



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, MAY 7, 2024

**CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA
7:00 PM (PUBLIC BUSINESS)**

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, unless the City Council approves remote public comment. 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 unless the City Council approves remote public comment. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_rRYF0GcxRjSD1smr8iafsA

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 (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Vice Mayor Chua)

PRESENTATIONS (7:05 PM)

- Affordable Housing and Building Safety Month (Proclamation)
- National Mental Health Awareness Month (Proclamation)
- Older Americans Month (Proclamation)
- Distracted Driving Awareness Month (Proclamation)

PUBLIC FORUM (7:10 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 (7:15 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 May 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for May 2024.

C2. Approve City Council City Council Meeting Minutes of April 16, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of April 16, 2024.

C3. 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.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

- C5. Adopt a Resolution Approving a Memorandum of Understanding between the City of Milpitas and Milpitas Police Officers Association (MPOA) Covering the Period of January 1, 2024 through December 31, 2026 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)**

Recommendation: Adopt a resolution approving a Memorandum of Understanding between the City of Milpitas and Milpitas Police Officers Association (MPOA) covering the period of January 1, 2024 through December 31, 2026.

- C6. Approve and Authorize the City Manager to Execute the Purchase Order with Code 3 Technology for Fire Mobile Computer Replacement (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)**

Recommendation: Approve and authorize the City Manager to execute the purchase order with Code 3 Technology for 27 Getac ruggedized laptop computers for a total amount not-to-exceed \$152,507.45.

- C7. Approve Amendments to the Subscription and Services Agreement with RideCo for Milpitas SMART (Staff Contact: Jay Lee, Planning Director, 408-586-3077)**

Recommendation: (1) Approve amendments to the subscription and services agreement with RideCo for Milpitas SMART; and (2) Authorize the City Manager to execute the amended agreement.

- C8. Adopt Resolutions Approving the Annual Engineer's Report and Declaring Intention to Levy and Collect Assessments, and Provide Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1 - McCarthy Ranch (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)**

Recommendation: Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of public hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 95-1 - McCarthy Ranch.

- C9. Adopt Resolutions Approving the Annual Engineer's Report and Declaring Intention to Levy and Collect Assessments, and Provide Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1 - Sinclair Horizon (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works – Engineering Division Manager, 408-586-3316)**

Recommendation: Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of public hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 98-1 - Sinclair Horizon.

- C10. Adopt a Resolution Designating Street Resurfacing 2024-2025, Project No. 4300 to be Funded by California Senate Bill 1 - The Road Repair and Accountability Act of 2017 (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works Division Manager – Engineering, 408-586-3316)**

Recommendation: Adopt a resolution designating Street Resurfacing 2024-2025, Project No. 4300 to be Funded by California Senate Bill 1 - The Road Repair and Accountability Act of 2017.

- C11. Authorize the City Manager to Accept the CalRecycle Grant and Approve Related Budget Amendment (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2603; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)**

Recommendation: Authorize the City Manager to accept grant funding from CalRecycle's Senate Bill 1383 Local Assistance Grant and approve related budget amendment for revenues in the amount of \$217,999.00 for the Solid Waste Fund (Fund 280) for FY 2024-25.

C12. Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: (1) Receive an update on the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

C13. Approve Design for Dixon Landing Public Art Project (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409; and Tegan McLane, Assistant Recreation and Community Services Director, 408-586-3212)

Recommendation: Approve artist Lacey Bryant's design for Dixon Landing Park public art mural.

PUBLIC HEARINGS (7:30 PM)

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

14. Conduct a Public Hearing on an Appeal of the Planning Commission's Decision to Deny Conditional Use Permit No. UP23-0013 to Allow for the Retail Sales of Tobacco Products at 1225 Jacklin Road (Staff Contact: Jay Lee, Planning Director, 408-586-3077)

Recommendation: (1) Conduct a public hearing and move to close the hearing following comments; (2) Consider the project to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) and as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and (3) Adopt a Resolution upholding or overturning the appeal and overturning the Planning Commission's decision to deny Conditional Use Permit No. UP23-0013 to allow for the retail sales of tobacco products within an existing 870-square-foot tenant space of a 9,960-square-foot multi-tenant commercial building located on a 0.9-acre site located at 1225 Jacklin Road within the C1 Neighborhood Commercial Zoning District.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (8:20 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 (8:30 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: www.milpitas.gov/government/council/agenda_minutes.asp (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.

Milpitas City Council Calendar

May 2024

April 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				

June 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						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 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	6 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	7 7:00 PM -City Council	8 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)	9 2:30 PM -Council Subcommittee Meeting: Housing (CM/EC) 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 5:30 PM -Cities Assoc of SCC Legislative Action Committee (CM) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -Cities Assoc of SCC (CM)	10	11
12	13 4:30 PM -Economic Development and Trade Commission (CM) [Community Center, Room 7/8]	14 4:00 PM - Milpitas HOPE 5:30 PM -Special Council Meeting: FY24-25 Budget Study Session [Barbara Lee Senior Center, Room 140/141]	15 6:00 PM -Energy and Environmental Sustainability Commission (EC)	16 10:00 AM -VTA Congestion Mgmt Prog & Planning (CMPP) (CM) 3:00 PM -Cities Assoc of SCC Recycling & Waste Reduction Commission (CM) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Burlingame Community Center, Sequoia Room) 7:00 PM -Public Safety and Emergency Preparedness Commission (HL) [Fire Station #1, Main Street]	17	18
19	20 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library) 7:00 PM -Science, Technology & Innovation Commission (GB) [Community Center, Room 7/8]	21 6:00 PM -Closed Session 7:00 PM -City Council	22 7:00 PM -Planning Commission	23 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose)	24 11:00AM – 12:00PM -Eritrea Independence Day Flag Raising Ceremony (Cesar Chavez Plaza)	25
26	27  Memorial Day – City Observed Holiday City Hall Closed	28	29	30 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA) (GB) (Santa Clara)	31	



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, APRIL 16, 2024

CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA

The City Council of the City of Milpitas convened in a Regular Meeting of the Milpitas City Council on April 16, 2024, in the City Council Chamber, 455 E. Calaveras Blvd, Milpitas, CA, and via teleconference/Zoom webinar.

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

Mayor Montano called the Regular City Council meeting to order at 6:00 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

ABSENT: Vice Mayor Chua

AB 2449

1. **Consider Councilmember Anthony Phan's Request to Appear Remotely Pursuant to AB 2449 and Authorize the Council to Accept Public Comments Remotely at the April 16, 2024, Meeting of the Milpitas City Council (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040; Suzanne Guzzetta, 408-586-3001)**

City Attorney Mutalipassi introduced the item. Councilmember Phan reported on his request to participate remotely due to a family medical emergency.

After discussion, motion: to allow Councilmember Phan to appear remotely pursuant to AB2449 and to allow remote public comment at the April 16, 2024 meeting of the Milpitas City Council.

Motion/Second: Councilmember Lien/Councilmember Barbadillo

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Lien

NOES: None

ABSENT: Vice Mayor Chua, Councilmember Phan

ADJOURN TO CLOSED SESSION

City Attorney Mutalipassi introduced the items to be discussed at Closed Session.

There were no public speakers.

The City Council adjourned to closed session at 6:03 PM.

(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

The City Council reconvened at 7:04 PM.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi noted there was nothing to report out from Closed Session.

PLEDGE OF ALLEGIANCE

Councilmember Barbadillo lead the Pledge of Allegiance.

INVOCATION

Mayor Montano invited Dr. Jenni'fer JMB Chapman to provide the invocation.

PRESENTATIONS

Mayor Montano presented proclamations in recognition of Earth Day, Arbor Day, and National Public Safety Telecommunicators Week. Public Works Director DiRenzo invited the public to Calle Oriente Park on Saturday, April 20, 2024, for the city's Earth Day event. He accepted the proclamations for Earth Day and Arbor Day. Police Chief Hernandez and Public Safety Dispatchers accepted the proclamation. Chief Hernandez provided remarks highlighting the accomplishments of Milpitas Public Safety Dispatchers.

PUBLIC FORUM

There were the following public speakers:

1. Voltaire Montemayor
2. Pushti Mokani

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest (Absent: Chua). City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions (Absent: Chua).

Councilmember Lien reported that she would need to recuse herself from Item C15.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Councilmember Barbadillo read the City Council Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Councilmember Barbadillo/Councilmember Lien

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Vice Mayor Chua

CONSENT CALENDAR

City Manager Thomas reported that Councilmember Lien would need to recuse herself from Item C15 and the item would need to be pulled from the Consent Calendar.

There were the following public speakers:

1. Voltaire Montemayor

After discussion, motion: to approve the Consent Calendar, pulling Item C15 to be heard immediately following the Consent Calendar.

Motion/Second: Councilmember Barbadillo/Councilmember Lien

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Vice Mayor Chua

2. **Receive City Council Calendar of Meetings for April and May 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received City Council Calendar of Meetings for April and May 2024.

3. **Approve City Council Regular and Special Meeting Minutes of April 2, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approved City Council Regular and Special Meeting minutes of April 2, 2024.

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

Received the list of anticipated agenda items for the next regular City Council meeting.

5. **Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Reviewed the list of items that have been requested by City Councilmembers and provide direction to staff as necessary.

6. **Consider Recommendations from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)**

Received Mayor Montano's recommendation and confirmed appointments to City Commissions:

Economic Development and Trade Commission

1. Appointed Bhagvat Bimalkumar to the Hospitality seat with a term ending April 2027.

7. **Reallocation of American Rescue Plan Act Funds (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3053)**

(1) Approved the reallocation of funding within the American Rescue Plan Act Fund and the General Fund to ensure completion of the programs in the ARPA Investment Plan previously approved by Council; and (2) Adopted **Resolution No. 9316** authorizing the reallocation of funding within the American Rescue Plan Act fund balance as of March 31, 2024, and the General Fund to fund certain City staff positions wages during Fiscal Year 2023-2024 and to ensure completion of programs in the ARPA Investment Plan previously approved by Council.

8. **Receive Report on American Rescue Plan Act Funding for Rent and Mortgage Relief Program and Approve Transfer of \$216,125.00 in Mortgage Relief Funds to Rent Relief (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing**

Division Manager, 408-586-3275)

Received report on American Rescue Plan Act (ARPA) funding for Rent and Mortgage Relief Program and approved transfer of \$216,125.00 in Mortgage Relief Funds to Rent Relief.

9. **Receive the July - December 2023 Report for Unhoused Services (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing Division Manager, 408-586-3275)**

Received the July – December 2023 report for unhoused services.

10. **Approve and Authorize the City Manager to Execute a Three-Year Professional Services Agreement with Berry, Dunn, McNeil & Parker LLC for Enterprise Resource Planning Consulting Services (Staff Contact: Gabrielle Tsang, Interim Finance Director 408-586-3131; and Kelli Parmley, Human Resources Director 408-586-3086)**

Approved a three-year professional services agreement with Berry, Dunn, McNeil & Parker LLC for Enterprise Resource Planning (ERP) Consulting Services for a not-to-exceed amount of \$375,500.00, authorized the City Manager to execute the contract, with additional authority to approve an optional two years and changes up to 10%.

11. **Approve and Authorize the City Manager to Execute an Amendment to the Professional Services Agreement with Ascent Environmental for Consultant Services Related to Preparation of the Gateway-Main St. Specific Plan (Staff Contact: Jay Lee, Planning Director, 408-586-3077)**

(1) Approved an amendment to the Professional Services Agreement with Ascent Environmental for consultant services related to preparation of the Gateway-Main St. Specific Plan; (2) Approved a Budget Appropriation of \$90,000.00 from the Community Planning Fund into Capital Improvement Program Project No. 3437; and (3) Authorized the City Manager to execute the amended agreement.

12. **Authorize the City Manager to Execute the Grant Agreement with the County of Santa Clara to Accept the 2023 State Homeland Security Grant Program Award and Approve a Budget Appropriation in the Amount of \$105,205.00 to the Police Department's FY 2023-24 Operating Budget (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406)**

Authorized the City Manager to execute the Grant Agreement with the County of Santa Clara to accept the 2023 State Homeland Security Grant Program Award and approved a budget appropriation in the amount of \$105,205.00 to the Police Department's FY 2023-24 Operating Budget.

13. **Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

(1) Received an update on the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; and (2) Determined by a four-fifths vote that the condition continues to constitute an emergency.

14. **Approve a Three-Year Agreement with Portford Solutions for Licensing, Maintenance, and Support of ApplicationXtender Document Management Software and Authorize the City Manager to Execute the Contract (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)**

Approved a three-year agreement with Portford Solutions for the licensing and maintenance and support services related to ApplicationXtender for the not-to-exceed amount of \$118,150.19 and authorized the City Manager to execute the agreement.

ITEMS PULLED FROM CONSENT CALENDAR

15. Consider One Donation Request from Milpitas Community Education Endowment, Inc. (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Councilmember Lien announced she had to recuse herself from the decision due to serving on the board of the organization. She left the meeting at 7:30 PM.

There were the following public speakers:

1. Voltaire Montemayor

After discussion, motion: to Approve a donation request of \$500.00 for Milpitas Community Education Endowment, Inc. for their annual fundraiser on Friday, April 26, 2024.

Motion/Second: Councilmember Barbadillo/Mayor Montano

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Phan

NOES: None

ABSTAIN: Councilmember Lien

ABSENT: Vice Mayor Chua

Councilmember Lien returned to the meeting at 7:32 PM.

PUBLIC HEARINGS

16. Conduct a Public Hearing and Adopt a Resolution Approving Site Development Permit, Density Bonus Permit and Environmental Assessment and Allow the Development of Two Multi-Family Residential Buildings at 1300 South Main Street (Staff Contact: Jay Lee, Planning Director, 408-586-3077)

City Manager Thomas introduced the item. Acting Senior Planner Stark presented the report.

Mayor Montano opened the public hearing.

There were the following public speakers:

1. Voltaire Montemayor

Mayor Montano closed the public hearing.

Developer representative Jean Broussard addressed the Council and was available to respond to Council questions.

Councilmember Barbadillo inquired after other projects in the same area, raised questions about waivers and concessions granted, and asked about project amenities. Acting Senior Planner Stark, the developer's representative Jean Broussard, and Recreation Director Lorentzen responded to the Councilmember's questions.

Mayor Montano voiced concerns about traffic ingress and noise from the nearby train tracks seeking reassurances regarding resident safety and sound mitigation measures. She proposed working with a muralist to adorn a blank wall instead of paying an in lieu fee, emphasizing the importance of art in the community. The developer agreed to explore this option, and the discussion concluded with a compromise to enhance community benefits while expressing overall approval for the project and its

color scheme.

Councilmember Barbadillo expressed gratitude for the public art compromise and raised concerns about parking and traffic. He highlighted the potential issues of reduced parking and emphasized the importance of community education regarding the project's design and parking decisions given the constraints imposed by state law.

City Manager Thomas suggested proposed language for an additional condition of approval, "During development and construction of the project, the applicant shall coordinate with the Department of Recreation and Community Services to develop designs for a significant mural on the stairs for the tower facing Main Street with final design to be revised by the Arts commission for recommendation and final approval on design and cost by City Council with completion of the mural prior to 50% of occupancy permits being issued." The Developer asked if it would be possible that the design only go to the Arts Commission rather than going before the City Council again. The City Council agreed.

Mayor Montano inquired about bus passes for tenants and expressed appreciation for including 39 parking spaces despite not being required by state density bonus law. The developer explained the challenges of the site and the efforts made to maximize parking.

After discussion, motion: to (1) Conduct a public hearing on the development of two multi-family residential buildings with 118 below-market rate (100% affordable); (2) Consider the project to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section §15332 (Class 32: In-Fill Projects) and, as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and (3) Adopt **Resolution No. 9317** to approve Site Development Permit No. SD22-0015, Density Bonus Permit No. DB23-0011 and Environmental Assessment No. EA23-0015, subject to the findings and Conditions of Approval; and (3) add to the Conditions of Approval for the developer to, "coordinate with the Recreation and Community Services Department to develop designs for a significant mural on the stair tower facing Main Street, with the final design to be reviewed by the Arts Commission for recommendation, and completion of the mural prior to 50% of occupancy permits issued for the multifamily residential project at 1300 South Main Street."

Motion/Second: Mayor Montano/Councilmember Lien

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Vice Mayor Chua

17. Conduct a Public Hearing and Adopt a Resolution Approving the Proposed 2025-2029 Capital Improvement Program (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Michael Silveira, City Engineer, 408-586-3303)

City Manager Thomas introduced the item. City Engineer Silveira presented the report.

Mayor Montano opened the public hearing.

There were the following public speakers:

1. Voltaire Montemayor

Mayor Montano closed the public hearing.

Mayor Montano inquired after street ratings, well regulations, infrastructure costs, and grant

opportunities.

After discussion, motion: to Conduct a public hearing and adopt **Resolution No. 9318** approving the 2025-2029 Capital Improvement Program..

Motion/Second: Councilmember Barbadillo/Councilmember Lien

Motion carried by the following:

AYES: Mayor Montano, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Vice Mayor Chua

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager Thomas announced the Small Business Expo taking place on Saturday, April 20, 2024, and the commencement of Phase I of the Council Chamber Improvements.

Councilmember Lien announced the Black April Event to take place at the City Hall Plaza on April 28, 2024.

Councilmember Barbadillo asked the City Council to revisit the solicitation ordinance for potential improvements and reintroduction, and to explore the possibility of augmenting the Planning Commission's stipend. There was consensus to add both items to the prioritization list (Vote: 4-0-1. Absent: Chua).

ADJOURNMENT

Mayor Montano adjourned the meeting at 9:10 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 5/2/2024

May 21, 2024 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Vice Mayor Chua)

PRESENTATION

- Asian Pacific American Heritage Month (Proclamation)
- Public Works Week (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for April and May 2024 (City Clerk)
2. Approve City Council Meeting minutes of May 7, 2024 (City Clerk)
3. Preview list of items for June 4, 2024 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Legislation Update (City Manager)
6. VTA BPAC Appointment (City Manager)
7. FY2023-24 3rd Quarter Financial Status Report for the Quarter Ended March 31, 2024 (Finance)
8. Xerox 5-Year Contract Renewal (Finance)
9. Adopt Resolution for Final Acceptance of Storm Drain Projects (Public Works)
10. 355 Sango Court Initial Acceptance (Public Works / Engineering)
11. Cross-Connection Hazard Assessment Contract Award (Public Works)
12. Community Heroes Policy (Recreation)

PUBLIC HEARINGS

13. FY 2024-2025 User and Regulatory Fee Schedule (Finance)
14. CIP 2016 VOC CEQA Adoption & Conceptual Design Acceptance & CIP 2018 POC Conceptual Design Acceptance (Public Works / Engineering)

COMMUNITY SERVICES

15. BAAQMD Air Quality Presentation (Public Works)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Explore the possibility of augmenting the Planning Commission stipend	Barbadillo	4/16/2024	This item will be considered as part of the next City Council prioritization discussion
2	Revisit the solicitation ordinance for potential improvements and reintroduction	Barbadillo	4/16/2024	This item will be considered as part of the next City Council prioritization discussion
3	Explore changing or enhancing the focus of the community advisory commission to add housing	Chua	4/2/2024	This item will be considered as part of the next City Council prioritization discussion
4	Honor military residents by selecting several at one given month during the year for recognition with banners displayed on Main Street	Chua	3/19/2024	This item will be considered as part of the next City Council prioritization discussion
5	Explore options for revisions to ADU ordinance	Chua	3/5/2024	This item will be considered as part of the next City Council prioritization discussion
6	Explore an Arts Month Event where commissioners can exhibit their Art	Chua	3/5/2024	This item will be considered as part of the next City Council prioritization discussion

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
7	Request that the Arts Commission explore alternatives for future of statue in front of City Hall	Phan	1/30/2024	An update was included in the February 20th Council prioritization reprt.
8	Update the Commissioner Handbook to include an option for outgoing commissioners to make presentations to other commissions	Chua	1/23/2024	An update was included in the February 20th Council prioritization reprt.
9	Workshop for retailers focusing on best practices and safety with plans for quarterly sessions	Chua	1/23/2024	An update was included in the February 20th Council prioritization reprt.
10	Explore possibility of naming the County library on Main Street	Phan	1/23/2024	An update was included in the February 20th Council prioritization reprt.
11	Consideration of the 20% Low Income Below Market Rate Housing	Montano	12/5/2023	This item was approved to move forward as part of the February 20th Council prioritization
12	Bring back Bingo and the Tour at the Senior Center	Chua	11/7/2023	An update was included in the February 20th Council prioritization reprt.
13	Referral for utility infrastructure cost on Main Street from Carlo to Corning Streets	Montano	10/17/2023	An update was included in the February 20th Council prioritization reprt.
14	Consider a possible ordinance or policy regarding solicitations at home	Barbadillo	10/3/2023	An update was included in the February 20th Council prioritization reprt.
15	Main Street International Festival	Lien	10/3/2023	An update was included in the February 20th Council prioritization reprt.
16	Have the Police Chief direct staff to complete an analysis in partnership with the County to	Chua	9/5/2023	An update was included in the February 20th Council prioritization reprt.
17	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	An update was included in the February 20th Council prioritization reprt.
18	Human Resources Director to conduct a job fair specific to the job openings at City Hall	Chua	5/2/2023	An update was included in the February 20th Council prioritization reprt.
19	Pickleball Pilot Project	Chua	2/28/2023	An update was included in the February 20th Council prioritization reprt.
20	Main Street Infrastructure Projects	Montano	2/28/2023	An update was included in the February 20th Council prioritization reprt.
21	Main Street Flooding at Library	Chua	2/28/2023	An update was included in the February 20th Council prioritization reprt.
22	Satellite Consulate Office	Montano	2/28/2023	An update was included in the February 20th Council prioritization reprt.

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
23	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update was included in the February 20th Council prioritization rept.
24	City Manager to look into defining either a standalone teen center or updating information to	Chua	9/20/2022	An update was included in the February 20th Council prioritization rept.
25	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe	Montano	8/16/2022	An update was included in the February 20th Council prioritization rept.
26	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	An update was included in the February 20th Council prioritization rept.
27	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	An update was included in the February 20th Council prioritization rept.
28	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	An update was included in the February 20th Council prioritization rept.
29	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	An update was included in the February 20th Council prioritization rept.
30	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	An update was included in the February 20th Council prioritization rept.
31	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	An update was included in the February 20th Council prioritization rept.
32	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	An update was included in the February 20th Council prioritization rept.
33	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.

NOTE: Deferred and Completed Items are not listed



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving Memorandum of Understanding Between the City of Milpitas and Milpitas Police Officers Association (MPOA) Covering the Period of January 1, 2024 through December 31, 2026 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	5/7/2024
Recommendation:	Adopt a resolution approving a Memorandum of Understanding between the City of Milpitas and Milpitas Police Officers Association (MPOA) covering the period of January 1, 2024 through December 31, 2026.

BACKGROUND:

The Memorandum of Understanding (MOU) between the City of Milpitas and the Milpitas Police Officers Association expired on December 31, 2023. Thus, the City needs to enter into a new MOU.

ANALYSIS:

City representatives and representatives from MPOA met and conferred in good faith to negotiate a new MOU. The City and MPOA began negotiations on August 24, 2023 and met 7 times. A Tentative Agreement has been reached with a new successor Memorandum of Understanding with an effective date of January 1, 2024 and will remain in effect through December 31, 2026. The MPOA Bargaining Group voted in favor of the Tentative Memorandum of Understanding on April 11, 2024. The major items of the agreement are:

- 1) Three-year contract with the following wage adjustments:
 - 6.5% base salary increase for Sworn and Non-Sworn employees retroactive to the first full pay period in January 2024.
 - 5.0% base salary increase for Sworn employees and a 3.0% base salary increase for Non-Sworn employees effective the first full pay period in January 2025.
 - 4.0% base salary increase for Sworn employees and a 3.0% base salary increase for Non-Sworn employees effective the first full pay period in January 2026.
- 2) New incentive pay for eligible sworn employees for Crisis Intervention Training (CIT):
 - Effective the first full pay period in January 2024, all sworn employees who meet the following criteria shall receive 2.5% of the employee's base pay:
 - California POST Crisis Intervention Training (Basic) Certification; or
 - California POST Hostage (Crisis) Negotiation Training (Basic) Certification; or
 - Minimum 24 hours of relevant training as determined by the Department's Training Unit, including courses in crisis intervention, de-escalation, strategic communication, and other topics relative to promoting positive, non-biased, non-use of force interactions with the community.

The Memorandum of Understanding is included in the City Council's agenda packet as Exhibit A to the Resolution to approve the MOU. The draft MOU document was available for public review for the 10-day period required by the City of Milpitas Open Government Ordinance starting on April 26, 2024.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the Resolution in the Recommendation

Pros: The City would not have to incur additional costs due to wage increases.

Cons: The City would not have a current MOU with this bargaining group representing over 115 City employees who help keep the Milpitas community safe

FISCAL IMPACT:

There is sufficient funding the FY 2023-2024 budget to cover the costs for the proposed wage and benefit increases for this current fiscal year, which is \$1,169,016 on top of what has already been budgeted. The proposed wage and benefit increase for FY 2024-2025 and FY 2025-2026 will be incorporated in the budget adoption process.

The fiscal impact for the proposed increases for MPOA will be approximately \$9,131,377 over three fiscal years.

California Environmental Quality Act (CEQA):

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

RECOMMENDATION:

Adopt a resolution approving a Memorandum of Understanding between the City of Milpitas and Milpitas Police Officers Association (MPOA) covering the period of January 1, 2024 through December 31, 2026.

Attachment(s):

- (a) Resolution Approving MPOA MOU and Updated Salary Table
- (b) Exhibit A – Memorandum of Understanding
- (c) Exhibit B – Salary Table

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE
MEMORANDUM OF UNDERSTANDING WITH THE MILPITAS POLICE OFFICERS
ASSOCIATION, FOR THE PERIOD OF JANUARY 1, 2024 THROUGH DECEMBER 31, 2026
AND APPROVE AND ADOPT THE PAY SCHEDULE TITLED “ALL JOB
CLASSIFICATIONS/SALARY TABLE”**

WHEREAS, the most recent Memorandum of Understanding (MOU) between the Milpitas Police Officers Association (MPOA) and the City of Milpitas covered the period of January 1, 2017 through December 31, 2023; and

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

WHEREAS, the new MOU between MPOA and the City of Milpitas shall be effective January 1, 2024, through December 31, 2026, a copy of which is attached as “**Exhibit A**.”

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The MOU between the Milpitas Police Officers Association and the City of Milpitas, attached hereto as **Exhibit A**, is hereby approved and the City Representatives are hereby authorized to execute it.
3. The City Council approves and adopts **Exhibit B**, the pay schedule “ALL JOB CLASSIFICATIONS/SALARY TABLE effective May 7, 2024”.

PASSED AND ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

MEMORANDUM of UNDERSTANDING

The City of Milpitas

and

Milpitas Police Officers Association

January 1, 2024 – December 31, 2026

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MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MILPITAS AND MILPITAS POLICE OFFICERS ASSOCIATION ON SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS

JANUARY 1, 2024 TO DECEMBER 31, 2026

The authorized representatives of the City of Milpitas, hereafter referred to as the "City," and the authorized representatives of the Milpitas Police Officers Association, hereafter referred to as the "Association," do hereby jointly accept and agree to all the terms and conditions of employment set forth in this Memorandum of Understanding (hereinafter "MOU") pursuant to Section 15.13 of the Personnel Rules and Regulations of the City of Milpitas (as amended).

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

- a) The term of this MOU shall be for three years commencing at 12:01 a.m. on January 1, 2024 and terminating at 12:00 Midnight on December 31, 2026.
- b) This MOU shall apply to all employees listed in the salary schedule set forth in Appendix A of this agreement and attached hereto.
- c) The terms and conditions of employment set forth in this MOU have been arrived at upon meeting and conferring in good faith by the authorized representatives of the City and the authorized representatives of the Association. The authorized representatives of the Association agree to recommend acceptance by the employees of all terms and conditions of employment set forth herein and the authorized representatives of the City agree to recommend to the Milpitas City Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.
- d) This MOU is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et. seq.) and has been jointly prepared by the parties.
- e) The legal relationship between the City, its employees and the Milpitas Police Officers Association is governed by the law of the State of California including but not limited to the Meyers-Milias-Brown Act, the Public Safety Officers Procedural Bill of Rights Act, City Ordinances, Resolutions, Rules and Procedures and this Memorandum of Understanding. Wherever this MOU contains a provision relating to the subject matter which is also referred to in City Resolutions, Rules or Procedures, the provisions of this MOU shall prevail. The parties understand and agree that City ordinances cannot be amended by this agreement.
- f) The City recognizes the Association as the exclusive representative under Government Code Sections 3500 et. seq. for the following classifications of employees within the Milpitas Police Department:

Patrol Officer
Police Officer
Police Sergeant
Police Lieutenant
Patrol Officer Trainee

Police Officer Trainee
Communications Dispatcher
Communications Supervisor
Community Service Officers
Police Clerk I
Police Clerk II
Police Clerk Supervisor
Police Evidence Technician
Police Assistant

SECTION 1.00 – EMPLOYEE RIGHTS

- 1.01 Any employee in the City's competitive service may join, organize, maintain or not maintain membership in a labor organization. The City neither encourages nor discourages these activities, nor does membership or non-membership in any labor organization affect the employee's standing or rights as a City employee. The right to join, organize or maintain membership in a labor organization is also extended to any association of municipal employees not identified with any labor organization.

The right to join a labor union or any association of municipal employees also includes the right not to join. Any employee desiring to join, remain a member, or become independent of any such organization or association is free to exercise these rights without undue influence, coercion, intimidation, or pressure of any kind from any person. Any City right or benefit shall not be denied or adversely affected by employees covered by this MOU exercising their right not to join an employee organization. No employee covered by this MOU shall be denied or adversely affected in City rights or benefits for engaging in employee organizational activities, including representing the Association or members of the Association.

- 1.02 Employees participating in organizational or other labor union activities or similar activities of any employee association are required to conduct such activities on their own time and not during regularly assigned working hours, with the following exceptions:
- 1.02.1 An Association representative representing or assisting an Association member in the presentation of a grievance (including representation in a disciplinary proceeding) may use such working hours as are essential to present the grievance to management.
 - 1.02.2 Officials of any organization representing employees in this bargaining unit may meet with the City Manager or other City officials when such meeting times are approved by the City Manager.
 - 1.02.3 Business agents or representatives of the Association or its affiliates having business (other than recruiting of members) with the officers or individual members of the Association or other recognized employee group may meet and confer on duty with such officers or members during the course of the working day for a reasonable period of time, provided that permission is first obtained from the Chief and the employee's immediate supervisor, and further provided that the conduct of such business will in no way conflict with the performance of City business.

- 1.03 The use of the workplace or premises for organizational activities other than the presentation of a grievance or the conduct of business as provided for above is permitted only after working hours, with advance notice to the Chief or City Manager, and shall in no way interfere with the performance of official duties of on-duty personnel. . The City will provide space upon request at any City facility for a union or employee association furnished, installed, and maintained bulletin board for posting of notices and bulletins and a magazine rack for distribution of union or association literature.
- 1.04 For City employees who may wish to belong to a public employee union or association, the City will cause dues to be deducted when specifically authorized in writing.
- 1.05 The Association will set the monthly membership dues rates for eligible permanent employees who elect to be dues-paying members. The Association shall determine and inform City of the single lump sum amount of the dues that will be deducted every two weeks for each employee. The amounts to be deducted shall remain in place unless and until City is notified otherwise by the Association. The Association will be the custodian of record for membership within its bargaining unit and on a regular basis will provide City with certification of those employees who have authorized dues deduction. The above subsection shall be applied in accordance with federal, state and local law.
- 1.05.1 Unit members on voluntary leave without pay and unit members who are on laid-off status shall be exempt from the provisions herein, except that the election as to the membership must be exercised within the first ten (10) workdays upon return to paid status.
- 1.05.2 City is under no obligation to make payroll deductions for periods during which a unit member is either terminated from employment or not on City's payroll for any reason, including, but not limited to, layoff and voluntary leave of absence for more than thirty (30) days.
- 1.05.3 Upon the rehiring of any unit member, City shall treat such unit member as a new unit member for purposes of this Section.
- 1.05.4 Association, as defined in this Section, shall hold City harmless, and shall reimburse City fully and promptly for any fees, costs, charges, or penalties incurred in responding to or defending against claims, disputes, challenges which are actually brought against City or any of its agents, in connection with the administration or enforcement of any subsection of the Section pertaining to representation fees. Such reimbursement shall include, but not be limited to, court costs, litigation expenses, and attorney's fees incurred by City.
- 1.06 There is no intent by Association or City to create an "Association Office"; however, the City recognizes the Association's need to conduct administrative

tasks. Therefore, City shall provide space approved by the Police Chief to accommodate an Association file cabinet, bookcase and answering machine. This arrangement shall not be used by on-duty members during work hours except as provided for in this section. It is understood that administrative tasks exclude political activities. Association agrees not to engage in any political activities while using a City facility.

- 1.07 City shall provide paid release time for Association officers and members to conduct essential Association business, such as labor negotiations, PORAC/FOP annual conference, training and monthly meetings, benefits meetings with the City and/or applicable government agencies, and other essential training and conferences, excluding political activity, upon reasonable written notice to and prior approval by the Police Chief. Release time shall not result in overtime by any other employee. These events include but are not limited to:

<u>EVENT</u>	<u>ANTICIPATED MAXIMUM PERSONNEL</u>	<u>DAYS/HOURS</u>
PORAC/FOP Monthly Meetings	2	5 hr./month
PORAC/FOP Annual Conference	3	5 days
Labor Negotiations Training	3	3-4 days
LTD and Health Benefits Meetings	2	5 hr.
PERS Meetings	2	1 day
MOU Negotiations	5	Per meeting

The Police Chief or designee may approve additional paid release time for meetings, seminars, conventions, and symposia at the request of Association.

- 1.08 Association's use of City facilities shall be conditioned upon City's right to suspend, revoke or modify said use upon reasonable notice. After notifying Association of City's proposed action and the reason for the action, the City Manager or designee will convene a meeting to consider Association's position and to decide whether the use shall be suspended, revoked, or modified.
- 1.09 City agrees to notify an elected officer of Association if an employee dies or suffers a serious injury while in the course and scope of duty or causes or is accused of causing a serious injury or death while in the course and scope of duty. Association has the obligation to maintain confidentiality regarding private medical information learned about an employee's injury.

SECTION 2.00 – CITY RIGHTS

- 2.01 The City continues to possess exclusively the rights listed below, plus all other rights to which by law the City is entitled. These rights may not be abridged or modified in any way, except by formal legislative action by the City Council (i.e. resolution or ordinance) The City has the right and may exercise its discretion:
- 2.01.1 To determine the mission of its constituent departments, commissions and boards;
 - 2.01.2 To set standards of service.
 - 2.01.3 To direct employees, make assignments and reassignments, schedule and assign work, and require and assign overtime work;
 - 2.01.4 To take disciplinary action;

- 2.01.5 To relieve its employees from duty because of lack of work or other legitimate reasons;
 - 2.01.6 To employ any appropriate means or method to maintain the efficiency of governmental operations and administration;
 - 2.01.7 To determine the methods, means and personnel by which government operations are to be conducted;
 - 2.01.8 To determine the procedure and standards for selection for employment and determine the content of job classifications;
 - 2.01.9 To determine when an emergency exists and to take all necessary action to carry out its mission in emergencies, including recalling and deploying off-duty personnel and requiring that employees work overtime;
 - 2.01.10 To exercise complete control and discretion over its organization and technology of performing its work;
 - 2.01.11 To organize and reorganize its departments and affairs, and to otherwise exercise complete control and discretion over its organization;
 - 2.01.12 To transfer or reassign employees, as outlined in the MOU; and
 - 2.01.13 To layoff employees by position as a result of: a material change in duties, organization, or shortage of work or funds in the Department or the City.
- 2.02 Specialty Assignments: Routine and scheduled openings to specialty assignments shall be announced at least four (4) weeks in advance in writing so that eligible candidates have the opportunity to submit a request for such specialty assignment. In making the assignment, the Police Chief shall consider, but is not limited to, the applicant's special skills, qualifications, evaluations, and service record and the effect of the assignment on the applicant's career development. When a specialty assignment occurs at other than a normal rotation date, the Department shall post the announcement at least two weeks in advance of the selection.
- 2.03 Transfers: As specified above, the City retains the right to make personnel transfers as deemed necessary for the good of the City and the Department. Said transfers shall not be made without reasonable notice (as the circumstances permit) to such employee or until the employee's written objections, if any, are considered by the Chief.
- Such transfers shall not be for disciplinary purposes. The City shall not be required to comply with pre-disciplinary or disciplinary procedures in connection therewith.
- No sworn officer shall be loaned or temporarily reassigned to a location or duty assignment if another sworn officer would not normally be sent to that location or would not be given that duty assignment under similar circumstances.
- 2.04 Any violation of the policies and procedures created by this MOU may be grounds for disciplinary action as defined by this MOU. Any MOU provision between the City and the Association shall take precedence over any of the above-enumerated employee and management rights. Such a Memorandum of Understanding will be honored in good faith during the life of this contract.
- 2.05 Except in cases of emergency the City shall give written notice (30 days in advance of any contract with third parties) which shall result in the lay-off, demotion, or transfer of any employee

represented by the Association and shall meet and confer with the Association regarding the same upon reasonable notice.

SECTION 3.00 – ADVANCE NOTICE

Except in cases of emergency as provided in this section, the City shall give reasonable written notice to each recognized employee organization affected by an ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation including actions taken under City Rights that affect wages, hours and other terms and conditions of employment proposed to be adopted by the City and shall give such recognized employee organizations the opportunity to meet with City representatives. The scope of representation shall not, however, include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

SECTION 4.00 - DISCIPLINE PROCEDURES

4.01 - DISCIPLINARY ACTION

4.01.1 Causes for Disciplinary Action

Discipline may be imposed for cause, based upon, but not limited to, the following conduct:

- (a) Fraud in securing appointment.
- (b) Falsification of records.
- (c) False statements or representations regarding another employee or work performed.
- (d) Failure to satisfactorily perform the duties and/or responsibilities of an employee's position.
- (e) Inexcusable neglect of duty.
- (f) Insubordination.
- (g) Reporting for or performing work while impaired as a result of alcohol and/or drug use.
- (h) Dishonesty or misuse of or misappropriation of City property and/or funds.
- (i) Criminal conviction which carries potential sentence of imprisonment in a federal penitentiary or a state prison; or conviction of any crime involving moral turpitude, or conviction of any misdemeanor substantially relating to the function of an employee's position.
- (j) Unauthorized absence.
- (k) Absenteeism.
- (l) Non-observance of work hours, including tardiness, and abuse of leave privileges.
- (m) Discourteous or non-cooperative treatment of the public or other employees.
- (n) Conduct, either during or outside duty hours, which is of such a nature that it causes discredit to the Police Department or the City.
- (o) Violation of any condition of employment contained in the Municipal Code; the Personnel Rules & Regulations; any Personnel Policies and Procedures, the Milpitas Police Manual; this Memorandum of Understanding; or a formal action of the Council.

- (p) Failure to meet financial obligations to the extent that such failure leads to repeated attachment or garnishment of wages (consistent with California law).
- (q) Acceptance of gift or gratuity for performing City employment-related favor or service.
- (r) Failure to acquire, maintain and/or keep current any required licenses or certificates.
- (s) Violation of the City's or department's outside work policy.
- (t) Any illegal discriminatory act or omission based on race, age, sex, religion, political opinion or affiliation, national origin, marital status, physical or mental disability, color, creed, ancestry, sexual orientation or medical condition towards employees, applicants, independent contractors, City Council and Commission members and citizens.
- (u) Gossiping.
- (v) Abandonment of position.

4.02 Disciplinary Action

4.02.1 Written Reprimand

Written reprimand means written notification to the employee that there is cause for dissatisfaction with the employee's conduct or performance and that further disciplinary measures may be taken if said conduct or performance is not corrected. Written reprimands shall be given in the manner and on forms prescribed or accepted by the Human Resources Director. Written reprimands shall be made a part of the employee's official personnel record and as such may be considered as pertinent evidence or information in any hearing. The appeals procedure for written reprimands is set forth in Section 4.05.2 below.

4.02.2 Suspension

Suspension without pay shall be any loss in pay, not to exceed thirty (30) calendar days.

4.02.3 Reduction in Step

Reduction in Step within range shall be the withdrawal of step advancements granted. Reduction in pay shall become effective on the effective date of the disciplinary action. Reduction may be made on a permanent or temporary basis.

4.02.4 Involuntary Demotion

Involuntary demotion shall be a reduction in classification to a classification having a lower maximum salary with reduction in salary. Demotion may be made on a permanent or temporary basis.

4.02.5 Termination

Termination means the dismissal of an employee from City service.

4.03 Authority for Disciplinary Action

The Police Chief, or designated representative, has authority to take disciplinary action. The Human Resources Director shall be notified of any contemplated disciplinary action, beyond a letter of reprimand, prior to the time it is taken, or in an emergency situation, as soon as possible. The immediate supervisor has the authority to issue a letter of reprimand.

4.04 Proposed Discipline Notice to Employees

Prior to receiving any suspension, reduction in step, involuntary demotion or termination, the employee shall be served with a proposed disciplinary notice containing the following:

- (a) The proposed disciplinary action;
- (b) The nature of the charges and/or violation of City ordinances, resolutions, written procedures, municipal code, personnel rules and regulations or departmental regulations, policies or operating procedures;
- (c) The reasons for the proposed action;
- (d) The materials upon which the action is based;
- (e) An opportunity for the employee to respond to the charges in writing and/or to a hearing officer, not less than five working days from the date the notice was served; and
- (f) The right of the employee to be represented by an attorney or other representative at any disciplinary conferences or proceedings.

4.04.1 Any employee notified pursuant to Section 4.04 above who desires an opportunity to respond may do so by appearing at the appointed place and time. Said response may be oral or in writing. The employee is not entitled to an evidentiary hearing, and the sole purpose of the meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the hearing officer determines that the presentation of witnesses is necessary.

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

4.05 Right of Appeal

4.05.1 Reprisals

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

4.05.2 Written Reprimand

The employee may request an administrative hearing with the Police Chief by submitting a written request within ten (10) working days from the date of the written reprimand. The Police Chief shall hold the hearing within ten (10) working days of the filing of the request and shall issue written findings within ten (10) working days of the hearing. The employee is not entitled to an evidentiary hearing, and the sole purpose of the meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the Police Chief, or designated representative, determines that the

presentation of witnesses is necessary. Written reprimands are not subject to the Discipline Appeal process set forth in Section 4.05.3 and/or the Grievance Process.

The Human Resources Director shall remove a letter of reprimand from a sworn personnel file or any other file used for personnel purposes upon written request by the sworn employee provided there have been no additional disciplinary actions of a similar nature during the subsequent twelve (12) months. The Human Resources Director shall remove a letter of reprimand from a non-sworn personnel file or any other file used for personnel purposes upon written request by the non-sworn employee provided there have been no additional disciplinary actions of a similar nature during the subsequent twenty-four (24) months. Any letter of reprimand shall be considered removed from the employee's personnel file or any other file used for personnel purposes after twelve (12) or twenty-four (24) months from the date of the written reprimand.

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

4.05.3 Suspensions, reduction in step, demotion and termination

The following procedure shall be used in the appeal process:

Appeal: Within ten (10) working days of the receipt of written notice of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request with the Police Chief and the Human Resources Director.

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

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

The fees and expenses of the arbitrator shall be shared equally by the City and the disciplined employee, or Association, if the Association represents the disciplined employee at the arbitration.

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

The arbitrator shall have no power or authority to interpret anything other than the Memorandum of Understanding, Personnel Rules and Regulations, and existing policies, rules, directives or procedures. The arbitrator shall be without power or authority to make any decision that requires

the City to commit an unlawful act. The arbitrator also shall not have authority to change existing wage rates or employee benefits.

If, as result of an arbitration award, an employee's disciplinary action is overturned or modified in any way, relevant portions of the employee's performance appraisal review shall be rewritten, if necessary, so the performance appraisal does not include references or language inconsistent with the arbitrator's decision.

Decision - Final and Binding: The arbitrator shall issue a written decision within thirty (30) working days of hearing or submission of written briefs, whichever is later, that provides direction to the Police Chief and the City and shall be final and binding.

4.06 Waiver of Steps or Time Limits

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

SECTION 5.00 - LAYOFF

5.01 Any layoff shall be according to seniority and the procedures defined in Municipal Code Section VI-102 et seq.

5.01.1 The City Manager, after review with the Chief and the Human Resources Director, may lay off an employee because of material change in duties, organization, or shortage of work or funds in the department or the City.

5.01.2 The Human Resources Director shall notify the affected employee(s) in writing at least thirty (30) days in advance of the intended layoff and of their option to accept a voluntary demotion in lieu of layoff.

5.01.3 Employees laid-off or accepting demotions in lieu of layoff shall be placed on a Re-Employment List in inverse order of displacement for an appropriate Class for three (3) years.

SECTION 6.00 - RESIGNATION

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

SECTION 7.00 - OTHER EMPLOYMENT

7.01 Employees may engage in other employment or business activity that is not inconsistent, incompatible, in conflict with, or inimical to the employee's duties or the duties, functions, or responsibilities of the City, and which does not involve time demands that would reduce the employee's efficiency.

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

- (a) Involves the use for private gain or advantage of City time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of the City office or employment.

- (b) Involves receipt or acceptance by the Employee of any money or other consideration from anyone other than the City for the performance of an act which the Employee, if not performing such act, would be required to render in the regular course of hours of City employment or as a part of regular duties.
 - (c) Involves the performance of an act, which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by any other Employee of the City.
 - (d) Involves such time demands as would reduce the Employee's efficiency.
 - (e) Creates a conflict of interest.
 - (f) Would reflect adversely on the reputation of the City or Police Department.
 - (g) Would interfere with the Employee's concentration, efficiency, quality of performance or safely performing his or her duties.
 - (h) Would significantly interfere with the Employee's ability or willingness to work overtime and/or "cover" other Employees' shifts.
- 7.03 Employees must notify the Police Chief in writing, and obtain advance written approval, for other employment. Disapproval of such requests may be appealed to the City Manager whose decision shall be final. Other employment work permits shall be kept in the employee's personnel file and maintained according to personnel rules.
- 7.04 For occasional and sporadic employment (including activities and enterprises where compensation is paid), employees must notify the Police Chief of such employment in writing prior to engaging in such activities; provided, however, that where such advance notice is not reasonably possible, it may be provided not later than the employee's next working day.

SECTION 8.00 - GRIEVANCE PROCEDURE

8.01 Definitions

- (a) A grievance is any dispute, which involves the interpretation of application of any provision of this MOU. A grievance does not include disciplinary actions, as a different review procedure for disciplinary matters is otherwise provided in this MOU. Performance appraisal reviews are not grievable.
- (b) A "grievant" is any Employee, or the Milpitas Police Officers Association on behalf of more than one employee, adversely affected by an alleged violation of the specific provisions of a Memorandum of Understanding or the Personnel Rules and Regulations.
- (c) A "working day" is any day in which the City Hall is open for business.
- (d) "Employee organization" is the Milpitas Police Officers Association.

8.02 Representation

At any step in the grievance procedure, the employee concerned may choose representation by himself/herself, representation by the Association or representation by legal counsel. The concerned employee shall be personally present at all stages of the grievance procedure unless the employee specifically waives the right in writing.

8.03 Scheduling/Attendance

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

8.04 Informal Grievance

The parties shall attempt to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible.

In any instance of grievance, the employee or employees concerned shall first make efforts to resolve such grievance with their immediate supervisor concerned within thirty (30) calendar days following the occurrence, or knowledge, of the events on which the grievance is based.

8.05 Formal Grievance - Level I

If a mutually satisfactory solution of a grievance as specified in the paragraph above is not reached, then within ten (10) working days of the immediate supervisor's decision, the grievant(s) shall submit a grievance statement in writing. The written grievance shall set forth all of the issues involved; shall be dated and signed and shall be submitted to the Police Chief. It is recommended but not required that the grievance contain each of the following:

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

The Police Chief, or designated representative, shall investigate the facts and issues and reach a conclusion at the earliest date consistent with the nature of the investigation and with normal conduct of the department's business. Within ten (10) working days of receiving the formal grievance, the Police Chief or designated representative shall issue a written decision on the grievance.

8.06 Formal Grievance - Level II

If the grievance has not been resolved at Level I, the grievant may appeal the Department's written decision to the Human Resources Director or designee, within ten (10) working days after receiving

the Department's decision. The Human Resources Director or designee will review the facts and issues, further investigate as is necessary, and reach a conclusion. Within ten (10) working days of receiving the appeal, the Human Resources Director or designee shall issue a written decision on the grievance appeal.

8.07 Formal Grievance - Level III

If the grievance has not been resolved at Level II, the grievant may appeal the Human Resources Director's written decision to the City Manager or designee, within ten (10) working days after receiving the Human Resources Director's decision. The City Manager or designee will review the facts and issues, further investigate as is necessary, and reach a conclusion. Within ten (10) working days of receiving the appeal, the City Manager or designee shall issue a written decision on the grievance appeal.

8.07 Arbitration

Within ten (10) working days of the receipt of City Manager's final decision, the Grievant may request arbitration by filing a written request with the Police Chief. The Association shall also provide a copy to the Human Resources Director.

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

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

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

The arbitrator shall be without power or authority to make any decision that requires the City to commit an unlawful act. The arbitrator also shall not have authority to change existing wage rates or employee benefits.

Decision - Final and Binding

The arbitrator shall issue a final and binding written decision within thirty (30) working days of hearing or submission of written briefs, whichever is later, that provides direction to the Police Chief and the City and shall be final and binding upon both parties.

8.08 Waiver of Steps or Time Limits

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

SECTION 9.00 - ANNUAL VACATION LEAVE

- 9.01 All City employees shall be entitled to paid vacation leave beginning at the end of the first six months in the service of the City. However, vacation credits for this probationary period shall be accrued by each such employee from the date of his/her initial appointment.
- 9.01.1 All eligible employees shall earn vacation credits at the rate of 3.3846 hours per pay period (i.e. 88 hours per year) for each full two weeks of service.
- 9.01.2 After completion of the fourth year of service, vacation credits shall be increased to the rate of 4.9231 hours per pay period (i.e. 128 hours per year) for each full two weeks of service.
- 9.01.3 After completion of the ninth year of service, vacation credits shall be increased to the rate of 6.4615 hours per pay period (i.e. 168 hours per year) for each full two weeks of service.
- 9.01.4 After completion of the fourteenth year of service, vacation credits shall be increased to the rate of 8.0000 hours per pay period (i.e. 208 hours per year) for each full two weeks of service.
- 9.01.5 After completion of the nineteenth year of service, vacation credits shall be increased to the rate of 9.5385 hours per pay period (i.e. 248 hours per year) for each full two weeks of service.
- 9.01.6 After completion of the twenty-fourth year of service, vacation credits shall be decreased for sworn classifications to the rate of 8.6154 hours per pay period (i.e. 224 hours per year) for each full two weeks of service.
- 9.01.7 After completion of the twenty-fifth year of service, vacation credits shall be decreased for sworn classifications to the rate of 6.7692 hours per pay period (i.e. 176 hours per year) for each full two weeks of service.
- 9.01.8 After completion of the twenty-sixth year of service, vacation credits shall be decreased for sworn classifications to the rate of 3.0769 hours per pay period (i.e. 80 hours per year) for each full two weeks of service.
- 9.01.9 After completion of the twenty-eighth year of service, vacation credits shall be decreased for non-sworn classifications to the rate of 8.6154 hours per pay period (i.e. 224 hours per year) for each full two weeks of service.
- 9.01.10 After completion of the twenty-ninth year of service, vacation credits shall be decreased for non-sworn classifications to the rate of 6.7692 hours per pay period (i.e. 176 hours per year) for each full two weeks of service.
- 9.01.11 After completion of the thirtieth year of service, vacation credits shall be decreased for non-sworn classifications to the rate of 3.0769 hours per pay period (i.e. 80 hours per year) for each full two weeks of service.
- 9.01.12 A pay period is defined as two (2) calendar weeks.
- 9.02 Employees are not eligible to use vacation leave within the first six (6) months of continuous service. Between six months and one year of continuous service, an employee may be permitted to

take vacation leave not to exceed five (5) working days. Each eligible employee shall be required to serve the equivalent of one year continuous service in the City in order to be eligible for his/her full annual vacation leave provided.

- 9.03 The Chief or designee shall determine the times when an employee may take vacation. If the requirements of the City are such that an employee must defer part or all of his/her annual vacation in a particular calendar year, the appointing power shall permit the employee to defer the vacation to the following calendar year or allow the employee to cash out the deferred vacation at his/her option.
- 9.04 No employee may carry-over more than 336 hours of vacation leave to the following calendar year without the express approval of the City's Human Resources Director. Upon separation from the City an employee shall be compensated for accrued annual leave. Employees who are discharged or who resign during the initial probationary period are entitled to payment for accrued vacation.
- 9.05 In the event one or more City holidays fall within an annual vacation leave, and the employee is not receiving holiday-in-lieu pay, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly.
- 9.06 All permanent employees who work less than full time shall accrue vacation on a pro-rated basis based on their regularly scheduled assignment. Employees who receive increased vacation credits based upon a temporary assignment that exceeds three months will be credited retroactively to the first full pay period of the assignment. For example if an employee is assigned to work twenty (20) hours per week, the City will contribute fifty (50%) of the benefit contribution for full-time employees.
- 9.07 Vacation Cash-Out. An employee may elect to cash out annual vacation leave accruals as either (1) a Future Vacation Leave Accrual Cash-Out or (2) an Emergency Vacation Leave Cash-Out, in accordance with the provisions below:
- (a) An employee whose annual vacation leave accrual is 120 hours or less may elect to cash out a maximum of 40 hours of accrued annual vacation leave per calendar year.
 - (b) An employee whose annual vacation leave accrual exceeds 120 hours may elect to cash out a maximum of 80 hours per calendar year.
 - (c) An employee who cashes out the maximum vacation accruals as a Future Vacation Leave Accrual is not eligible for Emergency Vacation Leave Cash-Out in the same calendar year.
 - (d) Future Vacation Leave Accrual Cash-out
 - 1. The employee must use at least one full workday of paid vacation leave in the calendar year the employee submits the election request.
 - 2. Between November 1st of each calendar year through the end of the first full pay period in December of the same year, an employee may request to cash out future vacation accruals by completing and submitting an Irrevocable Vacation Cash Out request form to the Director of Human Resources. Employees who submit the request form after the first full pay period of December shall be ineligible to receive the cash-out the following calendar year. Once the election is made, it is irrevocable. If the employee does not select a date on which to receive the cash-out, the City will make payment in the last full pay period of the calendar year.

