. Enhance affordability by capping moderate income at 100% of the Area Median Income Limit instead of 120% (e.g. for a family of 4 that would be a cap difference of \$217,550 to \$181,300)
3. Keep Affordable Housing Ordinance at 15% and include a percentage requirement of 15% for extremely low income and/or very low-income households.

Attachment 2 – City Council Referral #03 Safe Parking

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:
Projects and Programs, CC03	Safe Parking	Mayor Carmen Montano
Lead Department/Office	Supporting Department(s)/Office(s)	
Housing	City Manager’s Office	
Council Priority Areas	Estimated Completion Date	Estimated Cost
Neighborhoods and Housing	TBD	\$30,000
		Funding Needed
		\$30,000
Description of Required Work Effort		
At the June 20, 2023 City Council meeting, Mayor Montano requested that staff explore a safe parking program in Milpitas. The work effort for this program would be arranged in a phased approach: • Phase 1: Outreach to faith-based organizations and selected local businesses to identify potential opportunity locations • Phase 2: Research of other city’s programs; and development of conceptual capital, operations and maintenance costs for potential safe parking alternatives • Phase 3: Proceed with implementation of safe parking program, if the City Council approves such a program, along with funding, in the report-out of Phases 1 and 2 It is expected that staff would report back to the City Council on Phase I in mid 2024. The \$30,000 cost estimate is to hire a consultant to perform the Phase I outreach as staff is currently at capacity with the existing workplan items. Additionally, if the amendments to the Affordable Housing Ordinance are also approved at this City Council prioritization session, one of these items would likely need to shift to Fiscal Year 2024-2025 to start with due to staffing capacity limitations.		
Status Update as of November 2023		
In late 2019, the Housing Subcommittee directed staff to research the potential for a safe parking site in Milpitas. Housing staff met with other City departments such as Police, Public Works, and Recreation & Community Services to discuss the impacts a potential safe parking site would have on City departments and services. As part of the research, staff also conducted a site visit to a San Jose Safe Parking site administered by LifeMoves in 2019. Per LifeMoves, this was a smaller safe parking site that offered wrap around services and operational cost of approximately \$385,000. Staff also met with local church leaders who were at one point operating a safe parking program for families only. This program was unaffiliated with the City. The churches offered five parking spaces an evening, but they noted that the spaces were often unused. Staff would need to engage with local church leaders to understand if the demand for safe parking has changed.		

Attachment 2 – City Council Referral #03 Safe Parking

(requires more than 4 hours of staff time)

As the pandemic began in March 2020, many housing research items, such as safe parking, were combined in order to develop a more cohesive and comprehensive COVID-19 response plan. Safe Parking was considered as a part of the City's COVID-19 Homeless Response plan but was not formally approved to proceed by Council.

In March 2021, to address the issues of homelessness, an Ad Hoc Homelessness Task Force was established by City Council. On March 1, 2022, the City Council further discussed the report and recommendations from the Homelessness Task Force. Although no specific direction was given by the full Council, individual Councilmembers expressed interest in various approaches to assist the unhoused population, including a recreational vehicle (RV) safe parking program.

On September 26, 2023, City of Milpitas staff met with City of Mountain View leadership to learn more about their comprehensive Safe Parking Program. Mountain View informed City staff that their Safe Parking Program consists of 5 sites that accommodate over 110 vehicles. More detailed information on the program will be available to staff in the coming weeks as we review their program details, staff reports, and progress reports. While all sites did not launch at the same time, City of Mountain View staff emphasized launching a program, no matter what size, required an extraordinary amount of staff resources. City of Mountain view staff noted they have a Housing Department of 14 Full Time Employees (FTE) and utilized 1 FTE outside their Housing Department in addition to an extensive amount of time from Housing staff to research and establish the program.

Council Clarification/Further Direction Requested

Staff is currently assuming that the focus of this program would include the following key parameters. If the Mayor and City Council would prefer a different approach, feedback would be required:

1. The focus would be on partnerships with faith-based organizations.
2. The program would be all-inclusive that services all types of vehicles and persons.
3. The program would include "wrap around services" such as mobile shower and laundry, case management, and assessments would be provided.

Other Considerations

Community Feedback

Council should consider the community impact of implementing a safe parking program and ensure proper outreach to the neighboring areas of any potential safe parking program locations.

Potential costs

Cost and the source of ongoing funding is a consideration for this program. As noted above, LifeMoves informed staff that the San Jose Safe Parking site toured in 2019 costs approximately \$385,000 per year to operate. Staff would have to determine the size and scope of a proposed safe parking site to provide cost estimates.

Staffing considerations

As noted above, the City of Mountain View dedicated 1 FTE to servicing their Safe Parking Program. Additional Housing staff resources would be required even if a minimal program was implemented. At

Attachment 2 – City Council Referral #03 Safe Parking

(requires more than 4 hours of staff time)

minimum, 1FTE would be required as well as hiring a third-party to administer the day to day operations of the site.