3. The employee will select either pay period 7, pay period 13, pay period 19 or pay period 24 to receive the cash-out; however, in no circumstances may an employee receive payment for future vacation accrual cash-out until the employee has actually accrued the minimum number of vacation hours. For example, an employee earning 5 hours of vacation per pay period who wishes to cash out 40 hours of vacation accrual, may request their cash-out accrual any time after eight pay periods.

4. As a condition of applying for cash-out, an employee must consent to future payroll deductions (in accordance with Section 7 below) for necessary withholding of required taxes.

5. All cash-outs of future vacation accruals will be included in an employee's regular paycheck.

(e) Emergency Vacation Accrual Cash-Out

An employee may request to cash-out vacation due to an unanticipated emergency that is caused by an event beyond the control of the employee and when the employee can demonstrate that it would result in severe financial hardship to the employee if early withdrawal were not permitted.

Severe financial hardship to the employee includes:

1. Losses resulting from a sudden and unexpected illness or accident of the employee or of a qualified family member of an employee.

2. Losses of the employee's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the employee. However, losses that can be resolved through reimbursement or compensation by insurance or otherwise, or by liquidation of the employee's assets to the extent the liquidation of the assets would not itself cause severe financial hardship, or by cessation of voluntary deferrals to a 457 plan, shall disqualify an employee from eligibility to receive Emergency Vacation Accrual Cash-Out.

3. Any other reason allowable under IRS regulations.

(f) Vacation leave may not be carried over to cash-out in subsequent years (except upon separation from City service).

(g) Any adjustments for prior taxes in amounts greater than \$100.00 shall be deducted from an employee's paycheck consistent with the procedures described in MOU Section 36.05.

9.08 Vacation leave requests for a minimum of one week will be made and approved on a pre-determined, semi-annual basis. The City will establish staffing levels based on departmental needs and input from the MPOA. Vacation assignments shall be determined based on seniority within a specialized work group, in accord with and after the City determines the City's needs. For purposes of this section, seniority shall be defined by badge number for non-supervisors and time in grade for supervisory personnel within the employee's specialized work group. The Chief, however, retains the right to modify the vacation schedule at his/her discretion to meet City needs. Supervisors within a specialized work group shall have priority over non-supervisors in vacation bidding. Full-time employees have seniority over part-time employees when it comes to vacation bidding. Once a vacation request made under this paragraph is assigned, it shall not be involuntarily cancelled except in an emergency or unusual circumstance such as, but not

necessarily limited to, an earthquake, a city-wide fire, a riot, a war, an act of terrorism, an epidemic, an Act of God, or an event requiring significantly more police personnel to work than would have been foreseeable at the time the vacation was assigned.

Employees shall be permitted to request vacation at other times throughout the year on a case-by-case basis.

SECTION 10.00 - SICK LEAVE

- 10.01 All permanent full-time employees shall accrue sick leave beginning with the date of original employment at the rate of 3.6923 hours per pay period. Employees become eligible to take accrued sick leave upon completion of one full month of continuous service. Sick leave shall be allowed only in case of necessity and actual sickness or disability. Medical or dental appointments may be charged against sick leave but will be limited to a maximum of four (4) hours per appointment and should be scheduled and approved in advance. Approval of sick leave for appointments in excess of four (4) hours must be approved by the Chief or designee. The City may take actions necessary to prevent abuse of the sick leave privilege. The City in its discretion may require a medical certificate from an employee following use of sick leave. The City's exercise of this discretion will not be considered disciplinary action.
- 10.01.1 After completion of the 24th year for a sworn employee, and after completion of the 28th year of service for a non-sworn employee, an employee may use up to 80 hours of sick leave for vacation or personal reasons other than illness, injury or disability if, at the time the employee uses the leave, the employee has fewer than a total of eighty (80) hours of accrued compensatory time off and vacation. An employee may use no more than eighty (80) hours of sick leave per calendar year for this purpose. An employee has the same right to use the up to 80 hours of sick leave per calendar year described in this sub-section as applies when an employee requests to use vacation. This paragraph shall be effective prospectively, following adoption of this MOU.
- 10.02 All permanent employees who work less than full-time shall accrue sick leave on a pro-rated basis based on their regularly scheduled assignment. These employees also become eligible to take accrued leave upon completion of one full month of continuous service.
- 10.03 Tentative charge of absent time: Unless an illness or injury is compensable under the Workers' Compensation law, an ill or injured employee will have absent time charged to available sick leave or accrued vacation pay until a determination is made that the illness or injury is compensable under the Workers' Compensation law. If the employee has exhausted his/her sick leave and vacation leave, absent time will be deemed to be leave without pay pending a determination that the illness or injury is compensable under the Workers' Compensation law.
- 10.04 For purposes of this section only, compensability may be determined by the City Manager upon the prompt filing of a supervisor's report, medical reports, if required, and other satisfactory evidence. Any determination, hereunder, is tentative and without prejudice to the right of the City to contest the claim. Unit members should refer to SOP 13-12 entitled "Transfer of Accrued Leave," for more information.
- 10.05 Except when an employee is terminated for just cause, resigns, or otherwise separates from the City without a certification of "good standing," the City shall pay a separating employee (or his or her estate) who has at least five (5) years of service, a percentage of unused accrued sick leave.

This payment is intended as compensation for regular attendance and satisfactory work performance. The pay-out formula shall be $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$. Employees with less than five (5) years of service are not entitled to compensation for unused accrued sick leave under this section upon separation. The Human Resources Director shall base the decision whether to certify an employee as separating in "good standing" on the overall work record of the employee. Employees hired on or before July 17, 1999 will retain the right to exercise the above sick leave cash out option for as long as they are employed with the City.

- 10.06 All employees are eligible for the PERS Unused Sick Leave Credit upon retirement.
- 10.07 Employees hired on or after July 18, 1999, who are separating from the City with at least five (5) years of service and are not being terminated for just cause, resigning or otherwise separating from the City without a certification of "good standing," shall be paid for unused sick leave according to the following formula:
 - 10.07.1 After completion of the fourth year: $0.25\% \text{ per year} \times \text{hourly rate} \times \text{accrued sick leave hours}$.
 - 10.07.2 After completion of the ninth year: $0.50\% \text{ per year} \times \text{hourly rate} \times \text{accrued sick leave hours}$.
 - 10.07.3 After completion of the fourteenth year: $0.75\% \text{ per year} \times \text{hourly rate} \times \text{accrued sick leave hours}$.
 - 10.07.4 After completion of the nineteenth year: $1.0\% \text{ per year} \times \text{hourly rate} \times \text{accrued sick leave hours}$.
- 10.08 Employees with five (5) years or more of service may elect to cash out or deposit into deferred compensation accrued sick leave. Employees wishing to cash out accrued sick leave may make a request by completing and submitting an Irrevocable Sick Leave Cash Out request form to the Director of Human Resources. Forms will be accepted between November 1st of each year through the end of the first full pay period in December. For employees hired on or before July 17, 1999, the maximum annual cash out or deposit into deferred compensation shall be at the rates set forth in Section 10.05. For employees hired on or after July 18, 1999, the maximum annual cash out or deposit into deferred compensation shall be at the rates set forth in Sections 10.07.1 – 10.07.4. The maximum amount shall not exceed 50% of an employee's balance. All personnel shall maintain a balance of at least 240 hours.

SECTION 11.00 - FAMILY LEAVE

- 11.01 Employees with available sick leave may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.
- 11.02 In this section, family medical purposes shall mean illness, accident, medical appointments or other related occurrences.
- 11.03 Immediate family includes mother, father, spouse, domestic partner, brother, sister, son, and daughter of the employee, employee's spouse, or employee's domestic partner. This includes step and adoptive relationships.

- 11.04 Each employee will be allowed to use a maximum of up to 50% of the employee's annual accrued sick leave per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.
- 11.05 In addition, each employee will be allowed to use any accrued leave hours up to the equivalent of 15 (fifteen) of the employee's regular workdays for the birth or adoption of a child beginning with the day of birth or adoption.

SECTION 12.00 - MILITARY LEAVE

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

SECTION 13.00 – LEAVE OF ABSENCE

13.01 General Leave of Absence

- 13.01.1 The Human Resources Director may grant an employee a leave of absence without pay up to one year. Leave shall be considered upon written request of the Employee.
 - 13.01.2 In evaluating an employee request, the Human Resources Director shall consider the recommendation of the Chief, departmental workload, the best interests of the City, the length of the employee's duration of employment, the employee's performance record, and the employee's stated reason for the leave.
 - 13.01.3 An employee with a non-work-related injury or medical condition may request a leave of absence only if the employee provides a doctor's certificate. At the City's discretion and expense, the City at any time may require a medical exam with a doctor selected by the City.
 - 13.01.4 An employee who is on leave without pay shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement benefits, credit for time employed or seniority entitlements of any kind) for the period of such leave. It is the intent of this subsection that an employee on leave without pay is deemed unemployed for the period of such leave in terms of accruing benefits.
 - 13.01.5 The Human Resources Director may authorize medical benefits for an employee on leave without pay status in extraordinary circumstances and in the interests of the City. Said benefit may not be granted in routine circumstances.
 - 13.01.6 At the discretion of the City, an employee on leave of absence (paid or unpaid) may be required, for a stated and valid reason, to submit to a medical examination, background investigation, or fitness for duty psychological examination prior to returning to duty. A permanent employee denied reinstatement to duty may appeal such denial in accordance with the discipline procedure set forth in this MOU.
- 13.02 The Chief may approve an unpaid leave up to four (4) workweeks per calendar year.

- 13.03 Failure on the part of an employee on leave to report to duty on the date and time that leave terminates shall be cause for discharge.
- 13.04 Nothing in this MOU shall preclude an employee from waiving in writing the right to reinstatement as a condition of approval for a leave of absence. An employee who waives the right may request reinstatement in accordance with the City's personnel rules and regulations.
- 13.05 Departmental Leave
- 13.05.1 If, in the course of performing the duties of a Peace Officer, an employee is involved in a serious traumatic incident or in the death or serious injury of a human being, that results in serious emotional strain, the Chief, with the approval of the City Manager, shall have the right to place the employee on departmental leave without loss of pay for a period of time as determined by the Chief and City Manager.
- 13.05.2 In a shooting incident, at a minimum, the following shall apply: After officers involved in a shooting incident have been interviewed, the involved officers will be placed on unassigned duty for a minimum of the remainder of their workweek and at least three days of their following workweek. This duty shall not be considered disciplinary and shall not reflect negatively on the officer in any way.

SECTION 14.00 - JURY LEAVE

- 14.01 Employees shall receive leave with pay when called for and required to physically report to jury duty subject to these conditions:
- 14.01.1 The employee shall notify the Chief immediately upon receipt of the notice to serve; and
- 14.01.2 Any payment (except mileage) received by the employee for jury duty shall be remitted to the City if the employee serves on City time.

SECTION 15.00 - WORKERS' COMPENSATION LEAVE

- 15.01 An employee unable to work because of a work-related illness or injury are eligible for workers' compensation leave, provided that the employee has notified superiors of the illness or injury and the claim has not been denied by the Human Resources Director or the City's third party workers' compensation insurance administrator.
- 15.02 Sworn Public Safety employees shall be compensated according to California State Labor Code Section 4850.
- 15.03 For all non-sworn employees, workers' compensation leave, per incident, shall be up to a maximum of 320 hours including salary continuance according to the following table:

<u>HOURS</u>	<u>SALARY RATE</u>
First 80	100%
Next 240	80%

This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available workers' compensation

leave. Following a maximum of 320 hours of workers' compensation leave, the City shall discontinue direct workers' compensation payments to the employee. This benefit shall be prorated based on the budgeted position. An employee may apply separately for long-term disability insurance, which becomes effective after a 60-calendar day waiting period.

An employee sustaining a work-related injury or disability shall be entitled to compensation to the extent provided by the State Workers' Compensation Insurance Act. An employee who has exhausted eligible workers' compensation leave shall receive full salary to the extent the employee's accrued sick leave or vacation time may be integrated.

- 15.04 An employee whose shift hours end between 12 midnight and 7:00 a.m., and who has a medical appointment related to a Workers Compensation injury in the morning hours of the same day, shall be allowed to take the last two hours of the shift off in order to rest and prepare for the medical appointment. Such time off shall be on City time and at the discretion of the on-duty supervisor, and shall be entered on the time sheet as workers compensation pay.

SECTION 16.00 - COMPASSIONATE LEAVE

Employees are granted leave of not to exceed the equivalent of one work week due to the death of an employee's spouse, mother, stepmother, mother-in-law, father, stepfather, father-in-law, sister, stepsister, sister-in-law, brother, stepbrother, brother-in-law, son, stepson, son-in-law, daughter, stepdaughter, daughter-in-law, grandmother, spouse's grandmother, grandfather, spouse's grandfather or grandchildren. Additional leave may be granted beyond the one work week period and may be extended beyond the employee's immediate family with the approval of the Human Resources Director. Compassionate leave is not charged to any other paid leave balance.

SECTION 17.00 - HOURLY RATE AND OVERTIME

- 17.01 Hourly Rate: For the purposes of this MOU, hourly rate of pay is defined as base pay, holiday in-lieu pay, educational incentive pay, longevity pay, Career Development Incentive, SWAT premium, motor premium, K-9 premium, Field Training Officer, Crisis Negotiator, Field Evidence Technician, Tactical Team and Tactical Dispatchers premium when applicable, bilingual premium and swing shift record premium pay provided that the employee earning the overtime is entitled to such additions over base pay by the terms and conditions of this Memorandum of Understanding. Paid leave time status counts toward "hours worked" for purposes of calculating what overtime is owed under MOU section 17.00.
- 17.02 Overtime, scheduled and unscheduled, shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off. Employees required to work up to eight (8) minutes beyond their normal work hours shall not receive overtime.
- 17.03 Call Back Pay: A minimum of three hours pay at the rate of time and one-half or its equivalent in compensatory time off, shall be guaranteed for every employee, who after leaving his/her place of duty is required without advance notice to return for emergency duties after the employee has been off duty less than four hours.

Call-back pay shall be four (4) hours pay at the rate of time and one-half, or its equivalent in compensatory time off for an employee who, after leaving the employee's place of duty, is required

without prior notice to return for emergency duties after the employee has been off-duty for four (4) or more hours.

Examples of Emergency duties are:

- SWAT call out
- Field Evidence Technician (FET) call out
- K9 call out
- Hostage Negotiator (HNT) call out
- Detective call out
- Traffic Investigation call out
- Or any non-scheduled event that required additional personnel

“Emergency call back” does not include a situation in which an employee is called in to work a regular patrol or dispatch function two hours (or less) before a regularly scheduled shift. In this situation, the employee will be paid on an overtime basis, at the rate of time and one half, or its equivalent in compensatory time off, from the time the employee reports for duty until the beginning of the employee’s regular shift; the employee will not receive a guarantee of at least four hours pay or its equivalent in compensatory time off, at a rate of time and one half.

- 17.04 Authorized and required appearances at legal hearings during off duty hours shall be compensated at time and one-half or equivalent compensatory time off with a minimum of three hours. When it is necessary to attend court more than once per day and/or where the appearances are separated by more than three (3) hours or court recess for lunch, the employee shall receive the minimum of three (3) hours at time and one-half pay for each appearance.

The City agrees that if an employee receives notice of cancellation of a scheduled court appearance on the day of said appearance prior to departing his/her residence en route to either court or City Hall, and that said appearance was required during the employee's off-duty time, the employee shall be compensated at time and one-half pay for one (1) hour or equivalent compensatory time off. An employee shall receive this same compensation if (1) the employee receives a notice to appear in Court and a request that the employee (or a judicial liaison or other Police Department employee) call the Court or the District Attorney's office on the date of the scheduled appearance, (2) and the scheduled appearance is during the employee's off-duty time, and (3) the employee learns on the date of the scheduled appearance that the employee is not required to appear.

If an employee is required to testify by telephone or video and this can be done from his/her home, the employee shall be compensated at a pay rate of time and one-half or equivalent compensatory time off for a minimum of two hours.

- 17.05 Training or Meetings: Employees required to attend City approved training or meetings outside their regular shift shall be paid a minimum of two (2) hours overtime.

17.06 Compensatory Time Off

17.06.1 Accrual: Compensatory time off may be accrued by the employee throughout the year. Accrual of compensatory time off shall be limited to 480 hours for sworn, 240 hours for non-sworn employees per calendar year. However, the accrued hours may not exceed the maximum allowable on the last day of the first pay period ending in January of each year. Hours in excess of that limit on that date shall be paid to the

employee on the following special pay out, and the employee's accrual bank shall be reduced accordingly.

- 17.06.2 Requests to Use: The City and Association agree that an employee wishing to use two or less days of accrued compensatory time off must request to use the compensatory time off at least seven (7) calendar days in advance; a request to use three to five days of accrued compensatory time off requires advance notice of 14 calendar days; and a request to use six or more days of accrued compensatory time off requires advance notice of 21 calendar days. This shall constitute reasonable notice. More notice is encouraged and would assist management in accommodating time off. Failure to provide reasonable notice shall constitute a reason for denying a request to use compensatory time off.

Only the Police Chief or designee has authority to approve or deny a request to use compensatory time off. The Chief or designee retains discretion to grant a request to use compensatory time off even if the employee did not provide reasonable notice. Even if the employee provides reasonable notice, the request may be denied if it would unduly disrupt the Department. If the employee provides reasonable notice, but time off is otherwise unavailable, the Department will post a request for volunteers to work. If a qualified employee accepts the assignment, the compensatory time off request will be granted. If no one signs up for the overtime assignment, the request to use compensatory time off may be denied. Given the need for volunteers, it is in an employee's best interest to provide as much advance notice as possible.

- 17.07 Overtime occurring on a paid City holiday shall result in pay, or compensatory time off, at the rate of time and one-half in addition to the paid holiday.
- 17.08 When an employee is required to appear in court, the City shall furnish a vehicle for transportation. If no vehicle is available, the employee shall use his/her own vehicle and shall be reimbursed by the City at the current rate per mile allowed by the IRS. If no vehicle is available, and the employee uses his/her own vehicle, the City shall assume liability for the use of the private vehicle, for City business and within the course and scope of employment, unless the employee was negligent, reckless or under the influence of alcohol or a controlled substance. Employees who drive to court must have auto insurance.
- 17.09 When any represented employee is required to work three (3) or more consecutive hours overtime except for training, court appearance, report writing or special details, the City shall reimburse said employee for the cost of a meal, up to a maximum of \$11.00 per meal.
- 17.10 After working overtime without at least eight consecutive hours of rest, an employee shall not report to work until eight hours after the completion of the overtime assignment. The employee shall be paid from the beginning of the employee's next regular shift.
- If an employee is scheduled to work after the mandatory rest period, the employee shall be allowed to use vacation or compensatory time off for the remainder of the shift with supervisor's approval.
- 17.11 Communications Dispatchers and Supervisors generally shall not be required to work more than twelve (12) consecutive hours. Exceptions to this general rule include if:
- (a) An emergency requires dispatchers and supervisors to work more than (12) consecutive hours. The determination as to when an "emergency" exists shall be made by the Police Chief or designee.

- (b) The dispatch supervisor (or watch commander for the dispatch supervisor) determines that the current dispatch staffing is inadequate.

SECTION 18.00 - HOLIDAYS

18.01 The following shall be paid holidays for the City of Milpitas employees:

- | | |
|---|--|
| (1) January 1 | (12) December 25 |
| (2) Third Monday in January | (13) In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday. |
| (3) Third Monday in February | (14) In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday. |
| (4) March 31 | (15) Any other holiday declared by the City Council as a paid City holiday for City employees. |
| (5) Last Monday in May | |
| (6) July 4 | |
| (7) First Monday in September | |
| (8) November 11 | |
| (9) Thanksgiving Day | |
| (10) The day after Thanksgiving | |
| (11) December 24, observed last working day before Christmas | |
| (16) Each employee shall be credited with one (1) floating holiday each calendar year, which must be used by December 31. | |

18.02 Whenever a holiday falls on a working day, full time employees shall be granted the day off with pay. Personnel employed on a permanent part-time basis for less than forty hours a week shall be entitled to paid holidays on a pro-rata basis.

18.03 Notwithstanding the provisions of Section 18.02 of this Memorandum of Understanding, the following provisions for payment of holiday pay to the below listed classes shall be as follows:

- 18.03.1 Dispatch personnel and sworn personnel assigned to Traffic Safety and Patrol Services shall not observe City holidays and shall receive 6% holiday-in-lieu. All other employees shall observe paid City holidays.
- 18.03.2 Except in emergencies, if Police Clerks are required to work any day during a 3 or 4 day holiday weekend, a flat fee of \$100 per weekend will be paid in addition to the time and one-half compensation for actual hours worked.

18.04 For purposes of this section, a holiday shall be deemed to begin and end at midnight.

SECTION 19.00 - STANDBY ASSIGNMENT

19.01 The City reserves the right to assign employees to standby status during non-work hours, including weeknights, weekends and holidays. Employees assigned to standby are required to be available for immediate return to work upon notification by their supervisor or Police Department Communications Dispatcher.

19.02 When assigned to standby, the following conditions will apply:

- (a) If the employee leaves home, the employee is responsible for providing his/her location, telephone number and/or pager number to Police Communications.

- (b) A radio equipped City vehicle may be provided for the employee's use.
 - (c) Travel precluding reasonable response time will not be permitted.
 - (d) Failure to respond will automatically result in the loss of compensation for the standby shift during which the failure to respond occurred. Failure to respond may also subject the employee to further disciplinary action.
- 19.03 Employees assigned to standby duty shall receive thirty minutes straight time compensation for each hour of assigned standby duty but at least one-half hour compensation at a minimum. In the event an employee is assigned to standby duty on a holiday, the employee shall receive forty-five minutes of straight time compensation for each hour of standby duty, but at least one hour compensation as a minimum.
- 19.04 The Department will notify the employee of the date and time when the standby starts. When the assignment ends, the employee will be notified by telephone at the available number reported to dispatch and/or through the pager system.
- 19.05 Standby pay shall not be in addition to court time under Section 17.02.3. An employee shall not be entitled to claim court time and standby time for the same time period.

SECTION 20.00 - EDUCATION AND TRAINING

20.01 EDUCATION

- 20.01.1 The City of Milpitas will provide a tuition reimbursement program for educational activities (which may include educational activities such as lectures, symposiums or seminars), which are job related and approved in advance by the Chief and the Human Resources Director. The amount of the fund shall not exceed the amount budgeted for this purpose. Any eligible employee whose regular assignment is less than full-time is entitled to the benefits of this section on a pro-rata basis (i.e. reimbursement under this Section for an employee who works ½ time would be 50% of the benefit provided to eligible full-time employees under this Section.). Except as provided in section 20.01.2, individual full-time employees are subject to a total reimbursement of \$2,000, (approximately the amount of tuition and registration costs for two semesters/6 units each at San Jose State University) plus books required by the reimbursed course, per fiscal year. Reimbursement is subject to the guidelines outlined in the Tuition Reimbursement S.O.P.
- 20.01.2 For employees who achieve a degree through an accelerated degree program, the employees may continue to receive reimbursement after achieving their degree, up to a maximum amount of \$10,000. For example, if an employee achieves a degree through an accelerated program in two years, and the degree would otherwise have taken 5 years to achieve, the employee may receive reimbursement for \$2000 each year for five years. In order to be eligible, all of the following requirements must be met:
- (a) The employee must remain employed by the City, and be employed on the last day of the fiscal year during which the employee receives reimbursement.

- (b) In the event employment is terminated, all future payment obligations under this section cease.
- (c) The employee must provide receipts and otherwise meet the terms of the City's tuition reimbursement policy.
- (d) The employee must demonstrate that the accelerated program resulted in achieving a degree, which would otherwise have met the reimbursement requirements.

20.02 TRAINING

- 20.02.1 If an employee is directed to participate in a training program which is related to his/her job, the City shall provide compensation for the following:
- (a) Regular wages for time away from the job (if during working hours);
 - (b) Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the regular assignment in a work week;
 - (c) Costs of tuition and/or registration for the training;
 - (d) Reimbursement for authorized transportation costs to and from the training (i.e. mileage reimbursement if an employee uses his or her personal automobile as allowed by the City; however, if employees car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement; and
 - (e) Compensable travel time where required by the Fair Labor Standards Act.
- 20.02.2 Participation in and successful completion of training courses may be considered in making employment advancements and promotions.

SECTION 21.00 - ATTENDANCE

- 21.01 Employees shall be in attendance at their work in accordance with the provisions of this Memorandum of Understanding regarding hours of work, holidays and leaves. All departments shall keep daily attendance records of employees which shall be reported to the City Manager in the form and on the dates he/she specifies.
- 21.01.1 An employee whose absence from duty is not authorized will not receive pay or benefits for the absent period and shall be subject to discipline. It shall be the responsibility of an employee absent without leave to promptly notify his/her supervisor of the reason the employee is absent without leave and of the employee's availability for duty.
- 21.02 City is not obligated to notify an employee that he/she is absent without leave. Failure of an employee absent without leave to return to duty shall be grounds for discipline (including discharge) subject to required disciplinary procedures and rights.
- 21.03 The City agrees that each employee shall be entitled to two 15-minute rest breaks per day, said rest breaks to be taken at the discretion of the supervisor (subject to operational conditions). Employees are not permitted to combine work breaks with another break or meal period.
- 21.04 For the term of this agreement, sworn police personnel working shifts shall work a 4/10 schedule (i.e., 4 consecutive 10 hour days), unless modified by agreement between the MPOA and the

Police Chief. Employees shall be given at least four (4) weeks' notice prior to any permanent schedule change. However, a supervisor and an employee may mutually agree to flex the employee's work hours, at straight time, with less than four weeks advance notice. Motorcycle officers assigned to day time duty shall work a standard 40 hour week, unless modified by the Police Chief.

Communications Dispatcher and Communications Supervisor personnel shall work a 4/10 schedule (i.e., 4 consecutive 10 hour days).

All other non-sworn employees shall work 40 hours per week.

- 21.05 Dispatch, patrol, traffic employees, and other non-sworn positions who will beat salary step "E" when the next shift begins and have an overall rating of meets expectations or higher on the most recent "PAR" shall be allowed to bid for shifts and days off by seniority (defined by badge number for non-supervisors and time in grade for supervisory personnel) on a semi-annual basis within the employee's specialized work group. The Department may modify an employee's shift selection to meet specified departmental needs.
- 21.06 The Police Chief or designee shall, for purposes of meeting departmental or operational needs in an emergency or unusual circumstance, retain the authority to change an employee's work schedule. At the conclusion of the emergency, the employee shall be returned to the employee's regular schedule.
- 21.07 If the parties mutually agree, the MOU can be reopened for the purpose of evaluating other work shifts, if needed during the term of this MOU.
- 21.08 The patrol schedule shall be completed and distributed at least 4 weeks prior to the beginning of a new work shift.

SECTION 22.00 - SAFETY EQUIPMENT

- 22.01 The City will provide each newly hired officer with those items of safety equipment listed in Appendix B. Further, the City agrees to reimburse the officer for the purchase of new safety equipment, which conforms to departmental policy, up to the maximum amount set forth in Appendix C.
- 22.02 The City shall provide each sworn officer with ammunition for weapons training. An employee may seek reimbursement for up to thirty (\$30) dollars per calendar year for any ammunition type that is not provided by the City, when needed to qualify for department required training on the officer's off duty or back-up weapon.
- 22.03 Equipment purchased in accordance with the above policy is City property.
 - 22.03.1 The City shall provide all sworn employees with a duty weapon upon hire. The make and caliber of this weapon shall comply with the current standards of the Milpitas Police Department, as documented within the Milpitas Police Manual. This section does not preclude sworn employees from carrying their personally owned duty weapon, so long as it complies with Departmental standards - as set forth in the Milpitas Police Manual.
 - 22.03.2 A sworn officer who has served satisfactorily in the Department for at least five (5) years may purchase a service weapon upon satisfactory separation from City service.

Satisfactory service shall be determined by the Police Chief, and may include consideration of performance appraisals, disciplinary record and medical records. Prices for weapons shall be based on their depreciated value.

- 22.04 The City agrees to refurbish City-owned equipment, which is issued to new officers.
- 22.05 The City agrees to give worn out safety equipment that it will no longer use to the officer to whom it is issued.
- 22.06 Upon retirement, the City shall give an officer his/her service weapon and holsters without charge if either (1) the Milpitas Police Chief endorses an identification certificate approving the officer carrying a concealed and loaded firearm or (2) a hearing board determines that, under Penal Code section 12027.1, at the time the officer retired from the Milpitas Police Department, the officer had a right to a certificate permitting the carrying of a concealed and loaded firearm.
- 22.07 An officer who requests reimbursement from the City for the purchase of new safety equipment shall carry and use the same whenever practicable.
- 22.08 The City agrees that an officer may carry personally owned items of safety equipment in addition to those items issued by the City, so long as the item(s) conforms to department policy.
- 22.09 The City and the Association agree that the life expectancy of equipment is a guide to be used by the department for replacement. If equipment is worn out prior to the replacement date, through no fault of the officer, it will be replaced. Conversely, if said equipment is serviceable at the replacement date, it will remain in service. The decision as to the serviceability of equipment will be made by a Division Captain.
- 22.10 Any officer who damages or loses City-owned equipment shall immediately report the same to the Police Chief through his/her chain of command. The Police Chief shall then direct the Division Captain to determine if the damage or loss resulted from:
 - (a) Carelessness or neglect on the officer's part, in which case the officer will be required to reimburse the City for the cost of repairing or replacing the item(s); or
 - (b) Circumstances beyond the officer's control, in which case the item(s) will be repaired or replaced at no cost to the officer.
 - (c) This subsection does not pertain to City-owned automobiles.
- 22.11 The City shall provide each officer with a ballistic vest, and three (3) vest covers at time of purchase, to be selected from a list approved by the Police Chief. All ballistic vests that have been in use for five years shall be replaced, as soon as reasonably possible.

All officers assigned to the Operations Division, except officers assigned to the investigations unit, who are normally assigned to field duty, shall wear a ballistic vest at all times. Officers, regardless of division, either in uniform or plain clothes, may be directed to wear a ballistic vest depending on the situation.

SECTION 23.00 - UNIFORM ALLOWANCE

- 23.01 Newly hired employees will be provided with an initial set of uniforms. If an employee separates from City employment during the period for which a prepayment has been made, the allowance

shall be pro-rated based on the time served and any overpayment shall be deducted from any sum owed the employee by the City upon separation.

- 23.02 Sworn personnel, dispatch personnel, records clerks and property clerks shall be eligible for an annual uniform maintenance allowance.

23.02.1 For sworn personnel the City agrees to provide thirteen hundred and fifty dollars (\$1350) annually to be paid on a biweekly basis.

23.02.2 For non-sworn employees eligible for uniforms under this section, the City will provide seven hundred and eighty dollars (\$780) annually to be paid on a biweekly basis.

SECTION 24.00 - RETIREMENT PLAN

The City shall contract with the California Public Employees Retirement System (CalPERS) to provide the retirement plans described in this Section and Government Code Section 7502.22.

- 24.01 Tier One: 3% at 50 Retirement Plan – Employees Hired Before July 1, 2011

This Section shall apply to sworn employees in the bargaining unit hired before July 1, 2011.

The retirement program commonly referred to as the 3% at Age 50 Plan will be available to bargaining unit employees covered by this Section as of the date specified by CalPERS in its contract with the City. The 3% at 50 Plan shall include the 1959 Survivor's Benefit and single highest year in full force and effect and the PERS Credit for Unused Sick Leave for members of MPOA.

- 24.02 Tier Two: 3% at 55 Retirement Plan – Employees Hired On or After July 1, 2011, And Before January 1, 2013, Or Who Qualify For Concurrent Membership or Pension Reciprocity

This Section shall apply to sworn employees in the bargaining unit hired on or after July 1, 2011 and before January 1, 2013. In addition, this Section shall apply to sworn employees hired on or after January 1, 2013 who are qualified for concurrent membership or pension reciprocity as stated in Government Code Section 7522.02(c) and related CalPERS requirements.

The 3% at 55 Plan shall include the Fourth Level of 1959 Survivor's Benefit, the Pre-Retirement Optional Settlement 2 Death Benefit, and single highest year and the PERS Credit for Unused Sick Leave for members of MPOA.

- 24.03 Tier Three: PEPR Retirement Tier Required For Safety Employees Hired On Or After January 1, 2013

This Section shall apply to sworn employees in the bargaining unit hired on or after January 1, 2013 unless otherwise qualified for a different retirement plan pursuant to Government Code Section 7522.02(c)(1).

The 2% at 50 (2.7% at 57) Plan shall include the 1959 Survivor's Benefit and highest consecutive thirty-six months and the PERS Credit for Unused Sick Leave for members of MPOA.

- 24.04 The City agrees to pay an employee for unused accrued sick leave as is set forth in Section 10 of the MOU, entitled "Sick Leave." An employee is eligible upon reaching minimum retirement age

(except for death or disability which have no minimum age requirement) with at least 5 years of service with the City.

24.05 Tier One: 2.7% at 55 Retirement Plan – Employees Hired Before July 1, 2011

This Section shall apply to employees in the bargaining unit hired before July 1, 2011.

The retirement program commonly referred to as the 2.7% at Age 55 Plan will be available to non-sworn bargaining unit employees covered by this Section as of the date specified by CalPERS in its contract with the City. The 2.7% at 55 Plan shall include the single highest year in full force and effect and the PERS Credit for Unused Sick Leave for non-sworn members of MPOA.

24.06 Tier Two: 2% at 60 Retirement Plan – Employees Hired On or After July 1, 2011, And Before January 1, 2013, Or Who Qualify For Concurrent Membership or Pension Reciprocity

This Section shall apply to non-sworn employees in the bargaining unit hired on or after July 1, 2011 and before January 1, 2013. In addition, this Section shall apply to non-sworn employees hired on or after January 1, 2013 who are qualified for concurrent membership or pension reciprocity as stated in Government Code Section 7522.02(c) and related CalPERS requirements. The 2% at 60 Plan shall include the single highest year and the PERS Credit for Unused Sick Leave for non-sworn members of MPOA.

24.07 Tier Three: PEPRA 2% at 62 Retirement Tier Required For Non-Sworn Safety Employees Hired On Or After January 1, 2013

This Section shall apply to non-sworn employees in the bargaining unit hired on or after January 1, 2013 unless otherwise qualified for a different retirement plan pursuant to Government Code Section 7522.02(c)(1). The 2% at 62 Plan shall include the highest consecutive thirty-six months and the PERS Credit for Unused Sick Leave for non-sworn members of MPOA.

24.08 RETIREE HEALTH CARE

24.08.1 Former employees retired prior to January 1, 1989 may continue health plan membership at their own expense as long as membership has been maintained.

24.08.2 For permanent employees hired prior to January 1, 1996, and retired on or before June 30, 2003, who had at least five (5) years of full-time or equivalent service with the City of Milpitas, the City agrees to pay for single coverage in any eligible health plan.

24.08.3 For permanent employees hired prior to January 1, 1996, and retired on or after July 1, 2003, who have at least five (5) years of full-time or equivalent service with the City of Milpitas, the City agrees to contribute up to 15% more than the cap on the City's single, medical premium contribution for active employees (hereafter, "retiree cap amount"), so long as the retiree is enrolled in an eligible health plan.

Example: If the active employee maximum City contribution for a single plan is \$210/month, the retiree will be eligible for up to $\$210 + 15\% = \$241.50/\text{month}$. If the retiree's plan premium is \$241.50 or less, the City will pay the applicable premium only. If the retiree's plan premium is greater than \$241.50, the City will pay \$241.50 toward the premium and the retiree will be responsible for the remainder.

- 24.08.4 For permanent employees hired on or after January 1, 1996, the City agrees to contribute up to the following percentages of the “retiree cap amount” so long as the retiree is enrolled in an eligible health plan:
- a) Upon PERS retirement, the City shall pay up to a maximum of 25% of the “retiree cap amount” on behalf of employees who completed less than nine full years of service, so long as the retiree remains in one of the eligible health care plans. [Example: If the current employee cap is \$210, the cap for a retiree with less than nine full years of service is \$60.38 $[(\$210 + 15\%) \times 25\% = \$60.38]$.]
 - b) Upon PERS retirement, the City shall pay up to a maximum of 50% of the “retiree cap amount” on behalf of employees who completed nine full years of service but less than fourteen full years of service, so long as the retiree remains in one of the eligible health care plans. [Example: Use formula in “a” above using 50%.]
 - c) Upon PERS retirement, the City shall pay up to a maximum of 75% of the “retiree cap amount” on behalf of employees who completed fourteen full years of service but less than nineteen full years of service, so long as the retiree remains in one of the eligible health care plans. [Example: Use formula in “a” above using 75%.]
 - d) Upon PERS retirement, the City shall pay up to a maximum of 100% of the “retiree cap amount” on behalf of employees who completed nineteen full years of service, so long as the retiree remains in one of the eligible health care plans. [Use formula in 24.05.3 above.]
- 24.08.5 Disability Retirement: For employees on disability retirement who had at least five (5) years of full-time or equivalent service with the City of Milpitas and retired on or between January 1, 1989 and June 30, 2003, the City agrees to pay for single coverage in any eligible health plan. For employees on disability retirement who had at least five (5) years of full-time or equivalent service with the City of Milpitas and retired after June 30, 2003, the City agrees to contribute up to “the retiree cap amount.” In either case, the City will only make the health care contributions until the former employee is re-employed.
- 24.08.6 Medicare: Once a retiree becomes Medicare eligible, the City shall contribute to the retiree’s eligible Medicare health care plan premium to the same extent required and up to the same maximums as described in this Section 24.00.
- 24.08.7 Spousal/Dependent Coverage: Retirees may elect to continue coverage for a spouse or eligible dependent under the retiree group medical plan provided that the spouse/dependent is covered by the group plan at the time the employee retires and maintains enrollment. The retiree is responsible for spousal and/or dependent monthly premiums.
- 24.09 RETIREE DEPENDENT HEALTH CARE
- 24.09.1 The Retiree Dependent Health Care Fund

Each year, the City will contribute 1% of payroll with benefits plus 1% of MPOA payroll (salary only) to a fund to be used to help pay the medical premiums of dependents of eligible retirees, and dependents of eligible employees who became deceased while still employed (the "Fund"). The City's annual 1% of payroll with benefits plus 1% of MPOA payroll (salary only) contribution shall be recalculated each year based on MPOA's payroll as of the last full pay period in June. The City will annually deposit this amount in the Fund by the end of August.

The City will periodically present a report to the MPOA president indicating the City's annual contribution, the total dollars in the Fund, and a brief description of how and the extent to which the Fund was used in the previous fiscal year to pay for the medical premiums of retirees' dependents. The City will use this report to set dependent contribution rates.

24.09.2 Contributions From the Fund Toward Retiree Dependent Premiums

Contributions from the Fund toward the medical premiums of dependents of retirees and eligible surviving dependents of deceased employees shall be as follows:

- (a) 100% for permanent MPOA employees hired prior to January 1, 1996, and retired or deceased while employed on or after July 1, 2003, who have at least five (5) years of full-time or equivalent service with the City of Milpitas;
- (b) For permanent MPOA employees hired on or after January 1, 1996, and retired or deceased while employed on or after July 1, 2003, who have at least five (5) years of full-time or equivalent service with the City of Milpitas:
 - (i) 25% for retirees with less than nine (9) years of service;
 - (ii) 50% for retirees upon completion of nine full (9) years of service;
 - (iii) 75% for retirees upon completion of fourteen full (14) years of service; and
 - (iv) 100% for retirees upon completion of nineteen full (19) years of service.

Any payments from the Fund to eligible dependents of MPOA employees who became deceased while employed prior to the adoption of this MOU shall be made prospectively only.

In no case will the City be required to place funds in the Fund above the 1% of payroll with benefits amount. If funds are depleted before the next year's City contribution is due, dependent medical premiums will be raised accordingly and will be the responsibility of the retiree and/or dependent. If less than 1% of payroll with benefits is used in a given year for the medical premiums of retirees' dependents, the remainder shall remain in the Fund and may be used in future years to supplement the City's annual 1% of payroll with benefits contribution if this contribution is insufficient in a given year to make all the payments set forth in 24.06.2(b) above.

- (c) The parties agree to reopen this MOU at the request of either party to discuss modifications to the above tiered system for retiree dependent premiums.

24.10 Retiree Court Pay: When a retiree is called back to testify on the City's behalf in Court, the City will pay the retiree at the top step rate of the current salary range (without any additional incentive or additional pays) applicable to the job classification the retiree held when (s)he retired, for a minimum of four (4) hours. This provision shall be applicable prospectively, following adoption of this MOU.

SECTION 25.00 - K-9 PREMIUM

Police Officers and Sergeants are eligible for a premium of 5% of base pay when assigned to the K-9 unit by the Police Chief or designated representative, and effective from the time the police dog enters the approved departmental training program. The City, at its option, may purchase the police dog, otherwise, the employee is responsible for the purchase of a police dog. The City shall pay for K-9 training costs and shall pay for veterinary costs up to \$1000.00 per year. The City shall pay each employee \$100.00 monthly for food, equipment, supplies, construction or purchase of a home kennel and running area and other necessary expenses for the appropriate care of the K-9.

Police Officers and Sergeants shall be paid \$180 monthly for the time spent by the employee in grooming, feeding, walking, exercising, transporting, home training, obtaining veterinary services and otherwise caring for the canine in the program. Thirty (30) minutes daily is considered to be a reasonable amount of time for care and grooming.

SECTION 26.00 - PAY PLAN

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

26.02 In administering the pay plan, the following rules shall be observed:

26.02.1 Step "A" is the minimum rate for a position and shall be the hiring rate for said position. Initial appointment at a rate higher than step "A" may be made in the case of an unusually well qualified person or where other special conditions warrant, but only with the approval of the City Manager.

26.02.2 Step "B" represents an incentive adjustment. An employee shall be eligible for step "B" only after completion of one year from the date of employment on recommendation from the Chief and approval of the City Manager.

26.02.3 Step "C" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall be eligible for step "C" after completion of one year at step "B" on recommendation from the Chief and approval of the City Manager.

26.02.4 Step "D" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall become eligible for step "D" after

- completion of one year at step "C" upon recommendation of the Chief and approval of the City Manager.
- 26.02.5 Step "E" represents an incentive adjustment for increasingly satisfactory performance. An employee shall be eligible for step "E" after completion of one year at step "D" upon recommendation of the Chief and approval of the City Manager.
- 26.02.6 Employees who have demonstrated outstanding ability may be advanced to the next higher step prior to completion of one year's service at the current step upon recommendation of the Chief and approval of the City Manager.
- 26.03 Salary Following Promotion: Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.
- 26.04 Performance Appraisal Review: Performance appraisals are an important personnel tool, and the City should endeavor to make them promptly.
- 26.05 The City shall evaluate employees annually (1) from their date of hire, or (2) the date they entered their classification. The classification date shall supersede the hire date. In any case, an employee must be evaluated at the completion of probation, be it initial, or as a result of promotion. If an employee does not receive a performance appraisal on the date it is due and the supervisor subsequently finds that the employee would have been entitled to a step increase (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within 30 working days after it is due, the employee shall have the right to file a grievance under Section 8.00 of this MOU.
- 26.06 In cases where an individual may be promoted within 45 days of a regular merit increase, the promotion will be based on the step increase due within 45 days provided that performance merits the increase.
- 26.07 All salary advancements specified within this section shall be effective with the nearest full pay period to eligibility. The nearest full pay period shall be defined as follows:
- For eligibility dates which fall within the first seven (7) days of a pay period, any increase shall be effective at the beginning of that pay period.
- For eligibility dates which fall within the second seven (7) days of a pay period, any increase shall be effective at the beginning of the following pay period.
- 26.08 The City and Association agree that whenever an employee would sustain an actual decrease in salary as a result of downward reclassification or reorganization within an existing department unit, without fault or inability on the part of the employee, the City Council shall adopt a "Y-Rate" to apply only to the employee so affected. A "Y" rate is defined as a monthly salary rate for an individual employee, which is greater than the established range for his/her classification. An employee for whom a "Y" rate is established shall not receive any increase in salary until such time as his/her rate of compensation is within the established range for his/her classification. An employee who accepts a reassignment to a lower paid position in lieu of layoff, shall not be "Y" rated.

SECTION 27.00 - BENEFITS

27.01 The benefit contribution for permanent full-time employees is as follows:

The City will contribute toward CalPERS medical benefits coverage with the maximum Kaiser Plan premium at the appropriate rate – i.e., single rate for single employees; two party rate; family rate. Dependents must meet eligibility requirements under plan terms.

The City of Milpitas currently offers CalPERS medical benefits coverage. The City reserves the right to discontinue offering this plan due to the following:

- a. The plan imposes unreasonable costs upon the City;
- b. The health care carrier refuses to provide services to the City;
- c. The health care provider no longer offers the services; or
- d. The health plan is discontinued.

27.02 The City will provide a life insurance policy in the amount of \$50,000 for each bargaining unit member.

27.03 The City shall provide a dental insurance plan with similar coverage to the one the members of the Association possessed as of December 2001. The total monthly dental benefit shall be based on the Family or Single Plan. Only employees who have eligible dependents shall be eligible for the Family Plan.

27.04 The City shall provide a long-term disability plan with similar coverage to the one the members of the Association possessed as of December 2001.

27.05 Full-time employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty five dollars (\$125.00) per month. Employees who wish to waive health insurance must complete the City of Milpitas' "Health Insurance Waiver" indicating they agree to abide by the terms and conditions of the waiver, and provide evidence of medical coverage each year during open enrollment.

27.06 Benefit Contribution - Part-Time Employees: The City agrees to contribute monthly premiums for medical, dental and life insurance in an amount to reflect the regularly scheduled assignment (or a long-term temporary assignment of not less than three months) pro-rated against the amount contributed for full time employees. For example if an employee is assigned to work twenty (20) hours per week, the City will contribute fifty (50%) percent of the benefit contribution for full-time employees. Similarly, if a part time employee is assigned to work thirty (30) hours per week, the City will contribute seventy-five (75%) percent of the benefit contribution. The City agrees to provide long-term disability insurance benefits, with similar coverage to the one the members of the Association possessed as of December 2001, at no cost to the part-time employee.

27.07 The City shall contribute fifty dollars (\$50) per employee towards the MPOA Trust Fund each month.

27.08 Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.

27.10 The City shall continue to provide the PERS improved nonindustrial disability benefit.

SECTION 28.00 - WORK-OUT-OF-CLASS

- 28.01 The City agrees that upon specific assignment by the Chief, or his/her designated representative, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions, which are not actively occupied due to temporary absence of the regularly appointed employee. Such assignment shall not be made to vacant positions except in accordance with the rules pertaining to temporary or provisional appointments.
- 28.02 Employees assigned to duties of a higher classification commencing with the first full workday of the assignment shall be compensated at the rate of 10% above base pay.
 - 28.02.2 In the absence of a supervisor, one person shall be designated as acting Watch Commander by the Division Captain or his/her authorized representative for the purposes of this section.
 - 28.02.3 Non-sworn employees who do not hold supervisory classifications will be considered to be working out of class while assigned and acting as a trainer. Communications Supervisor and Police Clerk Supervisor are excluded.

SECTION 29.00 - INCENTIVE PAY

- 29.01 For the period of this Memorandum of Understanding, sworn employees shall be entitled to educational incentive pay, if they hold the appropriate certificate, as follows:
 - 29.01.1 Intermediate POST certificate 5% over base pay.
 - 29.01.2 Advance POST certificate 7.5% over base pay.
- 29.02 Eligible employees shall not be required to participate in a requalification program in order to receive POST Incentive Pay.
- 29.03 All sworn and non-sworn employees shall be entitled to longevity pay as follows:
 - 29.03.1 Effective the first full pay period following the completion of an employee's 9th year of service, a longevity incentive of three percent (3%) over base pay.
 - 29.03.2 Effective the first full pay period following the completion of an employee's 14th year of service, a total longevity incentive of five percent (5%) over base pay (i.e., an additional 2% over the previous 3% longevity incentive for a total increase of 5% over base pay).
 - 29.03.3 Effective the first full pay period following the completion of an employee's 19th year of service, a total longevity incentive of seven percent (7%) over base pay (i.e., an additional 2% over the previous 5% longevity incentive for a total increase of 7% over base pay).
 - 29.03.4 Sworn Only: Effective the first full pay period following the completion of a sworn employee's 24th year of service, a total longevity incentive of 8.2% over base pay (i.e., an additional 1.2% over the previous 7% longevity incentive for a total increase of 8.2% over base pay).
 - 29.03.5 Sworn Only: Effective the first full pay period following the completion of a sworn employee's 25th year of service, a total longevity incentive of 10.5% over base pay

(i.e., an additional 2.3% over the previous 8.2% longevity incentive for a total increase of 10.5% over base pay).

- 29.03.6 Sworn Only: Effective the first full pay period following the completion of a sworn employee's 26th year of service, a total longevity incentive of 15.1%) over base pay (i.e., an additional 4.6% over the previous 10.5% longevity incentive for a total increase of 15.1% over base pay).
- 29.03.7 Non-Sworn Only: Effective the first full pay period following the completion of a non-sworn employee's 28th year of service, a total longevity incentive of 8.2% over base pay (i.e., an additional 1.2% over the previous 7% longevity incentive for a total increase of 8.2% over base pay).
- 29.03.8 Non-Sworn Only: Effective the first full pay period following the completion of a non-sworn employee's 29th year of service, a total longevity incentive of 10.5% over base pay (i.e., an additional 2.3% over the previous 8.2% longevity incentive for a total increase of 10.5% over base pay).
- 29.03.9 Non-Sworn Only: Effective the first full pay period following the completion of a non-sworn employee's 30th year of service, a total longevity incentive of 15.1%) over base pay (i.e., an additional 4.6% over the previous 10.5% longevity incentive for a total increase of 15.1% over base pay).

SECTION 30.00 - POLICE VEHICLES

30.01 Patrol Vehicles

- 30.01.1 Vehicle Replacement: Reasonable efforts shall be made to replace Police patrol vehicles before such vehicles have acquired 75,000 miles, provided that if said vehicles are safe and suitable for patrol purposes after 75,000 miles, they may remain in service for another 15,000 miles or a total of 90,000 miles.
- 30.01.2 The determination of the safety and suitability for patrol to extend vehicle usage from 75,000 to 90,000 miles shall be the mutual responsibility of the Association and the Chief. In making said decision to extend mileage from 75,000 to 90,000 miles, the condition of motor and attached components, electrical systems, suspension, running gear, braking system, front end alignment and parts, body, accessories and tires shall be considered. If any defect is discovered, the City shall determine if the defect is correctable and if correctable, whether the cost of correction would be economically in the best interests of the City.
- 30.01.3 In no event shall the vehicles referred to in this section remain in service in excess of 90,000 miles, except that should such vehicles acquire the 90,000 miles during an assigned shift, such vehicles will be used for the balance of such shift, but will not be permitted to remain in service for succeeding shifts. It is agreed that unforeseen difficulties beyond the control of the City may preclude close adherence to such mileage factors, and such failure to strictly observe such mileage shall not be considered a violation of the Memorandum of Understanding. If, however, notwithstanding the above, the City repeatedly fails to adhere to mileage limits as

stated above, such repeated failure may be considered a violation of the Memorandum of Understanding.

30.01.4 It is also agreed that Police vehicles, except those usually referred to as "detective cars," which are regularly and customarily used in patrol type activities, although not distinctively marked, shall be included in this replacement policy.

30.02 Police Vehicles Specifications: Police vehicles shall include Ford's "Police Interceptor Package" or a similar or equivalent Police High Performance Vehicle Package. The parties agree that it would be desirable to purchase vehicles meeting the following specifications:

- a) Heavy duty suspension components
- b) Heavy duty anti-lock braking system
- c) High speed and performance police type tires
- d) Heavy duty electrical system components
- e) Heavy duty seats
- f) Heavy duty automatic transmission
- g) Tinted windows
- h) Rear window defroster
- i) Power steering
- j) Electric door locks
- k) Heater, defroster and air-conditioner
- l) A.M.-F.M. in-dash radio
- m) Electric trunk lock
- n) Inside controlled rear and side view mirrors
- o) Safety prisoner barrier between front and rear seat if the vehicle is to be used to transport prisoners. If space does not permit such installation, or if the City does not choose to use such vehicle for prisoner transportation, the City agrees to provide suitable prisoner transportation vehicles such as trucks or vans for such purpose.
- p) Power windows
- q) Air bag safety system (driver side and passenger side when available)

If unforeseen difficulties should arise, regarding safety, suitability, or acquisition of said Police vehicles during the life of this agreement, the parties shall meet and confer in an attempt to resolve said difficulties.

30.03 Other Police Vehicles

30.03.1 Special service vehicles shall be of maximum performance and safety standards to protect the employee.

30.03.2 Vehicles assigned to employees of other divisions within the Police Department shall be suitable for the duty they are likely to perform and shall have the safest possible braking and suspension system. Said vehicles shall be capable of performing emergency-type duties with a positive degree of safety. Said vehicles shall be at least mid-size and shall be replaced after six (6) years or upon reaching 90,000 miles.

SECTION 31.00 – EMPLOYEE ASSISTANCE PROGRAM

31.01 The City agrees to continue to fund an Employee Assistance Program under which sworn personnel and dispatch are and shall continue to be entitled to up to 15 annual visits and all other

personnel are and shall continue to be entitled to up to 10 annual visits. The Association will assist the City in selecting a new employee assistance provider if and as needed. Relevant criteria in evaluating potential providers include the ability to provide a sufficient number of visits, cost, quality of service providers, and inclusion of service providers already used in existing program. Confidentiality must be guaranteed.

SECTION 32.00 - LIGHT DUTY

The City recognizes the importance of providing support and encouragement to police department employees who are recovering from an injury or illness in an effort to assist in making a complete and healthy recovery. Therefore, the City agrees to temporarily provide light duty assignments which are less strenuous and less hazardous for police department employees who are recovering from a work-related or off-duty injury or illness, including pregnancy. The intent of a temporary light duty assignment is to provide modified work duties which are beneficial to the employee by keeping him/her productively active, involved and informed in department activities, and beneficial to the City by the employee's work contributions and involvement during the recovery period. The temporary assignment will be consistent with the employee's physical abilities and department needs. The modified duties will reflect recommendations and limitations prescribed by the attending physician. Following are conditions for providing an employee with a light duty assignment:

- (a) That the temporary assignment may be in any department of the City provided the assignment is compatible with the employee's ability.
- (b) That the duties to be performed in said temporary assignment shall be those designated by the City provided that the duties shall be consistent with the written recommendations of the employee's physician.
- (c) Said employee shall not be increased or reduced in pay or benefit solely by virtue of said temporary transfer.
- (d) Provided that the City may verify said disability by having said employee examined by a physician of City's choosing at City's expense.

SECTION 33.00 - NO DISCRIMINATION

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

SECTION 34.00 - MOTORCYCLE PROGRAM

34.01 Compensation

- 34.01.1 Employees assigned to motorcycle duty shall receive a premium of 5% of an officer's base pay during the term of assignment.

34.02 Uniform Allowance

- 34.02.1 The City shall provide each employee assigned to motorcycle duty the following items in addition to the regulation uniform:
- (a) Motorcycle Boots (1 pr.)
 - (b) Motorcycle Breeches (3 pr.)
 - (c) Gloves (1 pr.)
 - (d) Leather Jacket (1)
 - (e) Sunglasses/Clear Safety Glasses (1 pr. ea.)
- 34.02.2 The City will replace this equipment as necessary.
- 34.02.3 The City agrees to repair or replace uniforms damaged in the line of duty subject to APPENDIX "B" - SAFETY EQUIPMENT.

34.03 Term of Assignment

- 34.03.1 At the Police Chief's discretion, qualified individuals will be assigned to motorcycle duty for a minimum two-year period and a maximum of six years. The Police Chief may, at his or her discretion, remove an employee from motorcycle duty for, among other reasons, failing to maintain training, equipment, proficiency or physical fitness for duty.
- 34.03.2 If the Officer is not physically fit for duty as the result of a non work-related injury, he/she shall not be removed from motorcycle assignment unless unable to respond as physically fit for more than 6 weeks. Any officer removed because of a non work-related injury may seek re-qualification as a motorcycle officer at a later date.
- 34.03.3 Once assigned to motorcycle duty, if the officer requests a transfer or resigns within the first two years, the City shall be reimbursed for the initial uniform allowance on a pro-rated basis. If the Department transfers an individual from motorcycle duty in the best interests of the Department, the reimbursement shall not apply.
- 34.03.4 Nothing in this section shall prohibit an officer while assigned to motorcycle duty from reapplying to motorcycle duty when a vacancy occurs, thus beginning a new six year maximum.

SECTION 35.00 - SELECTED STAFFING ASSIGNMENTS

35.01 Field Training Officers (FTO)

- 35.01.1 The City agrees to pay a premium of 10% of an officer's base pay while an officer is assigned as a Field Training Officer (FTO). "While assigned" is defined as the term of a training cycle during which a trainee, full time sworn or reserve officer, is assigned to a Field Training Officer.

- 35.01.2 Field Training Officers shall receive 10% premium compensation at all times while performing the duties of a police officer for the City of Milpitas during the time a trainee is assigned to that Field Training Officer, whether or not the trainee is being directly supervised and in company with the Training Officer. (i.e. overtime shift, sick leave, training, court time, etc.)
- 35.01.3 The salary increment will apply from the start of field training to its conclusion. Within reasonable limits, sick days, comp time hours, etc., will not disqualify a participant from incremental pay. If a member is not physically fit for duty as a result of a non-work related injury, he/she shall not be removed as an FTO unless unable to respond as physically fit for duty for more than 6 weeks. Any officer removed because of a non-work related injury may seek re-qualification as an FTO at a future date.
- 35.01.4 Desired qualifications for Field Training Officers:
- (a) have a minimum of two (2) years experience (if possible) as police officers (with patrol officer experience excluded).
 - (b) maintain their proficiency in training.
 - (c) maintain contact with their assigned trainee in a supportive role during academy training, i.e., between selection and commencement of field training.
 - (d) maintain a high level of proficiency in City ordinances, City employee rights, City and department policies.
- 35.02 SWAT Team
- 35.02.1 The City agrees to pay a premium of 5% of an officer's pay for departmental members while assigned as SWAT team members.
- 35.02.2 A department member will be considered a member of SWAT upon selection and successful completion of basic SWAT training and psychological fitness by the Department psychologist. Such membership will continue as long as the departmental member maintains necessary physical and psychological fitness for duty, proficiency, equipment and participation in the SWAT program to the satisfaction of the SWAT team leader and the Chief of Police. The City may, in its discretion and for any reason, remove or retain a member who promotes to Lieutenant from the SWAT team.
- 35.02.3 Failure to maintain training, equipment or proficiency or physical or psychological fitness for duty status are causes for removal from the SWAT team.
- 35.02.4 If the member is not physically fit for duty as a result of a non work-related injury, he/she shall not be removed from the SWAT team unless unable to respond as physically fit for more than 6 weeks. Any member removed because of a non work-related injury may seek re-qualification as a team member at a later date.
- 35.02.5 The City shall provide each officer assigned to SWAT duty with the following additional specialty uniform items:
- (a) BDU Shirts (2)
 - (b) BDU Pants (1 pr.)
 - (c) MGS Field Jacket with Liner (1)
 - (d) Boots (1 pr.)

- (e) Gloves with Shell (1 pr.)
- (f) Trouser Belt (1)
- (g) Utility Cap (1)
- (h) Boonie Hat (1)
- (i) Utility Bag (1)
- (j) High Intensity Light (1)

The City will replace equipment as necessary.

- 35.02.6 The Chief of Police, or designee, may evaluate the suitability of a member to continue on SWAT once the member has completed the initial four-year bid. This provision applies to members who are assigned to SWAT duty at the time this agreement becomes effective. The City or Department and the Milpitas POA shall meet and confer over the SWAT evaluation process.

Nothing in this section prohibits the Chief of Police or designee from removing a Department member from SWAT, without right of appeal, if their annual Performance Appraisal Report (PAR) has an overall evaluation rating of Below Standard or Unsatisfactory.

35.03 Special Assignments

- 35.03.1 Sworn Officers assigned to Police Community Relations, Special Investigations, Personnel and Training, Traffic Supervisors, Internal Affairs, and Investigations shall receive a 6% Career Development Incentive, shall observe municipal holidays and shall not receive holiday-in-lieu pay. All sworn officers shall receive 6% holiday pay or 6% career development, but not both.

35.04 Bilingual

The City agrees to pay a premium of 2.5% of base pay for departmental members with bilingual skills who are assigned in writing to utilize their bilingual skills in departmental duties. The specific selection of positions which will receive bilingual pay and the languages which will qualify for bilingual pay shall be made by the City upon request of the employee.

35.05 Swing Shift - Records

The City agrees to pay Records personnel who work swing shift a premium of 5% of base pay when 5/8th of the shift falls between 6:00 p.m. and 8:00 a.m. three or more times within the established workweek.

35.06 Swing and Graveyard Shifts – Dispatchers

Effective the first full pay period in July, 2005, the City will pay Dispatchers and Dispatch Supervisors whose regular work schedule is the graveyard shift (i.e. 75% of the shift is between 10:00 p.m. and 6:00 a.m.) an additional 5.0% of base pay. The graveyard shift currently is 8 p.m. to 6 a.m.

Effective the first full pay period in July, 2005, the City will pay Dispatchers and Dispatch Supervisors whose regular work schedule is the swing shift (i.e. 75% of the shift is between 4:00 p.m. and 12:00 a.m.) an additional 2.5% of base pay.

- 35.07 Crisis Negotiators, Field Evidence Technician, Tactical Team Members and Tactical Dispatchers
The City agrees to pay a premium of 5% of an employee's base pay for department members while assigned and acting as Crisis Negotiators, Field Evidence Technicians, Tactical Team members and Tactical Dispatchers.
- 35.08 Midnight Shift – Police
The City agrees to pay sworn personnel who work the midnight shift (9:00PM – 7:00AM) a premium of 5% of base pay when assigned to work nights.
- 35.09 Crisis Intervention Training (CIT) - Police
Effective the first full pay period in January 2024, all sworn employees who meet the following criteria shall receive 2.5% of the employee's base pay:
- (a) California POST Crisis Intervention Training (Basic) Certification; or
 - (b) California POST Hostage (Crisis) Negotiation Training (Basic) Certification; or
 - (c) Minimum 24 hours of relevant training as determined by the Department's Training Unit, including courses in crisis intervention, de-escalation, strategic communication, and other topics relative to promoting positive, non-biased, non-use of force interactions with the community.

SECTION 36.00 - MISCELLANEOUS

36.01 PERSONAL EQUIPMENT/UNIFORM REPLACEMENT

- 36.01.1 The City agrees to repair or replace personally owned property (worn or carried on the person), listed below, and uniforms that become damaged as a result of duty related activity only through no carelessness or neglect on the part of the employee. Any personally owned property not specifically listed here, that is worn or carried by an employee, and is damaged, shall not be repaired or replaced by the City. Any reimbursement for the cost of repair and replacement of personal property shall be limited to the actual cost of the repair and replacement not to exceed the limits as specified below:
- (a) Suits \$210
 - (b) Jackets/slacks \$120/84
 - (c) Leather Jackets \$210
 - (d) Dresses \$150
 - (e) Shirts/Blouses \$84
 - (f) Shoes \$102
 - (g) Eyeglasses \$200 (\$225 for bifocals)
 - (h) Sun glasses \$40 (non-prescription)
 - (i) Contact Lenses Not to exceed the difference between actual replacement cost and insurance deductible up to a maximum of \$50 per lens.
 - (j) Wristwatch \$90
 - (k) Jewelry No compensation.

- 36.02 The City agrees to meet and confer with the Association regarding implementation of any grant or other new program that involves the adding of new classifications of represented employees or the reclassification of employees.
- 36.03 The City agrees to make available to the Association data pertaining to bargaining unit classifications contained in the Bay Area Employee Relations Service (BAERS), or any other compensation survey obtained by the City.
- 36.04 The City will reimburse an employee up to a maximum of \$200 per calendar year for eyeglasses, and up to a maximum of \$225 for bifocals, when prescribed by a physician for use at a video display terminal. Reimbursements shall include lenses and frames, and exclude costs associated with eye examinations.
- 36.05 If an employee receives overpayment by the City, the City may obtain reimbursement by payroll deduction(s). Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by the mutual agreement of the employee and the City Finance Director.

Prior to making a payroll deduction, the City will notify the employee and the MPOA that the overpayment has occurred, and the basis for the City's conclusion that the overpayment occurred. Because the City has the right to obtain reimbursement by payroll deduction(s) for current employees, subject to the employee's/MPOA's right to bring a grievance, the City shall not refer an overpayment of a current employee to a collection agency. The City also will not refer an overpayment of a former employee to a collection agency until after the grievance procedure for a pending grievance, diligently pursued by the MPOA and filed prior to the employee separating City employment, has been completed.

If an employee does not receive notice of an overpayment until after the employee has separated employment, MPOA may initiate a grievance within 30 calendar days of the employee receiving written notice, and the City will not refer the overpayment to a collection agency until after the grievance procedure is completed, so long as diligently pursued by the MPOA. This agreement to permit MPOA to pursue a grievance concerning a former employee is a very narrow exception, limited to the circumstances and terms set forth in this paragraph, to the general rule that MPOA does not have standing to represent former Milpitas employees on any issues concerning the former employees' employment with the City.

- 36.06 The City and POA agree that good physical fitness is important. The City will continue to fund a physical fitness program with an annual maximum contribution of \$5,000. The program will test various components of physical fitness with an overall goal of improving the fitness level of the members of the Association. Specific components and the degree of importance shall be agreed upon by a representative from the City, POA and a 3rd party provider with the overall goal of increasing the health and fitness of employees. Employees will be able to participate on duty time if the test is within Milpitas but will not be paid for any off duty time necessary to complete the program. A test will be given annually to measure the fitness level of each employee participating in the program. The employee will be offered up to 24 hours of vacation leave depending upon the physical fitness level. If the employee fails to appear for their fit test appointment without the approval of the POA President or designee, the POA can seek reimbursement for the cost of the appointment.

- 36.07 Exercise Equipment -The City agrees to perform quarterly maintenance on exercise equipment located in the Police Department fitness room. Equipment to be maintained includes such equipment as stair stepping machine, Universal Gym, free weights, stationary bicycle and treadmill and will be repaired and/or replaced as needed.

SECTION 37.00 - NO LABOR ACTION

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

Unless otherwise specifically amended by the terms of this Memorandum, any term or condition of employment previously known to and approved by the Chief (and not terminated by the Chief) remains as previously established.

Upon the expiration date of this Memorandum of Understanding, and unless one of the parties, by a 30 day prior written notice to the other party, should elect to terminate this Memorandum, the provisions of this Memorandum shall continue in effect.

This Memorandum of Understanding represents a complete and final understanding and agreement on all issues negotiated between the City representatives and the Association's representatives.

This Memorandum of Understanding and any agreement, document, or instrument attached hereto or referred to herein integrate all terms and conditions mentioned herein or incidental hereto, and supersede all oral negotiations and prior writing in respect to the subject matter hereof.

The parties agree to begin negotiations for a successor Memorandum of Understanding no later than November 1, 2026. The MPOA has ratified and the City Council has approved this Memorandum of Understanding as of May 7, 2024.

City Representatives:

Richard C. Bolanos

Stephen Parodi

Candi Latini

Vicky Lien

Association Representatives:

Christopher W. Miller

Jason Speckenheuer

Mattison Madnick

Eric Bernardo

Lesly Saucedo

APPENDIX A - SALARY SCHEDULE

Job Classification	Bi-Weekly Salary Range – Effective January 1, 2024
Patrol Officer	\$4,453.29 - \$5,412.94
Police Officer	\$4,869.70 - \$5,919.24
Police Sergeant	\$5,882.74 - \$7,150.60
Police Lieutenant	\$6,830.69 - \$8,302.78
Patrol Officer Trainee	\$4,357.65 - \$5,296.63
Police Officer Trainee	\$4,765.12 - \$5,792.10
Communications Dispatcher	\$4,165.18 - \$5,062.73
Communications Dispatch Supervisor	\$4,810.58 - \$5,847.32
Community Service Officer	\$3,590.03 - \$4,363.73
Police Clerk I	\$3,033.15 - \$3,686.75
Police Clerk II	\$3,336.40 - \$4,055.45
Police Clerk Supervisor	\$3,853.62 - \$4,684.09
Police Evidence Technician	\$3,538.33 - \$4,300.87
Police Assistant	\$4,231.59 - \$5,143.49

1.01 The City will adjust the salary schedule as follows:

- 1.01.1 A 6.5% base salary increase for Sworn and Non-Sworn employees effective the first full pay period in January, 2024*.
- 1.01.1 A 5.0% base salary increase for Sworn employees and a 3.0% base salary increase for Non-Sworn employees effective the first full pay period in January, 2025.
- 1.01.1 A 4.0% base salary increase for Sworn employees and a 3.0% base salary increase for Non-Sworn employees effective the first full pay period in January, 2026.

*All 2024 pay increases shall be retroactive to the first full pay period in January, 2024.

APPENDIX B - SAFETY EQUIPMENT

Weapon (Semi-automatic)	Baton
Holster - Uniform	Baton Ring
Holster - Plainclothes	Helmet
Gunbelt	
Gunbelt Keepers (3 per officer)	
Magazine Holder	Rain Suit
Ammunition	Keyholder
Flashlight	Badge Holder
Flashlight Holder	Ballistic Vests
Handcuffs	Chemical Agent
Handcuff Case	Chemical Agent Holder

APPENDIX C - DEPRECIATION SCHEDULE

<u>Equipment</u>	<u>Purchase Price</u>	<u>Life (Years)</u>	<u>Devaluation per Year</u>
Semi-automatic Weapon	Purchase Price	15	Prorated
Holster (Uniform)	130.00	5	26.00
Holster (Plainclothes)	60.00	10	6.00
Gunbelt	70.00	10	7.00
Magazine Holder	35.00	5	7.00
Baton Ring	15.00	5	3.00
Rain Suit	120.00	5	24.00
Flashlight	25.00	10	2.50
Holder			
Gunbelt Keepers (3/Officer)	15.00	5	3.00
Handcuff Case	35.00	5	7.00
Keyholder	25.00	5	5.00
Badge Holder	30.00	10	3.00
SL20 Flashlight	Purchase Price	5	Prorated
Back Brace	Purchase Price ¹	5	Prorated

¹ This amount is to be approved by the Department, and does not include the gun/duty belt.

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - MPOA +6.5%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Accountant	50	2101	500	49.81	3,985.19	103,614.94	52.31	4,184.42	108,794.92	54.91	4,392.79	114,212.54	57.67	4,613.46	119,949.96	60.54	4,843.30	125,925.80
Accounting Technician I	50	6104	513	32.44	2,595.36	67,479.36	34.06	2,725.15	70,853.90	35.77	2,861.41	74,396.66	37.56	3,004.48	78,116.48	39.43	3,154.71	82,022.46
Accounting Technician II	50	6105	514	35.69	2,854.88	74,226.88	37.47	2,997.67	77,939.42	39.34	3,147.55	81,836.30	41.31	3,304.96	85,928.96	43.38	3,470.13	90,223.38
Administrative Analyst I	80	2102	801	42.02	3,361.82	87,407.32	-	-	-	-	-	-	-	-	-	55.32	4,425.62	115,066.12
Administrative Analyst II	80	2103	802	46.41	3,712.73	96,530.98	-	-	-	-	-	-	-	-	-	61.09	4,886.81	127,057.06
Administrative Assistant	80	6111	828	40.09	3,207.26	83,388.76	42.10	3,367.62	87,558.12	44.20	3,536.02	91,936.52	46.41	3,712.80	96,532.80	48.73	3,898.43	101,359.18
Adult Crossing Guard	70	8401	725	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	20.52	1,641.60	42,681.60
Adult Crossing Guard Superviso	70	8402	720	19.24	1,539.20	40,019.20	-	-	-	-	-	-	-	-	-	24.05	1,924.00	50,024.00
Assistant Chief of Police	60	1405	649	104.45	8,356.04	217,257.04	-	-	-	-	-	-	-	-	-	146.23	11,698.45	304,159.70
Assistant City Attorney	60	1113	645	78.46	6,276.93	163,200.18	-	-	-	-	-	-	-	-	-	106.21	8,496.84	220,917.84
Assistant City Manager	60	1104	666	98.45	7,876.34	204,784.84	-	-	-	-	-	-	-	-	-	137.84	11,026.88	286,698.88
Assistant Dir Recr & Comm Svcs	60	1121	659	67.18	5,374.71	139,742.46	-	-	-	-	-	-	-	-	-	94.06	7,524.59	195,639.34
Assistant Engineer	50	2201	502	53.97	4,317.88	112,264.88	56.67	4,533.77	117,878.02	59.51	4,760.44	123,771.44	62.48	4,998.50	129,961.00	65.61	5,248.45	136,459.70
Assistant Finance Director	60	1109	669	70.85	5,668.21	147,373.46	-	-	-	-	-	-	-	-	-	99.20	7,935.69	206,327.94
Assistant Fire Marshal	60	2501	632	81.30	6,503.96	169,102.96	-	-	-	-	-	-	-	-	-	113.82	9,105.56	236,744.56
Assistant Planner	50	2801	503	51.75	4,140.28	107,647.28	54.34	4,347.40	113,032.40	57.05	4,563.99	118,663.74	59.90	4,792.13	124,595.38	62.90	5,031.84	130,827.84
Assistant Pool Manager	70	5609	709	22.16	1,772.80	46,092.80	-	-	-	-	-	-	-	-	-	27.70	2,216.00	57,616.00
Assistant Water Operator	20	7212	221	44.39	3,329.11	86,556.86	46.61	3,495.58	90,885.08	48.94	3,670.35	95,429.10	51.38	3,853.85	100,200.10	53.95	4,046.57	105,210.82
Assistant Water Operator - 40	20	8611	226	44.65	3,571.86	92,868.36	46.88	3,750.63	97,516.38	49.23	3,938.33	102,396.58	51.70	4,136.04	107,537.04	54.28	4,342.75	112,911.50
Associate Civil Engineer	50	2202	504	62.07	4,965.54	129,104.04	65.17	5,213.85	135,560.10	68.43	5,474.55	142,338.30	71.85	5,748.28	149,455.28	75.45	6,035.71	156,928.46
Associate Planner	50	2802	505	59.51	4,760.57	123,774.82	62.49	4,999.24	129,980.24	65.62	5,249.46	136,485.96	68.89	5,511.25	143,292.50	72.33	5,786.71	150,454.46
Budget Manager	80	1115	839	61.26	4,900.49	127,412.74	-	-	-	-	-	-	-	-	-	80.63	6,450.48	167,712.48
Building & Housing Director	60	1802	658	85.63	6,850.13	178,103.38	-	-	-	-	-	-	-	-	-	119.88	9,590.18	249,344.68
Building Inspection Manager	80	3809	848	63.81	5,105.17	132,734.42	-	-	-	-	-	-	-	-	-	77.57	6,205.42	161,340.92
Building Inspector Apprentice	70	8610	770	28.00	2,240.00	58,240.00	-	-	-	-	-	-	-	-	-	35.00	2,800.00	72,800.00
Building Official	60	1804	676	75.32	6,025.48	156,662.48	-	-	-	-	-	-	-	-	-	105.45	8,435.67	219,327.42
Building Permit Technician	50	5801	508	39.52	3,161.65	82,202.90	41.50	3,320.08	86,322.08	43.58	3,486.64	90,652.64	45.75	3,660.32	95,168.32	48.04	3,843.14	99,921.64
Building/NP Inspector	50	3801	507	52.38	4,190.59	108,955.34	55.00	4,400.16	114,404.16	57.75	4,620.12	120,123.12	60.64	4,851.15	126,129.90	63.67	5,093.68	132,435.68
Business Systems Analyst/Dev	80	2119	853	56.02	4,481.54	116,520.04	-	-	-	-	-	-	-	-	-	73.74	5,899.08	153,376.08
Buyer	80	2106	803	41.64	3,331.34	86,614.84	-	-	-	-	-	-	-	-	-	54.81	4,385.08	114,012.08
CIP Manager	60	2211	642	65.06	5,205.17	135,334.42	-	-	-	-	-	-	-	-	-	91.10	7,287.82	189,483.32
Case Manager	50	5612	544	35.41	2,832.86	73,654.36	-	-	-	-	-	-	-	-	-	44.19	3,535.35	91,919.10
Chief Fire Enforcement Officer	60	1505	656	68.25	5,459.80	141,954.80	-	-	-	-	-	-	-	-	-	95.55	7,643.72	198,736.72
Chief of Police	60	1402	650	109.67	8,773.58	228,113.08	-	-	-	-	-	-	-	-	-	153.54	12,283.04	319,359.04
City Attorney	60	1112	644	99.96	7,997.00	207,922.00	-	-	-	-	-	-	-	-	-	124.95	9,996.27	259,903.02
City Clerk	60	1101	605	65.11	5,208.61	135,423.86	-	-	-	-	-	-	-	-	-	91.16	7,292.88	189,614.88
City Engineer	60	1201	606	75.95	6,076.04	157,977.04	-	-	-	-	-	-	-	-	-	106.33	8,506.46	221,167.96
City Manager	60	1102	697	134.13	10,730.77	279,000.02	-	-	-	-	-	-	-	-	-	134.13	10,730.77	279,000.02
Code Enforcement Officer	50	5804	515	45.80	3,664.13	95,267.38	48.09	3,847.39	100,032.14	50.51	4,040.58	105,055.08	53.03	4,242.60	110,307.60	55.68	4,454.58	115,819.08
Communications Dispatch Superv	40	6409	456	60.13	4,810.58	125,075.18	63.14	5,051.11	131,328.96	66.30	5,303.68	137,895.65	69.61	5,568.87	144,790.73	73.09	5,847.32	152,030.28
Communications Dispatcher	40	6408	455	52.06	4,165.18	108,294.76	54.67	4,373.42	113,708.99	57.40	4,592.08	119,394.02	60.27	4,821.64	125,362.60	63.28	5,062.73	131,631.06
Community Service Officer	40	6412	460	44.88	3,590.03	93,340.77	47.12	3,769.54	98,007.92	49.48	3,958.02	102,908.50	51.95	4,155.91	108,053.58	54.55	4,363.73	113,457.01
Councilmember	60	1107	699	20.87	417.40	10,852.40	-	-	-	-	-	-	-	-	-	20.87	417.40	10,852.40
Crime Analyst	80	2105	809	50.31	4,024.40	104,634.40	-	-	-	-	-	-	-	-	-	66.22	5,297.35	137,731.10
Cross Connection Specialist	20	8626	239	46.15	3,691.64	95,982.64	48.57	3,885.93	101,034.18	51.13	4,090.46	106,351.96	53.82	4,305.74	111,949.24	56.65	4,532.36	117,841.36
Customer Services Supervisor	80	2127	847	48.78	3,902.36	101,461.36	-	-	-	-	-	-	-	-	-	64.20	5,136.36	133,545.36
Deputy City Attorney	60	1114	646	61.30	4,903.84	127,499.84	-	-	-	-	-	-	-	-	-	84.97	6,797.43	176,733.18
Deputy City Clerk	80	6102	835	47.90	3,832.11	99,634.86	-	-	-	-	-	-	-	-	-	58.22	4,657.94	121,106.44
Deputy City Manager	60	1119	672	96.49	7,718.81	200,689.06	-	-	-	-	-	-	-	-	-	135.02	10,801.85	280,848.10
Deputy Director of IT	60	1123	679	77.97	6,237.69	162,179.94	-	-	-	-	-	-	-	-	-	99.85	7,988.17	207,692.42
Deputy Fire Chief	60	1504	633	102.44	8,195.58	213,085.08	-	-	-	-	-	-	-	-	-	143.42	11,473.81	298,319.06
Deputy Public Works Director	60	1207	654	75.95	6,076.04	157,977.04	-	-	-	-	-	-	-	-	-	106.33	8,506.46	221,167.96
Digital Media Specialist	80	2121	840	43.33	3,466.76	90,135.76	-	-	-	-	-	-	-	-	-	57.04	4,563.31	118,646.06
Dir of Recr & Community Svcs	60	1208	655	83.85	6,708.28	174,415.28	-	-	-	-	-	-	-	-	-	117.62	9,409.89	244,657.14
Economic Development Coord	80	8623	852	52.86	4,228.77	109,948.02	-	-	-	-	-	-	-	-	-	65.55	5,243.62	136,334.12
Economic Development Director	60	1206	653	78.76	6,301.09	163,828.34	-	-	-	-	-	-	-	-	-	110.27	8,821.50	229,359.00
Economic Development Spec	80	8606	850	50.34	4,027.05	104,703.30	-	-	-	-	-	-	-	-	-	60.76	4,861.06	126,387.56
Electrical/Building Inspector	50	3802	511	55.00	4,400.15	114,403.90	57.75	4,620.12	120,123.12	60.64	4,851.14	126,129.64	63.67	5,093.68	132,435.68	66.85	5,348.38	139,057.88
Emergency Services Coordinator	80	2502	836	55.62	4,449.24	115,680.24	-	-	-	-	-	-	-	-	-	73.20	5,855.80	152,250.80

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - MPOA +6.5%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Engineering Aide	50	3201	512	42.92	3,433.82	89,279.32	45.07	3,605.52	93,743.52	47.32	3,785.78	98,430.28	49.69	3,975.05	103,351.30	52.17	4,173.80	108,518.80
Engineering Permit Technician	50	2210	540	38.64	3,091.04	80,367.04	40.57	3,245.60	84,385.60	42.60	3,407.86	88,604.36	44.73	3,578.21	93,033.46	46.96	3,757.15	97,685.90
Entry Firefighter/EMT - 40	10	4512	115	50.50	4,040.28	105,047.28	52.52	4,201.89	109,249.14	-	-	-	-	-	-	-	-	-
Entry Firefighter/EMT - 56	10	4510	112	36.07	4,040.28	105,047.28	37.52	4,201.89	109,249.14	-	-	-	-	-	-	-	-	-
Entry Firefighter/Paramedic-40	10	4513	116	56.56	4,525.11	117,652.86	58.83	4,706.14	122,359.64	-	-	-	-	-	-	-	-	-
Entry Firefighter/Paramedic-56	10	4511	113	40.40	4,525.11	117,652.86	42.02	4,706.14	122,359.64	-	-	-	-	-	-	-	-	-
Entry Level Fire Inspector	10	3508	114	44.03	3,522.52	91,585.52	46.23	3,698.65	96,164.90	48.55	3,883.60	100,973.60	50.97	4,077.78	106,022.28	53.03	4,242.70	110,310.20
Envir & Regulatory Comply Spec	80	8624	851	53.72	4,297.94	111,746.44	-	-	-	-	-	-	-	-	-	70.72	5,657.33	147,090.58
Environmental Inspector	50	2213	553	55.00	4,400.15	114,403.90	57.75	4,620.15	120,123.90	60.64	4,851.16	126,130.16	63.67	5,093.71	132,436.46	66.85	5,348.38	139,057.88
Equip Maint Worker I - 40	20	8612	227	40.60	3,248.33	84,456.58	42.61	3,409.11	88,636.86	44.75	3,579.87	93,076.62	46.99	3,759.59	97,749.34	49.34	3,947.32	102,630.32
Equip Maint Worker II - 40	20	8613	228	44.65	3,571.86	92,868.36	46.88	3,750.63	97,516.38	49.23	3,938.33	102,396.58	51.70	4,136.04	107,537.04	54.28	4,342.75	112,911.50
Equip Maint Worker III - 40	20	8614	229	50.30	4,024.21	104,629.46	52.82	4,225.92	109,873.92	55.47	4,437.63	115,378.38	58.24	4,659.31	121,142.06	61.16	4,892.97	127,217.22
Equipment Maint. Worker I	20	7202	200	40.35	3,026.45	78,687.70	42.37	3,177.78	82,622.28	44.49	3,336.71	86,754.46	46.71	3,503.53	91,091.78	49.05	3,678.70	95,646.20
Equipment Maint. Worker II	20	7203	201	44.39	3,329.11	86,556.86	46.61	3,495.58	90,885.08	48.94	3,670.35	95,429.10	51.38	3,853.85	100,200.10	53.95	4,046.57	105,210.82
Equipment Maint. Worker III	20	7204	202	50.01	3,751.01	97,526.26	52.51	3,938.49	102,400.74	55.14	4,135.45	107,521.70	57.90	4,342.22	112,897.72	60.79	4,559.35	118,543.10
Executive Assistant	80	6117	812	44.09	3,527.48	91,714.48	46.30	3,703.88	96,300.88	48.61	3,889.07	101,115.82	51.04	4,083.51	106,171.26	53.60	4,287.69	111,479.94
FF/Paramedic Trainee - 40	10	4504	107	54.39	4,351.07	113,127.82	54.39	4,351.07	113,127.82	54.39	4,351.07	113,127.82	54.39	4,351.07	113,127.82	54.39	4,351.07	113,127.82
FF/Paramedic Trainee - 56	10	4514	155	38.85	4,351.07	113,127.82	38.85	4,351.07	113,127.82	38.85	4,351.07	113,127.82	38.85	4,351.07	113,127.82	38.85	4,351.07	113,127.82
Finance Director	60	1103	627	86.00	6,879.87	178,876.62	-	-	-	-	-	-	-	-	-	120.39	9,631.05	250,407.30
Finance Manager	60	1116	647	60.69	4,855.51	126,243.26	-	-	-	-	-	-	-	-	-	84.97	6,797.75	176,741.50
Financial Analyst I	80	2125	844	39.24	3,139.00	81,614.00	-	-	-	-	-	-	-	-	-	51.65	4,131.85	107,428.10
Financial Analyst II	80	2126	845	43.33	3,466.76	90,135.76	-	-	-	-	-	-	-	-	-	57.04	4,563.31	118,646.06
Fire Battalion Chief	10	2508	153	54.56	6,110.87	158,882.62	-	-	-	-	-	-	-	-	-	76.39	8,555.22	222,435.72
Fire Battalion Chief - 40	10	2509	154	76.39	6,110.87	158,882.62	-	-	-	-	-	-	-	-	-	106.94	8,555.22	222,435.72
Fire Captain	10	2504	100	47.75	5,348.06	139,049.56	50.08	5,608.79	145,828.54	52.52	5,882.54	152,946.04	55.09	6,169.96	160,418.96	57.78	6,471.78	168,266.28
Fire Captain - 40	10	2507	108	66.85	5,348.06	139,049.56	70.11	5,608.79	145,828.54	73.53	5,882.54	152,946.04	77.12	6,169.96	160,418.96	80.90	6,471.78	168,266.28
Fire Chief	60	1502	630	112.95	9,035.72	234,928.72	-	-	-	-	-	-	-	-	-	158.13	12,650.04	328,901.04
Fire Engineer/EMT	10	4501	102	42.11	4,715.93	122,614.18	44.15	4,945.04	128,571.04	46.30	5,185.58	134,825.08	48.55	5,438.15	141,391.90	50.92	5,703.35	148,287.10
Fire Engineer/EMT - 40	10	4515	156	58.95	4,715.93	122,614.18	61.81	4,945.04	128,571.04	64.82	5,185.58	134,825.08	67.98	5,438.15	141,391.90	71.29	5,703.35	148,287.10
Fire Engineer/Paramedic	10	4505	151	47.16	5,281.85	137,328.10	49.45	5,538.45	143,999.70	51.86	5,807.85	151,004.10	54.38	6,090.73	158,358.98	57.03	6,387.75	166,081.50
Fire Prevention Inspector	10	3501	106	67.50	5,400.23	140,405.98	70.79	5,663.55	147,252.30	74.25	5,940.03	154,440.78	77.88	6,230.32	161,988.32	81.69	6,535.14	169,913.64
Fire Protection Engineer	10	3507	110	67.50	5,400.23	140,405.98	70.79	5,663.55	147,252.30	74.25	5,940.03	154,440.78	77.88	6,230.32	161,988.32	81.69	6,535.14	169,913.64
Firefighter/EMT	10	4502	103	39.35	4,407.54	114,596.04	41.26	4,621.15	120,149.90	43.26	4,845.52	125,983.52	45.37	5,081.12	132,109.12	47.57	5,328.39	138,538.14
Firefighter/EMT - 40	10	4516	157	55.09	4,407.54	114,596.04	57.76	4,621.15	120,149.90	60.57	4,845.52	125,983.52	63.51	5,081.12	132,109.12	66.60	5,328.39	138,538.14
Firefighter/EMT Trainee - 40	10	4509	109	48.56	3,884.89	101,007.14	48.56	3,884.89	101,007.14	48.56	3,884.89	101,007.14	48.56	3,884.89	101,007.14	48.56	3,884.89	101,007.14
Firefighter/Paramedic	10	4503	104	44.08	4,936.44	128,347.44	46.21	5,175.68	134,567.68	48.46	5,426.98	141,101.48	50.81	5,690.86	147,962.36	53.28	5,967.80	155,162.80
Fitness Instructor	70	5620	713	35.00	2,800.00	72,800.00	-	-	-	-	-	-	-	-	-	75.00	6,000.00	156,000.00
Fleet Maint Worker I - 40	20	8615	230	38.76	3,100.90	80,623.40	40.70	3,256.31	84,664.06	42.74	3,418.87	88,890.62	44.87	3,589.60	93,329.60	47.12	3,769.55	98,008.30
Fleet Maint Worker II - 40	20	8616	231	42.63	3,410.69	88,677.94	44.77	3,581.42	93,116.92	47.00	3,760.33	97,768.58	49.36	3,948.46	102,659.96	51.82	4,145.79	107,790.54
Fleet Maint Worker III - 40	20	8617	232	49.04	3,922.89	101,995.14	51.49	4,119.21	107,099.46	54.06	4,324.71	112,442.46	56.76	4,540.41	118,050.66	59.61	4,768.40	123,978.40
Fleet Maintenance Worker I	20	7207	213	38.76	2,907.11	75,584.86	40.70	3,052.43	79,363.18	42.73	3,205.08	83,332.08	44.87	3,365.27	87,497.02	47.11	3,533.56	91,872.56
Fleet Maintenance Worker II	20	7208	214	42.64	3,197.83	83,143.58	44.77	3,357.68	87,299.68	47.01	3,525.60	91,665.60	49.36	3,701.89	96,249.14	51.83	3,886.91	101,059.66
Fleet Maintenance Worker III	20	7209	215	49.03	3,677.46	95,613.96	51.48	3,861.32	100,394.32	54.06	4,054.36	105,413.36	56.76	4,257.06	110,683.56	59.60	4,469.99	116,219.74
GIS Technician	50	2212	552	53.97	4,317.88	112,264.88	56.67	4,533.77</										

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - MPOA +6.5%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Lifeguard	70	5610	710	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	22.88	1,830.40	47,590.40
Maint Worker III - 40	20	8619	234	41.75	3,340.14	86,843.64	43.84	3,507.40	91,192.40	46.03	3,682.66	95,749.16	48.34	3,866.95	100,540.70	50.75	4,060.25	105,566.50
Maintenance Assistant	20	8625	238	25.46	2,036.74	52,955.24	26.67	2,133.25	55,464.50	27.91	2,233.09	58,060.34	29.23	2,338.75	60,807.50	30.61	2,448.58	63,663.08
Maintenance Custodian I	20	8101	203	29.74	2,230.53	57,993.78	31.23	2,342.06	60,893.56	32.79	2,459.18	63,938.68	34.43	2,582.14	67,135.64	36.15	2,711.25	70,492.50
Maintenance Custodian I - 40	20	8107	222	29.74	2,379.25	61,860.50	31.23	2,498.18	64,952.68	32.79	2,623.11	68,200.86	34.43	2,754.28	71,611.28	36.15	2,891.97	75,191.22
Maintenance Custodian II	20	8102	204	32.72	2,453.64	63,794.64	34.35	2,576.29	66,983.54	36.07	2,705.12	70,333.12	37.87	2,840.30	73,847.80	39.76	2,982.36	77,541.36
Maintenance Custodian II - 40	20	8108	223	32.72	2,617.21	68,047.46	34.35	2,748.01	71,448.26	36.07	2,885.45	75,021.70	37.87	3,029.67	78,771.42	39.77	3,181.21	82,711.46
Maintenance Custodian III	20	8103	205	37.62	2,821.62	73,362.12	39.50	2,962.69	77,029.94	41.48	3,110.83	80,881.58	43.55	3,266.38	84,925.88	45.73	3,429.74	89,173.24
Maintenance Custodian III - 40	20	8618	233	37.62	3,009.93	78,258.18	39.50	3,160.20	82,165.20	41.48	3,318.67	86,285.42	43.55	3,484.29	90,591.54	45.73	3,658.10	95,110.60
Maintenance Worker I	20	8202	206	32.72	2,453.64	63,794.64	34.35	2,576.29	66,983.54	36.07	2,705.12	70,333.12	37.87	2,840.37	73,849.62	39.76	2,982.36	77,541.36
Maintenance Worker I-40	20	8203	207	33.01	2,641.07	68,667.82	34.65	2,772.27	72,079.02	36.39	2,911.49	75,698.74	38.21	3,056.71	79,474.46	40.12	3,209.95	83,458.70
Maintenance Worker II	20	8204	208	35.99	2,698.97	70,173.22	37.79	2,833.90	73,681.40	39.67	2,975.57	77,364.82	41.66	3,124.37	81,233.62	43.74	3,280.60	85,295.60
Maintenance Worker II-40	20	8205	209	36.31	2,904.47	75,516.22	38.12	3,049.70	79,292.20	40.04	3,202.94	83,276.44	42.03	3,362.17	87,416.42	44.13	3,530.43	91,791.18
Maintenance Worker III	20	8206	210	41.38	3,103.77	80,698.02	43.45	3,258.97	84,733.22	45.63	3,421.92	88,969.92	47.91	3,593.02	93,418.52	50.30	3,772.69	98,089.94
Maintenance Worker/Seasonal	70	8207	760	19.88	1,590.40	41,350.40	-	-	-	-	-	-	-	-	-	24.85	1,988.00	51,688.00
Management Analyst	80	2128	854	55.71	4,457.07	115,883.82	-	-	-	-	-	-	-	-	-	78.02	6,241.27	162,273.02
Marketing Coordinator	50	5614	548	41.70	3,336.01	86,736.26	43.79	3,502.80	91,072.80	45.97	3,677.93	95,626.18	48.27	3,861.83	100,407.58	50.69	4,054.93	105,428.18
Mayor	60	1118	696	26.09	521.88	13,568.88	-	-	-	-	-	-	-	-	-	26.09	521.88	13,568.88
Office Assistant I	50	6108	516	28.21	2,256.91	58,679.66	29.62	2,369.74	61,613.24	31.10	2,488.25	64,694.50	32.66	2,612.62	67,928.12	34.29	2,743.26	71,324.76
Office Assistant II	50	6109	517	31.03	2,482.49	64,544.74	32.58	2,606.57	67,770.82	34.21	2,736.98	71,161.48	35.92	2,873.82	74,719.32	37.72	3,017.45	78,453.70
Office Specialist	50	6110	518	35.69	2,854.85	74,226.10	37.47	2,997.63	77,938.38	39.34	3,147.55	81,836.30	41.31	3,304.96	85,928.96	43.38	3,470.13	90,223.38
PW Division Mgr. - Eng.	60	1127	692	76.53	6,122.73	159,190.98	-	-	-	-	-	-	-	-	-	95.67	7,653.41	198,988.66
PW Division Mgr. - Opr.	60	1126	691	76.53	6,122.73	159,190.98	-	-	-	-	-	-	-	-	-	95.67	7,653.41	198,988.66
PW Division Mgr. - Utl.	60	1128	693	76.53	6,122.73	159,190.98	-	-	-	-	-	-	-	-	-	95.67	7,653.41	198,988.66
Patrol Officer	40	4401	404	55.67	4,453.29	115,785.46	58.45	4,675.95	121,574.61	61.37	4,909.71	127,652.56	64.44	5,155.21	134,035.38	67.66	5,412.94	140,736.36
Patrol Officer Trainee	40	4402	458	54.47	4,357.65	113,298.90	57.19	4,575.45	118,961.78	60.05	4,804.28	124,911.25	63.06	5,044.46	131,155.90	66.21	5,296.63	137,712.34
Payroll Specialist	50	5102	546	38.11	3,049.05	79,275.30	40.02	3,201.51	83,239.26	42.02	3,361.57	87,400.82	44.12	3,529.67	91,771.42	46.33	3,706.09	96,358.34
Plan Check Engineer	50	3807	521	63.52	5,081.48	132,118.48	66.69	5,335.02	138,710.52	70.03	5,602.14	145,655.64	73.52	5,881.79	152,926.54	77.25	6,179.74	160,673.24
Plan Checker	50	3803	522	54.16	4,333.06	112,659.56	56.87	4,549.66	118,291.16	59.72	4,777.53	124,215.78	62.70	5,015.70	130,408.20	65.84	5,267.19	136,946.94
Plan Review Manager	60	1210	678	71.14	5,691.25	147,972.50	-	-	-	-	-	-	-	-	-	92.53	7,402.01	192,452.26
Planning Commissioners	70	1108	698	1.00	20.00	520.00	-	-	-	-	-	-	-	-	-	1.00	20.00	520.00
Planning Director	60	1803	607	85.63	6,850.13	178,103.38	-	-	-	-	-	-	-	-	-	119.88	9,590.18	249,344.68
Planning Manager	60	2803	602	65.26	5,220.90	135,743.40	-	-	-	-	-	-	-	-	-	91.37	7,309.25	190,040.50
Planning Technician	50	2813	554	39.52	3,161.65	82,202.90	41.50	3,320.08	86,322.08	43.58	3,486.64	90,652.64	45.75	3,660.32	95,168.32	48.04	3,843.14	99,921.64
Police Assistant	40	6401	450	52.89	4,231.59	110,021.23	55.54	4,443.12	115,521.02	58.32	4,665.26	121,296.88	61.23	4,898.56	127,362.65	64.29	5,143.49	133,730.79
Police Captain	60	1401	651	99.47	7,957.84	206,903.84	-	-	-	-	-	-	-	-	-	139.26	11,140.93	289,664.18
Police Clerk I	40	6402	451	37.91	3,033.15	78,861.95	39.81	3,184.83	82,805.56	41.80	3,344.05	86,945.22	43.89	3,511.26	91,292.82	46.08	3,686.75	95,855.58
Police Clerk II	40	6403	452	41.71	3,336.40	86,746.40	43.79	3,503.31	91,085.98	45.98	3,678.46	95,639.88	48.28	3,862.41	100,422.77	50.69	4,055.45	105,441.58
Police Clerk Supervisor	40	6404	454	48.17	3,853.62	100,194.05	50.58	4,046.34	105,204.83	53.11	4,248.60	110,463.72	55.76	4,461.06	115,987.60	58.55	4,684.09	121,786.43
Police Evidence Technician	40	8607	459	44.23	3,538.33	91,996.70	46.44	3,715.22	96,595.73	48.76	3,901.01	101,426.25	51.20	4,096.09	106,498.23	53.76	4,300.87	111,822.74
Police Lieutenant	40	2402	400	85.38	6,830.69	177,597.85	89.65	7,172.23	186,478.03	94.14	7,530.87	195,802.64	98.84	7,907.43	205,593.27	103.78	8,302.78	215,872.35
Police Officer	40	4403	403	60.87	4,869.70	126,612.25	63.92	5,113.27	132,944.95	67.11	5,368.91	139,591.66	70.47	5,637.30	146,569.82	73.99	5,919.24	153,900.19
Police Officer Trainee	40	4404	457	59.56	4,765.12	123,893.09	62.54	5,003.43	130,089.28	65.67	5,253.65	136,594.77	68.95	5,516.28	143,423.40	72.40	5,792.10	150,594.56
Police Sergeant	40	4405	401	73.53	5,882.74	152,951.25	77.21	6,176.89	160,599.23	81.07	6,485.72	168,628.78	85.13	6,810.10	177,062.60	89.38	7,150.60	185,915.64
Police Support Services Mgr	60	1404	657	63.29	5,063.37	131,647.62	-	-	-	-	-	-	-	-	-	88.61	7,089.04	184,315.04
Pool Manager	70	5608	708	23.22	1,857.60	48,297.60	-	-	-	-	-	-	-	-	-	28.15	2,252.00	58,552.00
Principal Civil Engineer	80	2204	822	66.49	5,318.93	138,292.18	-	-	-	-	-	-	-	-	-	86.47	6,917.76	179,861.76
Principal Planner	80	2811	823	68.55	5,483.95	142,582.70	-	-	-	-	-	-	-	-	-	83.02	6,641.91	172,689.66
Program Coordinator	50	5606	523	38.89	3,111.11	80,888.86	-	-	-	-	-	-	-	-	-	51.19	4,095.15	106,473.90
Public Information Officer	60	1122	674	62.81	5,025.13	130,653.38	-	-	-	-	-	-	-	-	-	87.94	7,035.20	182,915.20
Public Services Assistant I	50	6601	524	32.44	2,595.36	67,479.36	34.06	2,725.15	70,853.90	35.77	2,861.44	74,397.44	37.56	3,004.50	78,117.00	39.43	3,154.71	82,022.46
Public Services Assistant II	50	6602	525	35.69	2,854.88	74,226.88	37.47	2,997.67	77,939.42	39.34	3,147.54	81,836.04	41.31	3,304.97	85,929.22	43.38	3,470.13	90,223.38
Public Works Director	60	1204	635	88.05	7,043.70	183,136.20	-	-	-	-	-	-	-	-	-	123.27	9,861.21	256,391.46
Public Works Inspector	50	3202	526	52.38	4,190.59	108,955.34	55.00	4,400.16	114,404.16	57.75	4,620.12	120,123.12	60.64	4,851.15	126,129.90	63.67	5,093.68	132,435.68
Public Works Manager	60	1117	648	58.60	4,688.09	121,890.34	-	-	-	-	-	-	-	-	-	82.04	6,563.32	170,646.32
Purchasing Agent	80	1106	826	54.89	4,391.06	114,167.56	-	-	-	-	-	-	-	-	-	70.79	5,663.24	147,244.24
Recreation Administrative Asst	70	5619	712	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	23.96	1,916.80	49,836.80
Recreation Attendant	70	5618	711	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	23.96	1,916.80	49,836.80
Recreation Instructors	70	5607	707	18.82	1,505.60	39,145.60	-	-	-	-	-	-	-	-	-	37.64	3,011.20	78,291.20

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - MPOA +6.5%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Recreation Leader	70	5617	706	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	23.96	1,916.80	49,836.80
Recreation Services Supervisor	80	2601	827	52.43	4,194.59	109,059.34	-	-	-	-	-	-	-	-	-	69.01	5,520.64	143,536.64
Recreation Svcs Assistant I	50	8601	527	18.34	1,467.01	38,142.26	19.25	1,540.34	40,048.84	20.22	1,617.41	42,052.66	21.23	1,698.24	44,154.24	22.29	1,783.19	46,362.94
Recreation Svcs Assistant II	50	8602	528	21.77	1,741.81	45,287.06	22.86	1,829.09	47,556.34	24.01	1,920.50	49,933.00	25.21	2,016.57	52,430.82	26.47	2,117.35	55,051.10
Recreation Svcs Assistant III	50	8603	529	25.03	2,002.18	52,056.68	26.28	2,102.24	54,658.24	27.59	2,207.36	57,391.36	28.97	2,317.71	60,260.46	30.42	2,433.64	63,274.64
Recreation Svcs Assistant IV	50	8604	530	29.36	2,349.09	61,076.34	30.83	2,466.53	64,129.78	32.37	2,589.85	67,336.10	33.99	2,719.36	70,703.36	35.69	2,855.31	74,238.06
Retired Annuitant - Extra Help	70	5107	747	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Retired Annuitant - Interim	70	5108	748	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Risk Analyst	80	2130	857	43.33	3,466.76	90,135.76	-	-	-	-	-	-	-	-	-	57.04	4,563.31	118,646.06
SCADA Technician	20	8627	240	47.04	3,763.08	97,840.08	49.51	3,961.14	102,989.64	52.12	4,169.63	108,410.38	54.86	4,389.08	114,116.08	57.75	4,620.09	120,122.34
Senior Accountant	80	2110	829	48.78	3,902.36	101,461.36	-	-	-	-	-	-	-	-	-	64.20	5,136.36	133,545.36
Senior Accounting Technician	50	6106	539	39.25	3,140.37	81,649.62	41.22	3,297.42	85,732.92	43.28	3,462.29	90,019.54	45.44	3,635.43	94,521.18	47.71	3,817.16	99,246.16
Senior Administrative Analyst	80	2112	834	53.88	4,310.29	112,067.54	-	-	-	-	-	-	-	-	-	70.92	5,673.86	147,520.36
Senior Building Inspector	50	3804	531	60.50	4,840.10	125,842.60	63.53	5,082.17	132,136.42	66.70	5,336.24	138,742.24	70.04	5,603.02	145,678.52	73.54	5,883.19	152,962.94
Senior Buyer	80	2129	856	51.78	4,142.10	107,694.60	-	-	-	-	-	-	-	-	-	63.04	5,042.86	131,114.36
Senior Executive Assistant	80	6123	855	46.41	3,712.73	96,530.98	-	-	-	-	-	-	-	-	-	61.09	4,886.81	127,057.06
Senior HR Analyst	80	2122	841	50.31	4,024.43	104,635.18	-	-	-	-	-	-	-	-	-	66.22	5,297.35	137,731.10
Senior Plan Check Engineer	50	3806	534	69.87	5,589.62	145,330.12	73.37	5,869.26	152,600.76	77.03	6,162.46	160,223.96	80.88	6,470.27	168,227.02	84.92	6,793.71	176,636.46
Senior Planner	80	2805	830	62.84	5,027.35	130,711.10	-	-	-	-	-	-	-	-	-	76.39	6,110.94	158,884.44
Senior Public Works Inspector	50	3203	535	60.50	4,840.13	125,843.38	63.53	5,082.17	132,136.42	66.70	5,336.25	138,742.50	70.04	5,603.02	145,678.52	73.54	5,883.19	152,962.94
Senior Public Works Lead	20	8609	225	55.35	4,427.91	115,125.66	58.12	4,649.31	120,882.06	61.02	4,881.78	126,926.28	64.07	5,125.85	133,272.10	67.28	5,382.29	139,939.54
Senior SCADA Technician	20	8628	241	51.74	4,139.39	107,624.14	54.47	4,357.26	113,288.76	57.33	4,586.59	119,251.34	60.35	4,827.99	125,527.74	63.53	5,082.10	132,134.60
Special Project Associate	70	5105	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Special Project Associate	70	8605	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Sr Code Enforcement Officer	50	5806	545	53.75	4,300.03	111,800.78	56.43	4,514.18	117,368.68	59.26	4,740.51	123,253.26	62.22	4,977.88	129,424.88	65.33	5,226.26	135,882.76
Sr. Public Services Assistant	50	5615	549	39.81	3,184.44	82,795.44	41.80	3,343.66	86,935.16	43.89	3,510.84	91,281.84	46.08	3,686.38	95,845.88	48.38	3,870.70	100,638.20
Sr. Special Projects Associate	70	5106	749	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Staff Assistant	70	5104	745	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	26.62	2,129.60	55,369.60
Student Intern	70	5103	740	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	26.62	2,129.60	55,369.60
Transporation & Traffic Mgr	60	1202	675	62.81	5,025.13	130,653.38	-	-	-	-	-	-	-	-	-	87.94	7,035.20	182,915.20
Water Meter Technician I	20	8104	216	32.71	2,453.54	63,792.04	34.35	2,576.29	66,983.54	36.07	2,705.11	70,332.86	37.87	2,840.30	73,847.80	39.76	2,982.35	77,541.10
Water Meter Technician I -40	20	8620	235	32.72	2,617.31	68,050.06	34.35	2,748.18	71,452.68	36.06	2,885.18	75,014.68	37.87	3,029.33	78,762.58	39.77	3,181.68	82,723.68
Water Meter Technician II	20	8105	217	35.99	2,698.97	70,173.22	37.79	2,833.88	73,680.88	39.67	2,975.55	77,364.30	41.66	3,124.35	81,233.10	43.74	3,280.60	85,295.60
Water Meter Technician II -40	20	8621	236	35.99	2,879.03	74,854.78	37.79	3,023.21	78,603.46	39.67	3,173.50	82,511.00	41.66	3,332.99	86,657.74	43.75	3,499.64	90,990.64
Water Systems Operator	20	7211	219	50.01	3,751.00	97,526.00	52.51	3,938.15	102,391.90	55.14	4,135.44	107,521.44	57.90	4,342.22	112,897.72	60.79	4,559.35	118,543.10
Water Systems Operator - 40	20	8622	237	50.30	4,024.21	104,629.46	52.82	4,225.92	109,873.92	55.47	4,437.63	115,378.38	58.24	4,659.31	121,142.06	61.16	4,892.97	127,217.22

Union Code	Union Description
10	IAFF - International Association of Firefighters
20	MEA - Milpitas Employee Association
40	MPOA - Milpitas Police Officers Association
50	Pro-Tech - Milpitas Professional and Technical Group
60	Unrep - Unrepresented
70	Temps - Temporary
80	Mid-Con - UPEC Mid-Mgmt-Confidential Unit



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Purchase Order with Code 3 Technology for Fire Mobile Computer Replacement (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)
Category:	Consent Calendar-Public Safety
Meeting Date:	5/7/2024
Recommendation	Approve and authorize the City Manager to execute the purchase order with Code 3 Technology for 27 Getac ruggedized laptop computers for a total amount not-to-exceed \$152,507.45.