Attachment 2 – City Council Referral # CC04, City Hall Public Art

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:	
Projects and Programs, CC04	City Hall Lobby Public Art	Mayor Montano	
Lead Department/Office	Supporting Department(s)/Office(s)		
Recreation and Community Services	Public Works		
Council Priority Areas	Estimated Completion Date	Estimated Cost	
Community Wellness and Open Space	FY 2024-25	\$20,000 - \$40,000	
		Funding Needed	
		No funding needed as sufficient monies are in the Public Art Fund	
Description of Required Work Effort			
This referral requests the installation of public art piece(s) in the City Hall Lobby. It would be a coordinated project led by the Department of Recreation and Community Services, City Managers Office, Public Works, and the Arts Commission. Recreation and Community Services Staff would need to create an Artist Call for Proposals, conduct proposal reviews with the Arts Commission, and bring final artist selections, proposed lobby areas and project budget to City Council for approval. After which staff would develop and oversee the professional artist(s) contract, oversight and execution of piece(s), and their installation. Total estimated staff hours are 80 hours with an estimated value of \$16,000. Depending on the piece(s), this project may require formal engineering, additional inspections, and rental equipment (lifts) to safely complete the installations. Monies for this project can come from the Public Art Fund. Therefore, no additional resources would be needed. Ongoing costs or maintenance costs will be assessed as part of a new Public Art Master Plan which will be started FY24. Staff is currently working on a larger Public Art Project – VTA Pillar Murals - previously approved as a City Council priority, and projects currently underway at Dixon Landing Park and Higuera Adobe Park. Additionally, the City Council recently approved the Historic Park Marker Public Art Program. Unless further direction is provided, this new project would begin in Fiscal Year 2024-2025 so as not to impact the schedules for the above projects.			
Status Update as of November 2023			
New request. No work has been conducted.			
Council Clarification/Further Direction Requested			
As mentioned above, this project would be scheduled to start in Fiscal Year 2024-2025 so as not to impact currently scheduled public art projects. If the City Hall Lobby Public Art Program is a higher priority for the City Council, direction is needed to defer the Park Marker Project to start in FY2024-25.			
Other Considerations			

Attachment 2 – City Council Referral # CC04, City Hall Public Art
(requires more than 4 hours of staff time)

none

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:
PROJECTS AND PROGRAMS CC05	International Festival on Main Street	Councilmember Lien
Lead Department/Office	Supporting Department(s)/Office(s)	
Recreation and Community Services	Public Works, Police Department, Economic Development	
Council Priority Areas	Estimated Completion Date	Estimated Cost
Community Wellness and Open Space	Fiscal Year 2024-2025	\$4,000 to \$48,000
		Funding Needed
		\$4,000 to \$48,000
Description of Required Work Effort		
Although the cost of this referral is dependent on the Council directed scope, staff has developed the following options: (1) An annual one evening small sized event on Main Street such as a movie and/or concert; or (2) Integration of a multicultural theme into an already existing event organized by the City; or (3) A new one or two-day festival celebrating the multi-culturalism of Milpitas with special event activities such as but not limited to children’s activities, food, music, art, and performances.		
Status Update as of November 2023		
At the February 7, 2023, City Council hearing during “Announcements and Future Agenda Items,” Councilmember Hon Lien requested that staff review a potential International Cultural Festival on Main Street. At the June 20, 2023, City Council prioritization session this item did not receive sufficient votes to proceed. However, this item was added back to the list for potential City Council prioritization by Councilmember Hon Lien at the October 3, 2023, City Council meeting. Staff has performed a preliminary review of options that may meet the goals of this City Council request. These options are presented below: Option 1: Schedule an existing Summer Concert Series night to be on Main Street with music theme and food truck(s) to have cultural themes. For this option, staff recommends that the location for an existing Fiscal Year 2024-2025 concert or movie be shifted over to Main Street for a one evening event. This would require additional staffing and funding to close streets, and set up temporary infrastructure (power, water, furniture as Main Street’s infrastructure it not yet established, and use of business/parcel owners is not guaranteed.) This option would allow the City to continue to showcase Main Street and be a temporary boost for		

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

restaurants and businesses by drawing customers to the street. Typically, there are four (4) concerts in a summer series. In this option staff would move one of the concerts to this site. If it is desired to hold this event in addition to the existing series, staff would return with further analysis of the costs based on Council input and direction.

Option 2: Integrate a multicultural theme into an already existing event

For this option, staff recommends that an existing, established event, for example the annual Tree Lighting Ceremony, be themed to include a multicultural theme, showcasing the myriad of winter cultural holiday traditions through storytelling, song, and performances. Additional monies are anticipated for this option to pay for cultural performances.

If the City Council were to support option 2, staff would incorporate this new theme into an existing event and execute as part of the Fiscal Year 2024-2025 event calendar.

Option 3: A new 1 or 2-day International Cultural festival

A third option would be for the City to host a brand new 1- or 2-day festival focused on multiple cultures. Considerations for this type of event are listed below:

- (1) Costs: Staff costs for setting up the event program would be approximately \$15,000. The cost of special event activities (performers, equipment, etc.) is estimated at \$25,000. Overnight security for the event area would also be required for approximately \$8,000. Therefore, the cost estimate without staff overtime and without revenue estimates is about \$48,000. Revenue estimates cannot be determined at this time.
- (2) Location: Given the potential size of the event, this would likely need to be held at the Civic Center Plaza, Milpitas Sports Center, or Main Street. The location of the event determines the level of staff support from Recreation and Community Services as well as other departments. For example, events located in areas requiring street closures require additional costs due to major support from the Public Works Department and Police Department for street closures and traffic management.
- (3) Considerations: Special Events programming is currently at capacity. Adding a new one- or two-day festival without any adjustments to the existing events scheduled would not be feasible for the following reasons.
 - The event calendar is currently at capacity. If the City were to hold another multi day event, it would be difficult to find a date on the calendar that isn't already taken or close to one of the existing City-run events. If the City Council would like to proceed with this event, existing events regularly scheduled near this new event would need to be cancelled to stage and support the International Festival. Staff would return to the City Council during the Fiscal Year 2024-2025 Budget process for an update on which events would need to be modified.

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

- Staff resources are currently at capacity for events. With over 40 events currently held throughout the year, staff is not able to add additional events without also adding funding for supporting staff in the events program area.
- Six (6) events are currently ARPA funded and ongoing funding will need to be provided for them beginning in 2025. Adding another event would cause it to compete with funding for the existing ARPA funded events as well as creating a saturation of event themes for audiences. Additionally, City Council added a new event during the approval of the Fiscal Year 2023-2024 budget, Black April, to the event calendar to occur on April 30th of each year.

Council Clarification/Further Direction Requested

If it is desired to move forward, staff would like clarification on whether the City Council supports Options 1, 2 or 3 listed above. If Option 3 is desired, staff will return to the City Council with alternatives during the Fiscal Year 2024-2025 Budget Process.

Other Considerations

For reference during the City Council discussion, staff has provided a list of current events as an attachment to this document.

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

Listing of Events for a Standard Fiscal Year, using Anticipated Fiscal Year 2023-2024 Anticipated Events as an Example (event time and details subject to change)

	Event Name	Month	Event Type	Cultural Event (not including flag raisings)	Time Limited Funding?
1	Fourth of July Pool Party	July	Citywide (ticketed)		
2	Fourth of July Concert & Fireworks	July	Citywide (ticketed)		
3	Movie Night Series - Movie #3	July	Citywide (free)		
4	Summer Concert Series - Concert #3	July	Citywide (free)		
5	Movie Night Series - Movie #4	July	Citywide (free)		
6	Summer Concert Series - Concert #4	August	Citywide (free)		
7	Family Bike Day	August	Commission Event - CityWide (free) (Parks, Recreation and Cultural Resources)		
8	Retro Milpitas	August	Citywide (ticketed)		Yes, General Fund (planned for one year only)
9	India Independence Day	August	Flag Raising		
10	ArtWalk	September/ October	ARPA Event - CityWide (free)		Yes, ARPA

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

	Event Name	Month	Event Type	Cultural Event (not including flag raisings)	Time Limited Funding?
11	Lantern Festival	September	ARPA Event - CityWide (free; some paid areas)	Yes	Yes, ARPA
12	Hispanic Heritage Month	September	Flag Raising (no event in FY 22-23)		
13	Mexican Independence Day	September	Flag Raising		
14	Pumpkins in the Park	October	Citywide (free; some paid areas)		
15	Delano Manongs Park Grand Opening	October	Citywide (free)	Yes	
16	Filipino American History Month	October	Flag Raising		
17	Dia De Los Muertos	October/Nov ember	APRA Event- CityWide (free)	Yes	Yes, ARPA
18	Native American Heritage & Culture Month	November	Flag Raising		
19	Veterans Day	November	Citywide (free)		
20	Veterans Lunch	November	Commission Event - Milpitas Veterans (Veterans Commission)		
21	Tree Lighting	December	Citywide (free; some paid areas)		
22	Milk & Cookies with Santa	December	Citywide (ticketed)		
23	Lunar New Year	January	Citywide (free)	Yes	
24	YouthTournament	February	Commission Event - Milpitas Youth (Youth Advisory Commission)		
25	Black History Month	February	Flag Raising (no event in FY 22-23)		

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

	Event Name	Month	Event Type	Cultural Event (not including flag raisings)	Time Limited Funding?
26	Youth Spelling Bee	March	Commission Event - Milpitas Youth (Youth Advisory Commission)		
27	Family Game Night	March	Citywide (free)		
28	Cesar Chavez Day	March	Flag Raising (no event in FY 22-23)		
29	Holi Festival	March	APRA Event- CityWide (free)	Yes	Yes, ARPA
30	Black April Event	April	Citywide (free)	Yes	Yes, General Fund
31	Earth Day	April	ARPA Event - CityWide (free)		Yes, ARPA
32	Commissioners' Recognition Event	April	City Commissioners		
34	Vietnamese American Heritage Month	April	Flag Raising (no event in FY 22-23)		
35	Public Safety Day	May	Flag Raising (no event in FY 22-23)		
36	Bike to Wherever Day	May	Commission Event - CityWide (free) (Parks, Recreation and Cultural Resources)		
37	Asian Pacific American Heritage Month	May	Flag Raising (no event in FY 22-23)		
38	Eritrea Independence Day	May	Flag Raising		
39	Memorial Day	May	Citywide (free)		
40	Milpitas Family Campout	June	ARPA Event (ticketed)		Yes, ARPA

Attachment 2 – City Council Referral #05

(requires more than 4 hours of staff time)

	Event Name	Month	Event Type	Cultural Event (not including flag raisings)	Time Limited Funding?
41	State of the City Address	June	Citywide (free)		
42	Movie Night Out #1	June	Citywide (free)		
43	Summer Concert #1 (Juneteenth Themed)	June	Citywide (free)		
44	Movie Night Out #2	June	Citywide (free)		
45	Juneteenth Flag Raising	June	Flag Raising (no event in FY 22-23)		
46	Philippine Independence Day	June	Flag Raising		
47	LGBTQ Pride Month	June	Flag Raising		

Footnotes:

*Does not include Milpitas
Community Concert Band Concerts
(3 concerts a year), Theater
productions or all support
commission specific events.

*Shaded events are flag raisings
that did not have an event
associated with them in FY 2022-
2023. Flag raising events are co-
organized by community partners.