BACKGROUND:

The City's Fire Department vehicles are equipped with advanced technology systems that provide fire staff essential functionalities, including maintaining continuous communication with the 9-1-1 dispatch center and interacting with various systems and databases. This capability is made possible with ruggedized computers and secure wireless connectivity.

The last upgrade project was completed in September 2017. The current mobile computers and accompanying wireless equipment have now reached the end of life, and the degraded performance of the existing computers does not meet the increasing demand for modern computer applications and systems. The deteriorating hardware also contributes to reliability and performance issues, which could hinder productivity, increase response times, and require significant IT resources to perform continuous repair and troubleshooting.

The manufacturer of the current equipment has been acquired by another company and is no longer in business. Replacement parts are also no longer available.

Upgrading the mobile computer system will ensure that firefighters will be equipped with reliable and efficient tools to carry out their duties effectively and demonstrate the City's commitment to their safety and efficiency.

ANALYSIS:

The IT Department and the Fire Department have evaluated rugged computers from industry-leading manufacturers against the City's key requirements.

- **Enhanced Functionality:** Provide enhanced mobility and versatility by replacing the current non-removable computers with removable laptop computers with a docking station.
- **Durability:** Specially designed computers that can withstand harsh environments, including extreme temperatures, humidity, vibrations, and continuous operation.
- **Performance:** Next-generation computer processors that meet the demands of multitasking offer faster processing speeds and greater storage capacity. Performant systems that provide higher compatibility and level of integration with a new generation of public safety products available in the market.
- **Next Generation Wireless:** Next-generation wireless components that provide high-speed internet connectivity.
- **Data Security:** Computers capable of running advanced security tools that provide robust protection and secure connectivity for data-sharing.

- **Product Support:** Industry-leading manufacturer with a history of producing and delivering rugged and reliable products and robust support to other public safety and US military clients.

Through a series of evaluations, staff have determined that the Getac K120 model tablet would best accomplish the objectives of this project. K120 meets all requirements of the Fire Department, and the technical specifications and functionalities have been validated by the IT Department. The manufacturer Getac is highly regarded in the industry and produces several rugged computer products used by various government entities nationwide, including the US Air Force, police, and fire departments.

In 2023, the IT Department also replaced obsolete computers in the Police Department patrol vehicles with Getac K120 model tablet computers. Installing the same rugged computers in the Fire Department vehicles will satisfy the system requirements and provide standardization, and allow IT to efficiently manage all public safety mobile computers.

Per Section I-2-3.08 ("Cooperative Procurement") of the City's Municipal Code, the City's Purchasing Agent is authorized to make purchases based on an agreement or cooperative purchasing program entered into by a public agency. Code 3 Technology has issued a quote referencing Sourcewell Purchasing Cooperative Contract No. 090122-GET, totaling \$152,507.45. Cooperative contracts that exceed \$100,000 require City Council approval. Thus, staff is recommending executing a purchase order with Code 3 Technology through the Omnia Partners Purchasing Cooperative.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve the procurement of Getac Ruggedized Laptop Computers.

Pros: City will not incur \$152,507.45 in costs.

Cons: IT department will not be able to modernize the Fire Department vehicles.

Reason for Not Recommending: City will not be able to equip firefighters with a modern and reliable technology system that is critical for providing effective fire service. Outdated technology in the fire vehicle will result in slow processing speed, security vulnerabilities, incompatibility with other systems, increased maintenance cost, and reduced efficiency due to equipment failures.

FISCAL IMPACT:

The total purchase amount is to not exceed \$152,507.45. The project will be funded by the Capital Improvement Program, CIP 3497 "Public Safety Mobile Computer Terminals". Funding for CIP 3497 comes from the General Government CIP Fund. As of May 1, 2024, the balance in CIP 3497 is \$310,008.55.

California Environmental Quality Act (CEQA):

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

RECOMMENDATION:

Approve and authorize the City Manager to execute the purchase order with Code 3 Technology for 27 Getac Ruggedized Laptop Computers for a total not-to-exceed amount of \$152,507.45.

Attachment(s):

- Sourcewell Purchasing Cooperative Agreement
- Vendor Quote and Purchase Order Template



Solicitation Number: 090122

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Getac, Inc., 15495 Sand Canyon Ave., Suite 350, Irvine, CA 92618 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Law Enforcement Equipment from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 7, 2026, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in materials and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Supplier is not liable in any event for consequential damages. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs, with the exception of consequential damages, incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other

insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcwell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcwell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcwell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcwell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all

references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of

not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any

person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

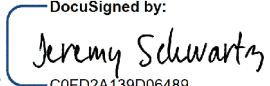
Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's

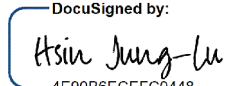
090122-GET

Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Getac, Inc.

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
11/2/2022 | 9:06 PM CDT
Date: _____

DocuSigned by:

By: 4E90B6ECEFC0448...
Hsin Jung-Lu
Title: VP Finance & Business Services
11/9/2022 | 6:52 PM PST
Date: _____

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
11/9/2022 | 9:00 PM CST
Date: _____

RFP 090122 - Law Enforcement Equipment

Vendor Details

Company Name: Getac, Inc.
Does your company conduct business under any other name? If yes, please state: Getac Video Solutions
Address: 15495 Sand Canyon Drive Suite 350
Irvine, CA 92618
Contact: Tammy Tubbs
Email: contract.administrator_us@getac.com
Phone: 949-217-8939
Fax: 949-217-8939
HST#: 954547422

Submission Details

Created On: Tuesday August 09, 2022 14:05:13
Submitted On: Wednesday August 31, 2022 13:26:16
Submitted By: Tammy Tubbs
Email: contract.administrator_us@getac.com
Transaction #: 8ea9ceaa-33c7-4c2e-8e79-8184a5443ff2
Submitter's IP Address: 76.82.4.103

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Getac, Inc.	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	N/A	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	N/A	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	00PP6	*
5	Proposer Physical Address:	15495 Sand Canyon Ave Suite 350, Irvine CA 92618	*
6	Proposer website address (or addresses):	www.getac.com/us	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Hsin Jung-Lu; VP Finance & Business Services, 15495 Sand Canyon Ave, Suite 350, Irvine CA 92618, hj.lu@getac.com, (949) 681-2949	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Tammy Tubbs, Capture Manager, tammy.tubbs@getac.com, (949) 217-8939	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Maria Gutierrez, Contract Administrator, contract.administrator_us@getac.com, (949) 247-4114	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	For over 30 years, Getac has worked collaboratively with Resellers and End Users to identify, consult, develop, and deploy rugged computing solutions across a wide range of sectors; such as public safety, warehousing, transportation, manufacturing, utility, telecom and military / defense. As the 2nd largest rugged IT manufacturer in the world, Getac is tremendously proud of the impacts we have made in helping leverage technology to support the changing role of mobile data terminals in various government entities and our goal is to provide solutions that enhance operations and reduce total cost of rugged mobile data terminal ownership. Getac's current lineup of products include 8 rugged laptops and 8 rugged tablets that feature a rang of screen sizes and features to meet the need of all rugged users.
11	What are your company's expectations in the event of an award?	As a Sourcewell contract holder, Getac plans to utilize this cooperative contract to support a more efficient procurement method for our thousands of customers. We understand the time and cost associated with competitive bidding and look to reduce this procurement challenge for our customers across the US and Canada. We are eager to utilize a robust marketing and training plan to introduce Sourcewell to our customers as a viable procurement method for future procurements.
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Sine 2016, Getac has consistently grown in sales from \$130M in 2016 to \$200M in 2021. Please see "Getac Financial Review" document attached. You may also view our past financial reports at https://en.getacgroup.com/investors/reports.php
13	What is your US market share for the solutions that you are proposing?	Getac currently maintains over 60% market share in the Federal space to include DoD and maintains 35% market share across rugged laptops, tablets, and related accessories and peripherals.
14	What is your Canadian market share for the solutions that you are proposing?	Getac currently maintains over 25% market share in the rugged laptops and tablet space in Canada.
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No.
16	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	As an Original Equipment Manufacturer (OEM) since 1989, Getac has been providing rugged computing solutions for demanding professionals in extreme environments. Getac was established as a joint venture with GE Aerospace to supply defense electronic products. As the 2nd largest rugged manufacturer in the world, with sales over \$41.3B, Getac is an industry leader in the rugged IT space. Rugged is all we do! We have also established key partnerships with major MDT providers like Havis, Gamber Johnson, Lind, Absolute, and Getac Video Solutions to ensure our products have an ecosystem that support an effective and efficient end user solution. We have over 120 North American-based employees that provide Sales, Service and Support to the Getac customer and utilize a strong lineup of 1100+ certified resellers to work directly with the end user and/or customer to ensure the best value rugged IT solution for the buyer.
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	As a manufacturer, Getac is ISO 9001 and ISO 14001 certified. All of our devices also carry a MIL-STD 810H certification (required to officially be called "rugged") and are Ingress Protection (IP) rated for protections against sand, liquids, and other ingress damage. All Getac devices are EPEAT certified Bronze or better to ensure energy efficiency and carry all necessary US and Canadian UL certification. Our device also maintain the NETREADY designation for us across emergency service communication channels.
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	N/A

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
19	Describe any relevant industry awards or recognition that your company has received in the past five years	PCMag -- Best Rugged Laptops for 2022 5/3/22 https://www.pcmag.com/picks/the-best-rugged-laptops?test_uuid=06r4MYCu5PZzCkufjQSV3po&test_variant=b PCMag -- F110 - 4 Stars 5/2/22 https://www.pcmag.com/reviews/getac-f110-2022 NotebookCheck -- S410 Gen 4 5/19/22 https://www.notebookcheck.net/Getac-S410-Gen-4-laptop-review-Simple-changes-with-huge-upgrades.608357.0.html Laptop -- S410 -- 4 Stars - Editor's Choice 1/18/22 https://www.laptopmag.com/reviews/getac-s410-review Laptop -- K120- 4 Stars - Editor's Choice 1/18/22 https://www.laptopmag.com/reviews/getac-k120-review Notebook Check -- B360 1/10/22 https://www.notebookcheck.net/Getac-B360-rugged-laptop-review-Bright-1400-nit-touchscreen.590220.0.html PCMag -- S410 -- 4 Stars 10/7/21 https://www.pcmag.com/reviews/getac-s410-g4 ZDNet Video -- Best Rugged Tablets 7/26/21 https://www.zdnet.com/video/top-5-best-rugged-tablets-in-2021/ RuggedPC Review -- B360 5G 6/23/21 https://www.ruggedpcreview.com/3_news_2021_06_23_getac.html Rugged PC Review -- K120 -- 4/28/21 https://www.ruggedpcreview.com/3_news_2021_04_28_getac.html PCMag -- B360 -- 4 Stars Editor's Choice -- 8/11/20 https://www.pcmag.com/reviews/getac-b360 PCMag -- Best Rugged Laptops for 2022 5/3/22 https://www.pcmag.com/picks/the-best-rugged-laptops?test_uuid=06r4MYCu5PZzCkufjQSV3po&test_variant=b PCMag -- F110 - 4 Stars 5/2/22 https://www.pcmag.com/reviews/getac-f110-2022 NotebookCheck -- S410 Gen 4 5/19/22 https://www.notebookcheck.net/Getac-S410-Gen-4-laptop-review-Simple-changes-with-huge-upgrades.608357.0.html Laptop -- S410 -- 4 Stars - Editor's Choice 1/18/22 https://www.laptopmag.com/reviews/getac-s410-review Laptop -- K120- 4 Stars - Editor's Choice 1/18/22 https://www.laptopmag.com/reviews/getac-k120-review Notebook Check -- B360 1/10/22 https://www.notebookcheck.net/Getac-B360-rugged-laptop-review-Bright-1400-nit-touchscreen.590220.0.html PCMag -- S410 -- 4 Stars 10/7/21 https://www.pcmag.com/reviews/getac-s410-g4 ZDNet Video -- Best Rugged Tablets 7/26/21 https://www.zdnet.com/video/top-5-best-rugged-tablets-in-2021/ RuggedPC Review -- B360 5G 6/23/21 https://www.ruggedpcreview.com/3_news_2021_06_23_getac.html Rugged PC Review -- K120 -- 4/28/21 https://www.ruggedpcreview.com/3_news_2021_04_28_getac.html

		PCMag – B360 – 4 Stars Editor's Choice – 8/11/20 https://www.pcmag.com/reviews/getac-b360 PCMag -- Best Rugged Laptops for 2022 5/3/22, Laptop – S410 – 4 Stars - Editor's Choice 1/18/22, Laptop – K120- 4 Stars - Editor's Choice 1/18/22, ZDNet Video – Best Rugged Tablets 7/26/21 https://www.zdnet.com/video/top-5-best-rugged-tablets-in-2021/, PCMag – B360 – 4 Stars Editor's Choice – 8/11/20 https://www.pcmag.com/reviews/getac-b360	
20	What percentage of your sales are to the governmental sector in the past three years	60% of our \$566M in sales over the past three years (2019 - 2021) are government sector sales.	*
21	What percentage of your sales are to the education sector in the past three years	10% of our \$566M in sales over the past three years (2019-2021) are education sector sales	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	State Contracts: (1) MS 2019 - \$890K, 2020 - \$1.3M, 2021 - \$630K; (2) NC 2019 - \$258K, 2020 - \$193K, 2021 - \$163K; (3) NY 2019 - \$132K, 2020 - \$395K, 2021 - \$154K; COOP Contracts: N/A; Currently awaiting NASPO award and OMNIA Award; We utilize our distributors, HP and SYNEX cooperative contracts in conjunction with our certified reseller contract awards.	*
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	As the OEM, we do not directly hold a GSA contract but our products are listed by our Reseller partners and can be found on the following GSA Schedules; Group F- F02 (formerly Schedule 70).	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
Las Vegas Metro Police Department	Mandy Berninger	702.828.3111	*
Florida Fish and Wildlife Commission	Elija Padron	863.648.3832	*
Metro Nashville Police Department	Tom Thorson	615.862.7446	*

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Las Vegas Metro Police Department	Government	Nevada - NV	Rugged laptops and/or tablets for all LVMPD mobile units, including car, motorcycle, horse, and bicycle	Over 40 purchase orders from 10 - 300+ qty since 2017	\$2,900,000+	*
San Bernardino County Sheriff's Office	Government	California - CA	Rugged laptops and/or tablets for all SB County mobile units, including car, motorcycle and bicycle	Over 60 purchase orders from 5 - 400+ qty since 2015	\$3,400,000+	*
Florida Fish and Wildlife	Government	Florida - FL	Rugged laptops and/or tablets for all mobile units, including car, motorcycle, bicycle and boat	Over 10 purchase orders from 22 - 80+ qty since 2018	\$3,200,000+	*
Canadian National Defense	Government	QC - Quebec	On National Military Standing Offer (NMSO) contract to provide rugged laptops and tablets to defense personnel for command and control, mission planning, flightline maintenance and tactical communication.	Over 30+ purchase orders from 5 - 320 qty since 2017	\$3,100,000+	*
United States Air Force	Government	Alabama - AL	On USAF IT contract (currently QEB) to provide contract to provide rugged laptops and tablets to AF personnel for command and control, mission planning, flightline maintenance, situational awareness and tactical communication.	Over 30+ purchase orders from 5 - 400 qty since 2018	\$3,800,000+	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
26	Sales force.	Getac sales force is led by Larry D'Onofrio and supports North America Public Sector sales including all organizations covered by the Sourcewell Cooperative. Larry's team include 12 Regional Sales Managers (RSMs), geographically assigned and possess over 146 years of Rugged Information Technology sales experience. Our RSMs work directly with national and regional certified resellers and end users to develop the best value information technology rugged solution for the interested organization.	*

27	Dealer network or other distribution methods.	Our certified reseller network includes over 1100 Getac certified resellers, including large, small, and diversity business networks. A brief listing of successful Getac resellers include: Brite Datasource Mobility PCN Strategies *DuraTech USA *SHI *GST NWN Barcodes Island Tech Services Cas Severn Glacier Computing *Mobile Rugged Computers Ramco Rugged RCN Midwest Public Safety *USC Canterbury *Preferred Communications Compar Code 3 Insight Howard CDW *Companies identified with current diversity qualifications.	*
28	Service force.	Getac Service force is led by Derek Suzuki and a team of over thirty US-based developers, engineers, technical support specialists, field service specialist. Getac also maintains an Order Operations 12-member team led by Cheryl Wynkoop and provides purchasing manager order fulfillment specialists, demo loan specialists, and order operations specialists to ensure a seamless order experience from receipt of PO to customer delivery. All Getac Service tools and reports are available to the end user on our 24/7 Customer Portal.	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	When an end user shows an interest in purchasing Getac equipment, we will assign certified regional reseller to support the development of the SKU# and Purchase Order. Once Getac has received the PO from the reseller, we will place the order with our factory and coordinate delivery and installation (if necessary). All Getac customers will have a Getac RSM and Reseller POC assigned to each sale.	*

30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	a. In Service Warranty - Customer support is available by calling 1-866-394-3822 or email at Getac.Support@Getac.com. End user may initiate all in-warranty requests by logging in to the Service Portal at https://support.getac.com/Portal/SetLanguage?languageCode=us. b. Out of Warranty (OOW) Services - Should a hardware problem arise requiring service for an out of warranty device our customer can follow this simple process. 1. Visit https://usrma.Getac.com/ and register as a new user 2. Once logged in, a customer will select Create Service request and Follow the prompts 3. Customers may generate a quote and save it to their account for 30 days 4. Once the quote is paid for on the Portal, an RMA is issued along with shipping labels. 5. All prices include time and material plus round-trip shipping Customer Complaints and Service-related Issues – Initial complaints and service-related issues are handled through Getac's Level 1 Technical Support. If an issue which requires escalation, a Getac Level 2/3 Technical Support Representative or Professional Services Manager will take over the case through resolution. An acknowledgement with appropriate follow up communication should take place throughout the research until resolution. Response Time (pre-CV19/Post CV19) – Getac provides technical support for Getac branded product for the following hours of operations: • Level 1 Technical Support is offered 7 days a week x 24 hours per day x 365 days a year. This would consist of basic troubleshooting, product use and service questions. • Level 2 Technical Support is offered from 8am – 6pm ET, M – F, excluding holiday / Response time when escalated from Level 1 is within 4 business hours. • Level 3 Technical Support is available from 7am – 6pm PT M-F, excluding holidays / Response time when escalated from Level 2 is by next business day. Case Management - All complaints received via email or phone call are captured in Getac's case management software and each customer contact is time stamped. Each escalation has a running time capture with escalation notification sent to all team members. This ensures the fastest response from the first available resource (Level 2/3, Prof Svc Mgr) to address the issue.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	As the second largest rugged laptop and tablet manufacturer in the world, Getac is proud to provide our rugged lineup of products to the Sourcewell participating entities. We are unique to the IT industry because "Rugged Is All We Do." Since 1989, Getac has sought to grow our North American presence and the use of cooperative contracts like Sourcewell, provides efficient and cost effective procurement opportunities for our nations' public sector and non-profit industry. Getac is prepared for additional growth this contract may afford and is currently operating our total manufacturing capability at 70%.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Our Getac sales force and support include Canadian assets including Regional Sales Managers and Certified Repair Centers centrally located in Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Getac currently supports all geographic area of the United States and Canada.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Getac does not forsee any issues servicing the Sourcewell participating entity sectors.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Getac does not have any specific contract requirements or restrictions that would apply to participating entities in Alaska, Hawaii, or other US Territories.	*

Table 7: Marketing Plan

Line Item	Question	Response *
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36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Upon contract award for the new Contract, Getac plans to promote the contract award through internal and external communications as approved by the Agreement Administrator. The goal of marketing the contract is not only to communicate the value proposition, benefits, and the Sourcewell and Getac story, but also to emphasize Getac's commitment and flexibility in delivering and promoting Sourcewell and/or State-specific standards and savings as appropriate and approved by the Agreement Administrator and the participating agencies. To ensure effective marketing plan execution, the Getac Contract Representative, with the collaboration of the Agreement Administrator and designated participating agencies, will develop a plan annually that will help in promoting contract awareness and value for the contract. Getac looks forward to reviewing and discussing the proposed plan with after award.	*
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	The Marketing plan will include several key features: Press Release: Getac will collaborate with the designated Agreement Administrator and other designated contacts to prepare and distribute a press release, after approval, announcing the contract award to Getac. Once a press release is written and approved, and with permission, Getac will manage all efforts with the media. The press release will be sent to all government industry publications and released over the business wire for pickup by major media. Getac will also leverage the announcement over social media sites to include LinkedIn, Facebook, and Twitter. As required under the contract, all marketing materials will be provided for review, modification and approval prior to distribution. Communication will not be released without approval in writing from the Agreement Administrator. Advertising: Getac will drive contract awareness and product/service promotions under the contract through Getac web banners on https://www.getac.com/us/ and our Platinum Tier Certified Resellers promoting the contract value proposition and product/service promotions through web banners provides an opportunity to reach a large audience of procuring entities. Web banners have a "call to action" inviting the reader to contact Getac URL for pricing and information. Getac will distribute periodic email newsletters and promotions to eligible procuring entities throughout the contract term. These email promotions will provide the most current ongoing promotions. As required under the contract, all marketing materials will be provided to the Agreement Administrator for review, modification and approval prior to distribution. Communication will not be released without approval in writing from the Agreement Administrator. Web Presence: The Getac Sourcewell contract website that is in development with a potential landing page named https://sourcewell.getac.us/ will offer customers extensive information on the contract, products, certified resellers, warranty, pricing and more. Getac will continue to make improvements throughout the contract term to provide information to potential Sourcewell procurement entities. The website will provide a dropdown menu of the participating agencies and guide the user to a state specific page to facilitate procurement efforts. Each state website will be personalized, as allowed by and as approved by the Participating Agencies Procurement official, to meet the needs of the organization and maintain the approved format.	*
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Marketing Events & Forums: Getac will participate in annual marketing events annually and attend other Sourcewell events. The Getac Primary Account Representative will attend events along with the Contract Program Management team and potential management team members. The Getac Primary Account Representative and other Program Management team members will meet with participating agencies throughout the year to review participating agencies marketing plans and events, which may include management. Getac, in partnership with our Platinum tiered certified resellers, may schedule seminars in local major cities to review the latest IT trends and new Getac products with both local agencies and Getac authorized partners. Getac will work with the Agreement Administrator, designated Sourcewell teams and/or participating agencies to make them aware of these events or schedule additional seminar events or Webinars. Events will provide important information to agencies on contracts specifics including product scope, ordering information, price lists, and how to save more using this contract. As allowed and approved by the Agreement Administrator, Getac agency-approved partners can assist in the marketing activities in this section to promote the contract through telemarketing/email/social media campaigns, events and distribution of Agreement Administrator approved marketing documents. This will allow Getac to reach even more agencies for contract awareness.	*
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Due to the highly customized nature of each and every rugged laptop and tablet Getac manufacturers, we do not offer E-procurement service for initial procurement. Once a Getac customer, customers will be provided a User Log In to purchase additional accessories, peripherals as needed and approved under the terms of the contract.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	All Getac products will come with an operating manual and access to training materials via the online customer portal at no additional cost to the buyer. Getac may also be able to provide additional training and support as requested at no additional cost to the procurement agency.
41	Describe any technological advances that your proposed products or services offer.	1. Our revolutionary LumiBond® 2.0 touchscreen technology, which bonds the display glass with the touch panel and LCD, creating a single pane that is more durable and readable, and offers better contrast and more crisp colors than other rugged laptop display. It features four advanced touch modes (Touch, Glove or Pen mode, plus an optional Digitizer mode), and the included hard-tip stylus enables you to capture signatures and take more precise notes on drawings, maps, or forms. 2. Main chassis structure is precision cast using Magnesium Alloy, an incredibly strong structural metal that also happens to be one of the lightest in the world for its strength. We combined that with an advanced rugged polymer in areas of less impact and rubberized absorption polymer at the main points of contact. Our devices have been independently tested and certified to MIL-STD-810H and MIL-STD461G standards. 3. Hot-swappable dual-battery design allows for potentially everlasting, uninterrupted battery life. This enables you to remove one of the two rechargeable batteries and replace it with a fresh battery without ever shutting down apps or your Windows OS. 4. AT&T FirstNet Ready®, offers an easy-to-carry profile, a comfortable touchscreen, and more power to run your general office and industry-specific applications with ease for first responders. 5. Most of our models' offer the newest and fastest wired and wireless connection options available. Thunderbolt™ 4 offers 40 Gbps data sharing with other devices, while Wi-Fi 6 (802.11ax) offers nearly five times speedier WLAN connectivity than the previous generation, and more reliability in dense deployments. The new Bluetooth 5.2 standard enhances connectivity with various Low-Power Wide-Area (LPWA) devices, while Wireless WAN with integrated GPS/GLONASS receiver, incorporating the latest Sierra Wireless module, delivers advanced air interface connectivity, including LTE-Advanced (LTE-A). 6. All Getac devices come with an entire lineup of accessories and peripherals including multiple battery charging stations, hands straps and holders, detachable keyboards, stylus' just to name a few.
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	In response to the trend of international environmental protection, such as the requirements of product greening, toxic free, hazard free and environmentally friendly design, packaging, and recyclability, the Company has developed "Regulations for Getac Environmental Load Control" and "Getac Green Product Operating Procedures" and other related operating procedures and regulations, to actively promote overall product greening internally, and require all Getac suppliers to cooperate with the requirements of Getac environmental control regulations, not only to meet the requirements specified in the domestic and international environmental protection laws and regulations, so that the products can be successfully marketed globally, but also with stricter demand of self-expectation to meet the requirements of customers, while fulfilling the corporate responsibility and emphasizing the importance of environmental protection. We are also making it easier for customers to reduce waste by designing easily recyclable products and working with our Certified reseller partners to offer environmentally friendly packaging services and solutions for large scale device deployments.
43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Getac cares about the environment. We have implemented strict policies to ensure our material parts, products, packing and manufacturing processes are environmentally friendly. We are proud to partner with organizations around the globe to bring awareness and help implement solutions to the environmental issues the world is facing. As a certified green manufacturer Getac has been independently tested and received environmental certifications including EPEAT®, RoHS Directive, REACH Regulation, and ENERGY STAR®. We believe in, and actively pursue innovation that will continue to lessen the environmental impact of electronics manufacturing to improve the quality of human life and protect the planet. Getac has set the Company's environmental policy with the goal of "Care for Environment, Sustainable Recycling," clearly set for cherishing the earth's resources, complying with national environmental laws and regulations. Getac is committed to promoting green production, fulfilling our responsibility to protect the earth, through standard operation procedures; we include water resources management, energy management, wastewater, waste, and air pollution prevention in our daily management. All Getac's factories scrupulously abide by the environmental laws and regulations of the plant locations, and all factories have obtained the environmental management system certification of ISO14001 or the same level, and all plants have completed the new version certification of ISO14001:2015 at the end of 2019.

44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	N/A	*
45	What unique attributes does your company, your products, or your services offer to Sourcwell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcwell participating entities?	As an OEM, Getac is the only global rugged IT manufacturer that builds every device from the ground up. Our ability to forecast sales and manufacturer in spite of global market supply fluctuations ensures our customer have the fastest delivery time available in the industry. Despite global supply chain issues in 2020 and 2021, Getac has maintained a <60 day delivery timeline as our competitors are regularly shipping at 120 - 180 days after receipt of purchase order.	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	Our S410 comes standard with a Limited 3 Year Warranty and all other products come standard with a 3 Year Bumper to Bumper Warranty that includes accidental coverage. Additional warranty for Year 4/5/6 may be purchased for an additional fee. Getacs warranty obligations for this hardware product are limited to the terms set forth below: Getac, Inc. warrants this Getac-branded rugged computer against defects in materials and workmanship under normal use and damage that occurs due to accidental acts and exposure to environmental conditions for a period of THREE (3) YEARS from the date of purchase by the original end-user purchaser ("Warranty Period"). This warranty only applies to products sold by Getac or its Authorized Distributors or Dealers and only where the products are used and serviced within North America or its Authorized Service Providers' territories. Warranty coverage only applies to service carried out by a Getac Authorized Service Provider. If a hardware defect arises and a valid claim is received within the Warranty Period, at its option and to the extent permitted by law, Getac will either repair the defect at no charge, using new or refurbished replacement parts, or exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product. A replacement product or part, including a user installable part that has been installed in accordance with instructions provided by Getac, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair, whichever provides longer coverage for you. When a product or part is exchanged, any replacement product becomes your property and the replaced item becomes Getacs property. Parts provided by Getac in fulfillment of its warranty obligation must be used in products for which warranty service is claimed. Please review "Warranty Card" attached for additional warranty information.	*

47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Exclusions and Limitations - This Limited Warranty applies only to Getac-branded hardware products manufactured by or for Getac that can be identified by the "Getac" trademark, trade name, or logo affixed to them. The Limited Warranty does not apply to any non-Getac hardware products, co-branded hardware products (whether or not displaying a "powered by Getac" trademark, trade name, or logo affixed to them) or any software, even if packaged or sold with Getac hardware. Manufacturers, suppliers, or publishers, other than Getac, may provide their own warranties to the end user purchaser, but Getac, in so far as permitted by law, provides their products "as is". Software distributed by Getac with or without the Getac brand name (including, but not limited to system software) is not covered under this Limited Warranty. Refer to the licensing agreement accompanying the software for details of your rights with respect to its use. Getac does not warrant that the operation of the product will be uninterrupted or error-free. Getac is not responsible for damage arising from failure to follow instructions relating to the product's use. Batteries supplied with the product are covered under the warranty for one (1) year from date of purchase. A battery furnished under the warranty is covered for the remaining period of the one year warranty on the original battery or ninety (90) days from the date of replacement or repair, whichever provides longer coverage for you. The LCD, touchscreen, hard drive/SSD, motherboard, and keyboard are limited to one repair/replacement per part component per 12 month period for damage that occurs due to accidental acts and exposure to environmental conditions. This warranty does not apply to: (a) loss or theft; (b) fire; (c) submersion; (d) acts of god; (e) acts of war; (f) virus-inflicted damage; (g) improper use, intentional misuse or abuse; (h) improper maintenance or modification by anyone other than Getac or a Getac Authorized Service Provider; (i) a product or part that has been modified to alter functionality or capability without the written permission of Getac; (j) a product on which any Getac serial number has been removed or defaced; (k) data recovery from hard drive failure; (l) All consumable items; such as screen protection films, logo badges, labels, cleaning cloths, carry cases, manuals, cables, straps, belts, holsters, tethers, stylus, digitizer pens, and harnesses and any other options and accessories not listed above or covered under a separate warranty. (m) to cosmetic damage that does not affect the functionality of the system, including but not limited to scratches, dents and numerals, letters, icons and symbols silkscreened onto unit keycaps and numerals, letters, icons and symbols silkscreened onto unit cabinet; or (n) negligence (o) operation of product outside the published environmental or electrical parameters (p) use of supplies or parts not meeting Getac's specifications Please review "Warranty Card" attached for restrictions and other limitations.
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48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Technicians do not need to travel to perform warranty repairs. Warranty Repair Description - Getac offers an industry-leading warranty (bumper-to-bumper) on our products for a minimum of 3-years (semi-rugged product require service upgrade), which includes accidental damage. With one of the lowest annual failure rates in the computer industry, Getac computers are built-to-survive. If one does need repair, we want to make it as convenient as possible. That's why Getac rugged computers are serviced by FedEx Logistics - a fast, convenient and reliable service so you can quickly get back to doing what you do best. For minor repairs, Getac's Self-Maintainer Program lets customers opt to have replacement parts shipped directly to them. Device Support - Getac employs a multi-layered support structure, at no cost to the End User that includes a Solutions Architect, Field Service Engineer, and a 3-Tier Technical Support team. In addition, Getac's 24/7 technical support is available via email at GetacSupport_US@Getac.com or by phone at +1 (866) EZ-GETAC [+1 (866) 394-3822]. All support requests via phone or email are logged in our internal ticketing system and assigned to the appropriate resource. Escalation to product or software engineering is engaged as needed. The Getac Service Portal allows real-time tracking of hardware repairs and history. For technical support incidents, a ticket # is generated for every request and on-going and final resolution can be obtained by referring to previously assigned ticket #. Getac does not use "off-shore" technical support.
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49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	No. Getac repair services are available in US and Canada. For Level I/II Repairs – Getac Self-Maintainer Program empowers in house technicians to provide immediate services to defective unit for minor repairs. For Level I and Level II repairs, the Getac Self-Maintainer Program allows you to perform warranty repairs on Getac products. Instead of shipping products to Getac's US-based Repair Center, the defective part can be swapped out by your own technicians. This allows you keep possession of your products and minimize downtime. Self-Maintainer repairs include all parts, and materials at no additional cost. Common cosmetic repairs like hatch door replacement are also included. Getac provides training for your team as part of the Self- Maintainer Program with an emphasis on parts replacement, product use and Getac's Service System processing. Upon successful completion of training, Getac supplies you an initial stock of seed parts to inventory at your location. When a repair is needed, your technician diagnoses the problem, creates an RMA in Getac's Online Service System (GSS) then removes the required part from Getac consigned inventory and repairs the unit. To replenish the inventory, simply place the defective part in the used part box, put a copy of the RMA inside, write the RMA number on the outside of the box and return it to Getac. Upon receipt of the defective part, Getac will ship out a replacement part to you. When you receive the new part, place it into inventory for future repairs. To ensure our high standard for repair is met, Getac has established the following qualification requirements for the Self-Maintainer Program: • Repairs are limited to customer owned product—150-unit minimum • Must be a current Getac USA customer in good business standing • Must have Service and Spare Parts Agreement in place with Getac • Must have qualified technicians on staff capable of repairing Getac products • Must have a dedicated environment and tools appropriate to repair products • Maintain product repair information and problem codes in the Getac Service Portal for product tracking and spare part replenishment Level III Repairs - FedEx TechConnect Program was designed to offer fast, convenient, reliable service repairs that can be initiated 24 hours a day, 7 days a week on Getac Service Portal. With one of the lowest annual failure rates in the computer industry, Getac computers are built to survive. If one does need repair beyond the Level I & Level II Self-Maintainer program, we want to make it as convenient as possible. Getac has partnered with FedEx TechConnect, a fast, convenient, reliable service repair center located in Memphis, TN. The End-of- runway location ensures shorter time in transit for express shipments and 3 day or less transit by FedEx Ground for most of the US. Warranty repairs can be initiated 24 hours a day, 7 days a week on the Getac service portal. With over 1,800 FedEx Office locations nationwide, it's easy to find a convenient drop-off location to and US-based end user. Once the device is shipped to the end of runway state of the art facility, technology repair specialists, certified by Getac, provide diagnostics, repair, re-image and upgrade services with quality assurance methodologies designed to verify that everything is working properly. All Getac warranty repairs are performed by expert technicians using only Getac original production parts. Every repair comes with online three-stage tracking of the inbound shipment to the repair center, during repair or upgrade, and the return shipment back to the designated location. With the 24/7 online monitored chain of custody, your system is always either with FedEx or you. Average repair time, excluding shipping, is 3.1 days.
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	All Third Party products warranty will be passed to the original equipment manufacturer. Third Party Product Warranty Services – All third-party product warranty procurement processes, descriptions, and contact information will be available on a link at the Sourcewell/Getac website under Third Party products.

51	What are your proposed exchange and return programs and policies?	In accordance with generally accepted rugged manufacturing return and exchange policies, Getac does not allow exchanges or returns on any delivered products. each product is custom made-to-order and will only be promptly replaced if it arrives Dead-On-Arrival (DOA). Getac RSMs and certified resellers take great care to support the buyer through the procurement process to ensure the exact device(s) order meet and/or exceed all desired end user specifications.	*
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52	Describe any service contract options for the items included in your proposal.	Additional Accessory/Service Warranty Details Peripherals - Getac peripherals come with at least 1-year warranty as standard. However, should you wish to extend the warranty on your Getac device, it makes sense to do the same for your peripherals. - We can offer extensions to year 2 ~ 5 from the standard warranty on Getac or 3rd party accessory, keyboard, docks and rugged power supplies. - If your accessory fails, log onto our Getac Service Portal and request a repair. Once returned, your accessory will be repaired, tested and shipped back to you. - If you work to a longer refresh cycle or are looking to extend your current devices working life email us at GetacSupport_US@Getac.com or by phone at +1 (866) EZ-GETAC [+1 (866) 394-3822] to discuss additional warranty extensions options. Batteries - We pride ourselves on the quality of batteries and their ability to perform throughout a full day. However, batteries are considered to be "consumable" as there are limitations on the recharge cycles of all batteries. Since batteries are consumable products, the industry standard and that of Getac is to provide a 1-year warranty. - You can extend this with our Battery Warranty so that should it fail we will send you a replacement battery. - A battery is considered good if it maintains 50% of its charge capacity during the warranty period. Expedited Service - For customers who want their mission-critical equipment repaired faster, we have two options for expedited service available for an additional fee. No more internal challenges waiting for estimates and approvals, just report your product issue via our Service Request system and we'll take care of the rest Option 1 - Express Care Option 2 - Priority Care 2 Days Shipping Overnight Shipping Line Hopping Priority Front of Queue Priority 2 Days Repair 1 Day Repair To ensure that our high standard for repair is met, Getac has established the following qualification requirements for the Expedited Service Program: - Must purchase Expedited Service Program with Getac product at the same time. - All purchases are recorded in the Getac Service System. When devices need repair, register the service request (SR), which will automatically generate expedited service information in SR. - Getac provides a 3-year expedited service for 3-year warranty products, and provides a 5-year expedited service for 5-year warranty products. - Accessories are not included in this program Extended Warranty - Extend your standard warranty from 3 years up to 5 years, for specific projects we can offer up to 7 years of extended warranty. Getac's standard warranty for fully rugged devices includes the Bumper-to-Bumper warranty which covers accidental damage. The Extended Warranty covers any repairs in the same manner as the standard warranty. - Getac provides coverage for failures due to defects in materials or workmanship that occur with normal use. - All system components are covered under the extended warranty, except consumable items. - Purchase the Extended Warranty option at the point of sale or within 3 months of purchasing your Getac device. Keep Your Hard Drive Warranty (KYHW) - Getac is experienced in dealing with security-industry customers that require top-level security to protect the data on their devices. For these customers, we can ship you a replacement HDD / SSD. - Getac takes reasonable precautions to protect your data while it is in our hands. However, some customers' devices hold sensitive data that they cannot take any risks. Keep Your Hard Drive warranty option is designed for these customers. If you handle data of a sensitive nature, for national security or commercial reasons, then add this to your warranty.
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Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	The value-added reseller partners supporting this contract have specific focuses on State and Local Government entities. These partners are aligned with the Getac Public Sector team and receive additional support from Getac's Field Sales organization. This alignment ensures partners have the proper support and competence to master the requirements set forth by the partnering government end users. The appointed resellers include large national organizations as well as local partners who often provide additional services around product deployment and implementation of Getac devices. These value-added resellers will work directly with the participating agencies to provide both pre- and post- sales support, quotes, as well as installation and implementation services. Getac's value-added resellers will be the primary points of contact for acceptance of orders, invoicing, and payment. Payment terms are generally Net30. These value-added resellers will source all Getac solutions and services through Getac's appointed distribution partners, who have a direct purchasing relationship with Getac, the manufacturer. Upon receiving a fully executed purchase order from the government end user, the value-added reseller will issue purchase order to one of the appointed distributor partners. The purchase order to distribution will include a copy of the end customer's purchase order for the purpose of tracking and reporting as indicated below.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	Paul Levand Vice-President of Business Development "On the North Coast of America" 216-496-6711 plevand@rivercapital.com www.rivercapital.com	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Getac is prepared to accept the buyers standard transaction documents and do use any mandatory forms, SLAs or T&Cs in connection with award.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	No. ACH preferred method of payment.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Getac will provide a minimum discount off MSRP by Category. Additional discounts may be offered at the discretion of the certified Getac reseller. See "Getac Proposed Pricing Sheet" for additional details.	*
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Getac pricing sheet includes SKU, Description, MSRP, % Off Discount by Category, and Proposed Sourcewell NTE price. See "Getac Proposed Pricing Sheet."	*
59	Describe any quantity or volume discounts or rebate programs that you offer.	Getac does not offer quantity or volume discounts or rebate programs. They may be offered by the certified reseller.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Getac does not sell open market items and only sells Getac labeled products and related accessories and peripherals. All SKUs and descriptions and NLT price can be reviewed on the "Getac Proposed Pricing Sheet."	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Getac does not have additional costs associated with the purchase of items identified in the "Getac Proposed Pricing Sheet."	*
62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Freight, delivery and/or shipping is included in the price of the device.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Freight, delivery and/or shipping is included in the price of the device.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	N/A	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Upon award, GETAC will have a master price file/catalog set up that include the guaranteed category discounts along with the scope of products allowed under the contract and thresholds tied to each part number as approved by the Administrator defined in the awarded Master Agreement. During each setup process, these price files are reviewed by contract and pricing operations personnel for accuracy as part of GETAC's contract compliance and pricing management business processes. These same reviews and approvals occur each time a product is added, or a contract modification is received. GETAC's price file/catalog of products under each category is tied systematically to the MSRP list price and tied to the discounts that automatically pre-calculate the price file/catalog in accordance with the discount that is reflected and flowed to the contract website and the Inside Sales Representatives' quoting tool. The GETAC system that houses the price list/catalogs were recently audited to ensure compliance, and GETAC agrees to conduct random checks during the term of to ensure quotes provided are at the discount off list price he contracts as required. Getac will conduct a quarterly self-audit, that will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings will be reported to Lead Agency with actions to correct documented findings. GETAC audits purchase orders and corresponding invoices randomly on a quarterly basis under existing contracts today and will continue this process under a new awarded contract. The website, quotes and invoices generated through GETAC systems are based on the contract number tied to a specific price file/catalog for pricing and systematically flows. GETAC agrees to conduct random checks during the term of the contract as required. Quotes automatically reflect the discount off GETAC's list price as required under the contract, and invoices will reflect the lowest price at the time the product ships. If an order is received for GETAC-branded product and a price decrease was generated prior to shipment, the procuring entity will receive the price decrease reflected on the invoice, providing them additional savings.
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	The Contract Administrator will be responsible to provide quarterly and annual sales reports to Getac leadership team and coordinate with our training and marketing teams to produce materials to encourage Sourcewell contract use. After the first year baseline sales, the Contract administrator with direction from the Executive team, will establish increase sales goals and RSMs will be expected to meet sales goals in order to achieve the highest level of annual bonus payouts.
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	1.25%

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Getac offers rugged computing product lines of all sizes including rugged notebooks, rugged tablets, rugged handheld for federal, education, military, public sector, utility, manufacturing, transportation & logistics, insurance, automotive maintenance, and field-service customers. Currently Getac has over 19,300 devices valued at \$82.5M deployed in Federal Government (Non-Military), including transit authorities, public utilities and services, emergency preparedness organizations, judicial support and services and other NGOs. Getac currently manufactures Rugged Laptops ranging in screen size from 11.6" to 15.6." Getac currently manufactures Rugged Tablets and Handheld PCs ranging in screen size from 7" to 14" and has both Windows and Android OS available. Please review the "Getac Lineup Card" for detailed specifications for each device proposed in this RFB.
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	We do not wish to add subcategories. We have listed our products based on minimum specifications identified in the RFP. We will have an "Accessory/Peripheral" category. See below. Rugged Laptop Category - X600, X500, B360, S410, V110 Rugged Tablet Category - A140, K120, F110, UX10, T800 Rugged Handheld PC Category - ZX10, ZX70(Android OS) Accessories/Peripherals - Power Adapters, Stylus Pens, Digitizer Pen, Carry Bag, Dual Battery Charger, High Capacity Battery, Keyboard Dock, Multi-Bay Charger, Office Dock, Hand strap, Shoulder strap, Screen Protector, Standard battery, Vehicle dock

Table 148: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered	Comments	
71	Law Enforcement duty gear	☐ Yes ☒ No	N/A	*
72	Traffic safety enforcement equipment, devices, and instruments	☒ Yes ☐ No	Getac solutions are built to improve upon the computer-aided dispatch software (CAD) and police records management system (RMS) you already use. Writing citations, collision reports, and DUI arrest reports has never been easier thanks to Getac solutions. With our rugged devices, you can write, sync, and submit all the documents required from the field electronically, saving time, and reducing errors. Getac rugged devices are built with law enforcement in mind, providing you access to information to stay situationally aware as you protect and serve. Whether on patrol or during an emergency, Getac devices allow you to remain in contact with command, dispatch, and your fellow officers to make sure everyone is safe and informed.	*
73	Crime scene management and evidence collection equipment and supplies	☐ Yes ☒ No	N/A	*
74	Tactical and EOD equipment (with the exception of those items excluded in subsections 2. or 3. of RFP)	☒ Yes ☐ No	ANSI rated rugged devices available for EOD environments	*
75	Services related to the offering of the solutions in subsections above, such as training, installation, testing, maintenance, warranty programs, and technical support	☐ Yes ☒ No	N/A	*

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - Sourcewell Pricing Page_Final.pdf - Wednesday August 31, 2022 13:23:12
 - [Financial Strength and Stability](#) - Financial Review Form.pdf - Tuesday August 09, 2022 14:38:46
 - [Marketing Plan/Samples](#) - Marketing Plan.pdf - Wednesday August 31, 2022 12:37:18
 - WMBE/MBE/SBE or Related Certificates (optional)
 - [Warranty Information](#) - Warranty Details.pdf - Tuesday August 09, 2022 17:33:13
 - [Standard Transaction Document Samples](#) - Sample Quote.pdf - Wednesday August 31, 2022 11:28:20
 - [Upload Additional Document](#) - Getac-All in One-US-July2022.pdf - Wednesday August 10, 2022 17:29:18

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Tammy Tubbs, Capture Manager, Getac, Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum**" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_5_Law_Enforcement_Equipment_RFP_090122 Wed August 24 2022 02:56 PM	☒	1
Addendum_4_Law_Enforcement_Equipment_RFP_090122 Wed August 17 2022 04:20 PM	☒	2
Addendum_3_Law_Enforcement_Equipment_RFP_090122 Tue August 16 2022 09:33 AM	☒	1
Addendum_2_Law_Enforcement_Equipment_RFP_090122 Wed August 10 2022 07:59 AM	☒	1
Addendum_1_Law_Enforcement_Equipment_RFP_090122 Mon July 18 2022 04:34 PM	☒	2

Date: 4/11/2024
QUOTE: 24-230

Daniel Nam
City of Milpitas
1275 N. Milpitas Blvd
Milpitas, CA 95035
408-586-2712

Customer ID: MFDCA002

Salesperson	Project	Payment Terms	Contract#
Clay Jeppsen	Fire MDCs – Getac K120s	Net 30	Sourcewell #090122-GET

Part#	Description	Qty	MSRP	Sourcewell	Price	Ext. Price
KP8774VAAQXX	Getac K120G2-R, i7-1165G7, W/Win Hello Webcam, Win11 Pro x64, 32GB RAM, 256GB PCIe SSD, Sunlight Readable, Full HD LCD Touchscreen, Hd Tip stylus, Rear Cam, Red Backlit KBD, Wifi+Bluetooth+5G Sub-6 (EM9190) w/ int GPS/Glonass+ Antenna Passthru, 3yr Bumper-2-Bumper Warranty	27	\$5355	\$4552	\$3855	\$104,085
GE-SVTBNFX5Y	Bumper-to-Bumper + Extended Warranty - Tablet (Year 4 & 5)	27	\$599	\$539	\$462	\$12,474
OHG160108203	Gamber-Johnson K120 Vehicle Dock w/ Triple pass-through w/ Screen Stiffener	27	\$1751	\$1576	\$785	\$21,195
GAD2X8	Getac 120W 11-16V, 22-32V DC Vehicle adapter, 3yr war	27	\$110	\$99	\$98	\$2646

Subtotal	\$140,400.00
Sales Tax	\$11,999.45
Recycle	\$108.00
Shipping	\$0.00
Total	\$152,507.45



Thanks for your business!
Quote Expires **6/30/2024***



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Amendments to the Subscription and Services Agreement with RideCo for Milpitas SMART (Staff Contact: Jay Lee, Planning Director, 408-586-3077)
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2024
Recommendation:	(1) Approve amendments to the subscription and services agreement with RideCo for Milpitas SMART; and (2) Authorize the City Manager to execute the amended agreement.

Background:

In November 2016, Santa Clara County voters approved the 2016 Measure B ballot measure, a 30-year half-cent countywide sales tax to enhance transit, highways, expressways and active transportation programs for bicycles and pedestrians. The Santa Clara Valley Transportation Authority (VTA) established the 2016 Measure B Innovative Transit Service Models Program to provide approximately \$6 million in funding to eligible cities through a competitive grant application process.

City staff in partnership with RideCo, a transportation consulting firm that provides on-demand transit solutions, submitted a grant application for funding through the Innovative Transit Service Models Program to develop and implement Milpitas SMART, a 12-month pilot program to provide a flexible, convenient first/last-mile transit solution with convenient connections to VTA light rail and the Milpitas Transit Center. On March 4th, the VTA Board of Directors approved the recommended projects, including Milpitas SMART, and authorized the General Manager to execute the necessary agreements. The City of Milpitas was awarded the full amount of the grant request in the amount of \$1,084,732. On April 5, 2022, the City Council authorized the City Manager to execute a funding agreement with VTA to receive this funding and a subscription and services agreement with RideCo in a not-to-exceed amount of \$1,355,916 for consultant services to operate Milpitas SMART.

Milpitas SMART launched on September 12, 2022 and initially provided first/last-mile connections to or from four key hubs in the City of Milpitas: (1) Milpitas City Hall, (2) Milpitas Transit Center, (3) Great Mall, and (4) VTA Alder Station. Riders could book trips from any one of nearly a hundred virtual stops across the City to any of these four hubs and vice versa. Despite the City's extensive marketing and outreach efforts, ridership for the service remained low through February at approximately 5 passengers per weekday. Furthermore, staff received significant community feedback requesting direct access to key destinations outside the hubs including the Milpitas Library and Milpitas High School.

To meet this demand and increase ridership, City staff requested and received VTA approval to transition Milpitas SMART from a hub-and-spoke to a point-to-point service model. In February 2023, the City implemented this service change. On August 8, 2023, the City Council approved amendments to the funding agreement with VTA and subscription and services agreement with RideCo and authorized the City Manager to execute the amended agreements to reflect this service change. On September 5, 2023, the City Council accepted an allocation of \$1,600,000 in State funding for the SMART Program, approved a budget appropriation of the same amount into Capital Improvement Program (CIP) Project No. 3493 (Milpitas SMART), and provided direction to City staff on proposed program modifications, including expanded service hours, fleet conversion, and fare promotions.

Analysis:

Program Update

Ridership

Since transitioning to a point-to-point service model in February 2023 and expanding the service hours to include weekday evenings and Saturdays in November 2023, ridership has increased dramatically each month and peaked at 4,176 passengers in January 2024.

Marketing and Promotions

City staff in partnership with RideCo has continued to initiate various marketing efforts to increase community awareness of the program and increase ridership. Per Council direction, SMART offered free rides during the holiday season and the project team marketed the promotion through social media posts and in-app messages. The project team also carried out an Earth Day marketing campaign to offer free rides from April 20 to April 30.

Project Funding

The project budget for the initial term of 12 months is \$1,355,916, which is funded by a combination of grant funds from VTA's 2016 Measure B Program, developer contributions, and the General Government CIP Fund. The City also received \$1,600,000 in funding from the State through the Budget Act of 2023 (AB 102) to continue operating Milpitas SMART once the grant funds from VTA and developer contributions are expended.

Budget for Initial Term	\$1,355,916
2016 Measure B Program	\$1,084,732
Developer contributions	\$200,00
General Government CIP Fund	\$71,184
State Funding (Budget Act of 2023)	\$1,600,000
Total Project Budget	\$2,955,916

The City has expended the \$1,084,732 in VTA grant funds and \$200,000 in developer contributions. Once the \$1,600,000 in State funding is expended, the City will then expend the \$71,184 from the General Government CIP Fund set aside for CIP Project No. 3493 (Milpitas SMART).

Based on the expected monthly operating costs and fare revenue collected, the current funding is anticipated to last until Summer 2025. The funding duration is subject to change depending on various factors including potential increases to the cost per vehicle revenue hour and possible fleet conversion. Once the project budget is expended, the City will need to secure additional funding to continue operating Milpitas SMART.

Proposed Amendments

Not-to-Exceed Amount

Although the \$1,600,000 in funding from the State has already been appropriated into CIP Project No. 3493 (Milpitas SMART), an amendment to the subscription and services agreement with RideCo is needed to increase the not-to-exceed amount from \$1,355,916 to \$2,955,916. This amendment would allow the City to expend the \$1,600,000 in State funding and continue paying RideCo for its services through the end of the current agreement term in September 2024. The agreement with RideCo can be extended 12 months at a time for a total of up to 36 months from September 2024.

Service Hours Expansion

An amendment to the agreement is also needed to reflect the current service hours, which were expanded from Monday through Friday, 7am to 7pm, to Monday through Friday, 6am to 9pm and Saturday, 7am to 9pm.

Next Steps

City staff will continue to collaborate with RideCo on exploring external funding sources to operate Milpitas SMART beyond the anticipated funding duration.

Policy Alternatives:

Alternative 1: Do not approve amendment to the subscription and services agreement with RideCo and do not authorize the City Manager to execute the amended agreement with RideCo.

Pros: None.

Cons: In failing to amend the subscription and services agreement with RideCo, the City would be unable to pay RideCo for operating Milpitas SMART and would have to search for a new provider, which would lead to an interruption in service and require additional staff time and resources to procure a new provider.