Attachment 2 – City Council Referral #06

(requires more than 4 hours of staff time)

Category and Topic No.	Topic:	Requested by:
PROJECTS AND PROGRAMS CC06	Parade on Main Street	Mayor Carmen Montano
Lead Department/Office	Supporting Department(s)/Office(s)	
Recreation and Community Services	Public Works, Engineering, Fire, Police Department, Economic Development	
Council Priority Areas	Estimated Completion Date	Estimated Cost
Community Wellness and Open Space	Fiscal Year 2024-2025 or Fiscal Year 2025-2026	\$65,000
		Funding Needed
		\$65,000
Description of Required Work Effort		
This request would require the planning and execution of a new parade on Main Street, likely between the Library and either Corning Ave. or Curtis Ave. The parade could coincide with an existing event or it could be new on a stand-alone day. The assumption is that the parade event would be a 3-4 hour event on a Saturday morning. Close coordination and meetings with Main Street businesses will be critical as access to their businesses will not be available during the event.		
Status Update as of June 2023		
At the November 7, 2023, City Council hearing during “Announcements and Future Agenda Items,” Mayor Carmen Montano requested that staff review a potential parade on Main Street. This request received consensus for consideration.		
Considerations for this a parade are listed below:		
(1) Costs: Staff costs for setting up the event program would be approximately \$35,000. The cost of parade activities (performers, equipment, etc.) is estimated at \$25,000. Overnight security for the staging area would also be required for approximately \$8,000. Therefore, the cost estimate without staff overtime is about \$65,000. No direct revenue to the City is anticipated as this would be a free event. (2) Road closures: Pending further business owner outreach and staff analysis, the likely route of the parade would be from the Milpitas Library south on Main Street to either Corning Street or Curtis Ave. If the parade lasts from 3-4 hours, it could require between 4 to 6 hours of road closures with limited to no vehicle access to a number of Main Street businesses. Additional staff time has been allocated to the budget for this project to perform extra coordination with the business community. (3) Considerations: Special Events programming is at capacity. Adding a parade without any adjustments to the existing events scheduled would not be feasible for the following reasons.		

Attachment 2 – City Council Referral #06

(requires more than 4 hours of staff time)

- The event calendar and department staff calendars are at capacity with over 40 events, flag raisings, and performances each year. If the City were to hold a parade it would be difficult to find a date on the calendar that isn't already taken, close to one of the existing City-run events, or in competition with another local event. If the City Council would like to proceed with this event, existing events regularly scheduled near this new event would need to be cancelled to stage and support the parade. Staff would return to the City Council during the Fiscal Year 2024-2025 Budget process for an update on which events would need to be modified or removed from the calendar.
- Staff resources are at capacity for events. With over 40 events currently held throughout the year, all held on evenings and weekends, department staff calendars are not able to accommodate additional events.
- Six (6) events are currently ARPA funded and ongoing funding will need to be provided for them beginning in FY 2024-25. Adding another event or parade would cause it to compete with funding for the existing ARPA funded events as well as creating a saturation of event themes for audiences. Additionally, City Council recently added a new event during the approval of the Fiscal Year 2023-2024 budget, Black April, to the event calendar to occur on April 30 of each year.

Council Clarification/Further Direction Requested

If it is desired to move forward, staff will need feedback and clarification on whether the City Council would prefer this parade be aligned with an existing event or as a stand-alone event. If the Council would like a stand-alone event, it suggested that staff return to City Council with options as part of the analysis of special events scheduled to be heard during the Fiscal Year 2024-2025 Budget Process. Additionally, staff would seek feedback from business and property owners along the route.

Other Considerations

For reference during the City Council discussion, staff has provided a list of current events as an attachment to this document.