Reason not recommended: The amendment to the agreement would allow the City to continue operating Milpitas SMART, which provides a valuable and much-needed service to Milpitas' residents, employees, and visitors. Furthermore, the General Plan includes several policies to promote alternative modes of transportation, first/last-mile solutions, and public transit improvements to support the City's circulation goals. The continuation of Milpitas SMART supports these General Plan policies and goals.

Fiscal Impact:

The \$1,600,000 in funding from the State has already been appropriated into CIP Project No. 3493 (Milpitas SMART). The proposed amendment to the subscription and services agreement with RideCo would not change the project budget. As of May 1, 2024, the balance in CIP 3493 is \$1,580,000.00.

California Environmental Quality Act:

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

Recommendation:

1. Approve amendments to the subscription and services agreement with RideCo for Milpitas SMART.
2. Authorize the City Manager to execute the amended agreement.

Attachment:

- (a) Draft RideCo Subscription and Services Agreement Amendment No. 4
- (b) RideCo Subscription and Services Agreement Amendment Nos. 1 through 3



**AMENDMENT NO. 4 TO
SUBSCRIPTION AND SERVICES AGREEMENT
WITH
RIDECO US INC.
FOR
RIDECO'S DYNAMIC TRANSIT SYSTEM**

This Amendment No. 4 is entered into as of _____, (the "Effective Date") by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as "City") and **RideCo US Inc**, a stock corporation (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 4.

RECITALS:

WHEREAS, on May 26, 2022, the Parties entered into a Subscription and Services Agreement (the "Agreement") for Rideco's Dynamic Transit System for the not-to-exceed compensation amount of One Million Three Hundred Fifty-Five Thousand Nine Hundred Sixteen Dollars and Zero Cents (\$1,355,916.00), and with an initial term period from "launch date" through twelve (12) months (the Agreement); and

WHEREAS, on September 1, 2023 the Parties entered into Amendment No. 1 to replace Schedule A, Project Terms and Scope of Work; and

WHEREAS, on September 11, 2023 the Parties entered into Amendment No. 2 to replace Schedule A-1 Project Terms and Scope of Work (Revised August 2023); and

WHEREAS, on April 24, 2024 the Parties entered into Amendment No. 3 to replace Schedule A-2, Project Terms and Scope of Work (Revised September 2023); and

WHEREAS, the Parties now wish to amend the Agreement to replace Schedule A-3, Project Terms and Scope of Work (Revised April 2024) to update the hours of operation, extend the agreement by twelve (12) months, and to include a One Million Five Hundred Eighty Thousand Dollars and Zero Cents (\$1,580,000.00) increase for a new not to exceed of **Two Million Nine Hundred Fifty-Five Thousand Nine Hundred Sixteen Dollars and Zero Cents (\$2,955,916.00)** .

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

1. Schedule A-3, Project Terms and Scope of Work (Revised April 2024) is hereby deleted in its entirety and replaced with Schedule A-4, Project Terms and Scope of Work (Revised May 2024) attached hereto and incorporated herein by this reference.
2. The new term of this agreement is from September 12, 2022 through September 11, 2025.

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

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 4 as of the date first written above.

CITY OF MILPITAS

RIDECO US INC

Approved By:

Ned Thomas, City Manager

Signature

Date

Name

Approved As To Form:

Michael Mutalipassi, City Attorney

Title

Approved:

Date

Luz Cofresi-Howe
Finance Director/Risk Manager

Approved As to Content:

Jay Lee, Planning Director

SCHEDULE A-4
PROJECT TERMS AND SCOPE OF WORK
(Revised May 2024)

Project Term: 12-months starting on the launch date to the passengers, September 12, 2022. After the initial 12-month term, the City will have a one-time option to extend the contract from one (1) to up to twelve (12) months. Future extensions will require an increment of twelve (12) months at a time for a total up to thirty-six (36) months. The duration will be determined by mutual agreement by both parties and is subject to agreement of applicable terms including the appropriate Subscription and Services Fee.

Zone: Milpitas, CA

Service model: on-demand Point-to-Point Microtransit using virtual stops, within the Zone

Vehicles: Approximately four (4) 6-seat Dodge Caravan (or equivalent) minivans and three (3) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject to day of week, time of day and passenger demand.

Service Hours: 6am-9pm Monday to Friday and 7am-9pm Saturday

Vehicle Revenue Hours: Approximately 21,840 vehicle revenue hours based on 7 vehicles with a minimum of 18,720 vehicle revenue hours with 6 vehicles for the initial Project Term;

Subscription and Services Fee: \$58.65 per vehicle revenue hour

Purchase of bike racks and installation are not included in the pricing. Price estimates to be provided by Transit Operations Provider prior to purchase and installation of bike racks. Should services and/or insurance requirements change, RideCo reserves the right to adjust the service fees for any changes.

Marketing Budget: approximately \$75,000 **including vehicle wraps and installation**

Budget for the Project Term not to exceed: \$2,955,916.00

Float: \$25,000

City and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner.
2. RideCo shall coordinate with City to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential

subsidization).

3. RideCo shall ensure the adequate and complete training of initial operators, dispatchers, operations manager(s), and City staff that are involved in the operation or monitoring of the service. Additional training sessions may be requested under Professional Services fee of \$120 per hour.
4. RideCo will ensure that the functions listed in Schedule “D” Software Functional Requirements are met.
5. RideCo and City will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with City to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by the City and RideCo. Custom reporting is out of scope but may be requested under Professional Services fee of \$120 per hour.
8. RideCo will review data dashboard with the City and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide City with any recommendations for changes in virtual stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide city with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. City will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. RideCo, through its marketing subcontractor, will design graphics to be placed on the vehicles in accordance with specifications provided by the Transportation Operations Provider. Transportation Operations Provider will be responsible for having the graphics placed on the vehicles prior to commencement of vehicle revenue operations.

Vehicles and Drivers:

1. For the initial project term, the minimum number of vehicles in service is 6 vehicles.
2. Driver shift minimum is four (4) hours.
3. RideCo, through its subcontractor Transportation Operations Provider, will be

responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.

4. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving While Intoxicated) in the past seven (7) years
 - c. Speak, write, and read English fluently
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
5. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.
6. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
 - a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs
 - c. How to handle doubt, misunderstandings and objections
7. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
 - a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application,

customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.



**AMENDMENT NO. 3 TO
SUBSCRIPTION AND SERVICES AGREEMENT
WITH
RIDE CO US INC.
FOR
RIDE CO'S DYNAMIC TRANSIT SYSTEM**

This Amendment No. 3 is entered into as of Apr-24-2024, (the "Effective Date") by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as "City") and **RideCo US Inc.**, a stock corporation (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 3.

RECITALS:

WHEREAS, on May 26, 2022, the Parties entered into a Subscription and Services Agreement (the "Agreement") for Rideco's Dynamic Transit System for the not-to-exceed compensation amount of One Million Three Hundred Fifty-Five Thousand Nine Hundred Sixteen Dollars and Zero Cents (\$1,355,916.00), and with an initial term period from "launch date" through twelve (12) months (the Agreement); and

WHEREAS, on September 1, 2023 the Parties entered into Amendment No. 1 to replace Schedule A, Project Terms and Scope of Work; and

WHEREAS, on September 11, 2023 the Parties entered into Amendment No. 2 to replace Schedule A-1, Project Terms and Scope of Work (Revised August 2023) and extend the agreement by twelve (12) months; and

WHEREAS, the Parties now wish to further amend the Agreement to replace Schedule A-2, Project Terms and Scope of Work (Revised September 2023) to include a Twenty Thousand Dollar and Zero Cent (\$20,000.00) increase for a new not to exceed of **One Million Three Hundred Seventy-Five Thousand Nine Hundred Sixteen Dollars and Zero Cents (\$1,375,916.00)**.

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

1. Schedule A-2, Project Terms and Scope of Work (Revised September 2023) is hereby deleted in its entirety and replaced with Schedule A-2, Project Terms and Scope of Work (Revised April 2024) attached hereto and incorporated herein by this reference.
2. All other provisions of the Agreement not amended by this Amendment No. 3 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

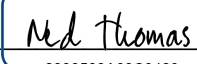
SIGNATURE PAGE TO AMENDMENT NO. 3
TO THE SUBSCRIPTION AND SERVICES AGREEMENT
WITH RIDEKO US INC
FOR RIDEKO’S DYNAMIC TRANSIT SYSTEM

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 3 as of the date first written above.

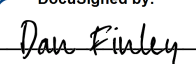
CITY OF MILPITAS

RIDEKO US INC

Approved By:

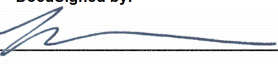
DocuSigned by:

Ned Thomas, City Manager

Apr-24-2024
Date

DocuSigned by:

Signature

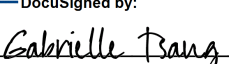
Dan Finley
Name

Approved As To Form:

DocuSigned by:

Michael Muralpassi, City Attorney

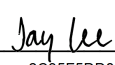
VP Customer Success
Title

Approved:

DocuSigned by:

Gabrielle Tsang
Interim Finance Director/Interim Risk Manager

Apr-22-2024
Date

Approved As to Content:

DocuSigned by:

Jay Lee, Planning Director

SCHEDULE A-3
PROJECT TERMS AND SCOPE OF WORK
(Revised April 2024)

Project Term: 12-months starting on the launch date to the passengers, September 12, 2022, after the initial 12-month term, the City will have a one-time option to extend the contract from one (1) to up to twelve (12) months. Future extensions will require an increment of twelve (12) months at a time for a total up to thirty-six (36) months. The duration will be determined by mutual agreement by both parties and is subject to agreement of applicable terms including the appropriate Subscription and Services Fee.

Zone: Milpitas, CA

Service model: on-demand Point-to-Point Microtransit using virtual stops, within the Zone

Vehicles: Approximately four (4) 6-seat Dodge Caravan (or equivalent) minivans and three (3) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject to day of week, time of day and passenger demand.

Service Hours: 7am-7pm Monday to Friday

Vehicle Revenue Hours: Approximately 21,840 vehicle revenue hours based on 7 vehicles with a minimum of 18,720 vehicle revenue hours with 6 vehicles for the initial Project Term;

Subscription and Services Fee: \$58.65 per vehicle revenue hour

Purchase of bike racks and installation are not included in the pricing. Price estimates to be provided by Transit Operations Provider prior to purchase and installation of bike racks. Should services and/or insurance requirements change, RideCo reserves the right to adjust the service fees for any changes.

Marketing Budget: approximately \$75,000 **including vehicle wraps and installation**

Budget for the Project Term not to exceed: \$1,375,916.00

Float: \$25,000

City and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner
2. RideCo shall coordinate with City to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential

subsidization).

3. RideCo shall ensure the adequate and complete training of initial operators, dispatchers, operations manager(s), and City staff that are involved in the operation or monitoring of the service. Additional training sessions may be requested under Professional Services fee of \$120 per hour.
4. RideCo will ensure that the functions listed in Schedule "D" Software Functional Requirements are met.
5. RideCo and City will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with City to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by the City and RideCo. Custom reporting is out of scope but may be requested under Professional Services fee of \$120 per hour.
8. RideCo will review data dashboard with the City and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide City with any recommendations for changes in virtual stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide city with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. City will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. RideCo, through its marketing subcontractor, will design graphics to be placed on the vehicles in accordance with specifications provided by the Transportation Operations Provider. Transportation Operations Provider will be responsible for having the graphics placed on the vehicles prior to commencement of vehicle revenue operations.

Vehicles and Drivers:

1. For the initial project term, the minimum number of vehicles in service is 6 vehicles.
2. Driver shift minimum is four (4) hours.
3. RideCo, through its subcontractor Transportation Operations Provider, will be

responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.

4. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving While Intoxicated) in the past seven (7) years
 - c. Speak, write, and read English fluently
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
5. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.
6. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
 - a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs
 - c. How to handle doubt, misunderstandings and objections
7. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
 - a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application,

customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.



**AMENDMENT NO. 2 TO
SUBSCRIPTION AND SERVICES AGREEMENT
WITH
RIDEKO US INC.
FOR
RIDEKO'S DYNAMIC TRANSIT SYSTEM**

This Amendment No. 2 is entered into as of **11 September 2023**, (the "Effective Date") by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as "City") and **RideCo US Inc.**, a stock corporation (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 1.

RECITALS:

WHEREAS, on May 26, 2022, the Parties entered into a Subscription and Services Agreement (the "Agreement") for Rideco's Dynamic Transit System for the not-to-exceed compensation amount of One Million Three Hundred Fifty-Five Thousand Nine Hundred Sixteen Dollars and Zero Cents (\$1,355,916.00), and with an initial term period from "launch date" through twelve (12) months (the Agreement); and

WHEREAS, on September 1, 2023 the Parties entered into Amendment No. 1 to replace Schedule A, Project Terms and Scope of Work; and

WHEREAS, the Parties now wish to amend the Agreement to replace Schedule A-1, Project Terms and Scope of Work (Revised August 2023) and extend the agreement by twelve (12) months.

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

1. Schedule A-1, Project Terms and Scope of Work (Revised August 2023) is hereby deleted in its entirety and replaced with Schedule A-2, Project Terms and Scope of Work (Revised September 2023) attached hereto and incorporated herein by this reference.
2. The new term of this agreement is from September 12, 2022 through September 11, 2024.
3. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO AMENDMENT NO. 2
TO THE SUBSCRIPTION AND SERVICES AGREEMENT
WITH RIDECO US INC
FOR RIDECO'S DYNAMIC TRANSIT SYSTEM**

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

CITY OF MILPITAS

RIDECO US INC

Approved By:

DocuSigned by:

Ned Thomas

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Ned Thomas, Acting City Manager

Sep-12-2023

Date

DocuSigned by:

Prem Gururajan, CEO

081CD0A5F12C4D4...

Signature

Prem Gururajan, CEO

Name

Approved As To Form:

DocuSigned by:

[Signature]

71850D37D7764FB...

Michael Mutalipassi, City Attorney

Director, Prem Gururajan

Title

Approved:

DocuSigned by:

[Signature]

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Lauren Lai, CPA, MPA

Finance Director/Risk Manager

Sep-12-2023

Date

Approved As to Content:

DocuSigned by:

Jay Lee

FDEFD4DB1544EF...

Jay Lee, Interim Planning Director

SCHEDULE A-2
PROJECT TERMS AND SCOPE OF WORK
(Revised August 2023)

Project Term: 12-months starting on the launch date to the passengers, September 12, 2022, After the initial 12-month term, the City will have a one-time option to extend the contract from one (1) to up to twelve (12) months. Future extensions will require an increment of twelve (12) months at a time for a total up to thirty-six (36) months. The duration will be determined by mutual agreement by both parties and is subject to agreement of applicable terms including the appropriate Subscription and Services Fee.

Zone: Milpitas, CA

Service model: on-demand Point-to-Point Microtransit using virtual stops, within the Zone

Vehicles: Approximately four (4) 6-seat Dodge Caravan (or equivalent) minivans and three (3) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject to day of week, time of day and passenger demand.

Service Hours: 7am-7pm Monday to Friday

Vehicle Revenue Hours: Approximately 21,840 vehicle revenue hours based on 7 vehicles with a minimum of 18,720 vehicle revenue hours with 6 vehicles for the initial Project Term;

Subscription and Services Fee: \$58.65 per vehicle revenue hour

Purchase of bike racks and installation are not included in the pricing. Price estimates to be provided by Transit Operations Provider prior to purchase and installation of bike racks. Should services and/or insurance requirements change, RideCo reserves the right to adjust the service fees for any changes.

Marketing Budget: approximately \$75,000 including vehicle wraps and installation

Budget for the initial Project Term not to exceed: \$1,355,916

Float: \$25,000

City and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner
2. RideCo shall coordinate with City to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential

subsidization).

3. RideCo shall ensure the adequate and complete training of initial operators, dispatchers, operations manager(s), and City staff that are involved in the operation or monitoring of the service. Additional training sessions may be requested under Professional Services fee of \$120 per hour.
4. RideCo will ensure that the functions listed in Schedule "D" Software Functional Requirements are met.
5. RideCo and City will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with City to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by the City and RideCo. Custom reporting is out of scope but may be requested under Professional Services fee of \$120 per hour.
8. RideCo will review data dashboard with the City and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
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10. RideCo will provide city with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. City will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. RideCo, through its marketing subcontractor, will design graphics to be placed on the vehicles in accordance with specifications provided by the Transportation Operations Provider. Transportation Operations Provider will be responsible for having the graphics placed on the vehicles prior to commencement of vehicle revenue operations.

Vehicles and Drivers:

1. For the initial project term, the minimum number of vehicles in service is 6 vehicles.
2. Driver shift minimum is four (4) hours.
3. RideCo, through its subcontractor Transportation Operations Provider, will be

responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.

4. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving While Intoxicated) in the past seven (7) years
 - c. Speak, write, and read English fluently
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
5. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.
6. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
 - a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs
 - c. How to handle doubt, misunderstandings and objections
7. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
 - a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application,

customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.

**FIRST AMENDMENT TO THE FUNDING AGREEMENT
BETWEEN
CITY OF MILPITAS
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
MILPITAS ONDEMAND**

THIS FIRST AMENDMENT to the AGREEMENT ("FIRST AMENDMENT") is between the CITY OF MILPITAS, referred to herein as "CITY", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA" as of the last date set forth in the signature block. Hereinafter, CITY and VTA may be individually referred to as "PARTY" or collectively referred to as "PARTIES".

I. RECITALS

1. WHEREAS, on May 27, 2022, the CITY and VTA entered into an agreement titled "FUNDING AGREEMENT BETWEEN CITY OF MILPITAS AND SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR MILPITAS ONDEMAND" ("AGREEMENT"); and
2. WHEREAS, on August 4, 2022, VTA Board of Directors approved the updated program category guidelines for the nine 2016 Measure B Program Categories, including the TRANSIT OPS CATEGORY; and
3. WHEREAS, on January 13, 2023, the CITY requested to change the existing on-demand service from a hub-and-spoke service to a stop-to-stop service model; and
4. WHEREAS, on February 7, 2023, VTA 2016 Measure B program office reviewed the CITY's supporting documentation and approved the CITY's proposed service model change, effective February 1, 2023; and
5. WHEREAS, the PARTIES desire to amend the AGREEMENT to reflect the change in the PROJECT.

NOW, THEREFORE, the PARTIES agree to amend the AGREEMENT as follows:

II. AGREEMENT

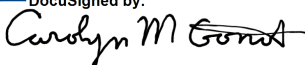
1. ATTACHMENT A is amended, effective February 1, 2023, and restated in its entirety as set forth in the attached ATTACHMENT A-1.
2. ATTACHMENT D is amended and restated in its entirety as set forth in the attached ATTACHMENT D-1.

3. Unless specifically defined herein, the capitalized terms used in this FIRST AMENDMENT have the meanings as defined in the AGREEMENT.
4. Except as herein modified, all provisions of the AGREEMENT, including any exhibits and subsequent amendments thereto, remain in full force and effect. All references to the AGREEMENT in this FIRST AMENDMENT refer to the AGREEMENT as amended unless otherwise specifically set forth or otherwise indicated by context.
5. In the event of any conflict between the provisions of this FIRST AMENDMENT and the provisions of the AGREEMENT, the provisions of this FIRST AMENDMENT will prevail. Whether or not specifically amended by this FIRST AMENDMENT, all of the terms and provisions of the AGREEMENT are amended to the extent necessary to give effect to the purpose and intent of this FIRST AMENDMENT.
6. If any provision of the AGREEMENT, as amended by this FIRST AMENDMENT, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this FIRST AMENDMENT as of the last date set forth below.

***Santa Clara Valley
Transportation Authority***

DocuSigned by:


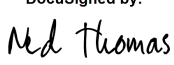
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Carolyn M. Gonot
General Manager/CEO

8/15/2023

Date

City of Milpitas

DocuSigned by:


0C937A88D0B94B7...

Ned Thomas
Acting City Manager

8/10/2023

Date

Approved as to Form:

DocuSigned by:


00B00225FC1E41C...

Shannon Smyth-Mendoza
Deputy General Counsel

8/14/2023

Date

Approved as to Form:

DocuSigned by:


71830037D7704FB...

Michael Mutalipassi
City Attorney

8/10/2023

Date

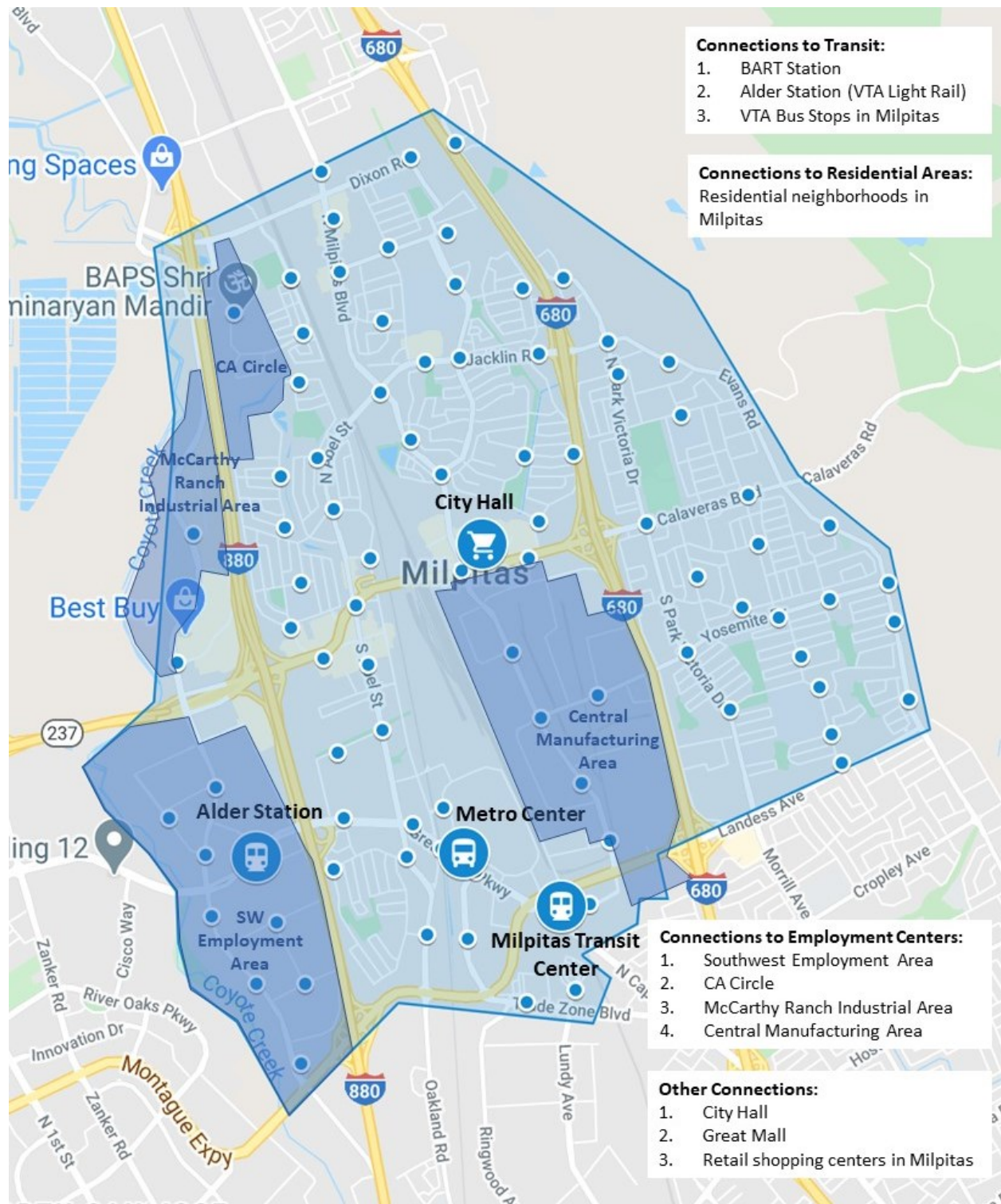
ATTACHMENT A-1

Service Parameters

(Effective February 1, 2023)

1. Service Span: Service runs Monday through Friday. Service hours match current VTA fixed bus routes in Milpitas and will change accordingly if VTA service hours in Milpitas change at any point in the future.
2. Service Coverage: City limit of Milpitas, as shown in Figure 1.
3. Routes: Service is on-demand point-to-point micro-transit service that has many virtual stops across the city limit of Milpitas. Vehicles may pick up passengers from anywhere within the service coverage area and may take the shortest route to the next stop on the ever-updating vehicle itinerary.
4. Infrastructure: Service operates with seven minivans, three of which will be fully ADA accessible. Service vehicle accommodates bicycles on board.
5. Fares: \$2.5 regular fares and \$1 for disabled, low-income, or youth population.
6. Online App: Passengers can book trips through mobile and web applications. All service data is available through a real-time dashboard. The software allows riders to pay in a variety of ways including cash and credit/debit cards. The online app offers seat selection options for mobility-limited riders/wheelchair users as well as standard seat types for ambulatory passengers.

Figure 1: Service Coverage Map



ATTACHMENT D-1**2016 Measure B Transit Operations Program Guidelines**

[Revised and approved by VTA Board of Directors: August 4, 2022]

The revenue from this program category will provide additional funds specifically for bus operations to serve vulnerable, underserved, and transit dependent populations throughout the county. The goals of the program category are to increase ridership, improve efficiency, enhance mobility services for seniors and disabled, and improve affordability for the underserved and vulnerable constituencies in the county. As VTA considers modifications to bus operations and routes to improve ridership and efficiencies, these funds may also be utilized to maintain and expand service to the most underserved and vulnerable populations. The funds may be used to increase core bus route service frequencies, extending hours of operations to early morning, evenings and weekends to improve mobility, safe access and affordability to residents that rely on bus service for critical transportation mobility needs. Attachment D describes the list of Candidate Projects and Programs.

Total Funding

7.94% of Program Tax Revenues

Program Type

Formula-based program

Distribution of Funds

- Funds will be allocated on a two-year cycle, in conjunction with the VTA Biennial Budget process.
- Funds are allocated on an annual basis, based on the application of the ballot-established ratio to the estimated Program Tax Revenue. The allocations are calculated in two steps:
 - Multiplying the ballot-established ratio by the projected Program Tax Revenues for that fiscal year.
 - Reconciling prior allocations, which were based on estimated Program Tax Revenues, with actual Program Tax Revenues (referred to as a “true-up process”). This true-up process will occur in the first fiscal year of each biennial budget cycle.
- The Transit Operations Program Category funding will be allocated for the following four sub-categories identified in 2016 Measure B Attachment D:
 - **Enhance Frequent Core Bus Network** by increasing core bus route service frequencies, and expanding or adding additional evening, late night and weekend service.
 - **Expand mobility services and affordable fare programs** for seniors, disabled, students and low-income riders.
 - Support **new/innovative transit service models** to address first/last mile connections and transit services for the transit dependent, vulnerable

- populations and paratransit users that is safe and accountable.
- **Improve amenities at bus stops** to increase safety, security and access with lighting and access improvements.

The allocations for the four sub-categories are as follows:

2016 Measure B Transit Operations Program	
Sub-category	Funding Allocation
Frequent Core Bus Network	73%
Innovative Transit Service Models	8%
Affordable Fare Programs	15%
Bus Stop Amenities	4%

Implementation

- Only projects and programs currently listed on 2016 Measure B Attachment D are eligible.
- **Enhanced Frequent Core Bus Network** will directly fund VTA's core bus network of services, maintain or increasing core bus route service frequencies, and expanding or adding evening, late night and weekend service.
- **Fare Programs** will directly fund VTA's Transit Assistance Program (TAP) and reduced fares for youth.
- **Innovative Transit Service Models** (Competitive Grant) will support goals to address first/last mile connections.
 - Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
 - The minimum grant award is \$250,000.
 - The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
 - The 2016 Measure B Program Office developed project criteria in conjunction with the VTA Technical Advisory Committee Capital Improvement Program Working Group and incorporated input from VTA committees.
- **Bus Stop Amenities** will directly fund improvements at VTA's bus stops. The bus stop improvements will be prioritized based on VTA's Transit Passenger Environment Plan or subsequent plans and ongoing maintenance needs.

Requirements

- Innovative Transit Service Models Competitive Grant Program
 - Reporting requirements will be detailed in agreements executed with VTA for project funding.
 - Funds will be distributed on a reimbursement basis.
- All capital projects must comply with VTA Complete Streets reporting requirements.
- All projects must comply with 2016 Measure B program oversight requirements.

- All collateral material must comply with 2016 Measure B branding requirements.

RIDEKO SUBSCRIPTION AND SERVICES AGREEMENT

This Subscription and Services Agreement (this “**Agreement**”) is entered into on May-26-2022 (the “**Effective Date**”) by and between **RideCo US Inc.**, having its office at 10880 Wilshire Boulevard, Suite 1101, Los Angeles, CA 90024 (“**RideCo**”), and the City of Milpitas, CA, having its principal address at 455 E. Calaveras Blvd. Milpitas, CA 95035-5411 (the “**City**”).

RECITALS

- A. RideCo is a technology provider for on-demand transit services.
- B. City wishes to implement a technology-driven transportation service and RideCo is willing to provide access to RideCo’s Dynamic Transit System (as defined below) on a license basis and to coordinate the provision and delivery of transportation services on the terms set out herein (the “**Project**”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is agreed by and between the parties as follows:

1. INTERPRETATION

1.01 Definitions: In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings:

“**Distributed Software**” means the RideCo passenger mobile application and driver mobile applications and any other software tools or components made available by RideCo for download under this Agreement;

“**Dynamic Transit System**” means RideCo’s proprietary software programs including optimization algorithms, data analysis algorithms, web application, passenger mobile application, driver mobile application, dashboards, graphical user interface, all documentation and end user manuals;

“**Documentation**” means any and all of the following that are provided by RideCo, in any form of media, in connection with the Agreement (a) know-how, proprietary information and methodologies, document templates and best practice guides; (b) scripts and data analysis tools; (c) user manuals and guides, that explain or facilitate the use of the Software, including all updates thereto; and (d) data sheets, specifications and other technical documents and materials in respect of the Software;

“**Maintenance and Support Services**” means the maintenance and support services provided by RideCo as further described in Section 3 of this Agreement and Schedule “B”;

“**Personal Data**” has the meaning given in Schedule “C”;

“**Platform Software**” means collectively the RideCo Dynamic Transit System (DTS) cloud platform technology and underlying software, including its dynamic routing technologies, ride-sharing technologies, algorithms, implementation architectures, operations dashboards, user interfaces, and application programming interfaces (“APIs”) to third party systems;

“**Operational Data**” means data recorded by the Distributed Software and presented through export on the operations dashboard end-user interface, where such data is provided by City or passengers or partner drivers of City. For greater certainty, Operational Data includes passenger ride booking information (origin, destination, time, payment, status) and driver action data (location data, pickup/drop-off times) however Operational Data does not include system log data

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or any other data that is not provided as an export to an end user through the operations dashboard end-user interface;

“Services” means collectively the provision of access to the Software, Documentation, associated APIs and interfaces to third party systems provided by RideCo under this Agreement together with the vehicular transportation services provided by the Transportation Operations Provider and Maintenance and Support Services all as further described in the schedules hereto;

“Software” means collectively the Distributed Software, Platform Software, and any interfaces between the two;

“Software Enhancements” means an update or upgrade to the Distributed Software or to the Platform Software, which update or upgrade may include new product features that change the character or structure of the software or its functional use or operation and will usually form part of an automatic update to the Software without any action being required from Customer;

“Subscription and Services Fee” means the fees set forth in Schedule “A”; and

“Transportation Operations Provider” means the subcontractor that is contracted by RideCo to provide drivers and vehicles for the Project. RideCo intends to subcontract to subcontractor selected by RideCo per the Measure B grant application regarding the Project.

1.02 Schedules: The schedules to this Agreement are set forth as follows:

Schedule “A”	-	Project Terms and Scope of Work
Schedule “B”	-	Service Level Agreement
Schedule “C”	-	Personal Data Protection Undertaking
Schedule “D”	-	Software Functional Requirements
Schedule “E”	-	Insurance Requirements

2. SERVICES LICENSE, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

2.01 Services. During the term of the Project, RideCo shall:

- a) provide and supply all necessary hardware and software to run the Project with the Dynamic Transit System;
- b) contract with a Transportation Operations Provider, acceptable to the City, that (i) will supply drivers and vehicles that meet applicable bylaws, insurance and indemnification requirements specified in this Agreement, and regulations of the City; and (ii) will agree to the applicable terms of the Funding Agreement executed between the Santa Clara Valley Transportation Authority and the City of Milpitas for this Project, including but not limited to, compliance with applicable requirements of state, federal, and local law, compliance with wage and hour laws, and insurance and indemnity requirements;
- c) perform logistics activities involved in running the Services, including without limitation:
 - i. the coordination of the dispatch, selection, scheduling, training and itinerary management for the Transportation Operations Provider, vehicles and drivers in relation to the Project;
 - ii. managing hours of operation and operating parameters as defined in Schedule “A”;

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- iii. communicating itinerary information with passengers and drivers (digitally via the website, SMS, or the mobile app);
 - iv. collecting fare payments (“**Fare Payments**”) from passengers of the ride-share service, via credit card (if applicable). The Fare Payments shall be reported in the Invoice (as such term is defined in Section 5.02); and
 - v. utilizing the Float (as defined in Section 5.03 below) to pay costs involved in the operation of drivers and vehicles on the Project,
- d) advise City of the assistance it requires from City in connection with the completion of its responsibilities under this Agreement; and
 - e) complete the Project in a professional and competent manner by persons qualified and skilled in their occupations and the roles that they are required to perform hereunder, and in accordance with: (a) this Agreement; (b) industry standards; and (c) any requirements of law, as applicable.

2.02 License Grant: Subject to the terms of this Agreement, RideCo grants City a limited, revocable, non-exclusive and non-transferable license to access and use the Dynamic Transit System in the geographic area identified in Schedule “A”. The Distributed Software may only be used in combination with the Approved Equipment/Third Party Software. RideCo or its agents, resellers or distributors may release from time to time to City at no additional charge during the term of this Agreement, software bug fixes and patches and such releases shall be considered “Software” hereunder and subject to the terms of this Agreement unless otherwise specified by RideCo.

2.03 Restrictions & End User Terms:

- a) *Restrictions.* Except as otherwise expressly permitted in this Agreement, City shall not, and shall not encourage any third party to: (i) customize, modify or create any derivative works of the Services; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction); (iii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Distributed Software; (iv) publish any results of benchmark tests run on the Software to a third party without RideCo’s prior written consent; (v) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to the Services; (vi) copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part and City may not copy any written materials (except for training materials and for internal use) accompanying any portion of the Services unless specifically authorized in writing to do so by RideCo. City shall not access the Services in order to build a competitive product or service or to copy any ideas, features, functions or graphics of the Dynamic Transit System or the Documentation. For greater certainty, City will not be in breach of this Section 2.03 if City independently develops a competing product or service without use or reference to RideCo’s Confidential Information.
- b) *End Users.* RideCo and its subcontractors shall ensure that end users agree to appropriate terms of service and privacy policy in accordance with requirements of applicable law before using the Services. RideCo will inform end users that the transportation services are provided on behalf of the City by the Transportation Operations Provider.

2.04 RideCo Intellectual Property: RideCo retains all right, title and interest in and to the Dynamic Transit System including all Documentation, all intellectual property rights in the Software and all copies and derivative works thereof. City acknowledges and agrees that the Dynamic Transit System, and all intellectual property rights therein (including without limitation,

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copyrights, patents, trade secrets, trademarks, moral rights and other intellectual property rights, in and to the Dynamic Transit System and all modifications, changes, enhancements, or additions thereto) and all intellectual property rights relating to the provision of professional services, feedback, technical support, maintenance and other support if any, (collectively, "**RideCo IP**"), are owned or licensed by RideCo. To the extent City acquires rights in the RideCo IP, City assigns such rights to RideCo and waives any moral rights it may have in the RideCo IP to and in favor of RideCo. Nothing in this Agreement gives City any right, title or interest in, to or under any of the Dynamic Transit System or any intellectual property rights therein (including without limitation patent rights) or arising pursuant to professional services, product feedback, technical support and other support.

- 2.05 Operational Data:** As between City and RideCo, City will own the Operational Data from the Project and City acknowledges and agrees that RideCo is not responsible for any liability arising out of the collection, retention, use, operation and disclosure by City of Operational Data. Subject to the personal data protection undertakings set out in Schedule "C", City hereby grants to RideCo for the duration of this Agreement a worldwide and royalty-free right and license to access and use the Operational Data for the sole purposes of: (i) providing the Services to City, (ii) assessing the performance of the Services; and (iii) creating Pattern Data (as defined in Section 2.06 below). City is not entitled to receive any compensation or re-imbursement of any kind from RideCo for use of said Operational Data. Except as otherwise expressly permitted in this Agreement, RideCo does not claim any right, title or interest in the Operational Data.
- 2.06 Personal Data Protection Undertaking.** RideCo hereby agrees and undertakes to comply with the personal data protection undertakings set out in Schedule "C".
- 2.07 Pattern Data. "RideCo Pattern Data"** means non-personally identifiable data including Operational Data which contains no Personal Data (as such term is defined in Schedule "C"). For greater certainty, RideCo Pattern Data does not identify a specific passenger or driver. As between RideCo and City, all right and title to RideCo Pattern Data belongs to RideCo and accordingly RideCo is free to use RideCo Pattern Data for any purpose including the improvement of RideCo's Services.
- 2.08 Suggestions.** RideCo shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services and business any suggestions, enhancement requests, recommendations or other feedback provided by City relating to the operation of the Services.
- 2.09 Reservation of Rights.** Except for the rights and licenses granted in this Agreement, City acknowledges and agrees that RideCo owns and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights therein) in and to the technology used to provide the Services) and all related RideCo IP and RideCo grants City no further licenses of any kind hereunder, whether by implication, estoppel or otherwise. City acknowledges that only RideCo shall have the right to maintain, enhance or otherwise modify the Dynamic Transit System.
- 2.10 Confidentiality:**

- a) *Confidential Information.* As used herein, "**Confidential Information**" means all confidential information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**") that is designated in writing as confidential or ought to be considered confidential based on the nature of the information and the circumstances of disclosure. For greater certainty, the Documentation and the functionality of the Software are all Confidential Information of RideCo. Confidential Information shall not include any information that the Receiving Party can demonstrate by its written records: (i) was known to it prior to its disclosure hereunder by the Disclosing Party; (ii) is or becomes known through no wrongful act of the Receiving Party; (iii) has been rightfully received from a third party without restriction or disclosure and without breach by such third party of a non-disclosure obligation; (iv) is independently developed by the Receiving Party;

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or (v) has been approved for release by the Disclosing Party's prior written authorization.

- b) *Obligations.* Neither party shall use any Confidential Information of the other party except as necessary to exercise its rights or perform its obligations under this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own Confidential Information of like nature. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, service partners, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it at least as restrictive as those in this Section. Upon any termination of this Agreement, the receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.

- c) *Public Records.* Notwithstanding anything to the contrary in this Section 2.10, City may disclose Confidential Information when compelled to by law (including the California Public Records Act, any other applicable public disclosure laws, and/or court orders). If City receives a request for public records that includes Confidential Information within City's possession or control and City's legal counsel reasonably believes it is legally required to disclose such public records, City will provide RideCo reasonable notice prior to disclosing such Confidential Information, it being understood that City may have ten (10) or fewer days to respond to such requests and that City will not reject any request for public records that its legal counsel determines, in its reasonable judgment, to be legally enforceable. RideCo will not disclose any Confidential Information of City except as compelled by a court or administrative body or required by any law or regulation. RideCo 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. For greater certainty, City acknowledges and agrees that RideCo Trade Secrets constitutes Confidential Information of RideCo that is not a 'public record' as such term is defined by applicable law and accordingly, any request to disclose the RideCo Trade Secrets must be notified to RideCo and will only be disclosed with RideCo's prior written consent. As used herein the term "RideCo Trade Secrets" means all deliverables and work product, including techniques, work methods, processes, protocols, formulas, algorithms, software code, marketing strategies, concept art, design, ideas, designs, drafts, look and feel concepts, graphic elements, brand identity, website or mobile application, page layouts, wireframes, source code, "widgets", images, photographs, videos, and any other design or development elements, including source files, created by or in connection with and/or provided by RideCo pursuant to this Agreement.

- d) *Injunctive Relief.* Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages if any unauthorized use or disclosure of its Confidential Information occurs or is threatened. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

3. MAINTENANCE AND SUPPORT SERVICES**3.01 Maintenance Services:** RideCo shall provide the following maintenance services to City:

- a) Supply or deploy corrections to the Software as required to correct errors, defects, malfunctions and deficiencies, if any, in the Software; and
- b) Supply or deploy improvements, extensions, upgrades, enhancements and other changes to the Software developed from time to time by RideCo.

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3.02 Support Services: In response to a support request from City, RideCo shall provide the following support services to City as per the priority levels, response times and procedures specified in Schedule “B” to be provided remotely:

- a) Clarification of software functionality
- b) Adjustments to software configuration; and
- c) Advice on the use and results of the Services;

3.03 Services Outside Scope of Maintenance and Support: The Maintenance and Support Services to be provided under this Agreement do not include:

- a) Correction of errors or defects caused by operation of the Software in a manner other than specified in the Software documentation;
- b) Rectification of errors caused by incorrect use of the Software;
- c) Correction of errors caused in whole or in part by the use of computer programs other than the Software unless the use of such programs has been approved by RideCo in writing; or
- d) Diagnosis or rectification of faults not associated with the Software.

3.04 Professional Services: City may request at any time and from time to time that RideCo provide to City any other professional services or Software modifications which are within the scope of its business and which are not provided for herein and which are not covered by the Subscription and Services Fee. RideCo shall evaluate such requests and may provide the City an estimate of the cost of such professional services. In no event shall RideCo be obligated to provide professional services not agreed in writing with City.

4. INSURANCE

4.01 Insurance Requirements:

- a) RideCo shall meet the Insurance Requirements in Schedule E. RideCo shall contractually require its subcontractors, including the Transportation Operations Provider, to provide and maintain insurance coverage(s) of the type and with the limits specified in Schedule E. It shall be RideCo’s responsibility to collect and maintain current evidence of insurance provided by its subcontractors and RideCo shall forward to City evidence of same. Evidence of insurance provided by RideCo and its subcontractors as set forth in this Agreement is subject to review and acceptance by City.
- b) RideCo shall not commence the Services under this Agreement until RideCo has obtained all insurance required under this Section 4.01 and Schedule E, and City has approved the insurance as to form, amount, and carrier, nor shall RideCo allow any subcontractor, including the Transportation Operations Provider, to commence any Services until all insurance required of the subcontractor has been obtained and approved by City. Failure to comply with any part of this Section shall constitute a material breach of this Agreement as set forth in Section 6.02(b).

5. FEES AND PAYMENT TERMS

5.01 Subscription and Services Fee: In consideration of the provision of the Services under this Agreement, City agrees to pay RideCo the Subscription and Services Fee in accordance with Schedule “A”. Incremental payments, if applicable, shall be made as outlined in Schedule “A”.

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- 5.02 Invoicing and Payment Terms.** Within fifteen (15) days following each month during the term of this Agreement, RideCo shall provide to City an invoice (“**Invoice**”). Within fifteen (15) days following City’s receipt of the invoice, it shall pay to RideCo all bona fide amounts owing pursuant to the Invoice. Any such amounts which are not paid by City when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid in full to RideCo.
- 5.03 Float:** City shall provide a pre-payment deposit (“**Float**”) to RideCo for the costs for the ride-share drivers with the amount of the Float specified in Schedule “A” (“**Float Amount**”) until changed by notice in writing from City to RideCo. RideCo shall have no right to apply the Float Amount to any amounts owing to it with respect to any Invoice unless and until it receives approval in writing from City of such Invoice. Upon termination or expiry of this Agreement, the Float shall be applied to the final approved Invoice payable to RideCo pursuant to this Agreement and the balance of any remaining amount of the Float shall be paid by RideCo to City within thirty (30) days following the expiry or termination of this Agreement. RideCo shall keep detailed records and documents with respect to the Transportation Operations Provider costs, operating hours, and Float Amount and shall provide copies of all documents as may be requested from time to time by City relating thereto.
- 5.04 Taxes:** All charges and fees provided for in this Agreement are exclusive of and do not include any foreign or domestic governmental taxes or charges of any kind imposed by any federal, state, provincial or local government on the transactions contemplated by this Agreement, including without limitation excise, sales, use, property, license, value-added taxes, goods and services, harmonized, franchise, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties other than taxes that are imposed based on the net income of RideCo. Any such taxes that are imposed on the net income of RideCo shall be the sole responsibility of RideCo. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of RideCo or its employees or subcontractors.

6. TERM AND TERMINATION

- 6.01 Term:** This Agreement commences on the Effective Date and shall run for the duration of the Project term specified in Schedule “A” together with any agreed extensions, unless terminated sooner in accordance with the terms of this Section 6.
- 6.02 Termination:**
- a) Either party may terminate this Agreement with or without cause by giving thirty (30) days’ written notice to the other party.
 - b) Either party may immediately terminate this Agreement with written notice if the other party: (i) fails to correct a material breach of its obligations under this Agreement within thirty (30) days after receipt by such other party of written notification from the notifying party of such material breach; (ii) ceases to carry on business as a going concern; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy reorganization or insolvency proceedings are instituted by or against the other party.
- 6.03 Survival.** The following Sections shall survive the termination or expiration of this Agreement for any reason: 1 (Definitions), 2.03(a) (Restrictions), 2.04 (RideCo Intellectual Property),

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2.05 (Operational Data), 2.07 (Pattern Data), 2.08 (Suggestions), 2.09 (Reservation of Rights), 2.10 (Confidentiality), 7.04 (Effect of Termination), 7.02 (Disclaimer of Implied Warranties), 7.03 (Service Disclaimer), 8 (General Provisions) and all terms related to payment (until payments have been made in full) and any other terms herein which expressly state that such terms will survive or which by their nature are required to survive to give effect to the surviving terms stated to survive, shall survive the termination or expiration of this Agreement for any reason and will continue in full force and effect subsequent to and notwithstanding such termination, until such provisions are satisfied or by their nature expire.

- 6.04 Effect of Termination.** On termination, City shall destroy all copies of the Software (and cease all access to the same), destroy or delete all accompanying Documentation and Confidential Information of RideCo and shall provide confirmation of having done so within one (1) week of the effective date of termination.

7. WARRANTIES, INDEMNIFICATION, LIABILITY

7.01 Warranties:

- a) *Representations and Warranties by Each Party.* Each party represents, warrants to the other party that: (i) it is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has all requisite power and authority and approvals to execute, deliver and perform its obligations under this Agreement; (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties; (iv) it will comply with all applicable laws in connection with this Agreement.
- b) *RideCo Warranties.* RideCo represents and warrants to City that RideCo will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient and business-like manner. RideCo further represents and warrants that:
- (i) The Services do not infringe any patent, copyright or trademark or violate the trade secret or other proprietary rights of any third party;
 - (ii) RideCo owns or has exclusive or non-exclusive rights in all patents, copyrights, trademarks, trade secrets and other proprietary rights in and to the Services necessary to grant the licenses herein; and
 - (iii) RideCo possesses the legal right and authority to execute and perform this Agreement,

Except as expressly provided in this Agreement, the Services are provided 'as is' and RideCo does not warrant that the functions performed by the Dynamic Transit System or Services will meet City's requirements or that the operation of the same will be uninterrupted or error-free.

- 7.02 Disclaimer of Implied Warranties:** Except as set forth in this Agreement, there are no other warranties or conditions of any kind, including without limitation, the warranties that the Services are free of defects, merchantable or fit for a particular purpose. Specifically, RideCo makes no representation or warranty regarding the merchantability, fitness for a particular purpose or functionality of the Services. All Approved Equipment/Third Party Software is subject to the warranty of its respective manufacturer and no warranty whatsoever is provided by RideCo. RideCo makes no guarantee of the performance, accuracy and results of the Services with respect to Operational Data. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Services is authorized under this Agreement except under this disclaimer.

- 7.03 Service Disclaimer & Liability Waiver.** RideCo is a technology provider and not a provider of transportation services. To the fullest extent permitted by law, RideCo will not be

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responsible for: (i) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of any passenger or driver or for any personal injuries, death, property damage, or other damages of expenses resulting therefrom; or (ii) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of Transportation Operations Provider or for any damages or expenses resulting therefrom including without limitation any personal injury or property damage. City expressly waives the right to bring any claim against RideCo, its successors, assigns or related companies, directors, officers or employees in respect of any and all actions, causes of action, damages, claims, cross-claims and demands of any kind in connection with the transportation, vehicular or driver related portions of the Services, except to the extent that a claim would not have arisen but for RideCo's gross negligence or willful misconduct. In consideration of the foregoing, RideCo will: (i) provide and maintain the insurance required in Schedule E; (ii) contractually require its subcontractors, including Transportation Operations Provider, to maintain the minimum insurance levels set out in Schedule E ; (iii) add City as a third party beneficiary to the contract between RideCo and Transportation Operations Provider to enable City to bring any transportation, vehicular or driver-related claims in connection with the Project directly against Transportation Operations Provider; and (iv) contractually require its transit service subcontractors, including the Transportation Operations Provider, to defend, indemnify and hold the City and the Santa Clara Valley Transit Authority (the "VTA") and their respective officials, directors, representatives, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of the Transportation Operations Provider or the applicable transit service subcontractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Transportation Operations Provider's or the applicable transit service subcontractor's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Transportation Operations Provider's cumulative liability to the City or any other party for damages for any cause whatsoever shall be limited to the amounts outlined in the subcontractor insurance requirements set out in Schedule E. In the event that Transportation Operations Provider or any applicable transit service subcontractor is unwilling or unable to accept the foregoing indemnity in Section 7.03(iv) as provided herein, the parties will work together in good faith to present and have the Transportation Operations Provider agree to alternative language in a form reasonably acceptable to the City. If City and RideCo cannot agree as to alternative indemnity language, City shall be entitled to immediately terminate this Agreement pursuant to Section 6.02(b).

7.04 Limitation of Liability:

- a) IN NO EVENT SHALL RIDECO BE LIABLE TO THE CITY FOR ANY LOST PROFITS OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT RIDECO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- b) RideCo's cumulative liability to the City or any other party for damages for any cause whatsoever shall be limited to the applicable insurance required of RideCo in Exhibit E. For the avoidance of doubt, RideCo will have no liability in respect of any transportation, vehicular or driver-related claims arising from or in connection with any operation or provision of transit services for the Project. Any transportation, vehicular or driver-related claims or other claims of the City in respect of the Transportation Operations Provider's responsibilities will not be subject to the foregoing restrictions and Transportation Operations Provider's liability will be capped at the level of the subcontractor insurance requirements set out in Schedule E.

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7.05 Indemnification: RideCo shall defend (at its own cost and expense) and hold City and VTA and their respective officers, officials, agents, and employees ("Indemnified Parties") harmless against any and all claims, demands, suits, brought by a third party against the City or VTA that any part of the Services infringes any patent, copyright, trademark or trade secret right of such third party, except to the extent that the actual or alleged infringement has not been caused by the use of a modification of the Software by the City other than a modification provided by RideCo, by the combination and/or use of the Distributed Software with third party software, hardware, data, and/or technology not approved by RideCo in writing or by City's failure to implement any update or upgrade provided by RideCo. In addition to the defense obligations above, RideCo will indemnify the Indemnified Parties in respect of any damages awarded by a court of competent authority to the third party claimant, any fines levied against the Indemnified Parties in respect of a claim and/or any settlement amounts agreed by RideCo with a third party claimant. As conditions for the foregoing commitments by RideCo, City will promptly notify RideCo of any such claim and provide reasonable assistance to RideCo with respect to handling the claim. RideCo will have the sole right to defend, negotiate and settle any such claim. RideCo may at any time and at its option and expense: (i) procure the right of City to continue to use the Services that may infringe a third party's rights; or (ii) modify the Services so as to avoid infringement; or (iii) terminate this Agreement and the licenses granted hereunder. In addition to the foregoing, and as a material part of its obligations herein, RideCo will ensure that its transit service subcontractors, including the Transportation Operations Provider, contractually agree to the flow down indemnification and insurance obligations specified in Section 7.03, above.

8. GENERAL PROVISIONS

8.01 Subcontractors: RideCo may sub-contract the performance of the transportation services provided by and/or managed by the Transportation Operations Provider to third party service providers. In the event that the Transportation Operations Provider's subcontract is terminated in accordance with its terms, RideCo will use commercially reasonable efforts to find a suitable replacement acceptable to City. City shall not unreasonably withhold, condition or delay consent to the same. In the event that RideCo cannot find a suitable replacement or the replacement is not approved by City, RideCo will have the right to terminate this Agreement on not less than sixty (60) days' prior, written notice to the City. For greater certainty, RideCo will be solely responsible for payment of its subcontractors, including the Transportation Operations Provider.

8.02 Partial Invalidity: If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect.

8.03 Assignment: Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the generality of the foregoing, RideCo may freely assign this Agreement to a successor in interest upon a merger, acquisition, reorganization, change of control, or sale of all or virtually all of its assets, and any such assignment shall not require the consent of the City. This Agreement shall be binding on and shall inure to the benefit of the parties, their successors and permitted assigns.

8.04 Governing Law and Venue: Except to the extent applicable law, if any, requires otherwise, this Agreement shall be governed by the laws of California. All disputes relating to this Agreement, shall be subject to and dealt with in the courts of Santa Clara County, CA.

8.05 Publicity. RideCo shall be entitled to disclose and publicize in the form of City lists and on its web site and marketing materials, the identity of the City as a client of RideCo, provided that

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the use of any trademark/logo of City shall be subject to City's prior written consent.

- 8.06 Non-Solicitation.** During the term of this Agreement and for one (1) year thereafter, the City shall not, directly or indirectly, in any manner whatsoever, including, without limitation, either individually or in partnership, jointly or in conjunction with any other person, or as employee, principal, agent, director or shareholder, hire any employees of RideCo or induce or attempt to induce any such employees to leave their employment.
- 8.07 Force Majeure:** Neither party shall be liable for any delay or failure in performance due to such acts of God, earthquake, labor disputes, strikes, shortages of supplies, riots, war, fire, epidemics, or transportation difficulties, to the extent not in control of such party. The obligations and rights of the excused party shall be extended on a week to week basis, provided, however, that a delay of thirty (30) days shall entitle the other party to terminate this Agreement without liability.
- 8.08 Miscellaneous:** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement may be amended only in writing signed by both parties. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. The relationship between RideCo and City is that of independent contractors and neither City nor its authorized agents shall have any authority to bind RideCo in any way. If any dispute arises under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith. The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning.
- 8.09 Entire Agreement.** This Agreement includes any amendments, supplements, schedules, exhibits or appendices attached, referencing this Agreement, or expressly made a part hereof by agreement between the parties and constitutes the entire agreement between the parties hereto.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

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IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as set out below.