Attachment 3
List of Completed, Postponed or Withdrawn Items

Group 4 – items that have been completed, deferred, or withdrawn						
1	Add Green Bike Lanes	Tran, Montano	9/17/2019	N/A	Engineering	Included in CIP
2	Adopt Resolution similar to County's re: xenophobia, discrimination	Dominguez	4/21/2020	N/A	CMO, CAO	Added to the consent calendar and adopted Resolution on 5/5/2020
3	Agendize a Flag Raising for India Independence Day	Tran	6/14/2022		Recreation	Item added to 6/21/2022 Consent Calendar
4	Agendize an update to the Lobbyist Ordinance for the next meeting	Chua	3/1/2022		City Attorney	Discussed at 3/15 City Council Meeting; At the 3/15/2022 Council Meeting, City Attorney was directed to bring back a proposed ordinance amendment for further discussion; Council approved the ordinance on 6/7/2022
5	Amend Accessory Dwelling Units (ADU) ordinance to address unpermitted ADUs	Chua	1/5/2021	Yes	Building Safety & Housing, Planning	Safe ADU Legalization Program is launched on 3/24/2022, utilizing ARPA funding. No Ordinance amendment is necessary.
6	Amend Ordinance to remove affordable housing in-lieu fee	Chua	12/15/2020	Yes	Building Safety & Housing, CAO	Amended Affordable Housing Ordinance adopted on 2/1/2022.
7	Below Market Rate (BMR) units - process for selecting applicants	Chua	10/19/2021	Yes	Building Safety and Housing, CAO	Info Memo sent to Council on 1/14/2022 and 3/17/2022.
8	BMR Homes sub-lease option during COVID-19	Chua	1/19/2021	No	CAO, Building & Housing	Info Memo sent on 4/26/2021
9	Bring back a conversation in the budget meeting to fund "walking beats" in the commercial and high crime areas	Dominguez	4/5/2022		Police	At the 4/5/2022 City Council meeting, this item was discussed and there was direction from Councilmember Dominguez to work with the City Manager to find funding sources
10	Bring back update report & discuss status of playing fields for girls' softball in Milpitas	Dominguez	10/20/2020	N/A	CMO, Recreation	Discussed on 02/11/2021, amended JUA for Russell approved on 6/15/2021
11	Celebrate Mexican Independence Day annually on September 16	Montano	6/2/2020	N/A	Recreation	Approved on consent 8/18/2020
12	City to highlight mental health resources on the website	Dominguez	8/17/2021		Recreation	Staff will issue an email this week (week of 7/25)
13	Community Theatre, perhaps with MUSD	Núñez, Phan	8/20/2019	N/A	Recreation, CMO	Discussed @ CIP Study Session on 4/14/2020; councilmembers asked outdoor amphitheater to be placed into the tail end of 5 year CIP
14	Community Workforce Agreement (PLA)	Phan	2/18/2020	Yes	CMO, CAO, Engineering	Council voted to remove this item from the list on 2/02/2021 per CM Phan's request
15	Consider "Old Town" Main St. revitalization, funding, economic dev., improve area	Montano	12/15/2020	Yes	CMO, Planning, Engineering, Finance	Council provided direction to move forward with revitalization efforts on May 11, 2021. Staff is working on various items related to revitalization and have provided subsequent updates to the Council in October and to the Main Street Revitalization Subcommittee in September and November.
16	Consider adding state certification NEC for electrical work done in the City (safety)	Dominguez	6/30/2020	N/A	Building & Housing	Not needed, staff is certified
17	Consider change in Commission structure, on term limits	Tran	12/15/2020	N/A	Recreation, CMO	Completed on 1/19/2021
18	Consider change in term limits for Mayor + Councilmembers	Montano	6/16/2020		City Attorney, City Manager	8/4/2020: Voted 3 -2 to pursue; 2/02/2021 to agendize for a future meeting; 3/16/2021 voted 3-1-1 to move forward. Scheduled for 3/15/2022; rescheduled for 4/05/2022; 4/05/2022 could give direction to move forward with Councilmember term limits and discuss the Mayoral seat at a later date; Discussed at the 5/10/2022 budget meeting and had a consensus not want to move forward with a ballot measure for the Mayor term limit; Councilmember term limits scheduled for June 7; Scheduled for June 21 meeting
19	Consider Community Museum and Park on Main St.	Phan	8/20/2019	N/A	CMO	To be considered as part of Specific Plan process
20	Consider expanding the Fee Waiver Policy eligibility to non-profit organizations outside of Milpitas but the events are specific to Milpitas residents	Chua	3/15/2022		Recreation	Council approved the policy revision at the June 21 2022 City Council meeting.
21	Consider funding to implement and create a homelessness encampment response team to be dispatched to encampment sites to address concerns, talked about creating a position to provide mental health assistance, and would like this to be brought back for discussion at the budget meeting	Dominguez	3/15/2022		City Manager, Public Safety, Recreation, Public Works	Direction from Council to bring forward as part of FY 22-23 budget discussion; at the May 10 Budget Study Session Council did not direct to do any further work on this item.
22	Consider naming "Milpitas Hills"	Dominguez	10/20/2020	Yes	Econ. Dev.	Deferred indefinitely on 2/02/2021; did not receive a majority vote from 2/02/2021 council meeting
23	Consider rescinding direction given on 1355 California Circle project and allow the project application to move forward without being tied to a specific plan (Original request was for item to be placed on November 2 agenda)	Chua	10/19/2021		Planning, CAO	Staff is working with the developer on options to move the project forward.
24	Consider satellite consular offices (post Covid)	Montano	6/2/2020	Yes	CMO	Deferred indefinitely per VM Montano's request on 2/02/2021 council meeting
25	Create an "Incentive Corner," which will be a sub-page with links to different freebies, grants, and incentives from the City and the regions, including the Water District and Silicon Valley Clean Energy	Chua	8/17/2021	No	Information Technology, Public Works	"Incentive Corner" webpage is live on the City's website. Banner posted on 3/28/2022.
26	Designate the California Oak Tree as the City's official heritage tree	Montano	2/1/2022		Recreation	Council approved at the 6/7/2022 meeting.
27	Discuss a "safety first" or other event in lieu of National Night Out (per CAC)	Phan	10/20/2020	Yes	Building & Housing, Police	Remove from the list per CM Phan's request on 2/02/2021 council meeting
28	Discuss budget reductions in next FY with input from residents, employees	Núñez	10/6/2020	N/A	Finance, CMO	On 10/20/2020, to 11/10, 11/17
29	Discuss having 4th of July parade	Núñez	2/18/2020	N/A	Recreation	No longer under discussion

Attachment 3
List of Completed, Postponed or Withdrawn Items

Group 4 – items that have been completed, deferred, or withdrawn						
30	Discuss potential litigation - re: govts' action on Jamboree-Project Homekey	Tran	10/6/2020	N/A	Building & Housing, CMO, CAO	Multiple Closed Sessions - Oct. 2020
31	Discussion in the next fiscal year, to have a sliding scale permitting program for seniors and low-income residence for necessary safety renovations	Tran	5/4/2021		Building Safety & Housing, Planning	8/09/2021 Council voted 5-0 to move this item forward and modify the existing Milpitas Assistance Program to include seniors; MAP continues to be available for low income seniors and sufficient funding was budgeted for FY 2022-23.
32	Discussion of campaign finance reform and/or Open Government Ordinance	Phan	6/30/2020	N/A	City Clerk, CAO	Withdrawn @ 8/4/2020 CC meeting
33	Discussion of Minute Man as City's image, when City branding comes back	Phan	8/18/2020	N/A	CMO	Staff and consultant presented the item on 5/4/2021, due to the late hour it was deferred to a future meeting. Council provided input that the Minute Man discussion will not be pursued further.
34	Discussion on possible tax measures	Tran, Phan	4/21/2020	N/A	Finance	Done on 5/15/2020
35	Discussion to reduce the City's Senior Center facilities deposit	Montano	5/4/2021		Recreation, Finance	8/09/2021 Council voted 5-0 to refer this item as part of the development of the FY 2022-23 Master Fee Schedule; Council approved the item on 4/19 as part of the adoption of the Master Fee Schedule
36	Discussion/staff report on Beautify Milpitas, graffiti abatement, resources	Montano	6/30/2020	Yes	CMO, PW	City Council approved the Beautify Milpitas program on June 1, 2021
37	Donate old, obsolete, noncompliance items from the Fire Department to Sister City Dagupan Philippines	Chua	8/9/2021	Yes	Fire, CAO, Finance	Council approved the resolution for donations of personal protective equipment on March 1, 2022 and staff implemented the program by the end of March.
38	Economic Development Corporation (EDC)	Montano	12/15/2020, 01/05/2021, 01/19/2021, 01/26/2021	Yes	CMO, Econ. Dev.	Deferred on 4/20/2021
39	Emergency item for next agenda: extend tenant eviction protections	Dominguez	6/16/2020	N/A	Building & Housing, CAO	Withdrawn, covered by other govt
40	Emergency request to cap rents on small businesses (tenants) in Milpitas	Dominguez	10/6/2020	N/A	Econ. Dev., CAO	On 12/01/20. Not supported
41	Establish "ADU Mondays"	Chua	1/5/2021	No	Building & Housing, Planning	Launched in March 2021
42	Establish a Day Worker Program	Montano	6/16/2020	Yes	CMO	Mayor & Vice Mayor to brainstorm in future; Council voted to remove this item from the list on 2/02/2021 per VM Montano's request
43	Establish Milpitas coronavirus testing site	Phan	4/7/2020	N/A	FCMO, Fire, CAO	Completed
44	Expedite process for Measure F Oversight Committee	Chua	12/15/2020	N/A	Finance	Staff explained planned process, appts. were approved by Council in March 2021
45	Explore a lease for the vacant land adjacent to the Library for City use	Tran	1/18/2022		City Manager, Economic Development, City Attorney	February 2023 update: At the January 31, 2023 City Council Budget Study Session staff was directed to drop this item from the priority list. Prior Updates: Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting.
46	Explore increasing the Conferences/Meetings/Memberships allowance for each Councilmember to \$10,000	Chua	5/17/2022		City Manager	On 6/07/22, City Council did not approve increasing the allowance as part of the adoption of the FY 2022-23 Budget; however, Council provided direction to review funding need as part of the FY 2022-23 mid-year budget review.
47	Extend the outdoor dining options through March of next year	Phan	9/21/2021	No	Planning	Planning Director to provide information on current outdoor dining extension
48	Fee waiver for the Chamber of Commerce for either the Oktoberfest or Arts and wine Festival	Montano	3/1/2022	Yes	Recreation	Staff reached out to the Chamber of Commerce. The Chamber may seek a fee waiver next fiscal year.
49	Fee waiver for the Christian Worship Center's Easter Egg Hunt event	Tran	3/1/2022		Recreation	The City Council approved a fee waiver for this event on April 5, 2022.
50	Fee waiver for the Filipino American South Bay Community to hold pop-up resource fair at a City Park	Dominguez	3/1/2022		Recreation	Staff engaged organizers of the event; event was held on June 19; organizers did not request a fee waiver.
51	Fee waiver for the Kiwanis Annual Crab Feed event	Tran	3/1/2022		Recreation	Approved at the 3/15/2022 Council Meeting
52	Form "Beautify Milpitas" subcommittee - for a future Task Force or Commission	Chua	12/15/2020	Yes	CMO, PW	Council approved the Beautify Milpitas program on June 1, 2021. No subcommittee to be formed.
53	Form a Historical Commission	Montano	6/2/2020	N/A	Recreation, CMO	Already part of PRCRC. Commission discussed on 01-05- 2021, no change
54	Form a Homelessness Task Force	Tran	12/15/2020	N/A	CMO	Approved by Council on 1/5/21
55	Guide small businesses on ADA (Americans with Disabilities Act) requirements due to the quick changes made to facilities during the pandemic	Chua	8/5/2021	No	Economic Development	SVEDA/SV Joint Venture hosted the "SV Small Businesses & ADA Compliance" webinar on 11/3/21. Several Milpitas business reps, & staff from Econ. Dev. & Building participated. Staff met with reps from CA Comm. on Disability Access to discuss business education & outreach.
56	Host a Townhall at City Hall in January, February, and March for the community to share comments about the issue of the unhoused	Tran	11/2/2021	Yes	CMO, CAO, Police, Public Works	Deferred by Mayor Tran because of public health status
57	Illegal dumping	Phan	10/5/2021	Yes	Public Works	Info Memo sent to Council on 2/25/2022
58	Incorporate a Press Release Policy (if there is an existing policy) in the City Council Handbook	Tran	8/17/2021	Yes	CMO, CAO	The City Council Handbook was adopted at the Jan. 11, 2022 City Council meeting.