CITY OF MILPITAS*Approved By:*

DocuSigned by:

Ashwini Kantak

0CF42D4A9C804E4...

Steven G. McHarris, City Manager

RIDECO US INC.

DocuSigned by:

Prem Gururajan

Signature F12C4D4...

Prem Gururajan

Name

May-26-2022

Date

Director, Prem Gururajan

Title

Approved As To Form:

May-24-2022

Date

DocuSigned by:

Michael Mutalipassi

71850D37D7764FB...

Michael Mutalipassi, City Attorney

DIR Registration Number (If Applicable)

Approved:

DocuSigned by:

Lauren Lai

8C79D33218B7434...

Lauren Lai, CPA, MPA
Finance Director/Risk Manager*Approved As To Content:*

DocuSigned by:

Ned Thomas

2B645CF2A4D94ED...

Ned Thoms, Planning and Neighbor Services Director]

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT**SCHEDULE "A"**
PROJECT TERMS AND SCOPE OF WORK

Project Term: 12-months starting on the launch date to the passengers, extendable for an additional 36 months, in 12 month increments at City's option, subject to agreement of applicable terms including the appropriate Subscription and Services Fee. After the initial 12-month term, the City will have a one-time option to extend the contract for less than a 12-month increment. The duration will be determined by mutual agreement by both parties. Further extensions will require an increment of 12-months.

Zone: Milpitas, CA

Service model: on-demand Hub and Spoke Microtransit using virtual stops, within the Zone

Vehicles: Approximately four (4) 6-seat Dodge Caravan (or equivalent) minivans and three (3) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject to day of week, time of day and passenger demand.

Service Hours: 7am-7pm Monday to Friday

Vehicle Revenue Hours: Approximately 21,840 vehicle revenue hours based on 7 vehicles with a minimum of 18,720 vehicle revenue hours with 6 vehicles for the initial Project Term;

Subscription and Services Fee: \$58.65 per vehicle revenue hour

Purchase of bike racks and installation are not included in the pricing. Price estimates to be provided by Transit Operations Provider prior to purchase and installation of bike racks. Should services and/or insurance requirements change, RideCo reserves the right to adjust the service fees for any changes.

Marketing Budget: approximately \$75,000 **including vehicle wraps and installation**

Budget for the initial Project Term not to exceed: \$1,355,916

Float: \$25,000

City and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner
2. RideCo shall coordinate with City to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential subsidization).
3. RideCo shall ensure the adequate and complete training of initial operators, dispatchers, operations manager(s), and City staff that are involved in the operation or monitoring of the service. Additional training sessions may be requested under Professional Services fee of \$120 per hour.

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4. RideCo will ensure that the functions listed in Schedule “D” Software Functional Requirements are met.
5. RideCo and City will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with City to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a standard daily KPI report, including data mutually agreed upon by the City and RideCo. Custom reporting is out of scope but may be requested under Professional Services fee of \$120 per hour.
8. RideCo will review data dashboard with the City and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide City with any recommendations for changes in virtual stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide city with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. City will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. RideCo, through its marketing subcontractor, will design graphics to be placed on the vehicles in accordance with specifications provided by the Transportation Operations Provider. Transportation Operations Provider will be responsible for having the graphics placed on the vehicles prior to commencement of vehicle revenue operations.

Vehicles and Drivers:

1. For the initial project term, the minimum number of vehicles in service is 6 vehicles.
2. Driver shift minimum is four (4) hours.
3. RideCo, through its subcontractor Transportation Operations Provider, will be responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.
4. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving

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- While Intoxicated) in the past seven (7) years
- c. Speak, write, and read English fluently
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
5. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.
6. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
- a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs
 - c. How to handle doubt, misunderstandings and objections
7. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
- a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application, customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT**SCHEDULE "B"****RIDECO SERVICE LEVEL AGREEMENT****1. APPROVED EQUIPMENT / THIRD PARTY SOFTWARE****Driver Mobile App Requirements:**

- Android Device running the most recent Android OS major version release and one previous major version release with Google Play Services
- GPS Enabled Phone
- High speed (4G recommended) data plan with a minimum of 2GB/month
- Minimum screen resolution 800x480
- Minimum recommended CPU: Mid-to-High range performance CPU based on ARMv8-A 64-bit Architecture
- 2GB RAM
- 1GB internal storage

Passenger Mobile App Requirements:

- iPhone running the most recent iOS major version release and two previous major version releases, or Android device running the most recent Android OS major version release and two previous major version releases with Google Play Services
- Minimum screen resolution 800x480
- Minimum recommended CPU: dual-core 1.5GHz
- 1GB RAM
- 200MB internal storage

Browser requirements for operations dashboards:

- Google Chrome (the most recent major version release and one previous major version release)
- Firefox (the most recent major version release and one previous major version release)
- Safari (the most recent major version release and one previous major version release)

2. PRIORITY LEVELS, RESPONSE TIMES AND PROCEDURES**Priority Levels**

High	Business critical problems that affect the availability or access of or to the Service Offering for most users
Medium	Not critical but important problems that materially interrupt or restrict the normal production running of the Software (affecting a minority of users)
Low	Not business critical or important. Issues that do not materially impact the normal production running of the Software

Resources and Forms of Support

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Support Portal	Utilized for medium or low priority items [** City specific slack channel(s)] (typically one slack channel for each active service)
Emergency hotline	Used for critical / high priority items [**City specific emergency telephone number] [**City specific emergency slack channel]

Support Response Time

Priority	Response Time	Update Frequency	Resolution Time
High	Reviewed by RideCo staff and support ticket updated/created within 2 hours	Every 2 hours or as mutually determined	Within 24 hours RideCo will attempt to resolve all high priority issues within 24 hours, however resolution times may be longer depending on the nature and complexity of the problem.
Medium	Reviewed by RideCo staff and support ticket updated/created within 12 hours	Every working day or as mutually determined	Within five (5) business days
Low	Reviewed by RideCo staff and support ticket updated/created within 24 hours	Every week or as mutually determined	RideCo shall notify City within ten (10) business days of the analysis of the problem, the intended fix and the release in which it will be delivered. Where feasible, RideCo shall provide a temporary workaround to City.

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**SCHEDULE "C"
PERSONAL DATA PROTECTION UNDERTAKING**

"Personal Data" means data, whether true or not, about an individual who can be identified: (a) from that data; or (b) from that data and other information to which the organization has or is likely to have access;

RideCo agrees that the following terms shall apply where RideCo accesses, handles or uses any Personal Data under the Agreement, including in the course of and/or in connection with exercising its rights or carrying out its obligations under the Agreement:

- a. Unless otherwise permitted by the City, RideCo may only collect, use or process Personal Data as allowed under this Agreement, and RideCo shall comply with any written instructions the City gives RideCo in advance relating to compliance with any laws, regulations, court orders, or self-regulatory programs applicable to the collection, use, disclosure, treatment, protection, storage and return of Personal Data.
- b. RideCo shall maintain commercially reasonable policies and procedures to protect the security, privacy, integrity, and confidentiality of Personal Data.
- c. If RideCo knows of any breach or potential breach of protective measures or if there has been any actual or potential unauthorized or accidental disclosure of Personal Data, RideCo must inform the City immediately and cooperate with the City in any post-breach investigation or remediation efforts.
- d. RideCo shall notify the City promptly in the event of any claim or complaint from any individual to whom the Personal Data relates and/or where there has been an event of non-compliance with any data privacy laws by RideCo, whether discovered by RideCo or forming the subject of an investigation and/or action by the relevant authorities.
- e. RideCo shall notify the City promptly in the event that RideCo is required by law, court order, warrant, subpoena, or other legal or judicial process to disclose any Personal Data to any person.
- f. If under the Agreement, RideCo has to collect any Personal Data from the City's employees or any other individuals directly, RideCo must notify the individuals about the purpose of RideCo's collection and must obtain and record (for future reference) their consent before RideCo does so, and RideCo must follow any reasonable instructions which the City may give RideCo in this regard, and must comply with all applicable laws for such collection of Personal Data.
- g. RideCo must not disclose any City Personal Data to any other persons/entities (e.g. to RideCo's related company/affiliate) or transfer any Personal Data outside of the USA or Canada without the City's permission in writing.
- h. RideCo shall promptly return to the City or destroy any Personal Data received in error. RideCo must destroy Personal Data as soon as practicable if required by the City. At the end of the Agreement, RideCo must notify the City if RideCo or other recipients (if disclosure of Personal Data to such other recipients has been permitted by the City in writing) have any Personal Data collected/received as part of the Agreement, and follow the City's instructions on destroying the Personal Data. Following such destruction, the City may require RideCo to certify that RideCo (and such recipients) no longer have Personal Data. If RideCo wants to retain any Personal Data beyond the end of the Agreement, RideCo will be required to inform the City of RideCo's reasons and seek the City's agreement on the same.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT**SCHEDULE "D"**
SOFTWARE FUNCTIONAL REQUIREMENTS**Passenger Application Requirements****Rider Account**

- Trip history menu to see trip details
 - Start & end time
 - Starting & ending address
 - Trip cost (if applicable)
 - Help menu to provide feedback, or report other issue
- Reserved trip details
- Recent destinations are automatically saved to rider account

Ride Booking and Tracking:

- Ability to enter an address or select current or specific location on the map
- Reserve multiple seats or seat types (e.g. accessible)
- Reserve trips up to 5 business days in advance
- Reserve multiple trips at once (same trip for multiple days in one week)
- Retain recently queried locations so they are easy to pull up even if rider does not designate them as a “favorite”
- Ability to restrict virtual vs. doorstep drop-off and pick-up points
- Vehicle location, vehicle ID and driver information are displayed while waiting for pickup
- Ability to call and/or leave a note for driver

Payment

- Ability to hold credit card information.
- Place to enter promotional codes

Rating System

- Ride rating (e.g., 1 to 5 stars)

Customer Support

- Legal/terms and conditions
- A place for Frequently Asked Questions (FAQs)
- In app requests for support
- Customer service system that creates trackable tickets for follow up and resolution
- Ability to mask phone number when contacting driver

Driver Application Requirements

- Automatic trip dispatching
- Dynamic routing capabilities to adjust vehicle allocation efficiently.
- Make phone calls to a rider via anonymized phone number
- Ability to launch turn-by-turn driving directions

Operations Dashboard Requirements

- Dashboards accessible to operations coordinators and authorized individuals by the City
- Dashboard displays real-time data on riders, vehicles, drivers and service performance/Key Performance Indicators (KPIs). Data available includes:
 - Ridership
 - Travel times

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- Trip denial rate
 - Booking abandonment rates
 - On-time performance
 - Trip and driver reviews
 - Trip and driver comments
- Ability to assign different user-level permissions and rights based on operator, seniority, or role.
 - The data gathered will be shared with / available to the operator or agency in multiple formats:
 - **Dashboards** to visualize rider, driver, and performance data, aggregated across a period or at an individual trip/driver level
 - **Weekly and monthly performance reports** provided in Excel, in a performance format to be mutually agreed upon
 - **Exports of the raw data** (rides, vehicles, times, locations etc.) in CSV format that can be further analyzed by the operator or agency staff if they desire

Software Security, Reliability & Privacy Requirements

- The passenger and driver apps are 'stateless' and do not store any confidential passenger data on the local device.
- All data is stored securely in the cloud (Amazon Web Services – 'AWS').
- The passenger and driver apps communicate securely with the cloud-based platform using RESTful APIs.
- RideCo's Platform Software has a 99.9%+ historical uptime performance record.
- Data is encrypted in transit using standard HTTPS, using an SSL wildcard certificate.
- All public facing webservers have been hardened using industry standard practices.
- Internal networks are shielded by AWS security groups which define allowable ports and IP addresses for internal services.
- APIs are all secured using token authentication using an identity management system. Tokens are only valid for one user and can only be acquired by successfully authenticating against our authentication API. APIs used by internal components are never exposed publicly. For certain API calls, throttling exists to prevent against DOS type attacks.
- Daily backups of production databases for disaster recovery.
- Software does not store any payment card or billing information on RideCo's servers.
- The mobile applications and operations dashboards include their own terms of service to end users that include provisions relating to data privacy, confidentiality, and intellectual property rights.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT**SCHEDULE "E"****INSURANCE REQUIREMENTS**

Contractor or Consultant shall procure and maintain for the duration of this 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. More specifically:

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 "Schedule E". 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.

In the event of the breach of any provision of this "Schedule E," or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

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.

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

Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

Workers' Compensation Insurance: Contractor or Consultant shall purchase and maintain statutory workers' compensation coverage for their employees if applicable. Employers' liability limits shall not be less than \$1,000,000 each accident, \$1,000,000 by disease-policy limit, \$1,000,000 by disease-each employee. The policy shall contain a Waiver of Our Rights to Recover from Others endorsement naming the City and its officers, officials, employees, and agents in the endorsement schedule.

Other Insurance Provisions:

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

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 VTA and their respective 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

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

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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 and VTA (if agreed to in a written contract or agreement) before the City's or VTA's own insurance or self-insurance shall be called upon to protect it as a named insured.

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

Waiver of Subrogation: Contractor or Consultant hereby grants to City and VTA a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City or VTA by virtue of the payment of any loss under such insurance. Contractor or Consultant shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City or VTA have 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 and VTA for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

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.

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

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, except subcontractors shall maintain workers compensation coverage for subcontractors personnel and automobile liability coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limit no less than \$5,000,000.00 combined single limit for bodily injury and property damage, 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 this Agreement, including all indemnity and insurance provisions, will be furnished to the subcontractor.

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:	Adopt Resolutions Approving the Annual Engineer's Report and Declaring Intention to Levy and Collect Assessments, and Provide Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1 - McCarthy Ranch (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2024
Recommendation:	Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of public hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 95-1 - McCarthy Ranch.

BACKGROUND:

Landscaping and Lighting Maintenance Assessment No. 95-1 - McCarthy Ranch (LLMD 95-1 McCarthy Ranch) provides for the maintenance and improvement of public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs along portions of North McCarthy Boulevard and the Ranch Drive gateway between State Route 237 and Dixon Landing Road in the areas as shown on the attached location map (**Attachment D**).

ANALYSIS:

Before the City Council can levy the annual assessments for LLMD 95-1 McCarthy Ranch, the Landscaping and Lighting Act of 1972 requires the City Council to adopt a resolution approving the annual Engineer's Report (Report) (**Attachment A**) evaluating the landscape and lighting maintenance district's maintenance and improvement costs for Fiscal Year (FY) 2024-25. On March 5, 2024, the City Council directed the City Engineer to prepare the Report (**Attachment C**), which is included in the City Council packet. The proposed total assessment for FY 2024-25 is \$0.0381 per lot square foot with an assessment rate not exceeding the maximum assessment rate of \$0.0550. The FY 2024-25 rate is approximately 4.38% higher than the previous year FY 2023-24 rate of \$0.0365.

Staff recommends that the City Council adopt Resolutions to:

- Approve the Report, and
- Declare its intention to levy and collect an assessment and direct publishing of notice of a public hearing to be held on June 4, 2024 (**Attachment B**).

POLICY ALTERNATIVE(S):

Alternative 1: Not adopt the Resolutions for LLMD 95-1 McCarthy Ranch.

Pros: None.

Cons: If the City Council does not adopt the Resolutions according to Landscaping and Lighting Act of 1972, the City's will be unable to collect to assessments for LLMD 95-1 McCarthy Ranch.

Reason is Not Recommended: Staff recommends approving the Resolutions into order to levy and collect assessments for fiscal year 2024-25 to allow for the continued maintenance and service of LLMD 95-1 McCarthy Ranch.

FISCAL IMPACT:

The levy and collection of assessments provides the City with the needed resources for the maintenance and the servicing of the improvements. The Fiscal Year 2024/2025 maintenance budget for LLMD 95-1 is estimated to be \$462,838.00. The City also maintains an operating reserve, not to exceed the estimated maintenance costs.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of public hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 95-1 - McCarthy Ranch.

ATTACHMENT(S):

- (a) Resolution Approving Annual Engineer's Report
- (b) Resolution Declaring Intention to Levy and Collect Assessments
- (c) Engineer's Report for LLMD 95-1 McCarthy Ranch
- (d) Location Map

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
APPROVING THE ANNUAL REPORT FOR
THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1
FOR FISCAL YEAR 2024/25**

The City Council of the City of Milpitas (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District 95-1 (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of and the report required pursuant to Section 22622 of the Act (the “Annual Report”); and

WHEREAS, the City Council has, by previous resolution, ordered NBS to prepare and file such Annual Report; and

WHEREAS, NBS has prepared and filed such Annual Report with the City Clerk.

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

- 1. Approval of Report:** The City Council hereby approves the Annual Report for the Assessment District concerning the levy of assessments as submitted by NBS for the fiscal year commencing July 1, 2024 and ending June 30, 2025.
- 2.** The Assessment District exterior boundaries are as shown by a map filed in the office of the City Clerk, which map is made a part hereof by this reference.

PASSED AND ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR
THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1
FOR FISCAL YEAR 2024/25**

The City Council of the City of Milpitas (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District No. 95-1 (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of the report required pursuant to Section 22622 of the Act (the “Annual Report”); and

WHEREAS, the City Council adopted a Resolution approving the Annual Report for the Assessment District for Fiscal Year 2024/25.

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE
CITY COUNCIL, AS FOLLOWS:**

1. **Intention:** The City Council hereby declares its intention to levy and collect assessments within the Assessment District to pay the costs of the Improvements for the fiscal year commencing July 1, 2024 and ending June 30, 2025. The City Council finds that the public’s best interest requires such action.

Improvements: The improvements within the Assessment District include, but are not limited to: operating, maintaining and servicing of all public landscaping improvements, consisting of landscaping and grass. Operating, maintaining and servicing costs include, but are not limited to: personnel, materials, electrical energy and water. Services provided include all necessary service, operations, administration, and maintenance required to keep the improvements in a healthy, vigorous, and satisfactory condition. A project renovating the landscape and irrigation improvements in the Assessment District was completed in Fiscal Year 2023/24. Also, the City will improve to the gateway entry sign, planting, towers, and pedestrian pathway lighting through FY2025/26.

2. **Assessment District Boundaries:** The boundaries of the Assessment District are as shown by the assessment diagram filed in the offices of the City Clerk, which map is made a part hereof by reference.
3. **Annual Report:** Reference is made to the Annual Report prepared by NBS, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the Assessment District and the zones therein, and the proposed assessments upon assessable lots and parcels of land within the Assessment District.

4. **Notice of Public Hearing:** The City Council hereby declares its intention to conduct a public hearing concerning the levy of assessments in accordance with Section 22629 of the Act. All objections to the assessment, if any, will be considered by the City Council. The public hearing will be held on **Tuesday, June 4, 2024 at 7:00 pm** or as soon thereafter as is feasible in the meeting place of the City Council located at 455 E. Calaveras Boulevard, Milpitas, CA 95035. The City Council further orders the City Clerk to publish notice of this resolution in accordance with Section 22626(a) of the Act.
5. **Increase of Assessment:** The maximum assessment is not proposed to increase from the previous year above that was previously approved by the property owners (as “increased assessment” is defined in Section 54954.6 of the Government Code).

PASSED AND ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

CITY OF MILPITAS

Fiscal Year 2024/25 Annual Report For:

Landscaping and Lighting Maintenance Assessment District No. 95-1

April 2024

CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1
455 East Calaveras Boulevard
Milpitas, California 95035
Phone (408) 586-3000

CITY COUNCIL

Carmen Montano, Mayor
Evelyn Chua, Vice Mayor
Anthony Phan, Council Member
Hon Lien, Council Member
Garry Barbadillo, Council Member

CITY STAFF

Michael Silveira, PE, City Engineer
Luz Cofresi-Howe, Finance Director/Risk Manager
Christian Di Renzo, Public Works Director

NBS

Tim Seufert, Client Services Director
Amanda Welker, Project Manager
Tom Zetz, Administrator

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1. ENGINEER'S LETTER

WHEREAS, in 1995, the City Council of the City of Milpitas (the “City”), State of California, under the Landscaping and Lighting Act of 1972 (the “Act”), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 95-1 (the “District”) in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2024/25 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location, and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2024/25 Maximum Assessment Rate per Lot Sq. Ft. ⁽¹⁾	2024/25 Actual Assessment Rate per Lot Sq. Ft.	2024/25 Net Amount to be Assessed ⁽²⁾⁽³⁾
LLMAD 95-1	45	\$0.0550	\$0.0381	\$448,957

⁽¹⁾ The April 1, 2024 Consumer Price Index (CPI) provided by the U.S. Bureau of Labor Statistics was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated using the February 1, 2024 CPI.

⁽²⁾ Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

⁽³⁾ This amount is only an estimate and does not reflect the final billed amount with rounding adjustments. Refer to Section 7 for the rounded figure.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District’s Plans and Specifications section of this Engineer’s Report (the “Benefited Parcels”) have been identified. For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy of which is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

- The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;
- No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and
- Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

Michael Silveira, City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located on the west side of the City of Milpitas, bounded on the east by State Route 880, on the west by Coyote Creek, on the south by State Route 237, and on the north by Dixon Landing Road. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, pedestrian lighting, gateway improvements, and entry signage, which are primarily situated within the public right-of-way and dedicated public easements within the District.

2.2 Landscaping Improvements

Landscaping, pedestrian lighting, gateway, and signage improvements were installed along the roadways and sidewalks within the District to enhance the overall visual appearance for adjacent parcels.

The improvements within the District consist of the maintenance and installation of any or all public landscaping and irrigation improvements adjacent to curbs of the following described streets, including jogging paths, planter walls, grass berms, pedestrian lighting and appurtenant irrigation systems, ornamental planting including lawns, shrubs, and trees; installation and maintenance of gateway columns and entry signs. Such maintenance includes all necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for property maintenance and operation thereof. The landscaping, irrigation, pedestrian lighting, gateway, and signage improvements are collectively referred to as “landscaping improvements.” All such work will be performed in the following areas:

2.2.1 N. MCCARTHY BOULEVARD

1. A strip of land including an earth berm approximately 50 feet in width from face of each curb line, from the southerly connection with Ranch Drive northerly 2,400 feet, more or less, to the northerly connection with Ranch Drive. A strip of land including a grass berm approximately 35 feet in width, west of the face of westerly curb, along the West Side of N. McCarthy Boulevard, from the southerly connection with Ranch Drive, northerly 2,400 feet, more or less. The initial phase includes a strip of land 6 feet wide on the west side of McCarthy Boulevard.
2. Commencing at a location approximately 2,400 feet north of State Route 237 thence proceeding north to the northern boundary of Lands of N. McCarthy, 7,800 feet more or less, a strip of land approximately 27 to 34 feet in width on each side along the east and west sides of McCarthy Boulevard between the northerly connection with Ranch Drive and Dixon Landing Road.
3. A median island from the southerly intersection with Ranch Drive northerly to the intersection with Dixon Landing Road.

4. Gateway Improvements, at the southerly intersection of N. McCarthy Boulevard and Ranch Drive and southerly of Bridge No. 1 along N. McCarthy Boulevard, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans.
5. Lighting costs in the District are limited to the supplemental pedestrian lights installed on the east side of McCarthy Boulevard between the two intersections at Ranch Drive and McCarthy Boulevard. The conventional lighting along McCarthy Boulevard is not included. There also exists decorative up-lighting for the Gateway Towers in other areas near the southern Ranch Drive intersection of McCarthy.

2.2.2 MILPITAS ENTRY SIGN

1. City of Milpitas Entry Identification Sign along N. McCarthy Blvd., including walls, columns, lighting, and other appurtenances.

2.2.3 RANCH DRIVE

1. Commencing at a Northerly location where the right-of-way of Ranch Drive is contiguous with the right-of-way of Interstate 880, thence southerly, a strip of land approximately 10 feet in width measured from the east face of curb of Ranch Drive, from the northerly connection with Interstate 880 and Ranch Drive, southerly 630 feet, more or less, thence 405 feet south to the southerly end of Gateway location, varying in width from 10 feet to 132 feet, more or less.
2. Gateway Improvements, at the southerly connection of Ranch Drive and Interstate 880, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans (Part A), except the Shopping Center's Monument Sign. As mentioned above, there also exists decorative up-lighting for the Gateway Towers in other areas near the southern Ranch Drive intersection of McCarthy.

2.3 Capital Improvements

In Fiscal Year 2021/22, the City initiated the design and construction of landscape and irrigation renovation on N. McCarthy Blvd. between State Route 237 and Dixon Landing Road and a portion of Ranch Drive. The landscape and irrigation renovation design has been completed and the project is currently in the construction stage.

2.4 Overhead

In addition to the costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2024/25 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Fiscal Year 2024/25 Budget
Maintenance Staff and Contract Services ⁽¹⁾	\$280,485
Capital Equipment	0
Supplies	38,053
Utilities (Water, Electricity)	69,300
Reserve Fund	0
Capital Improvement Program	75,000
Maintenance Costs	\$462,838
NBS	\$5,000
City Staff District Administration	400
County Auditor-Controller Fee ⁽²⁾	4,046
District Specific Costs	\$9,446
Total District Costs	\$472,284
General Benefit Contribution ⁽³⁾	(23,327)
Operating Reserve Contribution	0
Net Amount to be Assessed	\$448,957
Total District Square Footage⁽⁴⁾	11,794,540
Rate per Square Foot⁽⁵⁾⁽⁶⁾	\$0.0381
Maximum Rate Per Square Foot – 2024/25⁽⁷⁾	\$0.0550

⁽¹⁾ Fiscal Year 2024/25 Landscape Maintenance Contract Services includes Terracare and Irvine Company.

⁽²⁾ County Auditor-Controller Fee is currently 1% of the total levy submittal amount.

⁽³⁾ General Benefit Contribution is not applied to District Specific Costs, as these are special benefits to the District.

⁽⁴⁾ Total District Square Footage includes a 50% reduction for Parcel 5-7 (Sewer Main Pump Station) and Parcel 5-3C (Storm Pump Station).

⁽⁵⁾ The Rate per Square Foot equals the Net Amount to be Assessed / Total District Square Footage.

⁽⁶⁾ The assessed rate cannot exceed the maximum rate.

⁽⁷⁾ The April 1, 2024 CPI was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated by using the February 1, 2024 CPI.

3.1.1 OPERATING RESERVE

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2024 Operating Reserve Cash Balance	\$260,586
Operating Reserve Collection for Fiscal Year 2024/25	0
Estimated Fiscal Year Ending 6/30/2025 Operating Reserve Cash Balance	\$260,586

3.1.2 CAPITAL IMPROVEMENT BUDGET

The City completed the replacement of the irrigation controllers and repairs of the irrigation system on N. McCarthy Blvd. (between State Route 237 and Dixon Landing Road) and a portion of Ranch Drive. The City also installed planting in the median on Ranch Drive at the intersection of N. McCarthy Blvd. In 2024, The City is planning to make improvements to the gateway entry sign, tower, and pedestrian pathway lighting. Planting renovations will continue in 2025/2026. As of March 31, 2024, the balance available for the Capital Improvement Project is \$433,000. The City will utilize these funds, along with an annual collection of \$75,000 via the District from Fiscal Year 2024/25 to Fiscal Year 2028/29, to finance the work.

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described in this section. Figures in this section are derived from a Special v. General Benefit Analysis performed in Fiscal Year 2020/21.

4.1 Identification of Benefit

Section 4 of Article XIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into three primary benefit categories: aesthetic benefit, safety benefit, and economic benefit. The three District benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing, and operation of the improvements within the District. The landscaping improvements enhance the overall image and desirability of the properties within the District. Street landscaping improvements improve the livability, commercial activity, appearance, and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair, so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community.¹ With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity, and attract residents and visitors to the community.²
- **Increased Safety:** Well-maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces.³ The Victoria Transport

¹ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tdm/tdm97.htm>.

² Ibid.

³ Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review*. In: *Green Cities: Good Health* (www.greenhealth.washington.edu). College of the Environment, University of Washington.

Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions.⁴

- **Economic Activity:** Well-maintained street landscape improvements not only make adjacent properties appear more stable and prosperous but can spur investment in the property. The National Complete Streets Coalition notes that street design that is inclusive of all modes of transportation, where appropriate, not only improves conditions for existing businesses, but also is a proven method for revitalizing an area and attracting new development.⁵ Landscaped sidewalks create an inviting place for customers to shop and do business.⁶ Well-maintained and safe District areas will encourage an increase in the overall pedestrian activity. The area will become more pedestrian friendly, thus improving the retail environment by encouraging individuals to shop, dine, and stay within the District boundaries. The District will provide a cleaner more inviting environment to businesses and consumers which will attract, retain and expand the retail and business climate throughout. The effort will reduce vacancy rates and increase lease rates and utilization of property within the District.

4.3 General Benefits Identified

Section 4 of Article XIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District’s improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic, safety and economic activity benefits to the property within the District. However, it is recognized that the ongoing maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not work or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the District’s maintenance

⁴ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tdm/tdm97.htm>.

⁵ Pugliese, Philip. (2008). *Complete Streets provide all the elements of multi-modal transportation*. Retrieved from <http://www.americantrails.org/resources/trans/completestreets08.html>

⁶ U.S Department of Transportation. Federal Highway Administration. (2001). *Designing Sidewalks and Trails for Access, Part II of II: Best Practices Design Guide*. Retrieved from http://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/sidewalk2/

activities, general benefits provided by the ongoing maintenance of the improvements need to be quantified. The amount of general benefit that is provided from the District's maintenance activities cannot be funded via property owners' assessments.

Based upon the City's General Plan, the streets within the City are classified into one of the following categories: freeway, expressway, arterial, collector or local streets. The landscaping improvements are primarily located along N McCarthy Boulevard and Ranch Drive and situated within the public rights-of-way. The portion of the maintained landscaping that is located along N McCarthy Boulevard (classified as an arterial street) provides some general benefit to pass-through traffic.

Arterial streets are intended to provide a higher degree of mobility and generally serve longer vehicle trips. The landscape improvements within the District boundaries not only serve the parcels in the immediate vicinity, but persons who live outside of the District and are passing by. The City's most recent traffic study⁷ completed in 2016 does not identify the percentage of traffic, which is pass-through traffic, but it does provide an estimated number of daily trips for N McCarthy Boulevard at the entrance of the District. However, the daily trip count estimate is lower than the trip count utilized in the 2015 findings report. This would not be expected with the increase in development to this area. Therefore, In the absence of a more recent reading of traffic along N. McCarthy Boulevard, the 2015 average number of daily trips of 35,050 per the General Plan has been utilized for the base trip count.

In order to account for the estimated increase in daily average trips as a result of the increased development, the City commissioned a traffic study for each new development. Per the traffic studies, it is estimated there will be an increase of 9,156 average daily trips. Adding this increase to the 35,050 previously identified above, the estimated number of average vehicles per day is 44,206 as shown below.

Street Name	Average Number of Vehicles per Day
N McCarthy Boulevard – between SR 237 and Ranch Drive	44,206

Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets for a portion of their trips, but not working, shopping or conducting business in the District or benefiting from the landscaping improvements in place.

Research consistently shows that developments with multiple land uses that make walking safe and convenient and are near other development, allow residents and workers to drive significantly less if they choose. While this District is not a mixed-use development, there are multiple land uses adjacent to one another. Therefore, treating this development area as though the uses were separated and accessible only by car would result in inflated trip counts in comparison to conventional, single-use developments.

In lieu of having a comprehensive traffic study that identifies the pass-through traffic, the estimated number of special benefit trips for each parcel has been determined using the average daily trips according

⁷ City of Milpitas. (2016 Traffic Study). Retrieved from City's Assistant Traffic Engineer

to the ITE Trip Generation Report, 9th Edition⁸ and the 2010 NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-use Developments⁹.

Utilizing the ITE Trip Generation Report, each parcel within the District was assigned an average daily number of special benefit trips using the parcel's land use, building size or number of units. Further, to ensure the number of trips generated by the parcels has not been overstated, the percentage of total trips that are made internally within the development has been considered. Using the 2010 NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments, the total special benefit trips have been reduced by approximately 31% (19,258 trips) to account for internal trips between the various businesses within the District. The total number of special benefit trips is therefore 42,864 as shown below.

Property Type	Combined Trip Generations
Retail (ITE Land Uses 815, 820, 869)	24,978.76
Office (ITE Land Uses 710, 714, 750)	15,832.41
Industrial/Warehousing (ITE Land Uses 140, 150, 151)	8,660.43
Fast-Food Restaurant w/ drive thru (ITE Land Use 934)	3,925.30
Gas Station (ITE Land Use 945)	3,758.16
Restaurant (ITE Land Uses 931, 932)	3,710.03
Hotel (ITE Land Use 310)	1,256.82
Total Trips	62,121.92
Internal Trip Reduction ¹	(19,257.79)
Total Adjusted Special Benefit Trips	42,864.12

(1) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.¹⁰

The total of all special benefit trips was removed from the average number of vehicles per day traveling within the District to estimate the number of pass-through trips daily.

Street Name	Average Number of Vehicles per Day	Less: Estimated Special Benefit Trips	Estimated Number of Pass Through Trips	Estimated % General Benefit
McCarthy Blvd.	44,206	42,864	1,342	3.04%

Based on the above calculations, the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 3.04%.

Pass-thru Vehicle General Benefit	3.04%
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⁸ Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012) Washington, DC: Institute of Transportation Engineers.

⁹ Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments. Retrieved from onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_684.pdf

¹⁰ Ibid.

The commonly accepted distance people will walk for public transportation, goods and services is one-quarter mile.¹¹ However, based on the location of the District, and given that it is bounded by State Route 880 and 237, and Coyote Creek, there is not an efficient or practical means of walking into the District. Although unlikely, a person may decide to use the paths within the District, and as such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 1.00%.

Pass-thru Walking General Benefit	1.00%
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An estimated 1% of all US trips are made by bicycle¹². Although the District is bounded by State Route 880 and 237, and Coyote Creek, there is a bike lane on N McCarthy Boulevard and a bike path along Coyote Creek¹³. According to the National Household Travel Surveys, 49% of bike trips are for recreation, exercise, and sports¹⁴. As result of the District maintenance activities, there will be a level of general benefit to bicycle traffic that is not associated with property in the District. As such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be .50%, rounded up to 1.00%.

Pass-thru Biking General Benefit	1.00%
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Collective District-Wide General Benefit

Since the District is comprised of improved aesthetics, safety, and economic activity benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to vehicle, walking, and biking pass-thru traffic. This general benefit result is provided in the table below:

Pass-thru Vehicle General Benefit	3.04%
Pass-thru Walking General Benefit	1.00%
Pass-thru Biking General Benefit	1.00%
Total General Benefit	5.04%

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 5.04%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 95.00%. **This general benefit percentage is in line with the level of general benefit determined by the assessment engineer at formation of the District (less than 10%).**

¹¹ Walkscore. (2014). *Walk Score Methodology*. Retrieved from <http://www.walkscore.com/methodology.shtml>

¹² U.S Department of Transportation. Federal Highway Administration. (2011). *Summary of Travel Trends: 2009 National Household Travel Survey*. (Report No. FHWA-PL-11-022). Retrieved from <http://nhts.ornl.gov>

¹³ City of Milpitas. (2002). *General Plan*. Retrieved from <http://www.ci.milpitas.ca.gov>

¹⁴ Pucher, J., Buehler R., Meron, F., and Bauman, A. *American Journals of Public Health, Supplement 1, Vol 101, No S1 (2011). Walking and Cycling in the United States, 2001-2009: Evidence from the National Household Travel Surveys*. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/21551387>

4.5 Special Benefit Trips

The detailed breakdown of the estimated special benefit trips for each parcel in the District is shown in the following table.

Assmt ID	Assessor's Parcel Number	Land Use Description	Acreage	Gross Leasable Area	Average Trip Rate ¹	Estimated # of Daily Special Benefit Trips ²
1-1A-1	022-54-016	710 - General office	1.05	8,500	11.03	93.76
1-1A-2	022-54-017 ⁽³⁾	310 – Hotel	3.29	83,310	8.17	680.64
1-1A-3	022-54-018 ⁽³⁾	310 – Hotel	2.31	70,524	8.17	576.18
1-1A-4	022-54-019	934 - Fast Food	0.19	0.00	496.12	0.00
1-1B	022-54-008	934 - Fast Food	0.78	2,912	496.12	1,444.70
1-2	022-54-002	820 - Shopping Center	0.58	5,600	42.70	239.12
1-3	022-54-003	932 - High Vol. Restaurant	1.02	5,465	127.15	694.87
1-4A	022-54-009	869 - Home Superstore	8.47	86,250	20.00	1,725.00
1-4B	022-54-012	820 - Shopping Center	3.02	15,000	42.70	640.50
1-4C	022-54-013	820 - Shopping Center	0.23	10,000	42.70	427.00
1-4D	022-54-015	931 - Quality Restaurant	1.78	8,285	89.95	745.24
1-4E	022-54-014	932 - High Vol. Restaurant	0.64	3,710	127.15	471.73
1-4F	022-54-011	820 - Shopping Center	1.31	9,100	42.70	388.57
1-4G	022-54-010	931 - Quality Restaurant	1.03	7,476	89.95	672.47
2-1	022-53-001	931 - Quality Restaurant	0.75	6,500	89.95	584.68
2-2	022-53-002	820 - Shopping Center	1.23	15,020	42.70	641.35
2-3	022-53-003	820 - Shopping Center	0.76	12,000	42.70	512.40
2-4	022-53-004	934 - Fast Food	0.6	2,000	496.12	992.24
2-5	022-53-005	934 - Fast Food	0.74	3,000	496.12	1,488.36
2-6	022-53-006	820 – Shopping Center	1.19	51,250	45.04	2,308.30
2-7	022-53-007	820 - Shopping Center	21.92	187,134	42.70	7,990.62
3	022-29-016	815 - Discount Superstore	14.56	125,000	50.75	6,343.75
4-1A-1	022-56-005	714 - Corp Headquarters	2.04	115,753	7.98	923.71
4-1A-2	022-56-006	714 - Corp Headquarters	2.06	174,483	7.98	1,392.37
4-1A-3	022-56-007	714 - Corp Headquarters	2.07	174,483	7.98	1,392.37
4-1A-4	022-56-008	Undeveloped	34.52	-	-	-
4-1A-5	022-56-009	Parking Lot	24.32	-	-	-
4-1B	022-29-037	Undeveloped	6	-	-	-
5-1A-1	022-29-034	750 - Office Park	36.49	572,660	11.42	6,539.78
5-2A-1	022-29-035	750 - Office Park	31.31	480,772	11.42	5,490.42
5-3A-1	022-29-040	150 – Warehousing/710 General Office	15.55	313,978	8.87	2,784.67
5-3A-2	022-29-041	931 – Quality Restaurant	0.14	6,015	89.95	541.05
5-3A-3	022-29-042	150 – Warehousing/710 General Office	6.94	136,632	8.87	1,211.79
5-3A-4	022-29-043	150 – Warehousing/710 General Office	7.36	122,208	8.87	1,083.86
5-3A-5	022-29-044	140 - Manufacturing and 710 General Office	7.73	131,331	8.87	1,164.77
5-3B-1A	022-30-054	140 - Manufacturing and 710 General Office	5.63	99,576	8.87	883.14
5-3B-2	022-30-038	Undeveloped	10	-	-	-
5-3B-3	022-30-039	Undeveloped	5	-	-	-
5-3C	022-30-035 ⁴	Pump Station	0.19	-	-	1.00

Assmt ID	Assessor's Parcel Number	Land Use Description	Acreage	Gross Leasable Area	Average Trip Rate ¹	Estimated # of Daily Special Benefit Trips ²
5-5A-1	022-30-055	815 - Discount Superstore	5.6	74,131	50.75	3,762.15
5-5A-2	022-30-056	915 – Gasoline/Service Station	0.59	3,182	1,181.07	3,758.16
5-5A-3	022-30-057	151 – Mini-Warehouse	3.15	114,707	13.34	1,530.19
5-6	022-30-041	Open Space	0	-	-	-
5-7	022-30-049 ⁴	Sewer Pump Station	9.12	8,500	11.03	1.00
Total Estimated Daily Special Benefit Trips						62,121.92
Internal Trip Reduction ⁵						(19,257.79)
Total Special Benefit Trips						42,864.12

(1) Average Trip Rate per Day is from the Institute of Traffic Engineer's, Trip Generation Report. ¹⁵

(2) Average Number of Special Benefit Trips per Day is the Average Trip Rate times each 1,000 square feet of gross leasable area.

(3) Average Number of Special Benefit Trips per Day is the Average Trip Rate times number of hotel rooms for this parcel.

(4) Pump Station trips are an estimate.

(5) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool. ¹⁶

¹⁵ Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012) Washington, DC: Institute of Transportation Engineers.

¹⁶ Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-Use Developments. Retrieved from onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_684.pdf

5. METHOD OF ASSESSMENT

5.1 Introduction

The special benefits that accrue to the properties in the District are limited to those properties that abut an improved public street or which have been obligated by issuance of bonds for necessary public improvements (the “Benefited Parcels”). Other properties in the District receive only a general benefit from the work of the improvements, and there is also some general benefit that accrues to the community as a whole. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 5.04%.

The Benefited Parcels receive a special benefit proportionate to their net acreage and thus they are assessed on the basis of total net acreage for all costs associated with the maintenance and installation of the District’s improvements, with the following exceptions:

- Of the 9.12 acres of parcel 022-30-049 (sewer pump station), 5.51 acres is the pump station and is not assessable. The remaining 3.61 acres does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- Parcel 022-30-035 (storm pump station) does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- Parcel 022-29-037 and parcel 022-30-041 are dedicated to open space and therefore do not receive special benefit from the maintenance and improvements.

5.2 Method of Assessment Spread

The amount of assessment levied on each Benefited Parcel in the District, for Fiscal Year 2024/25, is \$0.0381 per square foot. The assessment rate was determined by taking the Fiscal Year 2024/25 Net Amount to be assessed (\$448,957) divided by the total net square footage of the District (11,794,540 sq. ft.).

The maximum assessment rate for Fiscal Year 2024/25 is approximately \$0.0550, which is a preliminary number. Each year the maximum assessment rate per square foot is increased by the percentage change from April 1st of the prior year to April 1st of the current year in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. The April 1, 2024 CPI was not available at the time of writing of this report. For purposes of this report, the CPI increase was estimated by using the February 1, 2024 CPI.

5.3 Maximum Assessment Rates

The following table provides the historical maximum assessment rate for Fiscal Year 2001/02 through the current fiscal year:

Fiscal Year	CPI	Percentage Increase ⁽¹⁾	Assessment Rate Range ⁽²⁾	
2001/02	189.1	N/A	\$0.0120	\$0.0300
2002/03	193.0	2.06%	0.0122	0.0306
2003/04	197.3	2.23%	0.0125	0.0313
2004/05	198.3	0.51%	0.0126	0.0315
2005/06	202.5	2.12%	0.0129	0.0321
2006/07	208.9	3.16%	0.0133	0.0331
2007/08	215.842	3.32%	0.0137	0.0342
2008/09	222.074	2.89%	0.0141	0.0352
2009/10	223.854	0.80%	0.0142	0.0355
2010/11	227.697	1.72%	0.0144	0.0361
2011/12	234.121	2.82%	0.0149	0.0371
2012/13	238.985	2.08%	0.0152	0.0379
2013/14	244.675	2.38%	0.0155	0.0388
2014/15	251.495	2.79%	0.0160	0.0399
2015/16	257.622	2.44%	0.0163	0.0409
2016/17	264.565	2.70%	0.0168	0.0420
2017/18	274.589	3.79%	0.0174	0.0436
2018/19	283.422	3.22%	0.0180	0.0450
2019/20	294.801	4.01%	0.0187	0.0468
2020/21	298.074	1.11%	0.0189	0.0473
2021/22	309.419	3.81%	0.0196	0.0491
2022/23	324.878	5.00%	0.0206	0.0515
2023/24	338.496	4.19%	0.0215	0.0537
2024/25	345.151	2.37% ⁽³⁾	0.0220	0.0550

⁽¹⁾ Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.

⁽²⁾ The left and right column indicate the minimum and maximum assessment rate, respectively.

⁽³⁾ The April 1, 2024 CPI was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated using the February 1, 2024 CPI.

5.4 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread may file an appeal with the Finance Director of the City. Any such appeal is limited to the correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014; said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavell
City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014.

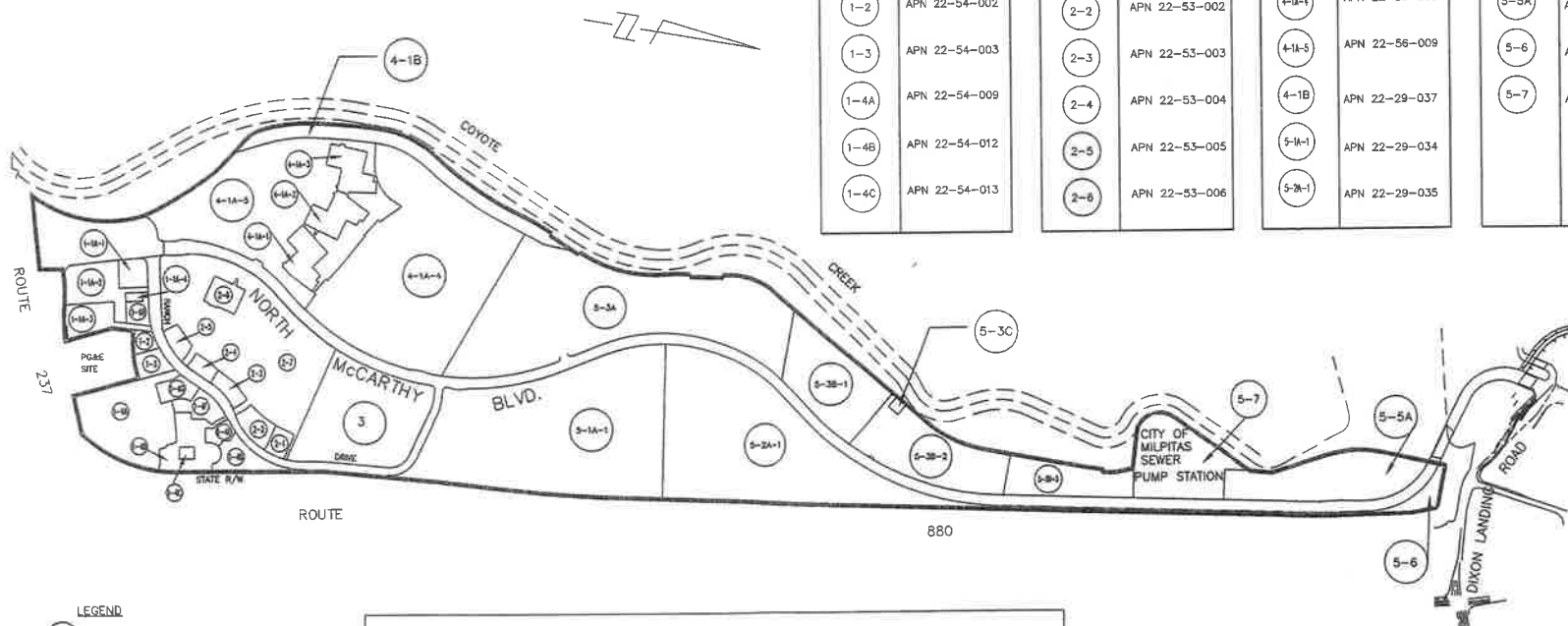
Mary Lavell
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

[Signature]
Superintendent of Streets
City of Milpitas

Figure 1

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
1-1A-1	APN 22-54-016	1-4D	APN 22-54-015	2-7	APN 22-53-007	5-3A	APN 22-29-036
1-1A-2	APN 22-54-017	1-4E	APN 22-54-014	3	APN 22-29-016	5-3B-1	APN 22-30-037
1-1A-3	APN 22-54-018	1-4F	APN 22-54-011	4-1A-1	APN 22-56-005	5-3B-2	APN 22-30-038
1-1A-4	APN 22-54-019	1-4G	APN 22-54-010	4-1A-2	APN 22-56-006	5-3B-3	APN 22-30-039
1-1B	APN 22-54-008	2-1	APN 22-53-001	4-1A-3	APN 22-56-007	5-3C	APN 22-30-035
1-2	APN 22-54-002	2-2	APN 22-53-002	4-1A-4	APN 22-56-008	5-5A	APN 22-30-048
1-3	APN 22-54-003	2-3	APN 22-53-003	4-1A-5	APN 22-56-009	5-6	APN 22-30-041
1-4A	APN 22-54-009	2-4	APN 22-53-004	4-1B	APN 22-29-037	5-7	APN 22-30-049
1-4B	APN 22-54-012	2-5	APN 22-53-005	5-1A-1	APN 22-29-034		
1-4C	APN 22-54-013	2-6	APN 22-53-006	5-2A-1	APN 22-29-035		



LEGEND
 6 ASSESSMENT NO.
 BOUNDARY DISTRICT
 — ASSESSMENT LIMIT

PART F - ASSESSMENT DIAGRAM
LANDSCAPING & LIGHTING & MAINTENANCE
ASSESSMENT DISTRICT NO. 95-1
 OF
CITY OF MILPITAS
 COUNTY OF SANTA CLARA - STATE OF CALIFORNIA

Note:
 Reference is hereby made to the maps and deeds of record in the Office of the Assessor of the County of Santa Clara for a detailed description of the lines and dimensions of any parcels shown hereon. Those maps shall govern for all details concerning the lines and dimension of such parcels. Each parcel is identified in said maps by its distinctive Assessor's Parcel Number.

7. ASSESSMENT ROLL

Assessor's parcel identification, for each lot or parcel within the District, shall be based on the Santa Clara County Assessor's secured roll data for the applicable year in which this report is prepared and is incorporated herein by reference.

A listing of assessor's parcels assessed within the District for Fiscal Year 2024/25, along with the assessment amounts, is on file in the office of the City Clerk and incorporated herein by reference. Based on County Assessor's secured roll data, current assessor's parcels, including corrected and/or new assessor's parcels, will be submitted and/or resubmitted to the Santa Clara County Auditor/Controller. The annual assessment amount to be levied and collected for the resubmitted parcel(s) shall be determined in accordance with the method of apportionment and assessment rate approved in this report. Therefore, if a single assessor's parcel has a status change in development, other land use change, or subdivides into multiple assessor's parcels, the assessment amounts applied to each of the new assessor's parcels shall be recalculated and applied according to the approved method of apportionment and assessment rate rather than a proportionate share of the original assessment amount.

City of Milpitas

LLMAD No. 95-1

Final Billing Detail Report for Fiscal Year 2024/25

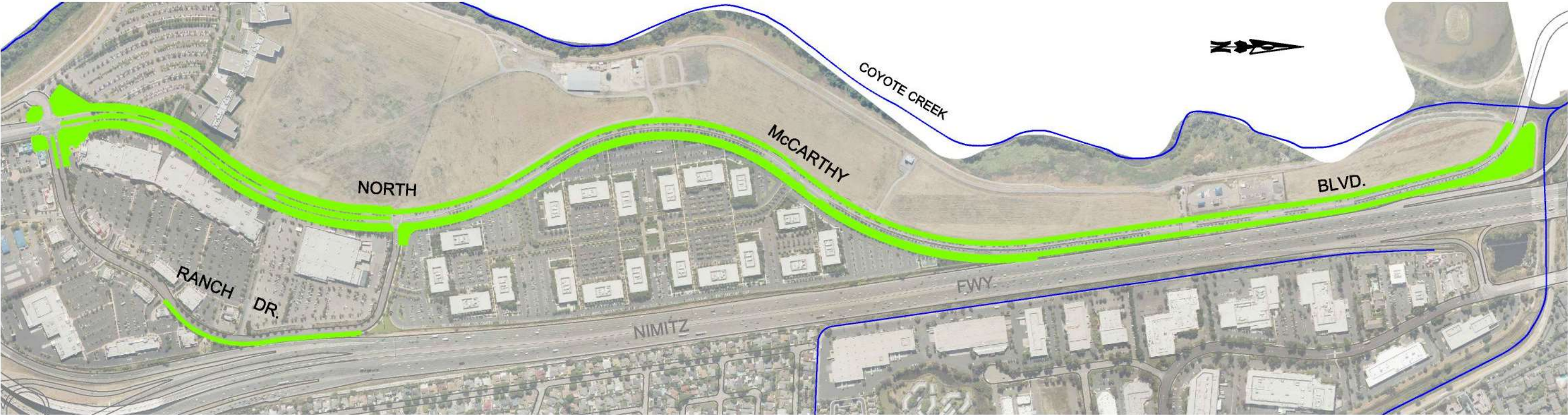
APN	Situs Address	Net Square Foot	Fiscal Year 2024/25 Levy
022-29-016	301 RANCH DR	634,234	\$24,141.98
022-29-034	430 N MCCARTHY BLVD	1,589,504	60,504.18
022-29-035	820 N MCCARTHY BLVD	1,363,864	51,915.20
022-29-037	565 N MCCARTHY BLVD	0	0.00
022-29-040	407N N N MCCARTHY BLVD	677,532	25,790.12
022-29-041	507N N N MCCARTHY BLVD	43,691	1,663.06
022-29-042	607N N N MCCARTHY BLVD	302,350	11,508.88
022-29-043	707 N MCCARTHY BLVD	320,732	12,208.60
022-29-044	807 N MCCARTHY BLVD	336,545	12,810.50
022-30-035		4,138	157.50
022-30-038		435,600	16,581.02
022-30-039	1207 N MC CARTHY BLVD	217,800	8,290.50
022-30-049		78,626	2,992.86
022-30-054	907 N MCCARTHY BLVD	245,330	9,338.42
022-30-055	1645 N MCCARTHY BLVD	243,936	9,285.36
022-30-056	1605 N MCCARTHY BLVD	25,875	984.90
022-30-057	1585 N MCCARTHY BLVD	137,040	5,216.38
022-30-058		0	0.00
022-30-059		0	0.00
022-53-001	275 RANCH DR	32,670	1,243.56
022-53-002	179 RANCH DR	53,579	2,039.46
022-53-003	125 RANCH DR	33,106	1,260.14
022-53-004	81 RANCH DR	26,136	994.86
022-53-005	41 RANCH DR	32,234	1,226.98
022-53-006	63 RANCH DR	51,836	1,973.14
022-53-007	11 RANCH DR	954,835	36,345.62
022-54-002	74 RANCH DR	25,265	961.68
022-54-003	84 RANCH AVE	44,431	1,691.26
022-54-008	50 RANCH DR	33,977	1,293.32
022-54-009	120 RANCH DR	368,953	14,044.12
022-54-010	110 RANCH DR	44,867	1,707.84
022-54-011	170 RANCH DR	57,064	2,172.10
022-54-012	200 RANCH DR	131,551	5,007.46
022-54-013	212 RANCH DR	10,019	381.36
022-54-014	190 RANCH DR	27,878	1,061.18
022-54-015	260 RANCH DR	77,537	2,951.42
022-54-016	12 RANCH DR	46,174	1,757.58
022-54-017	30 RANCH RD	143,312	5,455.16
022-54-018	40 RANCH DR	100,624	3,830.20
022-54-019		8,276	315.02
022-56-005	115 N MCCARTHY BLVD	88,427	3,365.94
022-56-006	135 N MCCARTHY BLVD	89,734	3,415.68

Slight variances may occur due to rounding

City of Milpitas
LLMAD No. 95-1
Final Billing Detail Report for Fiscal Year 2024/25

APN	Situs Address	Net Square Foot	Fiscal Year 2024/25 Levy
022-56-007	155 N MCCARTHY BLVD	90,169	3,432.26
022-56-010	205 N MCCARTHY BLVD	1,489,899	56,712.72
022-56-011		1,075,192	40,926.98
45 Accounts		11,794,540	\$448,956.50

CITY OF MILPITAS
LANDSCAPING MAINTENANCE DISTRICT (LMD) 95-1
(N.T.S.)