Attachment 3
List of Completed, Postponed or Withdrawn Items

Group 4 – items that have been completed, deferred, or withdrawn						
59	Increase number of commission members from seven to nine on the Parks, Recreation and Cultural Resources Commission	Montano	10/5/2021	Yes	CMO, Recreation, City Clerk	Council approved Bylaw changes at the April 19 Council meeting
60	Increase the City's rebate program to match Valley Water's two dollars rebate increase and look into expanding the "Lawn Buster" program to more residents based on income	Chua	6/15/2021	Yes	Public Works	On October 19, 2021, the Council approved a contract amendment with the Santa Clara Valley Water District (District) to match the District's rebate amount and to authorize the City to manage the "Lawn Buster" program with "Our City Forest" on behalf of the District. On December 14, 2021, Council approved a contract with "Our City Forest."
61	Increase the number of local businesses doing business with the City	Chua	4/6/2021	Yes	CMO, Economic Development, Finance	At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.
62	Info. on new SB 50 (housing, transit bill)	Phan	1/7/2020	N/A	Building & Housing	Sent memo to City Council
63	Job fair with 20 local businesses to be held soon and an additional one in the fall with the Chamber taking a larger role and the City providing some support	Chua	6/1/2021	Yes	Economic Development	
64	Letter from City Council opposing AB 2181 (Berman) regarding VTA's Board Composition	Tran	6/7/2022		City Manager	Per the email sent to Council on 6/17/2022, consistent with the Council approved Legislative Advocacy Policy, Mayor Tran signed a letter opposing the legislation unless amended.
65	List of city charges/costs that could be waived for small businesses	Dominguez	6/16/2020	N/A	Finance, Econ. Dev.	6/30/2020 info memo
66	Local Boy Scouts Fee Waiver for Eagle Scout Ceremony	Tran	6/7/2022		Recreation	Fee waiver was approved on September 20, 2022.
67	Look into allowing outdoor music and would like the ordinance brought back to Council.	Montano	8/5/2021		Planning	Zoning Ordinance Text Amendment adopted 08/16/2022
68	Look into how the City can be a resource for small businesses to help guide them on what to do in terms of ADA (Americans with Disabilities Act) requirements due to the quick changes made to facilities during the pandemic	Chua	8/5/2021		Economic Development	SVEDA/SV Joint Venture hosted the "SV Small Businesses & ADA Compliance" webinar on 11/3/21. Several Milpitas business reps, & staff from Econ. Dev. & Building participated. Staff met with reps from CA Comm. on Disability Access to discuss business education & outreach.
69	Look into reducing rates for the seniors and low-income families for Sports Center activities	Montano	2/1/2022	Yes	Recreation, Finance	The FY2021-22 Adopted Fee Schedule includes discounted membership and fitness passes for Seniors; low-income families can apply for membership and fitness pass discounts through the Milpitas Assistance Program
70	Maintain Dagupan, P.I. as a Sister City	Tran, Montano	9/17/2019	N/A	CMO	Approved the renewed MOU continuing the Sister City relationship on 12/17/2019
71	Mayor shall recommend a Milpitas resident to serve on VTA Bike Committee	Dominguez	11/17/2020	N/A	Engineering	12/15/20: resident Kristal Caidoy appointed to VTA BPAC
72	Memorialize those that have passed due to COVID-19 in Milpitas	Dominguez	3/2/2021	Yes	CMO, Recreation	At 8/9/2021, Council provided input that COVID-19 had not yet passed and that the discussion about a memorial should be had at a future time.
73	Mini-libraries in the low-income areas of the City	Montano	4/20/2021	Yes	Planning, Recreation	Discussed on 8/9/2021, staff to follow up with Vice Mayor Montano on specific vision. Staff met with the Vice Mayor. The City will continue to facilitate libraries as needed but will not take a lead role in funding or operating them.
74	No on possible ban on vaping, yes on restricting smoking in multi-unit bldgs	Montano	1/7/2020	Yes	Planning, Recreation, CAO	Ordinance for multi-unit buildings adopted on 6/15/2021
75	Opportunity to share ideas for US census & on City "sponsored" events	Dominguez	9/1/2020	N/A	CMO	12/01: remove census topic, move events to CC retreat 2021; at 1/12 retreat Council direction to cease
76	Ordinance to ban vaping in the City	Montano	12/15/2020		Planning	Study session with Council held 6/21/2022. Tobacco Retail Permitting program has been drafted, but there are unresolved issues with enforcement by Santa Clara County.
77	Outreach to notify the community of the trash voucher program	Chua	9/7/2021	No	Public Works	Staff provided an Information Memorandum regarding the pilot program on April 6, 2022.
78	Parade for MHS Trojans Football	Tran, City Manager	1/21/2020	N/A	Council	Completed 1/28/2020
79	Partner with the Rotary Club of Silicon Andhra to promote the stem cell donor outreach with a webinar and campaign to help increase the number of donors	Chua	8/17/2021		Recreation	Staff will include the stem cell donor information in regularly scheduled wellness event
80	Performance Evaluation (Contract) of City Attorney	Tran	1/5/2021	N/A	Council, CAO	Multiple Council closed session discussions held. Council voted to move to a full time in-house City Attorney on 6/21, additional direction on next steps to be provided to staff in August.
81	PG&E power outage plan presentation to Council	Tran	1/19/2021	No	CMO	Presented to Council on 3/16/2021
82	Plan to put utility fines into a fund to help small businesses in the City	Montano	12/15/2020	N/A	Finance	Directed staff on 2/02/2021 to approve policy recommendations temporarily suspending penalties for delinquent fire permit fees, and delay or waive business lic. tax collections but no direction to create a separate fund. On 2/16/2021 Council approved waiving business license penalty between Jan 1 - May 31, 2021. Also, the utility late fee and water shut off have been suspended consistent with State Emergency Order (through Sept 31, 2021). Also, Council allocated ARPA funds to assist small businesses.
83	Policy for Proclamations and Commendations	Núñez, Phan	8/20/2019	N/A	CMO	Withdrawn 6/2/2020
84	Policy for Social Media	Núñez, Phan	8/20/2019	N/A	CMO, CAO	Withdrawn 6/2/2020; policy already approved by Council