 2024-2025 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Resolutions Approving the Annual Engineer's Report and Declaring Intention to Levy and Collect Assessments, and Provide Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1 - Sinclair Horizon (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works – Engineering Division Manager, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2024
Recommendation:	Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of public hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 98-1 - Sinclair Horizon.

BACKGROUND:

Landscaping and Lighting Maintenance Assessment No. 98-1 - Sinclair Horizon (LLMD 98-1 Sinclair Horizon) provides the maintenance and improvement of public landscaping, irrigation systems, and pedestrian walking path adjacent to Sinclair Frontage Road and Los Coches Creek abutting the Sinclair Horizon residential subdivision in the areas as shown on the attached location map (**Attachment D**).

ANALYSIS:

Before the City Council may levy the annual assessments for LLMD 98-1 Sinclair Horizon, the Landscaping and Lighting Act of 1972 requires the Council to adopt a resolution approving the annual Engineer's Report (Report) (**Attachment A**) evaluating the landscape and lighting maintenance district's maintenance and improvement costs for Fiscal Year (FY) 2024-25. On March 5, 2024, the City Council directed the City Engineer to prepare the Report (**Attachment C**), which is included in the City Council packet. The proposed total assessment for FY 2024-25 is \$538.42 per lot, with an assessment rate not exceeding the maximum assessment rate of \$567.75. The FY 2024-25 rate is approximately 4.26% higher than the previous year FY 2023-24 rate of \$516.44.

Staff recommends that the City Council adopt Resolutions to:

- Approve the Report, and
- Declare its intention to levy and collect an assessment and direct publishing of notice of a public hearing to be held on June 4, 2024 (**Attachment B**).

POLICY ALTERNATIVE(S):

Alternative 1: Not adopting the Resolutions for LLMD 98-1 Sinclair Horizon.

Pros: None.

Cons: If the City Council does not adopt the Resolutions according to the Landscaping and Lighting Act of 1972, the City will be unable to collect assessments for LLMD 98-1 Sinclair Horizon.

Reason Not Recommended: Staff recommends approving the Resolutions in order to levy and collect assessments for fiscal year 2024-25 to allow for the continuous maintenance and service of LLMD 98-1 Sinclair Horizon.

FISCAL IMPACT:

The levy and collection of assessments provides the City with the needed resources for the maintenance and the servicing of the improvements. The Fiscal Year 2024/2025 maintenance budget for LLMD 98-1 is estimated to be \$70,183.00. The City also maintains an operating reserve, not to exceed the estimated maintenance costs.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Adopt a resolution approving the Annual Engineer's Report, adopt a resolution declaring its intention to levy and collect assessments, and provide notice of the Public Hearing to be held on June 4, 2024, for Landscaping and Lighting Maintenance Assessment District No. 98-1 - Sinclair Horizon.

ATTACHMENT(S):

- (a) Resolution Approving Annual Engineer's Report
- (b) Resolution Declaring Intention to Levy and Collect Assessments
- (c) Engineer's Report for LLMD No. 98-1 Sinclair Horizon
- (d) Location Map

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, APPROVING THE
ANNUAL REPORT FOR THE LANDSCAPING AND LIGHTING MAINTENANCE
ASSESSMENT DISTRICT NO. 98-1 FOR FISCAL YEAR 2024/25**

The City Council of the City of Milpitas (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District 98-1 (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of the report required pursuant to Section 22622 of the Act (the “Annual Report”); and

WHEREAS, the City Council has, by previous resolution, ordered NBS to prepare and file such Annual Report; and

WHEREAS, NBS has prepared and filed such Annual Report with the City Clerk.

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

- 1. Approval of Report:** The City Council hereby approves the Annual Report for the Assessment District concerning the levy of assessments as submitted by NBS for the fiscal year commencing July 1, 2024 and ending June 30, 2025.
- 2.** The Assessment District exterior boundaries are as shown by a map filed in the office of the City Clerk, which map is made a part hereof by this reference.

PASSED AND ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR THE
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1
FOR FISCAL YEAR 2024/25**

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District No. 98-1 (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of the report required pursuant to Section 22622 of the Act (the “Annual Report”); and

WHEREAS, the City Council adopted a Resolution approving the Annual Report for the Assessment District for Fiscal Year 2024/25.

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

1. **Intention:** The City Council hereby declares its intention to levy and collect assessments within the Assessment District to pay the costs of the improvements for the fiscal year commencing July 1, 2024 and ending June 30, 2025. The City Council finds that the public’s best interest requires such action.
2. **Improvements:** The improvements within the Assessment District include, but are not limited to: operating, maintaining and servicing of all public landscaping improvements, consisting of landscaping and grass. Operating, maintaining and servicing costs include, but are not limited to: personnel, materials, electrical energy and water. Services provided include all necessary service, operations, administration, and maintenance required to keep the improvements in a healthy, vigorous, and satisfactory condition. A project renovating the landscape and irrigation improvements in the Assessment District was completed in Fiscal Year 2023/24 and will continue to planting renovation through Fiscal Year 2025/26.
3. **Assessment District Boundaries:** The boundaries of the Assessment District are as shown by the assessment diagram filed in the offices of the City Clerk, which map is made a part hereof by reference.
4. **Annual Report:** Reference is made to the Annual Report prepared by NBS, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the Assessment District and the zones therein, and the proposed assessments upon assessable lots and parcels of land within the Assessment District.
5. **Notice of Public Hearing:** The City Council hereby declares its intention to conduct a public hearing concerning the levy of assessments in accordance with Section 22629 of the Act. All objections to the assessment, if any, will be considered by the City Council. The public hearing will be held on **Tuesday, June 4, 2024 at 7:00 pm** or as soon thereafter as is feasible in the meeting place of the City Council located at 455 E. Calaveras Boulevard,

Milpitas, CA 95035. The City Council further orders the City Clerk to publish notice of this resolution in accordance with Section 22626(a) of the Act.

6. **Increase of Assessment:** The maximum assessment is not proposed to increase from the previous year above that was previously approved by the property owners (as “increased assessment” is defined in Section 54954.6 of the Government Code).

PASSED AND ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

CITY OF MILPITAS

Fiscal Year 2024/25 Annual Report For:

Landscaping and Lighting Maintenance Assessment District No. 98-1

April 2024

CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1
455 East Calaveras Boulevard
Milpitas, California 95035
(408) 586-3000

CITY COUNCIL

Carmen Montano, Mayor
Evelyn Chua, Vice Mayor
Anthony Phan, Council Member
Hon Lien, Council Member
Garry Barbadillo, Council Member

CITY STAFF

Michael Silveira, PE, City Engineer
Luz Cofresi-Howe, Finance Director/Risk Manager
Christian Di Renzo, Public Works Director

NBS

Tim Seufert, Client Services Director
Amanda Welker, Project Manager
Tom Zetz, Administrator

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1. ENGINEER'S LETTER

WHEREAS, in 1998, the City Council of the City of Milpitas (the “City”), State of California, under the Landscaping and Lighting Act of 1972 (the “Act”), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 98-1 (the “District”) to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2024/25 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location, and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2024/25 Maximum Assessment Rate per Lot ⁽¹⁾	2024/25 Actual Assessment Rate per Lot	2024/25 Net Amount to be Assessed ⁽²⁾⁽³⁾
LLMAD 98-1	98	\$567.75	\$538.42	\$52,763.20

⁽¹⁾ The April 1, 2024 Consumer Price Index (CPI) provided by the U.S. Bureau of Labor Statistics was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated using the February 1, 2024 CPI.

⁽²⁾ Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

⁽³⁾ This amount is only an estimate and does not reflect the final billed amount with rounding adjustments. Refer to Section 7 for the rounded figure.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District’s Plans and Specifications section of this Engineer’s Report (the “Benefited Parcels”). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

- The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;
- No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and
- Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIID.

Michael Silveira, City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located in the City of Milpitas, bounded on the east by Sinclair Frontage Road, on the west by Berryessa Creek, and on the north by Los Coches Street. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, planter walls, grass berms, and ornamental planting, which are primarily situated within the public rights-of-way and dedicated public by easements within the District.

2.2 Landscaping Improvements

The landscaping and irrigation improvements were installed within the District in order to enhance the overall visual appearance for adjacent parcels. The improvements consist of the maintenance and operation of any or all public landscaping and irrigation improvements adjacent to curbs, including asphalt concrete jogging paths, planter walls, grass berms, and appurtenant irrigation systems; ornamental planting including lawns, shrubs, and trees, including necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for proper maintenance and operation thereof. The landscaping and irrigation improvements are collectively referred to as “landscaping improvements.” All such work will be performed in the following areas:

2.2.1 BERRYESSA CREEK

Due to the widening of the creek, improvements in Berryessa Creek were removed. Any improvements maintained in this reach (asphalt concrete jogging path, exercise equipment, planting, and irrigation) will no longer be maintained or improved.

2.2.2 LOS COCHES CREEK

1. A strip of land 812 feet long, 14 feet in width along the south bank of Los Coches Creek adjacent to Tract 9018. The improvements include an asphalt concrete jogging path, exercise equipment, planting, and irrigation.
2. A strip of land 5.5 feet wide within the Los Coches Street right-of-way between the back of sidewalk and the right-of-way along the south side of Los Coches Street between Berryessa Creek and Sinclair Frontage Road. The improvements include planting and irrigation.

2.3 Capital Improvements

In 2023, the City completed the replacement of the irrigation controller and repairs of the irrigation system along portions of Los Coches Street and Sinclair Frontage Road. The City is planning to continue planting renovations in 2025/2026..

2.4 Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2024/25 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Fiscal Year 2024/25 Budget
Maintenance Staff ⁽¹⁾	\$32,085
Capital Equipment	0
Supplies	2,898
Utilities (Water, Electricity)	11,800
Reserve Fund	0
<u>Capital Improvement Program</u>	<u>23,400</u>
Maintenance Costs	70,183
NBS	\$4,000
City Staff District Administration	400
<u>County Auditor-Controller Fee⁽²⁾</u>	<u>500</u>
District Specific Costs	\$4,900
Total District Costs	\$75,083
General Benefit Contribution ⁽³⁾	(22,318)
Operating Reserve Contribution	0
<u>Capital Improvement Fund Contribution</u>	<u>0</u>
Net Amount to be Assessed	\$52,765
Total District Lots	98
Rate per Lot⁽⁴⁾	\$538.42
Maximum Rate Per Lot – 2024/25⁽⁵⁾	\$567.75

⁽¹⁾ The City's Department of Public Works is the provider of Maintenance Services.

⁽²⁾ County Auditor-Controller Fee is currently 1% of the total levy submittal.

⁽³⁾ General Benefit Contribution is not applied to District Specific Costs, as these are special benefits to the District.

⁽⁴⁾ The Rate per Lot equals the Net Amount to be Assessed / Total District Lots. The Rate per Lot cannot exceed the maximum rate.

⁽⁵⁾ The April 1, 2024 CPI was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated by using the February 1, 2024 CPI.

3.1.1 OPERATING RESERVE

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2024 Operating Reserve Cash Balance	\$109,925
Operating Reserve Collection for Fiscal Year 2024/25	0
Estimated Fiscal Year Ending 6/30/2025 Operating Reserve Cash Balance	\$109,925

3.1.2 CAPITAL IMPROVEMENT BUDGET

The City completed the replacement of the irrigation controller and repairs of the irrigation system along portions of Los Coches Street and Sinclair Frontage Road in 2023. The City is planning to continue planting renovations in 2025/2026. As of March 31, 2024, the balance available for the Capital Improvement Project was \$98,000. The City will utilize these funds, along with an annual collection of \$23,4000 via the District from Fiscal Year 2024/25 to Fiscal Year 2028/29, to finance the project.

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described in this section. Figures in this section are derived from a Special v. General Benefit Analysis performed in Fiscal Year 2014/15.

4.1 Introduction

Pursuant to Article XIID, all parcels that receive a special benefit conferred upon them as a result of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into two primary benefit categories: aesthetic benefit and safety benefit. The two district benefit categories are further expanded upon below.

- **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing and operation of the improvements within the District. Street landscaping improvements improve the livability, commercial activity, appearance and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community¹. With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity and attract residents and visitors to the community².
- **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there

¹ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tm97.htm>.

² Ibid.

was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces³. The Victoria Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions⁴.

4.3 General Benefits Identified

Section 4 of Article XIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District’s improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic and safety benefits to the property within the District. However, it is recognized that the ongoing District maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not live in or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district’s maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District’s maintenance activities cannot be funded via property owners’ assessments.

The landscaping improvements are primarily located along Los Coches Street and Sinclair Frontage Road and within the subdivision along Los Coches Creek and Berryessa Creek. A portion of the maintained landscaping provides some general benefit to pass-thru traffic. Per the City, there is 52,912 square feet of landscaping being maintained.

Los Coches Creek and Berryessa Creek

As result of the District maintenance activities, there will be a level of general benefit to pedestrians and vehicular traffic that are not associated with property in the District. As expressed by the Court in *Beutz v.*

³ Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review*. In: *Green Cities: Good Health* (www.greenhealth.washington.edu). College of the Environment, University of Washington.

⁴ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tm/tm97.htm>.

County of Riverside (2010), “... courts of this state have long recognized that virtually all public improvement projects provide general benefits.” A route beginning or ending with a parcel within the District does not include the “general public” for purposes of determining general benefit. The landscaping improvements along the south side of Los Coches Creek and Berryessa Creek are local in nature, however even though they are intended primarily for localized access, there is some portion of pedestrian traffic that may not be accessing the adjacent properties. The landscaping improvements are located adjacent to the backyard of homes, and access is only available by walking or bicycling. There is no vehicular access to these improvements.

The Summary of Travel Trends, 2009 National Household Travel Survey (NHTS) prepared by the U.S. Department of Transportation Federal Highway Administration analyzed the number of person trips by various modes of transportations such as private vehicle, transit, walking or some other means of transportation. According to the Pacific Division data extracted from the 2009 NHTS database, of the annual 181,703 (in millions) total person trips, 21,252 (in millions) or 11.70% of those person trips were made by using walking as their mode of transportation, and 2,066 (in millions) or 1.14% of those person trips were made by bicycling⁵.

According to the U.S. Census Bureau (2010), the average household size in the City is 3.34 persons⁶. Based on this average household size, and considering there are 98 residential units within the District, there are approximately 327 people residing within the District boundaries. There are an estimated 163 residential units in close proximity, but outside of the District boundaries. Based on the City’s average household size, there are approximately 544 persons residing outside of the District boundaries, but have access to the landscaping improvements.

Community	Estimated Number of Residential Units	Estimated Number of Persons ⁽¹⁾
District	98	327
Sundrop Subdivision	83	277
Sinclair Renaissance Subdivision	80	267
Total Residential Population	261	871

⁽¹⁾ U.S. Census Bureau (2010) average household size in the City is 3.34 persons.⁷

In order to determine the estimated total number of persons who are within close proximity to the landscaping improvements, and would utilize walking or bicycling as their mode of transportation, we applied the 12.84% (11.70% walking, 1.14% bicycling) of person trips reported from the NHTS Pacific Division study, to the total nearby residential population (871). There are approximately 112 people within close proximity of the District that utilize walking or bicycling as their mode of transportation.

In order to determine the portion of the 112 persons that reside within the District, we applied the 2009 NHTS walking trip percentage (12.84%) to the District population (327). Approximately 42 people within the

⁵ U.S. Department of Transportation. Federal Highway Administration. (2011). Summary of Travel Trends: 2009 National Household Travel Survey. (Report No. FHWA-PL-11-022). Retrieved from <http://nhts.ornl.gov>

⁶ U.S. Census Bureau. (2010). Profile of General Population and Housing Characteristics: 2010, 2010 Demographic Profile Data. Milpitas, C.A. Retrieved March 23, 2015, <http://quickfacts.census.gov/qfd/states/06/0647766.html>

⁷ Ibid.

District boundaries use walking or bicycling as their primary mode of transportation. Therefore, the total surrounding neighborhood area population, located outside of the District boundaries, but in close proximity the landscaping improvements, that uses walking or bicycling as their primary mode of transportation is estimated to be 70 people.

Community	Estimated Number of Persons
District	42
Sundrop Subdivision	36
Sinclair Renaissance Subdivision	34
Walking or Bicycling Population	112

In order to obtain a better picture of the overall level of general benefit provided by the landscaping improvements, the pedestrian traffic that utilizes walking or bicycling as the mode of transportation that will seek out and use the District improvements, but live outside of the District, must be considered. The 2009 NHTS further details the purposes of the reported walking (21,252 in millions) and bicycling (2,066 in millions) trips; based on the property types people entering the District would most likely do so for social or recreational activities.

The following details the number of walking and bicycling trips, based on the 2009 NHTS study, for each of the activities that are the most likely reasons people outside of the District would use the landscaping improvements:

Trip Purpose	Number of Walking or Bicycling Trips (in millions)
Social/Recreational	6,442
Total	6,442

Of the total number of walking and bicycling trips reported, 6,442 (in millions) or 27.63% are for purposes that persons outside of the District may use the landscaping improvements. Applying this percentage (27.63%) to the number of people walking or bicycling as their mode of transportation and that reside outside of the District (70), there are approximately 19 people (general benefit) that may use the landscaping improvements, but do not reside within the District. Taking the 19 people that may walk or bicycle, but reside outside of the District, divided by total residential population with access to the landscaping improvements (871), the estimated percentage of persons, engaging in what is considered general benefit because they do not reside within the District, represents 2.21%.

Los Coches Street and Sinclair Frontage Road

The City does not have a study showing traffic volume along Los Coches Street and Sinclair Frontage Road along the District boundaries. The portion of the maintained landscaping that is located along Los Coches Street and Sinclair Frontage Road provides some general benefit to pass-through traffic. Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the

maintained streets within the District for a portion of their trips, but not living or conducting business in the District and benefiting from the landscaping improvements in place.

The Sundrop and Sinclair Renaissance residential communities are located directly across the street and next to the District, and vehicles entering and/or exiting these communities in all likelihood are passing by a portion of the landscaping improvements for a portion of their trip. In lieu of having a study that identifies the pass-through traffic, the estimated number of trips generated for each community has been calculated based on the number of units and average number of trips per dwelling unit.

Community	Number of Residential Units ⁽¹⁾	Estimated Number of Daily Vehicle Trips ⁽²⁾	% of Total Daily Vehicle Trips ⁽³⁾
District	98	933.0	44.34%
Sundrop Subdivision	83	790.2	37.56%
Sinclair Renaissance Subdivision	80	380.8	18.10%
Total	261	2,104.0	100.00%

⁽¹⁾ Number of Residential Units is from the City's Approved Projects map.⁸

⁽²⁾ Per the ITE Trip Generation Report a single family residence generates an average of 9.52 trips per dwelling unit.⁹

⁽³⁾ Number of daily trips has been reduced by 50% to account for vehicles entering and exiting the community from the opposite direction on Sinclair Frontage Road, and not driving along the portion of Los Coches Street and Sinclair Frontage Road with landscaping improvements maintained by the District.

As detailed above, based on the average number of daily vehicle trips generated for the communities in close proximity to the District, 1,171 (55.66%) are generated by residential units located outside of the District (general benefit).

All Locations and Landscaping Improvements – Residential Pass-thru Benefit

The general benefit percentages determined in the previous sections for Los Coches Creek and Berryessa Creek (2.21%) and Los Coches Street and Sinclair Frontage Road (55.66%) were then applied to each corresponding location with landscaping improvements. The landscaping square footage being maintained by the District was provided by the City's Public Works Department. The general benefit percentage for each street type was multiplied by the total square footage being maintained for such street. The general benefit square footage was summed for all street segments and divided into the total square footage of all landscaping maintenance. The result is the combined general benefit percentage. The following table details this calculation.

Street Name	Total Square Footage	General Benefit Percentage	General Benefit Square Footage
Los Coches Creek	4,572	2.21%	101
Berryessa Creek	21,025	2.21%	465
Los Coches Street	24,747	55.66%	13,773
Sinclair Frontage	2,568	55.66%	1,429
Totals:	52,912		15,768
Landscaping General Benefit			29.80%

⁸ City of Milpitas. (2013). Approved Development Projects. Retrieved from http://www.ci.milpitas.ca.gov/government/planning/proj_approved.asp

⁹ Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers. (2012). Washington, DC: Institute of Transportation Engineers.

Based on the above calculations, the general benefit portion of the improved aesthetics and increased safety resulting from the landscaping improvements is estimated to be 29.80%.

Public at Large General Benefit

Given the location and nature of the improvements, it is very unlikely the public at large would seek out or use the landscaping improvements within the District. In addition, there are more direct routes to access the industrial complexes/businesses located to the south of the District than the 2 lane Los Coches Street and Sinclair Frontage Road. Nevertheless, it is perceivable that members of the public at large may pass-thru a portion of the landscaping improvements, even if it's lost or leisure traffic. As such, general benefit of 2.00% has been assigned for the landscaping improvements to the public at large

4.4.1 COLLECTIVE DISTRICT-WIDE GENERAL BENEFIT

Since the District is comprised of improved aesthetics and increased safety benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles, and the public at large must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to all pass-thru traffic. This general benefit result is provided in the table below:

Residential Pass-thru General Benefit	29.80%
Public at Large General Benefit	2.00%
Total General Benefit	31.80%

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 31.80%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 68.20%.

5. METHOD OF ASSESSMENT

5.1 Method of Assessment Spread

All parcels in the District on which residential dwellings will be constructed specially benefit from the improvements to an equivalent extent. These parcels are therefore assessed on a per lot basis for the maintenance and operation of the District, including incidentals and appurtenances, and will include all the costs of maintenance and/or operating the improvements. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 31.80%.

The preliminary maximum assessment rate for Fiscal Year 2024/25 is \$567.75. The actual assessment rate levied on each taxable parcel for Fiscal Year 2024/25 is \$538.42.

Each year the maximum assessment rate shall be increased by the percentage change from April 1st of the prior year to April 1st of the current year by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. The April 1, 2024 CPI was not available at the time of writing of this report. For purposes of this report, the CPI increase was estimated by using the February 1, 2024 CPI.

5.2 Maximum Assessment Rates

The following table provides the historical maximum assessment rates for Fiscal Year 2000/01 through the current fiscal year:

Fiscal Year	CPI	Percentage Increase ⁽¹⁾	Maximum Rate
2000/01	178.7	N/A	\$292.803
2001/02	189.1	5.82%	309.844
2002/03	193.0	2.06%	316.234
2003/04	197.3	2.23%	323.280
2004/05	198.3	0.51%	324.918
2005/06	202.5	2.12%	331.800
2006/07	208.9	3.16%	342.286
2007/08	215.842	3.32%	353.661
2008/09	222.074	2.89%	363.872
2009/10	223.854	0.80%	366.789
2010/11	227.697	1.72%	373.086
2011/12	234.121	2.82%	383.611
2012/13	238.985	2.08%	391.581
2013/14	244.675	2.38%	400.904
2014/15	251.495	2.79%	412.079
2015/16	257.622	2.44%	422.118
2016/17	264.565	2.70%	433.494
2017/18	274.589	3.79%	449.919
2018/19	283.422	3.22%	464.392
2019/20	294.801	4.01%	483.037
2020/21	298.074	1.11%	488.400
2021/22	309.419	3.81%	506.988
2022/23	324.878	5.00%	532.318
2023/24	338.496	4.19%	554.632
2024/25	345.151	2.37% ⁽²⁾	567.755

⁽¹⁾ Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.

⁽²⁾ The April 1, 2024 CPI was not available at the time of writing of this report. The Fiscal Year 2024/25 CPI increase was estimated using the February 1, 2024 CPI.

5.3 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread, may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

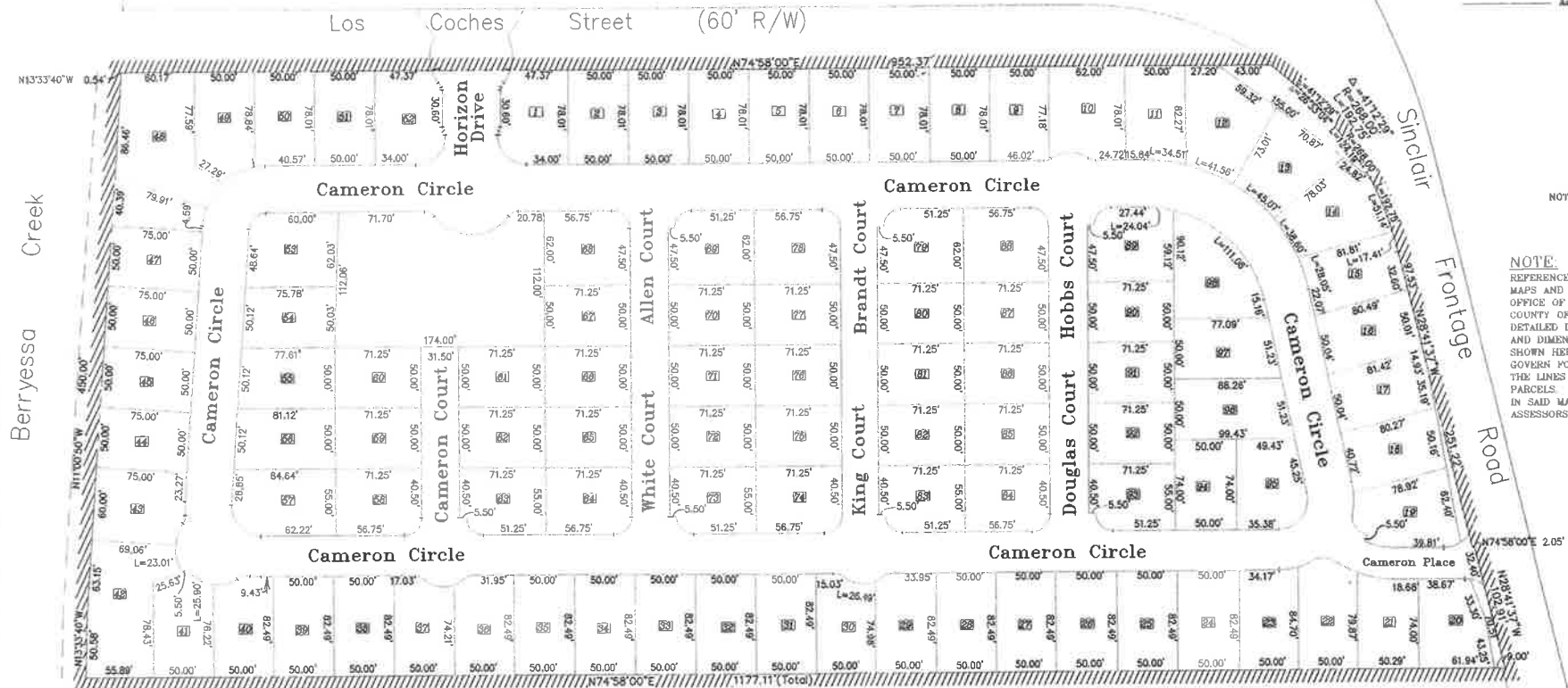
ASSESSMENT DIAGRAM NUMBER	ASSESSMENT PARCEL NUMBER	14	86-48-014	29	86-48-029	44	86-48-044	59	86-48-059
1	86-48-001	15	86-48-015	30	86-48-030	45	86-48-045	60	86-48-060
2	86-48-002	16	86-48-016	31	86-48-031	46	86-48-046	61	86-48-061
3	86-48-003	17	86-48-017	32	86-48-032	47	86-48-047	62	86-48-062
4	86-48-004	18	86-48-018	33	86-48-033	48	86-48-048	63	86-48-063
5	86-48-005	19	86-48-019	34	86-48-034	49	86-48-049	64	86-48-064
6	86-48-006	20	86-48-020	35	86-48-035	50	86-48-050	65	86-48-065
7	86-48-007	21	86-48-021	36	86-48-036	51	86-48-051	66	86-48-066
8	86-48-008	22	86-48-022	37	86-48-037	52	86-48-052	67	86-48-067
9	86-48-009	23	86-48-023	38	86-48-038	53	86-48-053	68	86-48-068
10	86-48-010	24	86-48-024	39	86-48-039	54	86-48-054	69	86-48-069
11	86-48-011	25	86-48-025	40	86-48-040	55	86-48-055	70	86-48-070
12	86-48-012	26	86-48-026	41	86-48-041	56	86-48-056	71	86-48-071
13	86-48-013	27	86-48-027	42	86-48-042	57	86-48-057	72	86-48-072
		28	86-48-028	43	86-48-043	58	86-48-058	73	86-48-073

74	86-48-074	89	86-48-089
75	86-48-075	90	86-48-090
76	86-48-076	91	86-48-091
77	86-48-077	92	86-48-092
78	86-48-078	93	86-48-093
79	86-48-079	94	86-48-094
80	86-48-080	95	86-48-095
81	86-48-081	96	86-48-096
82	86-48-082	97	86-48-097
83	86-48-083	98	86-48-098
84	86-48-084		
85	86-48-085		
86	86-48-086		
87	86-48-087		
88	86-48-088		

LEGEND
 [K] Assessment Parcel Numbers
 District Boundary
 Assessment Limits



NOTE:
 REFERENCE IS HEREBY MADE TO THE MAPS AND DEEDS OF RECORD IN THE OFFICE OF THE ASSESSOR OF THE COUNTY OF SANTA CLARA FOR A DETAILED DESCRIPTION OF THE LINES AND DIMENSIONS OF ANY PARCELS SHOWN HEREIN. THOSE MAPS SHALL GOVERN FOR ALL DETAILS CONCERNING THE LINES AND DIMENSIONS OF SUCH PARCELS. EACH PARCEL IS IDENTIFIED IN SAID MAPS BY ITS DISTINCTIVE ASSESSORS PARCEL NUMBER.



An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014, said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of each assessment levied against each parcel of land shown on this assessment diagram.

Mary Lavell
 City Clerk of the City of Milpitas

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May 2014.

Mary Lavell
 City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

[Signature]
 Superintendent of Streets
 City of Milpitas

PART F
ASSESSMENT DIAGRAM
LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT
NO. 98-1

MILPITAS

CALIFORNIA

June 2011

1
1

Figure 1

7. ASSESSMENT ROLL

Assessor's parcel identification, for each lot or parcel within the District, shall be based on the Santa Clara County Assessor's secured roll data for the applicable year in which this report is prepared and is incorporated herein by reference.

A listing of assessor's parcels assessed within the District for Fiscal Year 2024/25, along with the assessment amounts, is on file in the office of the City Clerk and incorporated herein by reference. Based on County Assessor's secured roll data, current assessor's parcels, including corrected and/or new assessor's parcels, will be submitted and/or resubmitted to the Santa Clara County Auditor/Controller. The annual assessment amount to be levied and collected for the resubmitted parcel(s) shall be determined in accordance with the method of apportionment and assessment rate approved in this report. Therefore, if a single assessor's parcel has a status change in development, other land use change, or subdivides into multiple assessor's parcels, the assessment amounts applied to each of the new assessor's parcels shall be recalculated and applied according to the approved method of apportionment and assessment rate rather than a proportionate share of the original assessment amount.

City of Milpitas
LLMAD No. 98-1
Final Billing Detail Report for Fiscal Year 2024/25

APN	Assessment ID	Situs Address	Fiscal Year 2024/25 Levy
086-48-001	1	872 CAMERON CIR	\$538.40
086-48-002	2	868 CAMERON CIR	538.40
086-48-003	3	864 CAMERON CIR	538.40
086-48-004	4	860 CAMERON CIR	538.40
086-48-005	5	856 CAMERON CIR	538.40
086-48-006	6	852 CAMERON CIR	538.40
086-48-007	7	848 CAMERON CIR	538.40
086-48-008	8	844 CAMERON CIR	538.40
086-48-009	9	840 CAMERON CIR	538.40
086-48-010	10	836 CAMERON CIR	538.40
086-48-011	11	832 CAMERON CIR	538.40
086-48-012	12	828 CAMERON CIR	538.40
086-48-013	13	824 CAMERON CIR	538.40
086-48-014	14	820 CAMERON CIR	538.40
086-48-015	15	816 CAMERON CIR	538.40
086-48-016	16	812 CAMERON CIR	538.40
086-48-017	17	808 CAMERON CIR	538.40
086-48-018	18	804 CAMERON CIR	538.40
086-48-019	19	800 CAMERON CIR	538.40
086-48-020	20	1004 CAMERON PL	538.40
086-48-021	21	1000 CAMERON PL	538.40
086-48-022	22	996 CAMERON PL	538.40
086-48-023	23	992 CAMERON CIR	538.40
086-48-024	24	988 CAMERON CIR	538.40
086-48-025	25	984 CAMERON CIR	538.40
086-48-026	26	980 CAMERON CIR	538.40
086-48-027	27	976 CAMERON CIR	538.40
086-48-028	28	972 CAMERON CIR	538.40
086-48-029	29	968 CAMERON CIR	538.40
086-48-030	30	964 CAMERON CIR	538.40
086-48-031	31	960 CAMERON CIR	538.40
086-48-032	32	956 CAMERON CIR	538.40
086-48-033	33	952 CAMERON CIR	538.40
086-48-034	34	948 CAMERON CIR	538.40
086-48-035	35	944 CAMERON CIR	538.40
086-48-036	36	940 CAMERON CIR	538.40
086-48-037	37	936 CAMERON CIR	538.40
086-48-038	38	932 CAMERON CIR	538.40
086-48-039	39	928 CAMERON CIR	538.40
086-48-040	40	924 CAMERON CIR	538.40
086-48-041	41	920 CAMERON CIR	538.40
086-48-042	42	916 CAMERON CIR	538.40

Slight variances may occur due to rounding

City of Milpitas
LLMAD No. 98-1
Final Billing Detail Report for Fiscal Year 2024/25

APN	Assessment ID	Situs Address	Fiscal Year 2024/25 Levy
086-48-043	43	912 CAMERON CIR	538.40
086-48-044	44	908 CAMERON CIR	538.40
086-48-045	45	904 CAMERON CIR	538.40
086-48-046	46	900 CAMERON CIR	538.40
086-48-047	47	896 CAMERON CIR	538.40
086-48-048	48	892 CAMERON CIR	538.40
086-48-049	49	888 CAMERON CIR	538.40
086-48-050	50	884 CAMERON CIR	538.40
086-48-051	51	880 CAMERON CIR	538.40
086-48-052	52	876 CAMERON CIR	538.40
086-48-053	53	899 CAMERON CIR	538.40
086-48-054	54	903 CAMERON CIR	538.40
086-48-055	55	907 CAMERON CIR	538.40
086-48-056	56	911 CAMERON CIR	538.40
086-48-057	57	915 CAMERON CIR	538.40
086-48-058	58	211 CAMERON CT	538.40
086-48-059	59	203 CAMERON CT	538.40
086-48-060	60	195 CAMERON CT	538.40
086-48-061	61	200 CAMERON CT	538.40
086-48-062	62	208 CAMERON CT	538.40
086-48-063	63	216 CAMERON CT	538.40
086-48-064	64	207 WHITE CT	538.40
086-48-065	65	199 WHITE CT	538.40
086-48-066	66	191 WHITE CT	538.40
086-48-067	67	183 ALLEN CT	538.40
086-48-068	68	175 ALLEN CT	538.40
086-48-069	69	180 ALLEN CT	538.40
086-48-070	70	188 ALLEN CT	538.40
086-48-071	71	196 WHITE CT	538.40
086-48-072	72	204 WHITE CT	538.40
086-48-073	73	212 WHITE CT	538.40
086-48-074	74	203 KING CT	538.40
086-48-075	75	195 KING CT	538.40
086-48-076	76	187 KING CT	538.40
086-48-077	77	179 BRANDT CT	538.40
086-48-078	78	171 BRANDT CT	538.40
086-48-079	79	176 BRANDT CT	538.40
086-48-080	80	184 BRANDT CT	538.40
086-48-081	81	192 KING CT	538.40
086-48-082	82	200 KING CT	538.40
086-48-083	83	208 KING CT	538.40
086-48-084	84	199 DOUGLAS CT	538.40

Slight variances may occur due to rounding

City of Milpitas
LLMAD No. 98-1
Final Billing Detail Report for Fiscal Year 2024/25

APN	Assessment ID	Situs Address	Fiscal Year 2024/25 Levy
086-48-085	85	191 DOUGLAS CT	538.40
086-48-086	86	183 DOUGLAS CT	538.40
086-48-087	87	175 HOBBS CT	538.40
086-48-088	88	167 HOBBS CT	538.40
086-48-089	89	174 HOBBS CT	538.40
086-48-090	90	182 HOBBS CT	538.40
086-48-091	91	190 DOUGLAS CT	538.40
086-48-092	92	198 DOUGLAS CT	538.40
086-48-093	93	206 DOUGLAS CT	538.40
086-48-094	94	991 CAMERON CIR	538.40
086-48-095	95	995 CAMERON CIR	538.40
086-48-096	96	811 CAMERON CIR	538.40
086-48-097	97	815 CAMERON CIR	538.40
086-48-098	98	831 CAMERON CIR	538.40

98 Accounts

\$52,763.20

CITY OF MILPITAS
LANDSCAPING MAINTENANCE DISTRICT (LMD) 98-1
(N.T.S.)



 2024-2025 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

ST



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Designating Street Resurfacing 2024-2025, Project No. 4300 to be Funded by California Senate Bill 1 - The Road Repair and Accountability Act of 2017 (Staff Contact: Michael Silveira, City Engineer, 408-586-3303; and Roberto Alonzo, Public Works Division Manager – Engineering, 408-586-3316)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2024
Recommendation:	Adopt a resolution designating Street Resurfacing 2024-2025, Project No. 4300 to be funded by California Senate Bill 1 - The Road Repair and Accountability Act of 2017.

BACKGROUND:

California Senate Bill 1 - The Road Repair and Accountability Act of 2017 (SB1-RMRA), Chapter 5, Statute of 2017, was signed into law by the Governor in April of 2017 to address significant statewide transportation funding shortfalls. The distribution of SB1-RMRA funding to local jurisdictions for road maintenance is based on a population formula. The City of Milpitas is estimated to receive \$2,098,932.00 in funding for fiscal year 2024-2025.

ANALYSIS:

Street Resurfacing 2024-2025, Project No. 4300 ("Project"), is in the adopted 2025-2029 Capital Improvement Program and provides for the repair, rehabilitation, and/or reconstruction of the street pavement network. The streets are selected based on recommendations in the Pavement Management Program report prepared by Metropolitan Transportation Commission to maintain the City's overall pavement condition index (PCI) rating goal of good or better. Currently, the citywide street pavement network PCI rating is 71 which is considered to be in a "Good Condition".

The following streets selected for the Project (Attachment 1) are estimated at \$5.0 million and are anticipated to start construction in the summer of 2025:

- Great Mall Parkway from McCandless Drive to Montague Expressway
- Tasman Drive from Interstate 880 to Alder Drive
- Alder Drive from Tasman Drive to Barber Lane

As part of the SB1-RMRA program, California Transportation Commission (CTC) requires the City to submit an adopted Resolution specifying the projects that are designated to received SB1-RMRA funding no later than July 1, 2024. Staff recommends the City Council adopt a Resolution (**Attachment 2**) designating Project No. 4300 Street Resurfacing 2024-2025 to be partially funded by SB1-RMRA funds in the amount of \$2,098,932.00 in fiscal year 2024-2025.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt a Resolution stating Street Resurfacing 2024-2025, Project No. 4300, is to be funded by SB1-RMRA as required by CTC.

Pros: None.

Cons: Delaying the adoption of the Resolution will put the City at risk of losing the State allocation of the SB1-RMRA funding to maintain the current PCI rating goal of 70 or better.

Reason not Recommended: SB1-RMRA funding is needed to help offset the cost of the annual street resurfacing program to maintain and improve the condition of the City's pavement infrastructure.

FISCAL IMPACT:

The receipt of annual SB1-RMRA funding for the use in the City's pavement maintenance program is needed to help offset the City costs and will reduce the need for funding from other funding sources such as the General Fund. It is anticipated the City will receive \$2,098,932.00 in funding to be used for Street Resurfacing 2024-2025, Project No. 4300. This amount has been appropriated to CP4300 in FY25-29 adopted Capital Improvement Program budget.

California Environmental Quality Act (CEQA):

The project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities. Alternatively and independently, the action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Adopt a Resolution Designating Street Resurfacing 2024-2025, Project No. 4300 to be Funded by California Senate Bill 1 - The Road Repair and Accountability Act of 2017

Attachment(s):

- (a) Project Locations Map
- (b) Resolution

Project Locations Map

Project No. 4300 Street Resurfacing Project 2024-25 (New Project)

- Great Mall Parkway from McCandless Dr to Montague Expressway
- Tasman Dr from Highway 880 to Alder Dr
- Alder Dr from Tasman Dr to Barber Ln

(Streets highlighted in Orange)



RESOLUTION NO. _____

**RESOLUTION ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2024-2025 FUNDED BY
SENATE BILL 1 - THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

WHEREAS, Senate Bill 1 - the Road Repair and Accountability Act of 2017 (SB1-RMRA), Chapter 5, Statutes of 2017, was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB1 -RMRA includes accountability and transparency provisions that will ensure the residents of our City of Milpitas are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City of Milpitas must adopt by resolution a list of projects proposed to receive fiscal year funding from the SB1- RMRA which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City of Milpitas, will receive an estimated \$2,098,932.00 in SB1 - RMRA funding in Fiscal Year 2024-25; and

WHEREAS, this is the eighth year in which the City of Milpitas is receiving SB1-RMRA funding and will enable the City of Milpitas to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB1-RMRA; and

WHEREAS, the City of Milpitas has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City of Milpitas used a Pavement Management System to develop the SB1-RMRA project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB1-RMRA will help the City of Milpitas maintain and improve 129 center lane miles of streets throughout the City of Milpitas this year and similar projects into the future; and

WHEREAS, the 2021 California Statewide Local Streets and Roads Needs Assessment found that the City of Milpitas streets and roads are in a "good" condition and this revenue will help the City maintain and improve the overall quality of the road system for the next decade to a better condition; and

WHEREAS, the SB1-RMRA project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE the City Council of the City of Milpitas, State of California, as follows:

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

2. The project is categorically exempt from CEQA under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities. Alternatively and independently, the action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.
3. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2024-25 Road Maintenance and Rehabilitation Account revenues:

Project Title: Street Resurfacing 2024-2025, Project No. 4300

Project Description: The project will include the repairs of asphalt pavement section, replacement of curb and gutters, driveways, and sidewalks; installation of asphalt and ADA curb ramps; and installation of Class II bike lanes and Class III bike route facilities as described in the 2022 Trail, Pedestrian and Bicycle Master Plan.

Project Location: Great Mall Parkway from McCandless Drive to Montague Expressway, Tasman Drive from Interstate 880 to Alder Drive, and Alder Drive from Tasman Drive to Barber Lane

Estimated Project Schedule: Commence by July 2024 and complete by December 2026 based on the component being funded with SB1-RMRA funds.

Estimated Project Useful Life: 7-10 years

PASSED AND ADOPTED by the City Council of the City of Milpitas, State of California this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Accept the CalRecycle Grant and Approve Related Budget Amendment (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2603; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2024
Recommendation:	Authorize the City Manager to accept grant funding from CalRecycle's Senate Bill 1383 Local Assistance Grant and approve related budget amendment for revenues in the amount of \$217,999 for the Solid Waste Fund (Fund 280) for FY 2024-25.

BACKGROUND:

In 2022, the Department of Resources Recycling and Recovery (CalRecycle) released grant funding to assist local jurisdictions with Senate Bill 1383 (SB 1383) implementation. The grant funding is allocated to jurisdictions based on population. The City of Milpitas was awarded \$107,661 from this grant in 2022, which was used to fund SB 1383 compliance and recordkeeping software and a portion of the City's solid waste staffing costs.

In September 2023, CalRecycle released an additional SB 1383 Local Assistance Grant, providing for \$90 million in grant funding statewide. The grant is to assist local jurisdictions with SB 1383 implementation and can be used for specific activities such as capacity planning, collection, edible food recovery, education and outreach, enforcement and inspection, program evaluation/gap analysis, procurement, and record keeping.

ANALYSIS:

Staff applied for the 2023 SB 1383 Local Assistance Grant in November 2023, as authorized by Council Resolution No. 9119 (Attachment 1). In March 2024, CalRecycle notified staff that the City of Milpitas was awarded \$217,999 in grant funds. The funding will be used to continue use of the compliance and record keeping software (Recyclist), maintain the City's participation in the Santa Clara County Food Recovery Program, and towards the purchase of SB 1383 compliant recycled organic products such as compost, mulch, electricity, and/or renewable gas, in order to meet the City's SB 1383 procurement target.

POLICY ALTERNATIVE(S):

Alternative 1: Do not accept the grant funds.

Pros: None.

Cons: The City will fund the costs of implementing SB 1383 through the City's Solid Waste Fund or General Fund and not leverage funding from CalRecycle's SB 1383 Local Assistance Grant.

Reason for Not Recommending: It is in the City's interest to leverage external funding to offset City costs when feasible.

FISCAL IMPACT:

Public Works Operating Budget expenditures totaling \$217,999 from the Solid Waste Fund (Fund 280) related to implementation of Senate Bill 1383 (such as Recyclist software program costs, participation in the countywide edible food recovery program, and compliant product procurement) will be offset with the CalRecycle grant. To recognize the grant funding, staff recommends increasing the revenues for the Solid Waste Fund (Fund 280) in the amount of \$217,999 for FY2024-25.

California Environmental Quality Act (CEQA):

The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Accept grant funding from CalRecycle's Senate Bill 1383 Local Assistance Grant and approve budget amendment for revenues in the amount of \$217,999 in the Solid Waste Fund (Fund 280) for FY 2024-25.

Attachment(s):

- (a) Resolution No. 9119 Authorizing Submittal of Application(s) for all CalRecycle Grants
- (c) Budget Change Form

RESOLUTION NO. 9119

**A RESOLUTION OF THE CITY OF MILPITAS
AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL CALRECYCLE GRANTS FOR
WHICH THE CITY OF MILPITAS IS ELIGIBLE**

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milpitas authorizes the submittal of application(s) to CalRecycle for all grants for which the City of Milpitas is eligible; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee is hereby authorized and empowered to execute in the name of the City of Milpitas all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

PASSED AND ADOPTED this 15th day of February, 2022, by the following vote:

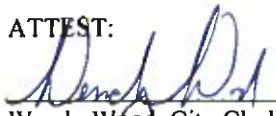
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


Wendy Wood, City Clerk

APPROVED:

 
Rich Tran, Mayor

APPROVED AS TO FORM:


Christopher J. Diaz, City Attorney

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	280-3564	\$217,999	280-4304237	\$217,999

Recommendation: Authorize the City Manager to accept grant funding from CalRecycle's Senate Bill 1383 Local Assistance Grant and approve related budget amendment for revenues in the amount of \$217,999 for the Solid Waste Fund (Fund 280) for FY 2024-25.

BACKGROUND:

In 2022, the Department of Resources Recycling and Recovery (CalRecycle) released grant funding to assist local jurisdictions with Senate Bill 1383 (SB 1383) implementation. The grant funding is allocated to jurisdictions based on population. The City of Milpitas was awarded \$107,661 from this grant in 2022, which was used to fund SB 1383 compliance and recordkeeping software and a portion of the City's solid waste staffing costs.

In September 2023, CalRecycle released an additional SB 1383 Local Assistance Grant, providing for \$90 million in grant funding statewide. The grant is to assist local jurisdictions with SB 1383 implementation and can be used for specific activities such as capacity planning, collection, edible food recovery, education and outreach, enforcement and inspection, program evaluation/gap analysis, procurement, and record keeping.

ANALYSIS:

Staff applied for the 2023 SB 1383 Local Assistance Grant in November 2023, as authorized by Council Resolution No. 9119 (Attachment 1). In March 2024, CalRecycle notified staff that the City of Milpitas was awarded \$217,999 in grant funds. The funding will be used to continue use of the compliance and record keeping software (Recyclist), maintain the City's participation in the Santa Clara County Food Recovery Program, and towards the purchase of SB 1383 compliant recycled organic products such as compost, mulch, electricity, and/or renewable gas, in order to meet the City's SB 1383 procurement target.

POLICY ALTERNATIVE(S):

Alternative 1: Do not accept the grant funds.

Pros: None.

Cons: The City will fund the costs of implementing SB 1383 through the City's Solid Waste Fund or General Fund and not leverage funding from CalRecycle's SB 1383 Local Assistance Grant.

Reason for Not Recommending: It is in the City's interest to leverage external funding to offset City costs when feasible.

FISCAL IMPACT:

Public Works Operating Budget expenditures totaling \$217,999 from the Solid Waste Fund (Fund 280) related to implementation of Senate Bill 1383 (such as Recyclist software program costs, participation in the countywide edible food recovery program, and compliant product procurement) will be offset with the CalRecycle grant. To recognize the grant funding, staff recommends increasing the revenues for the Solid Waste Fund (Fund 280) in the amount of \$217,999 for FY2024-25.

California Environmental Quality Act (CEQA):

The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Accept grant funding from CalRecycle's Senate Bill 1383 Local Assistance Grant and approve budget amendment for revenues in the amount of \$217,999 in the Solid Waste Fund (Fund 280) for FY 2024-25.

Attachment(s):

- (a) Resolution No. 9119
- (c) Budget Change Form

☐ Check if City Council Approval required.

Meeting: May 7, 2024

Requested by:	Department Head: Christian Di Renzo	Date: May 7, 2024
Reviewed by:	Interim Finance Director: Gabrielle Tsang	Date: May 7, 2024
Approved by:	City Manager: Ned Thomas	Date: May 7, 2024
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	5/7/2024
Recommendation:	(1) Receive an update on the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

Background:

Pursuant to Public Contract Code section 22050 and the attached [Council Resolution No. 9134](#), the Director of Public Works, in the case of emergency, may authorize a repair of a public facility and procure the work without giving notice for bids. An emergency is defined as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” Additionally, State law requires the Public Works Director, as the City official with delegated authority to take emergency action, to report any emergency authorization and the reason(s) for the authorization to the City Council not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action. Further, the Public Works Director is required to report why the emergency would not permit a delay resulting from a competitive solicitation for bids and the City Council is required to review the emergency action at every regularly scheduled meeting thereafter until the emergency repair is completed. The City Council shall continue to review the emergency action at every regularly scheduled meeting thereafter until the action is terminated. At each review, the City Council shall determine, by a four-fifths vote, whether there is a need to continue the action.

Consistent with applicable State law and Council Resolution, on November 21, 2023, the Public Works Director declared an emergency and authorized the City to contract with local contractor, Able Construction Inc., for the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek. Further, within the required timeframe the Public Works Director informed the City Council via the attached [Information Memorandum](#) on November 21, 2023 regarding the emergency authorization, the reasons for the authorization, and the cost for repair in the amount of \$137,519.

Project Update(s):

Below is a current update on the status of the storm drain emergency repairs and improvements at Evans Road and Piedmont Creek.

The City entered into two agreements with Able Construction Group, Inc. (Contractor) on December 14th, 2023 and December 18th, 2023 for storm drain repairs and improvements at Evans Road and Piedmont Creek, respectively. Subsequently, the City issued a Notice to Proceed to the Contractor to commence work beginning December 18th, 2023.

The contractor substantially completed improvements at Piedmont Creek, per project plans and specifications, the week of February 20th. The first progress payment for improvements at Piedmont Creek was submitted the week of March 4th. Work on storm drain improvements at Evans Road commenced the week of February 20th and was substantially completed the week of March 18th. A change order was issued for fabrication and installation of the metal grate cover for the concrete storm drain inlet. The metal grate was completed and installed the week of April 22nd.

The City performed a site walkthrough on April 23rd to ensure the improvements at both project locations were completed per project plans and specifications and the project site(s) are satisfactorily restored to pre-project conditions. A punch-list was issued for any outstanding items prior to deeming the project complete. The project will be deemed complete in May after receiving the final certified payroll for work associated with installation of the metal grate and releasing retention of the remaining contract price.

Fiscal Impact:

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget. CIP Project 3715 - Storm Drain System Rehabilitation Project will fund \$137,519 for the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek. Funding source comes from the Storm Drain General Fund and Storm Drain Fund. As of April 26, 2024, the balance in CIP 3715 is \$1,400,749.

California Environmental Quality Act:

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:

- (1) Receive an update on the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek.
- (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Design for Dixon Landing Public Art Project (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409; and Tegan McLane, Assistant Recreation and Community Services Director, 408-586-3212)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2024
Recommendation:	Approve artist Lacey Bryant's design for Dixon Landing Park public art mural.

BACKGROUND:

The Arts Commission has a public art project for Dixon Landing Park on its City Council approved 2023-24 work plan. A sculpture artist that previously was contracted for a Dixon Landing Park art project withdrew from the project early in the pandemic, due to project delays and engineering complications. On March 28, 2022, the Arts Commission re-examined Dixon Landing Park and identified possible artwork locations: the original corner location for a sculpture; a grassy location near the large baseball diamond with a view of the hills for a bench; the pillars of the entryway and snack shack for a mural; or the entryway overhead for a mobile.