Attachment 3
List of Completed, Postponed or Withdrawn Items

Group 4 – items that have been completed, deferred, or withdrawn						
85	Pollination protection	Dominguez	1/5/2021	Yes	CMO	Deferred on 2/02/2021; did not receive a majority vote on 2/02/2021 council meeting
86	Postponement (not waiver) of penalties related to City business fees	Tran	1/5/2021	N/A	Finance	On 2/16/2021 Council approved waiving penalties until May 31. The suspension of penalties is now no longer in effect.
87	Prepare a report on ghost guns; engage in legislative advocacy regarding ghost guns; and incentivize ghost gun buybacks at the May buyback event.	Dominguez Tran	4/5/2022		Police	An Information Memorandum was distributed on August 12, 2022.
88	Prepare Vision Zero Action Plan	Tran	6/7/2022		Engineering, Police	February 2023 update: At the January 31, 2023 City Council budget hearing, the City Council supported staff's recommendation to drop this item from the priority list due to the expense of the study as well as the fact that many traffic safety initiatives and projects are already underway in the City of Milpitas.
89	Proclaim Saturday, March 19, 2022 as Chez the Ice Cream Man Appreciation Day	Tran	3/1/2022	No	City Clerk	Proclaimed at the 3/15/2022 Council Meeting
90	Proclamation and support for face coverings	Montano	4/7/2020	N/A	CMO, CAO	4/21/2020. CC directed City Manager to issue regs
91	Propose building height limits in area east of Milpitas Blvd.	Tran	12/15/2020	Yes	Planning	City Council adopted Zoning Ordinance amendment to limit bldg heights in commercial areas adjacent to low-density residential area, including east of Milpitas Blvd. on 10/04/2022.
92	Provide Commissioners appreciation gifts	Chua	10/19/2021	Yes	CMO, Finance	Staff placed the order of fleece jackets the week of March 14th. Depending on the stock, the appreciation gifts will be distributed during the first two weeks in April 2022.
93	Read "Code of Conduct" aloud prior to each City Council meeting	Montano	6/2/2020	N/A	CAO	Approved 8/18/2020. City Attorney began this practice 9/01/20
94	Reduce the City's Senior Center facilities deposit for the Auditorium/Community Room	Montano	5/4/2021	Yes	Recreation, Finance	Council approved the reduction of the facilities deposit as part of the adoption of the FY 2022-23 Master Fee Schedule Resolution. Will be brought forward on 4/19 as part of Master Fee Schedule discussion.
95	Reduce the park rental fees for the Samuel Ayer High School reunion	Montano	2/1/2022	No	Recreation	Approved at 3/15/2022 Council meeting. Info Memo on City Council Policy on Fee Waivers & Reductions was sent out on 3/8/2022
96	Rename Augustine Park to include "Sunnyhills"	Tran, Montano	9/17/2019	N/A	Recreation	Approved on 2/4/2020
97	Rename portion of Dixon Landing Rd., as Barack Obama Boulevard	Núñez, Phan	8/20/2019	N/A	Planning, CMO	Deferred indefinitely
98	Report from staff on 2nd federal stimulus package - action plan on funds	Chua	12/15/2020	N/A	CMO, Finance	Info Memo sent to Council on 12/23/2020
99	Report on parking in The Pines	Núñez	1/7/2020	N/A	Engineering	2/18/2020
100	Report on speed cameras like Fremont (radar displays) - no enforcement	Phan	1/7/2020	N/A	Police	1/28/2020, 3/24/2020, 4/14/2020
101	Request for Dumpster Days	Tran	1/7/2020	N/A	PW	Program initiated in Spring 2021
102	Requested a meeting for the subcommittee for the Old Town Main Street be scheduled next month	Montano	1/18/2022	No	CMO	The Subcommittee meeting was held on April 12 at 4:30pm.
103	Requested an agenda item on November 2 Council meeting allowing the Council to rescind direction given to 1355 California Circle and include direction to allow the project application to move forward without being tied to a specific plan	Chua	10/19/2021		Planning	At the 1/18/2022 council meeting, Council voted 4-1 to rescind the direction and direct staff and the application to explore option one in the presentation to amend the General Plan and remove Council policy for the preparation of a Specific Plan
104	Requested discussion and for staff to look at creating a pilot project to accommodate pickleball at Peter Gill Park and would like a feasibility study with a goal of making these courts multi-purpose	Chua	11/16/2021 1/18/2022	Yes	CMO, Recreation, Engineering, Public Works	City Council approved the pilot on 3/15/2022
105	Requested staff work with the Vice Mayor and Mayor to explore and discuss building height limits near the hillside by January 2022	Tran	9/21/2021		Planning	Second reading of draft Zoning Ordinance scheduled for 08/16/2022
106	Requested that staff study the placement of a City sign for the Milpitas Police Department and explore the cost of a new sign	Dominguez	1/18/2022		Public Works, Police	Lighted signage for the Police Department and Public Works and IT was installed and completed the week of January 24th 2023. Landscaping was completed in the Summer of 2022. This item is completed.
107	Requested that the City have mini-libraries in the low-income areas of the City.	Montano	4/20/2021		Planning	8/09/2021 Council voted 3-1-1 to move this item forward, staff to follow up with Vice Mayor Montano on specific vision. Staff met with the Vice Mayor. The City will continue to facilitate libraries as needed but will not take a lead role in funding or operating them.
108	Requested the City Attorney's office explore encampment ordinances from the City of Oakland, Los Angeles, or other regional cities and would like a discussion on the existing policies to be brought back before the July recess.	Tran	2/15/2022		City Attorney	4/19/2022 direct the City Attorney to make the recommended changes to the Municipal Code to remove and prohibit property in public; the City Attorney will bring forward an ordinance in September 2022.
109	Requested the City create a youth scholarship fund for under privileged kids to play sports	Montano	5/17/2022		Recreation	As part of the adoption of the FY 2022-23 Budget, the City Council allocated \$20,000 for this program. Staff will bring forward a policy framework for this program for Council approval in September 2022.
110	Requested the City extend the outdoor dining options through March of next year	Phan	9/21/2021		Planning	Emergency Outdoor Dining program extended. Draft zoning ordinance with standards for permanent outdoor dining prepared and now under review. Planning expects bring forward draft ordinance for PC and Council consideration before the end of 2022.
111	Require implicit bias training for City Council, Commissioners & staff	Dominguez	6/16/2020	N/A	Human Resources	This item has been completed. The training was held on January 7, 2022 (for City Council) and various dates for staff. Training information was also sent to all Commissioners.

Attachment 3
List of Completed, Postponed or Withdrawn Items

Group 4 – items that have been completed, deferred, or withdrawn						
112	Resolution in support of elimination of discrimination v. women	Dominguez	1/7/2020	N/A	CMO, CAO	5/19/2020 Reso. Adopted 8/04/2020 Ord. adopted