On August 29, 2022, the Arts Commission received a staff report on Dixon Landing Park public art project locations and potential themes. They voted unanimously to focus on the pillars and requested staff seek public input on the proposed artwork themes: wildflowers, wetland birds, teamwork, good sportsmanship, and Dixon Landing history. The Commission directed Staff to launch the public input portion of the project in Spring 2023 when the park is most busy with youth Sports. Signs were posted on the pillars in the entry structure and surrounding the snack stand during the busy spring sports season inviting park users to use a QR code to take the survey. The survey was also promoted on social media and through other City channels.

On May 22, 2023, the Arts Commission heard feedback from the public survey regarding themes. A total of 181 people responded, more than 90 of which were Milpitas residents. The public overwhelmingly preferred the wildflower theme with 60 percent selecting that choice. The Arts Commission voted, per feedback from residents, to have the Call for Artists specify a theme of wildflowers.

A Call for Artists was widely distributed within the public art community, including to artists who had previously expressed interest in working with Milpitas and artists whose portfolios indicated an expertise in floral designs. On January 22, 2024, the Dixon Landing Public Art Selection Committee met and reviewed the portfolios of 12 artists whose applications met the criteria outlined in the Call for Artists. The group selected four finalists to be invited to submit full design proposals, including detailed renderings, budgets and a narrative explaining their concept, method, anticipated lifespan and maintenance, and any public engagement they proposed as part of the project. The four were:

- Lacey Bryant
- Lila Gemellos
- Nicole Ponsler
- Timothy Smith

On March 11, 2024, Selection Committee members reconvened to review the design proposals and rank their choices, with Lacey Bryant's proposal as the top vote.

On March 25, 2024, the Arts Commission reviewed and unanimously voted to recommend the Selection Committee's choice.

ANALYSIS:

San Jose-based Artist Lacey Bryant grew up in Milpitas and works as scenic artist, muralist, sculptor, and studio oil painter. She has completed six commissioned murals in San Jose and Redwood City. In addition, her scenic painter credits include projects for Dreamworks, Disney Pixar, SF Chinatown Lunar New Year, Great America and theme parks in Ohio, Virginia, and Missouri, and theater productions throughout Bay Area. Longtime Milpitas residents may remember her involvement with the City's Recreation and Community Services' Rainbow Theatre productions.

Ms. Bryant will work with two assistants, Juan Carlos Araujo of San Jose, and another to be named. Mr. Araujo is the co-founder of SJ Walls (formerly Pow! Wow! Mural Festival) and owner/curator of Empire Several Studios Gallery. He has extensive public art experience having managed 50 public art projects and created 10 commissioned murals himself.

Ms. Bryant hopes to use this artwork to demonstrate to the public that wildflowers are the pillars of the ecosystem, sustaining insects and other fauna. A few of the wildflowers are plants that many people see as weeds, and a few of the creatures are insects people see as pests. However, she proposed to include a QR code on each column so viewers can scan it to visit a webpage to learn more about the featured flower and its resident creature and discover their important roles in the local ecosystem. She will work with Staff to create these educational webpages that will provide a unique and ongoing form of public engagement.

Ms. Bryant and her team will paint onsite for three weeks, interacting informally with the public throughout the process. There will also be a "Community Help Weekend" where Milpitas volunteers can help prep the pillars by painting background colors. She will use Sherwin Williams latex exterior paint, Nova Color high pigment mural paint and an anti-graffiti coat and projects the murals will last 20+ years when properly cared for.

The Selection Committee liked Ms. Bryant's proposed design, as well as the high level of community engagement, use of assistant artists, and the fact that she grew up here.

The Arts Commission also liked this design best, and unanimously voted to recommend the Selection Committee's choice. They did request Ms. Bryant's proposed addition of both common and scientific names of the flowers to enhance the educational value of the murals. While they liked the convenience of a QR code link to the companion webpages, they expressed some concern about the security of QR codes on public signs and requested staff and the artist take special care to minimize the risk of bad actors placing fake QR codes over the ones on the artwork. For example, consider placing large QR codes high on the artwork, where they can easily be scanned by a phone camera, but are safe from tampering.

Other proposals considered include the Selection Committee's second choice by Timothy Smith, who proposed a "worm's eye view" of wildflowers with blue sky seen at the tops of the poles. Mr. Smith who is based in Claremont, in Southern California, would also work about three weeks onsite painting, though solo. He proposed to interact with the public while painting and to document the process through social media and time lapse photography.

San Jose artist Lila Gemellos offered four distinct floral treatments, some with as many as four background options. The large number of options left the Selection Committee with concerns that the artist's concept was too undecided. Also, while the group was intrigued by her proposal to engage the public with a nature hike at Ed Levin Park to gather wildflowers or wildflower images for inspiration, they were concerned that some production elements of the proposal did not seem realistic.

Mendocino area artist Nicole Ponsler proposed columns be split diagonally to suggest movement and offered a unified look for all entryway columns and a separate look for the snack shack columns. An earlier concept indicated glow-in-dark paint. The final proposal did not reference glow-in-the-dark but indicated outdoor lighting that the artist would install. Based on the budget, the group had some concerns about the durability of the

lighting and potential future maintenance issues. Most significantly, Ms. Ponsler proposed to paint offsite in her studio on Polytab, a material that is adhered to surfaces like wallpaper. While this is an increasingly popular technique for murals, the Selection Committee felt strongly that the neighbors would prefer to see the mural painted live and be able to watch its progress and interact with the artist over the painting period of several weeks.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve Lacey Bryant's proposed design for the Dixon Landing Park public art mural.

Pros: None.

Cons: Not approving the proposed design would further delay public art for this park and would be inconsistent with the City's established procedure surrounding public art selection.

Reason for Not Recommending: The Dixon Landing Park public art mural is an item on the arts commission's work plan, and the recommended design was selected by a committee of residents according to the Mural Program Policy procedures and approved by the Arts Commission.

FISCAL IMPACT:

There is no impact to the general fund. The commission for this public art project, \$30,000, has already been approved by the City Council and transferred into Public Art CIP 3489. As of May 1, 2024, the balance in CIP 3489 is \$528,088.46.

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:

Approve artist Lacey Bryant's design for Dixon Landing Park public art mural.

ATTACHMENT(S):

- (a) Artist Lacey Bryant's proposal for Dixon Landing Park public art mural
- (b) Artist Lacey Bryant's resume
- (c) Artist Lacey Bryant's portfolio samples

- Artist's Statement

These 18 columns are a celebration of the many varied and beautiful native wildflowers of the bay area and the tapestry of life that they support. Each pillar represents a different native wildflower and also depicts a creature that visits it and often that depends upon it for survival. I tried to choose flora and fauna from a variety of families representing species very familiar to those of us who grew up here in Milpitas as well as a few that will hopefully open the door to new surprises. I chose a few that you may think of as weeds, which I hope you will reconsider when you learn of their many uses and great value to creatures large and small. Some of the insects pictured are ones I remember playing with in my backyard here when I was young so I hope they will be familiar to kids today and fun to look for hiding amidst the flowers and foliage. There are some species that you may think of as pests, which I also hope you will change your mind about once you learn how important they are to their ecosystems. There are a couple of species which picture both the male and female variations, which can sometimes be so different that they are often mistaken for a different species! The flowers on these pillars are shown larger than life so that you can see the details and learn to identify them. We are so fortunate to be surrounded by such beauty but many of these flowers are small and easy to miss if you don't pay attention and lean in close. Some are threatened by loss of habitat and are often replaced with ornamental plants which don't have the same benefits to native species as native plants do. We can do a lot by learning about native wildflowers and helping them to thrive in our own backyards!

- Proposed dimensions 18 columns 10' highx40" around, designed as a continuous wrap around. I would also like to propose adding the band above each column to be painted in a contrasting color to compliment the design.

- Proposed materials high quality exterior primer undercoat and sealer, latex coatings and TSW anti Graffiti coating. Brands would include Shermin Williams or similar quality High grade exterior latex and Nova Color high pigment artist grade mural color.

- Proposed muralists Lacey Bryant will be the lead artist. She will be assisted by Juan Carlos Araujo of Empire Seven Studios and one additional skilled assistant, Stephen Longoria or another artist of equal skill if he is unavailable at the time the contract is offered. (The additional assistant will be confirmed at time of contracting.)

- Recommended installation procedure, including any special equipment required: After the city performs power washing of the surface, our installation would begin with a primer coating, then base color would be applied to each column. Next, the design outlines will be transferred to the columns. At this point, if desired, Milpitas volunteers may spend a weekend with us helping to fill in the base colors of the designs. After this, we will finish the detail on the mural and apply the anti-graffiti coating. No special equipment is required, we will supply ladders to complete work.

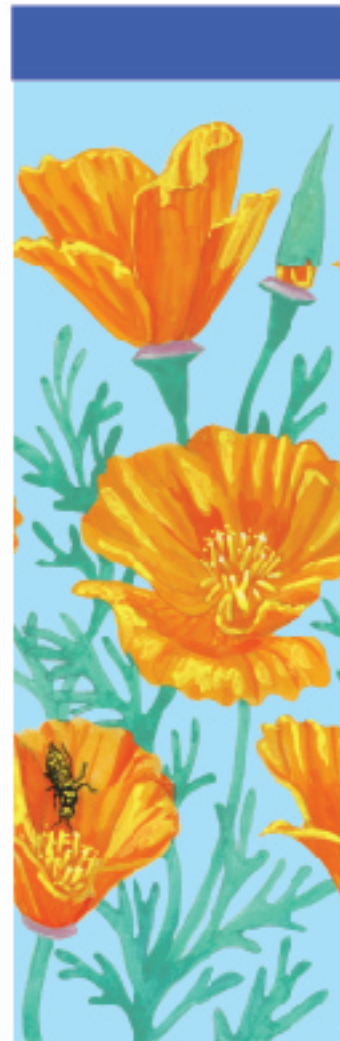
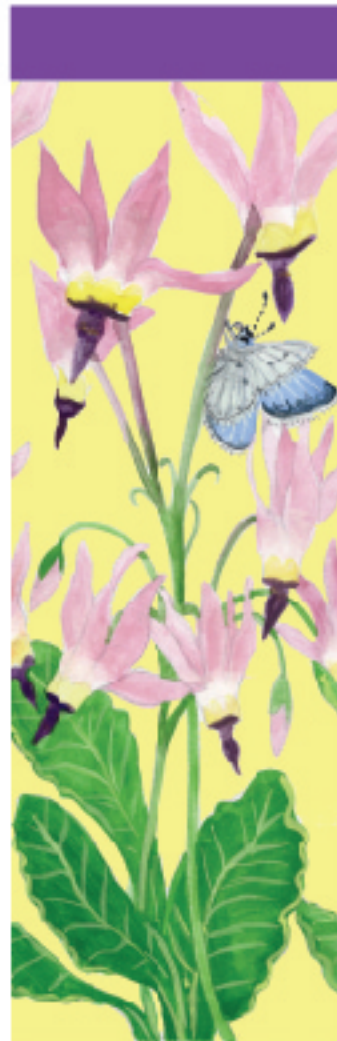
- Expected lifespan of the artwork may be 20-30 years if well maintained.

- Recommended annual and sporadic maintenance necessary to achieve expected lifespan should include twice annual inspection post winter and summer to check for weather damage or dirt build up. Graffiti should be promptly cleaned carefully with gentle water pressure and if residual marks are left, colors may be touched up (a touch up kit and colors to reorder will be provided). Anti-Graffiti coat may need reapplication after multiple heavy cleanings.

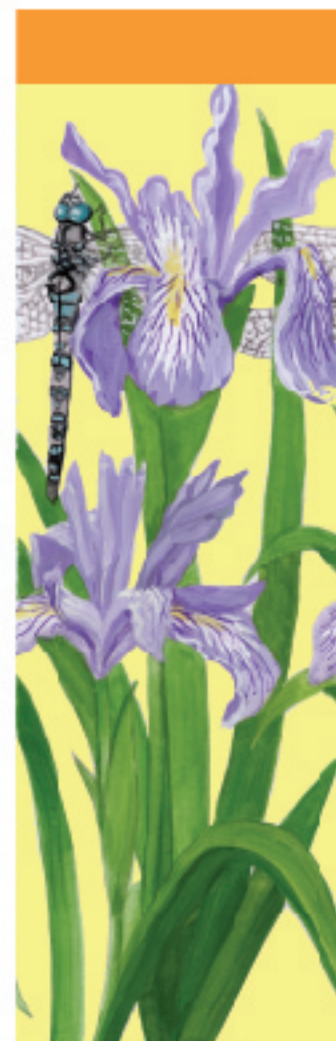
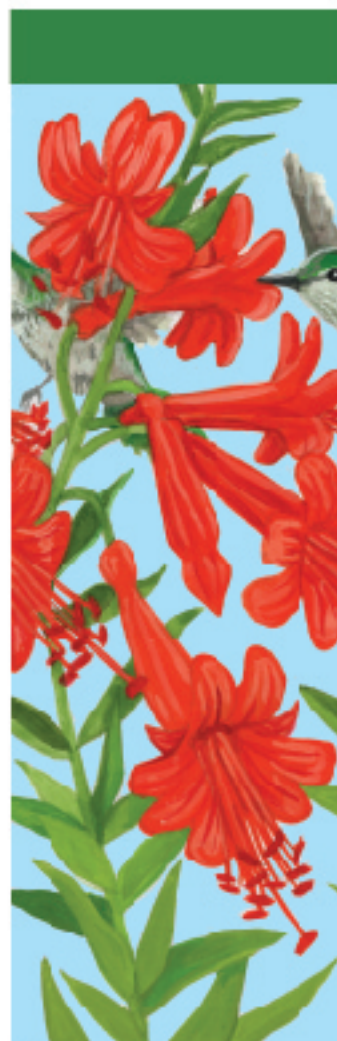
- How/if the public is encouraged to interact with the artwork: The public may be involved in a volunteer fill in colors weekend to help paint the mural. Additionally a small QR code may be incorporated into each column to lead viewers to a city maintained website or to wikipedia's page for each flower shown if this is desired. I can write descriptions of the flowers and creatures for your website if desired. Text names of flowers may also be added to the columns if desired.

- How/if the public is prohibited from interacting with the artwork, including safety measures. The artwork will add no safety risks to the area.

Entry Columns Right Side



Entry Columns Left Side



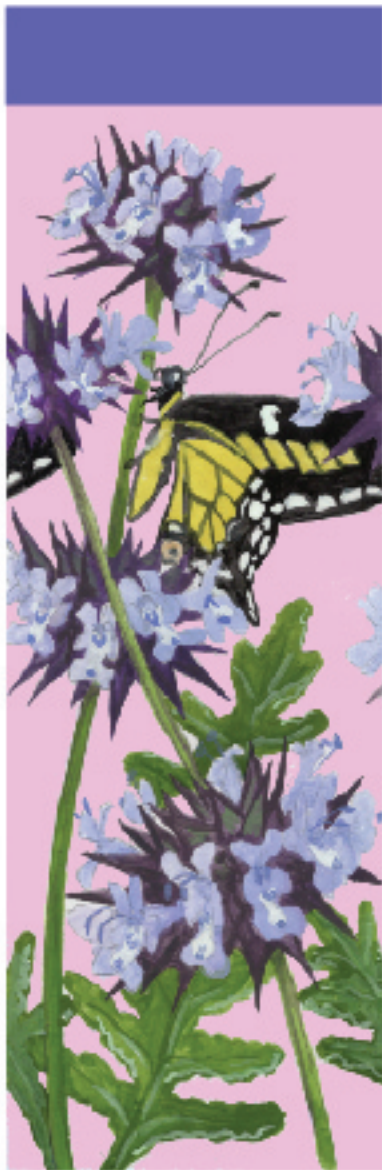
Entry Columns Mock Up



Snack Shack Rear Columns



Snack Shack Front Columns



Snack Shack front Mock up



Snack Shack Rear Mock up



Proposed Palette



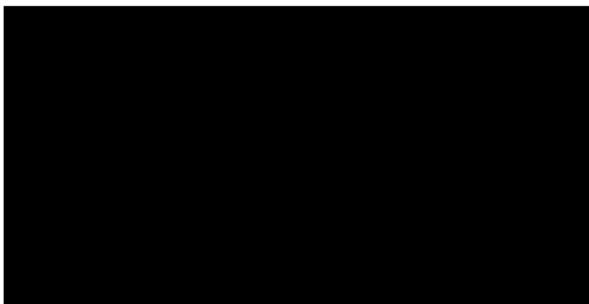
Paint brands to be Shermin Williams or similar high quality exterior latex and Nova Color artists high pigment mural latex.

5. Timeline

Please provide a timeline for fabrication and installation. We expect a contract to be offered in late May 2024. Desired installation is Summer 2024.

Expected timeline for execution of the murals would be late July- early August but may be moved to another time if necessary.

The weeks of July 14-Aug 4 would be ideal for us.



Qty	Description	Unit Price	Line Total
1	Artist fee	\$10,000.00	\$10,000.00
1	2 professional artists studio assistants	\$14,000.00	\$14,000.00
1	Materials and supplies, Sherwin Williams exterior professional coatings & Nova Color Mural Paints	\$1,300.00	\$1,300.00
1	Exterior Primer undercoater and sealer	\$250.00	\$250.00
1	Sundries, brushes, rollers, tape, drop cloths, rags, buckets	\$500.00	\$500.00
1	Anti graffiti clear coat (matte)	\$850.00	\$850.00
1	Empire Seven Studios Contract Services	\$600.00	\$600.00
1	Meals per diem for crew of 3 for 3 weeks	\$1,575.00	\$1,575.00
1	Insurance additional endorsements	\$325.00	\$325.00
1	Travel to Milpitas from San Jose, aprox 21 times to execute the work.	\$100.00	\$100.00
1	Project contingency	\$500.00	\$500.00
		Subtotal	\$ 30,000
		Total	\$ 30,000

Bio

Lacey Bryant was raised in Milpitas and remains based in the Bay Area. She works both as a scenic artist, muralist, and sculptor as well as a studio artist in oils. Her work is known for it’s fantastical elements and dreamlike quality. Drawing on a range of subject matter such as landscape, portraiture, figures, and still life often combined into a single collaged image her aim is to capture the shared joys and pains of the human experience.

- Selected Murals, Public Art & Community Contributions
- 2022 Public Art “When the Mountain Fell in Love with the Sea”, Empire 7 Studios, Ryland Mews 427 N. 2nd St, San Jose, CA
- 2019 Public Art “Believe”, Empire 7 Studios, 850 N 2nd St, San Jose, CA
- Public Art, “Hamster Wheels”, Redwood City Improvement Association, Redwood City, CA
- 2018 Public Art “Chase”, Exhibition District, 55 W Santa Clara St, San Jose, CA
- Public Art “Cheering the Chinook”, Exhibition District, Guadalupe River Park, San Jose, CA
- 2017 Public Art (collaboration with Benjamin Henderson) “Choose Your Own Adventure”, Pow! Wow! San Jose Mural Festival, 1066 The Alameda
- 2015 Public Art “Poppy Crossing”, Downtown San Jose Art Crosswalks, San Pedro St & Santa Clara St, San Pedro St & St. John St, San Jose, CA
- 2012 Public Art “Bee Free”, Art Box SJ Project, Dana Ave & Naglee, San Jose, CA

- Professional Service
- 2015-17 Founding board member, Exhibition District (now Local Color), San Jose, CA

- Selected Professional Experience and Scenic Artistry
- 2022-23 Scenic Artist for World’s of Fun park wide refurbish, Kansas City, MO
- 2021 Murals for Castaway Bay Waterpark & Resort, Sandusky, OH
- 2021 Scenic Artist for Kings Dominion Jungle X, Doswell, VA
- 2021-2023 Scenic art and mural for Carowinds Park, Charlotte, NC
- 2016-present Sculptor, The Parade Guys, San Francisco, CA (Lunar New Year Parade and Public Art Displays), San Francisco Chinatown, CA)
- 2016-18 Scenic Artist, The New Ballet School, San Jose, CA
- 2006-present Scenic Artist, California's Great America, Santa Clara, CA (South Bay Shores, Ice, Show Sets, Stage Sets, Halloween Haunt, sign painting, etc.)
- 2009-2013 Gallery Manager, KALEID Gallery, San Jose, CA
- 2007-2015 Scenic and Graphic Artist, Method 42 Productions, Santa Clara, CA (projects for Dreamworks, Disney Pixar, etc.)
- 2007-2008 Scenic Artist, Saratoga Drama Group, Saratoga, CA
- 2005 Scenic Artist, San Jose Stage Co., San Jose, CA
- 2004 Scenic Artist, California Shakespeare Theatre
- 2000-2009 Graphic Artist, Sunshine Graphics, San Jose, CA

- Selected Solo Exhibitions
- 2022 Wallflowers, Empire Seven Studios, San Jose, CA
- 2021 We Shall All Be Kings, Modern Eden, San Francisco, CA
- 2019 The Slow Tarot, Modern Eden, San Francisco, CA
- November Nocturnes, Cactus Gallery, Los Angeles, CA
- 2018 Patterns, Cactus Gallery, Los Angeles, CA
- 2016 Homeward, Empire Seven Studios, San Jose, CA
- Escape, Modern Eden, San Francisco, CA
- 2015 Liminal Space, Cactus Gallery, Los Angeles, CA
- 2014 Lacuna, Modern Eden, San Francisco, CA
- 2012 Tenuous Threads, Anno Domini, San Jose, CA
- Soliloquies from the Silent Country, Modern Eden, San Francisco, CA

- Gallery Affiliations
- Modern Eden, San Francisco, CA
- Cactus Gallery, Los Angeles, CA
- Empire Seven Studios, San Jose, CA

- Awards and Grants
- 2022 Residency, The Verdancy Project, Troutdale, OR (May 15-21, 2022)
- 2017 Residency, Chalk Hill Artist Residency, Healdsburg, CA (Jan 21-Feb 9, 2017)
- 2016 Residency, Chalk Hill Artist Residency, Healdsburg, CA (April 1-24, 2016)
- 2011 Individual Grant, Belle Foundation for Cultural Development

- Selected Bibliography
- 2019 “The Slow Tarot By Lacey Bryant”, San Francisco, CA: Modern Eden Gallery, 1st printing May 2019, 2nd printing Oct 2019, 3rd printing Jan 2021, 4th printing Dec 2023
- 2014 Monique Delaunay. “Lacey Bryant, “Lacuna” at Modern Eden Gallery.” SFartenthusiust.com July 30, 2014
- 2012 Ken Harman. “The Art of Lacey Bryant.” HiFructose.com January 5
- ArtPusher. “Lacey Bryant’s Silent Country.” Eclectixart.blogspot.com January 23
- Thena Cartwright. “Lacey Bryant.” Catapult Art Magazine 0212.v6 pages 66-69
- Daniel Garcia. “Lacey Bryant, Portrait.” Content Magazine. Issue 3.1 pages 12-17

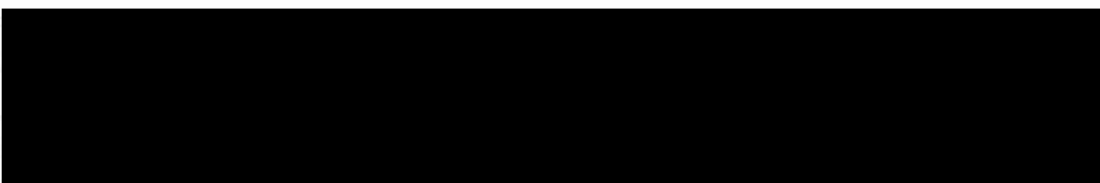
- Selected Group Exhibitions
- | | | | |
|------|---|------|---|
| 2022 | Danse Macabe, Modern Eden Gallery, San Francisco, CA | 2015 | Bestowed Upon Us, Alexi Era Gallery, Mascoutah, IL |
| | Loteria! VIII Cactus Gallery, Los Angeles, CA | | Return to the Wild, Auguste Clown Gallery, Melbourne, AUS |
| | Skate, Mirus Gallery, San Francisco, CA | | Golden, Modern Eden, San Francisco, CA |
| 2021 | Friendship, Cactus Gallery, Los Angeles, CA | | Cinder, Glass & Thorns III, Inner State, Detroit, MI |
| | The Art of Art, Modern Eden Gallery, San Francisco, CA | 2014 | Broad Spectrum, Empire Seven, San Jose, CA |
| 2020 | New Growth, Modern Eden Gallery, San Francisco, CA | | Halloween, Auguste Clown Gallery, Melbourne, AUS |
| | Profile, Modern Eden Gallery, San Francisco, CA | | Le Chat Noir, Modern Eden, San Francisco, CA |
| 2019 | She, M2 Gallery, Little Rock, AR | | Summer Flies, Flower Pepper Gallery, Pasadena, CA |
| | Self-ish, Modern Eden, San Francisco, CA | | As the Crow Flies, Corvidae Collective, Nashville, TN |
| | Beyond Wonderland, Wonderland, San Francisco, CA | 2013 | Urban Jungle, Wonderland SF, San Francisco, CA |
| 2018 | Loteria! V, Cactus Gallery at The Last Bookstore, Los Angeles, CA | | Life is a Cabaret, Tasty Gallery, Seattle, WA |
| | Baby Mama, Modern Eden, San Francisco, CA | | The Language of Flowers, Modern Eden, San Francisco, CA |
| | Night Garden, Modern Eden, San Francisco, CA | 2012 | Myth, Modern Eden, San Francisco, CA |
| | Tiny, Studio Gallery, San Francisco, CA | | Sanctuary, Cactus Gallery, Los Angeles, CA |
| 2017 | Loteria III, Cactus Gallery, Los Angeles, CA | | Creatures Featured, Tasty Gallery, Seattle, WA |
| | Lover’s Eye, Modern Eden, San Francisco, CA | | Cinder, Glass & Thorns, 323 East Gallery, Detroit, MI |
| | Flower Child, Modern Eden, San Francisco, CA | 2011 | Muerto en Vida, Cactus Gallery, Los Angeles, CA |
| 2016 | Dollmakers, Cactus Gallery, Los Angeles, CA | | Memento Mori, Modern Eden, San Francisco, CA |
| | Familiar Deconstructed, Smash Gallery, San Francisco, CA | | For The Birds, Tasty Gallery, Seattle, WA |
| | Symphony of Wings, Cactus Gallery, Los Angeles, CA | 2010 | Fresh Produce, Anno Domini, San Jose, CA |
| | Show of Littles, Smash Gallery, San Francisco, CA | | The Plague Show, Congregation Gallery, Hollywood, CA |
| | | | Mischief, Studio Gallery, San Francisco, CA |
| | | | La Gran Pachanga, 111 Minna Gallery, San Francisco, CA |
| | | 2009 | Superheros, Look At This Gallery, Chaing Mai, Thailand |

Examples of Prior Work

Lacey Bryant



Poppy Crosswalk
intersection of San Pedro St and Santa Clara St San Jose, CA
San Jose Downtown Association
2016



Examples of Prior Work

Lacey Bryant



(Detail)



(Detail)

When the Mountain Fell in Love with the Sea
427 N 2nd St. San Jose, CA
Ryland Mews Homeowners Association
2022, private commission

Examples of Prior Work

Lacey Bryant



Home Sweet Home
965 Lundy Ave. San Jose, CA 95133
First Community Housing
2021, private commission

Examples of Prior Work

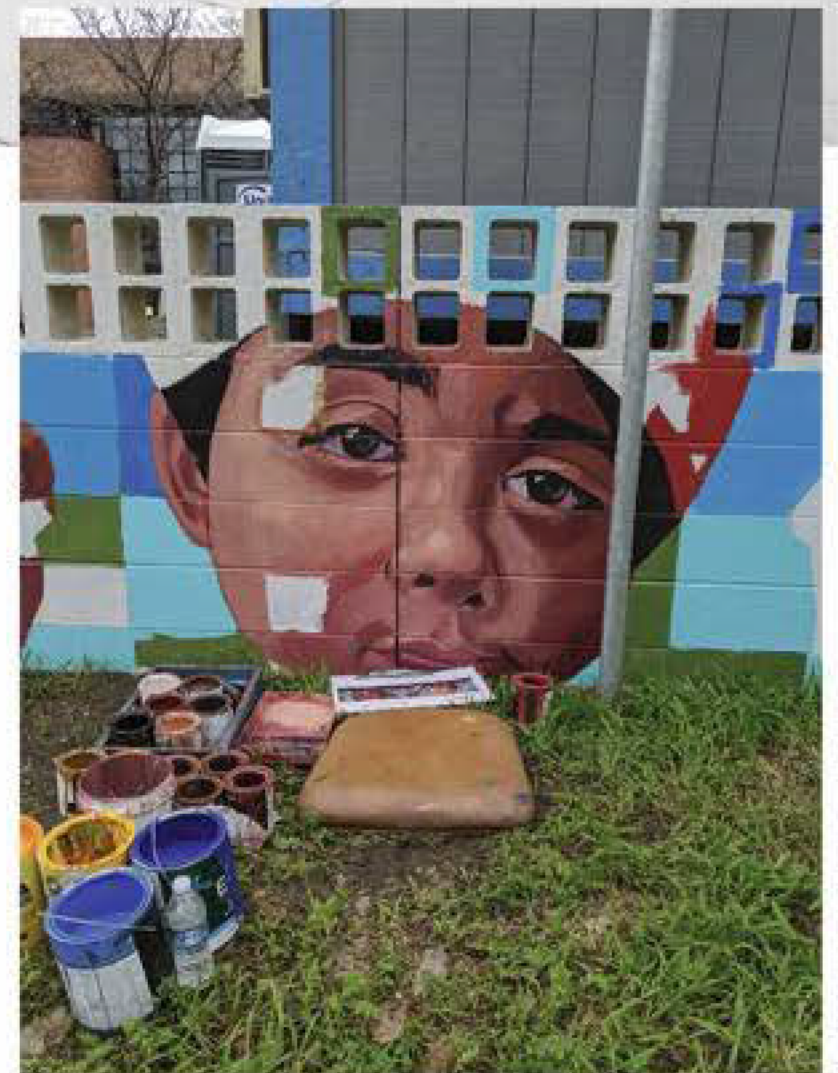
Lacey Bryant



Chase
55 W Santa Clara St. San Jose, CA
Exhibition District (now Local Color)
2017

Examples of Prior Work

Lacey Bryant



(Detail)

Believe

850 N 2nd St. San Jose, CA

Japantown Neighborhood Association for Muwekma Ohlone Middle School

2022, private commission

Examples of Prior Work

Lacey Bryant



Roses

San Jose, prior offices

First Community Housing

2021, private commission



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Hold a Public Hearing on an Appeal of the Planning Commission's Decision to Deny Conditional Use Permit No. UP23-0013 to Allow for the Retail Sales of Tobacco Products at 1225 Jacklin Road (Staff Contact: Jay Lee, Planning Director, 408-586-3077)
Category:	Public Hearings-Community Development
Meeting Date:	5/7/2024
Recommendation:	(1) Conduct a public hearing and move to close the hearing following comments; (2) Consider the project to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) and as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and (3) Adopt a Resolution upholding or overturning the appeal and overturning the Planning Commission's decision to deny Conditional Use Permit No. UP23-0013 to allow for the retail sales of tobacco products within an existing 870-square-foot tenant space of a 9,960-square-foot multi-tenant commercial building located on a 0.9-acre site located at 1225 Jacklin Road within the C1 Neighborhood Commercial Zoning District.

BACKGROUND:

On August 9th, 2023, the Building Safety & Housing Department conducted an inspection of 1225 Jacklin Road, the subject property, in response to a notice of violation of the Milpitas Municipal Code (MMC). That inspection found that the property was in violation of MMC Sec. XI-10-5.02(A)(1) for operating a Head/Smoke/Tobacco shop without the benefit of an approved Conditional Use Permit. On September 5th, 2023, the Building Safety & Housing Department conducted another inspection of the subject property and found the property to be in violation of conducting an interior remodel of tenant space without the benefit of a Building permit.

On November 7, 2023, Kareem Al Salahi, the applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow for the retail sale of tobacco products within the subject tenant space. The business will be known as Puff City Smoke Shop, which plans to operate daily from 10am to 12am (midnight). Conditional Use Permit No. UP23-0013 seeks to address these violations and bring the property into compliance.

On March 13, 2024, the Planning Commission held a public hearing to consider the Conditional Use Permit application for the proposed head/smoke/tobacco retail use. After receiving a presentation from staff, hearing from the applicant and the public, the Planning Commission closed the public hearing and vote 5-0, with one Commissioner absent and one abstaining vote, to deny the project. The Planning Commission raised concerns regarding safety and the welfare of students, as well as the proximity of the project to nearby schools and the Golfand amusement center. The Planning Commission also raised concerns regarding smoking at the project site and overall health concerns about the dangers of tobacco and other drug use.

On March 22, 2024, the applicant filed an appeal of the Planning Commission's March 13 decision pursuant to MMC Section XI-10-64.02. The applicant provided a letter stating six reasons why they believe they should be granted an appeal. The letter has been included as Attachment C and is summarized below.

1. No explanation, findings, evidence, or analysis: The applicant argues that there was no clear reason for their decision to deny the project.
2. Concerns regarding underage access: The applicant clarifies that no children would be allowed in their retail store and that they will have a number of security measures to ensure that underage persons would not be able to enter or purchase goods.
3. Concerns about signage: The applicant clarifies that all unpermitted signage has been taken down and that they are willing to compromise on any future signage proposals and will apply for any applicable permits.
4. Hours of operation: The applicant understands that the community may have concerns regarding the hours of operation and has proposed a new closing time of 10 p.m. daily, which is an hour before the nearby convenience store closes.
5. Name of business: The applicant is willing to compromise on a new business name to appease any community concerns.

ANALYSIS:

Planning staff recommends that the City Council uphold the appeal and review and approve a resolution to allow for the retail sale of tobacco and tobacco-related products for off-site consumption or use only. A list of items for sale include cigars, tobacco pipes, tobacco containers, tobacco grinders, tobacco wraps, hemp wraps, rolling papers, rolling machines, rolling tips, butane, lighters, backpacks, clothing, hemp products and CBD. The Project site is located within a single-story multi-tenant commercial building at the northwest corner of North Park Victoria Drive and Jacklin Road, just east of the I-680 Interstate Freeway. The site is surrounded by a mixture of commercial and residential uses. No site improvements or exterior modifications are proposed at this time. The applicant will be required to apply for and obtain a building permit for any applicable interior improvements.

During the March 22nd, 2024, the Planning Commission expressed concerns regarding customers smoking on-site. Staff has included the following condition of approval to address this concern, as there is currently no general prohibition for smoking on-site.

Smoking and On-site Use of Products Generally Prohibited. The Permittee shall comply with and ensure compliance with all state, local, federal, and other laws and regulations prohibiting or regulating smoking on the premises, including California Labor Code section 6404.5, California Health and Safety Code sections 104495 and 114371, California Government Code sections 7596-7598, and Title V, Chapter 215 of the Milpitas Municipal Code. In addition, the Permittee shall not cause, permit, aid, abet, suffer, conceal, or allow the consumption, smoking, or use of any goods or other products, including samples, obtained from the business on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Nor shall the Permittee cause, permit, aid, abet, suffer, conceal, or allow customers to consume, smoke, or use any tobacco or tobacco products on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.

Therefore, the project with the above conditional of approval will allow the property owner and applicant to prohibit smoking on the subject site. Additionally, per MMC Section XI-10-63.06 and Condition of Approval No. 13, the City Council may initiate review of the permit or receive a recommendation from the Planning Commission to take such action. Following a public hearing, the City may suspend, revoke, or modify the Conditional Use Permit if the applicant does not adhere to the conditions of approval or if the business operates in a manner that constitutes a public nuisance or negatively impacts the public health, safety, and welfare.

During the March 22nd, 2024 public hearing, the Planning Commission and members of the public also expressed concerns regarding the proposed hours of operation of 10 A.M. to 12 A.M. (midnight) daily. Through collaboration with City staff, the Applicant has agreed to reduce their hours of operation. Staff has drafted Condition of Approval No. 20 to limit the business hours to 10 A.M. to 10 P.M. daily.

Furthermore, the Milpitas Police Department reviewed the Project and prescribed measures to ensure the safety and security of the overall site and its occupants, including video surveillance and filing emergency contact information with the Police Department. The Police Department also reviewed the applicant's proposal for the sale of kratom, which is a substance derived from a tropical tree native to southeast Asia. Although kratom is not classified under the Controlled Substances Act, the Police Department has sufficient concerns to recommend the prohibition of kratom. All these measures have been included as conditions of approval for the Project. Examples include:

1. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours.
2. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police Department if needed.
3. Despite not being classified under the Controlled Substance Act, the use of kratom raises concerns regarding its impact on public safety and community well-being. Therefore, the Applicant is prohibited to sell kratom.

In accordance with MMC Section XI-10-57.04(F)(1), the Project was also found to be consistent with the Milpitas General Plan and the Milpitas Zoning Ordinance. In addition, the proposed Project was not deemed to be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The proposed retail business selling tobacco and tobacco related products provides retail options for patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building is existing, and the retail sales will be conducted wholly within the building. No consumption of the products will be allowed on the premises.

The Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by allowing the operation of a retail business in an existing unoccupied commercial tenant space with a Conditional Use Permit approval. The Project will provide economic opportunities to Milpitas residents and around the region by providing different retail options.

The proposed head/smoke/tobacco retailer use is a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. Additional information regarding the project and staff's analysis of how it meets the Conditional Use Permit findings can be found within the Planning Commission staff report (Attachment D).

POLICY ALTERNATIVE(S):

Alternative: Direct staff to draft a resolution to deny the appeal.

Pros: A different project with other uses could be proposed at this site in accordance with the General Plan land use designation of Neighborhood Commercial and the corresponding C1 Neighborhood Commercial Zoning District.

Cons: The existing tenant space will remain vacant until a new tenant is proposed, and the Applicant will need to relocate his business.

Reason for Not Recommending: The proposed project meets the required findings for approval and is consistent with the City's General Plan land use goals of encouraging a diverse mix of commercial uses and of promoting reinvestment in strip commercial and shopping centers.

FISCAL IMPACT:

If the proposed Project is approved, the applicant will apply for a business license and pay associated fees. The new business is expected to generate additional revenue to the City through sales taxes.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The Project is exempt from further environmental review under CEQA pursuant to CEQA Guidelines Section 15301 for Existing Facilities and as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Project includes a conditionally permitted use within an existing commercial center in an urbanized area. The Project is also consistent with the Milpitas General Plan and Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

RECOMMENDATION:

- (1) Conduct a public hearing and move to close the hearing following comments;
- (2) Consider the project to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) and as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and
- (3) Adopt a Resolution upholding or overturning the appeal and overturning the Planning Commission's decision to deny Conditional Use Permit No. UP23-0013 to allow for the retail sales of tobacco products within an existing 870-square-foot tenant space of a 9,960-square-foot multi-tenant commercial building located on a 0.9-acre site located at 1225 Jacklin Road within the C1 Neighborhood Commercial Zoning District.

ATTACHMENT(S):

- (a) City Council Resolution
- (b) Appeal Form
- (c) Appeal Letter from Applicant
- (d) Planning Commission Staff Report
- (e) Planning Commission Resolution No. 24-013

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS UPHOLDING THE APPEAL BY APPROVING CONDITIONAL USE PERMIT NO. UP23-0013 TO ALLOW THE RETAIL SALES OF TOBACCO PRODUCTS WITHIN AN EXISTING 870 SQUARE-FOOT TENANT SPACE OF A 9,960 SQUARE-FOOT MULTI-TENANT COMMERCIAL BUILDING LOCATED ON A 0.9-ACRE SITE AT 1225 JACKLIN ROAD (APN 029-09-057).

WHEREAS, on November 13, 2023, Kareem Al Salahi, the Applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow a Head/ Smoke/ Tobacco shop (Puff City) to allow for the retail sales of tobacco products; and

WHEREAS, the property is located within the Neighborhood Commercial (C1) Zoning District and has a General Plan land use designation of Neighborhood Commercial (NC); and

WHEREAS, the Planning Department completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

WHEREAS, on March 13, 2024, the Planning Commission held a duly noticed public hearing on the subject application, and considered the evidence presented by City staff, the applicant, and other interested parties; and

WHEREAS, the Planning Commission considered all of the written and oral testimony presented at the public hearing in making its decision; and

WHEREAS, the Planning Commission denied the issuance of Conditional Use Permit No. UP23-0013; and

WHEREAS, on March 22, 2024, within the time allowed by the Milpitas Municipal Code, Kareem Al Salahi (“Appellant” and “Applicant”) appealed the Planning Commission’s denial of issuance of Conditional Use Permit No. UP23-0013; and

WHEREAS, on May 7, 2024, the City Council held a duly-noticed public hearing on the appeal, at which time all those in attendance were given the opportunity to speak on the Project; and

WHEREAS, the City Council considered all of the written and oral testimony presented at the public hearing on the appeal, including evidence presented by City staff, the Appellant, and the public in making its decision.

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

SECTION 1. Recitals

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

SECTION 2. California Environmental Quality Act

This project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Conditional Use Permit will allow for the retail sales of tobacco products within an existing commercial shopping center in an urbanized area and will not have a negative impact on the surrounding area. The project is also consistent with the Milpitas General Plan, Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

SECTION 3. Conditional Use Permit (Section XI-10-57.04(F)(1))

The City Council makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP23-0013:

- A. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed head/smoke/tobacco use is consistent with this finding because the Project is within an existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The Project will be selling tobacco and tobacco related products, which provides additional retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare, because the retail tobacco sales will be conducted within an existing building. No consumption of the products will be allowed on the premises. As discussed above, the site meets all development standards and off-street parking requirements.

- B. *The proposed use is consistent with the Milpitas General Plan.*

As described in Table 1, the Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by operating a retail business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The Project will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

Table 1:
General Plan Consistency

General Plan Policy	Consistency Finding
<i>LU 6-4: Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.</i>	Consistent. The proposed smoke shop will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. The proposed smoke shop will be located in an existing shopping center that includes a diverse mix of uses including retail and restaurants.
<i>LU 6-5: Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.</i>	Consistent. The proposed smoke shop will reinvest in an existing shopping center by occupying a previously vacant tenant space.

- C. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The proposed head/smoke/tobacco use is a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. As demonstrated in Table 2, the Project conforms to the development standards as set forth in Milpitas Municipal Code Sections XI-10-5.02 and XI-10-5.03. Table 3 demonstrates the Project's compliance with the Zoning Ordinance parking standard per Section XI-10-53 Off-Street Parking Regulations.

Table 2: Zoning Conformance

	C1 Standard	Existing	Complies?
Front (South)	20'	~110'	Yes, no change
Side Yard (East/West)	0' 15' when abutting Residential	2' (west) 33' (east)	Yes, no change
Rear (North)	0' 15' when abutting Residential	2'	Yes, no change
<u>Floor Area Ratio</u> (Max)	0.35	~0.25	Yes, no change
<u>Building Height</u> (Max)	35' or 3 stories	~15' 1 story	Yes, no change
<u>Landscaping</u>	None	~25	Yes, no change

Table 3: Parking Summary

Uses	Area (sq. ft.)	Parking Standard	Total Parking Required
Smoke shop Market Gift shop (Retail)	4,108	1 space per 200 sq. ft.	4,180 sq. ft. /200 sq. ft. = ~21 spaces
Massage	619	2 spaces per treatment room	1 treatment room = 2 spaces
Dry Cleaners	1,320	1 space per 200 sq. ft.	1,320 sq. ft. / 200 sq. ft. = 6.6 Total for office = ~7 spaces
Restaurants	2,726 (gross)	1 per 39 sq. ft. of dining area	425 sq. ft./ 39 sq. ft. = ~11 spaces
Salon (personal services)	964	1 per 200 sq. ft.	964/200 = ~5 spaces
Total Parking Spaces required per Section XI-10-53			45
Existing parking spaces for the shopping center			45

SECTION 4: City Council Decision and Approval.

The City Council of the City of Milpitas hereby upholds the appeal by approving Conditional Use Permit No. 23-0013 based on the above findings and subject to the Conditions of Approval attached hereto as **Exhibit “1”** and incorporated herein.

PASSED AND ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT 1

CONDITIONAL USE PERMIT NO. UP23-0013 1225 JACKLIN ROAD (APN 029-09-057)

The City of Milpitas approves Conditional Use Permit No. UP23-0013 in accordance with Section XI-10-57.04 of the Milpitas Municipal Code, subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below. This permit is to allow the conditional use of a new off-sale only head/smoke/tobacco shop within 870 square feet tenant space of an existing 9,960 square-foot, one-story, multi-tenant commercial building located on a 0.9-acre site within the Neighborhood Commercial (C1) Zoning District at 1225 Jacklin Road (APN 029-09-057), subject to all other necessary reviews, approvals, permits, licenses, studies, and inspections necessary for such use. This permit does not permit the operation or use of these premises for a smokers' lounge or other on-site commercial tobacco or smoking use. This approval is subject to all applicable State and local regulations and the conditions of approval outlined below.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

GENERAL CONDITIONS

1. General Compliance. The applicant, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Conditional Use Permit Amendment No. UP23-0013 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans approved by the City Council on May 7, 2024, in accordance with these Conditions of Approval. **(P)**
3. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Ordinance, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or

- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Department prior to the expiration date of the approval. **(P)**
9. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. Permittee shall enter into an indemnification agreement with the City that incorporates the provisions of this condition prior to commencing the use authorized in this Permit. **(CA)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
16. Fire Department. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as demonstrated in the Fire Department's Memorandum, dated November 27, 2023, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. **(F)**
17. Building Department. The project/development shall comply with the requirements of the Building Department and the Building Code, as demonstrated in the Building Department's Memorandum, dated November 14, 2023, as may be amended by the City of Milpitas. **(B)**

18. Smoking and On-site Use of Products Generally Prohibited. The Permittee shall comply with and ensure compliance with all state, local, federal, and other laws and regulations prohibiting or regulating smoking on the premises, including California Labor Code section 6404.5, California Health and Safety Code sections 104495 and 114371, California Government Code sections 7596-7598, and Title V, Chapter 215 of the Milpitas Municipal Code. In addition, the Permittee shall not cause, permit, aid, abet, suffer, conceal, or allow the consumption, smoking, or use of any goods or other products, including samples, obtained from the business on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Nor shall the Permittee cause, permit, aid, abet, suffer, conceal, or allow customers to consume, smoke, or use any tobacco or tobacco products on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.
19. Laws and Licenses for Tobacco Retail. Obey all laws and regulations, including the Cigarette and Tobacco Products Licensing Act, and obtain all necessary permits, licenses, certifications, and approvals necessary for retail sale of tobacco and tobacco products, including maintaining in good standing a Cigarette and Tobacco Products Retailer's License with the California Department of Tax and Fee Administration. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.
20. Hours of Operation. Permittee shall have limited business operating hours of 10 A.M. to 10 P.M. daily. Any deviation from these hours of operation shall require that the Permittee submit a written request as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

POLICE DEPARTMENT CONDITIONS

21. Parking. Parking is not affected by the proposed permit, and the current parking lot is of sufficient capacity to accommodate additionally parked vehicles. No changes are recommended for the parking lot. **(PD)**
22. The parking lot should continue allowing accessible circulation for police patrols (vehicles, foot, and bicycles) to prevent and reduce the likelihood of criminal activity occurring in the area. **(PD)**
23. Visibility. Lighting shall be of sufficient wattage to adequately illuminate and make visible the presence of any person in or about the outside premises during hours of darkness. **(PD)**
24. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours. **(PD)**
25. Security. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police department if needed. **(PD)**
26. The cashier area, safe, or other devices that stores currency should be away from the front doors, windows of the business, and not in plain view to help prevent burglaries when the company is closed. If these areas cannot be moved, window treatments such as shades or blinds preventing the site from being visible from the outside should be considered. **(PD)**
27. Accessibility. An up-to-date map of the interior of the building should be provided to the Police Department. The map should minimally identify the locations of each entry/exit point, storage area, maintenance area, etc.

28. Kratom. Despite not being classified under the Controlled Substance Act, the use of kratom raises concerns regarding its impact on public safety and community well-being. Therefore, the sale of kratom is prohibited at the site. **(PD)**
29. Miscellaneous. Applicant shall file an emergency notification form with the Police Department so law enforcement can contact the applicant in case of any significant accident, emergency, or unforeseen circumstance. **(PD)**

BUILDING SAFETY AND HOUSING DEPARTMENT CONDITIONS

30. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department.

FIRE DEPARTMENT CONDITIONS

31. Please do not consider this an approval from Fire Department. Additional requirements may be made during the construction permit process. These notes are a general list of the applicable code requirements, and it is provided to assist with the construction permit process.
32. No changes shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of the current code(s). California Fire Code (CFC) Section 102.3
33. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505.1
34. Assembly Use. This facility/business/site is not approved for assembly use as defined by the CA Building Code (50 or more occupants).
35. Maximum Occupancy. The maximum number of occupants within this business/facility shall be limited to the permitted number by the Planning Department, but not to exceed the permitted occupancy load under the CA Building and Fire Codes.
36. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in the CFC Section 906 and as required by the Fire Code Official.
37. Egress based on occupant load and common path of egress travel distance. Two exits or exit access doorways from any space shall be provided where the design occupant load or the common path of egress exceeds the values listed in 2022 California Fire Code Table 1006.2.1. The cumulative occupant load from adjacent rooms, areas or spaces shall be determined in accordance with section 1004.2.
38. Exit doors shall swing in the direction of exit travel when serving an occupant load of 50 or more. CFC Section 1010.1.2.1
39. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. CFC Section 1010.1.9

40. Manually operated flush bolts or surface bolts are not permitted. CFC Section 1010.1.9.5
41. Exits and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. Exit sign placement shall be such that no point in a corridor is more than 100 feet or the listed viewing distance for the sign, whichever is less, from the nearest visible sign. Additional signs may be required if clear path of exit access is not readily defined. CFC Section 1013.1
42. Complete plans and specifications for all aspects of fire-protection systems shall be submitted to the Fire Department for review and approval prior to system installation or alteration. CFC Section 105.4
43. Means of egress shall be provided in conformance with the CA Building Code Chapter 10.
44. The Milpitas Fire Department shall approve new installation and/or modifications to existing fire protection, alarm or monitoring system(s). A separate submitted is required to the Milpitas Fire Department, for review and approval, prior to the commencement of any work. CFC Section 901.2

LEGEND

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(PD) = Police Department
(CA) = City Attorney

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

Signature of Permittee

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035

File with: **Milpitas City Clerk**
Milpitas City Hall, 3rd floor
455 E. Calaveras Blvd.
Milpitas, CA 95035

If questions, call:

PLANNING: 408-586-3279
CITY CLERK: 408-586-3001



APPEAL FORM

1. APPELLANT(S):

Name: Kareem Al Salahi
Company: Puff City Smoke Shop
Address: 1225 Jacklin Road
City/State/Zip: Milpitas, CA

2. DECISION BEING APPEALED:

I (we), the undersigned, do hereby appeal a decision of the Planning Commission's
(or other body's) approval of:

Planning Commission's denial of Conditional Use Permit No. UP23-0013

PROJECT: Tobacco Shop under MMC XI-10-5.02(A)(1)

LOCATION: 1225 Jacklin Road, Milpitas

DATE OF DECISION BEING APPEALED: March 13, 2024

3. STATE THE SPECIFIC RELIEF WHICH THE APPELLANT SEEKS:

Reverse the decision subject to new conditions set by City Council

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS ENTITLEMENT TO THE RELIEF SOUGHT:

Please see attached letter.

Attach additional pages, if more space is needed.

I, the undersigned, acknowledge the procedures for filing an appeal, including the responsibilities of public notices in accordance with the Milpitas Municipal Codes Title XI 10-64.04, as prescribed for zoning related hearings, and Title I 20-2.02 for Notices provided by mail.

DATE: _____

SIGNATURE _____

PRINT NAME: Kareem Al Salahi

☐ PAID Filing Fee \$2017.00

ADDRESS 1225 Jacklin Road

___ Cash

CITY/ST/ZIP Milpitas, CA 95035

___ Check No.

PHONE #s: 917-530-5297

E-MAIL ADDRESS: kareemgalal1998@gmail.com

FORM & FEE RECEIVED BY: _____
(City staff name)

DATE RECEIVED: _____

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035



PROCEDURE

PROCEDURE

Any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas, may appeal the decision to the City Council by filing a written notice of appeal with the City Clerk within twelve (12) calendar days of the date of the decision. The time limit shall be enforced. Per Milpitas Municipal Code I 20-5.02.

FEE FOR FILING

The appellant shall pay to the City at the time of filing the notice of appeal the sum of \$2,017.00. Fee established in the Master Fee Schedule adopted by City Council Resolution No. 9142 on April 19, 2022.

CONTENTS OF NOTICE

Notice of appeal shall state:

- (1) The name, address and e-mail of the appellant(s).
- (2) The decision appealed from, the date of the decision and the name of the officer, board, commission or department rendering the decision.
- (3) The specific relief which the appellant seeks.
- (4) A summary of the reasons why the appellant claims he/she is entitled to the relief sought.

The Notice of appeal shall be signed by the appellant or appellants.

SETTING OF HEARING DATE

If the decision appealed from was one rendered upon public hearing before a City officer, Board, Commission or Department, the City Clerk shall cause a hearing to be set before the Council within sixty (60) days of the filing of the notice of appeal (per Milpitas Municipal Code I-20-5.06). Notice of hearing shall be given in the same manner as was required to be given upon the original hearing before the Commission (in accord with Milpitas Municipal Code XI 10-64.04).

NOTICE

Notice shall be given to the appellant or appellants by mail in accordance with Section I-20-2.02 of the Milpitas Municipal Code. For appeals related to Zoning applications, notices shall also be in accordance with Title XI, 10-64.04 of the Milpitas Municipal Code.

HEARING APPEAL	The City Council shall hold a hearing upon the appeal in accordance with the provisions of Section I-20-3.02 of the Milpitas Municipal Code. The Council may hear and consider evidence presented at the hearing and may also hear and consider new evidence. The Council may also consider the decision of the officer, board, commission or department and the reasons assigned, if any.
DECISION OF THE COUNCIL	The Council shall render its decision by majority vote within sixty (60) days of the close of the hearing on appeal, per Milpitas Municipal Code I-20-3.17. The decision of the City Council shall be final.
	When an appeal from any decision of any City officer, board, commission or department to the Council is authorized by ordinance of the City or by the Milpitas Municipal Code, the Council shall be empowered to hear new evidence upon the appeal and to: (i) sustain the decision, or (ii) reverse and remand the decision for further consideration, or (iii) reverse the decision (without remand) and reach an opposite decision, or (iv) modify the decision, or (v) sustain, reverse or modify the decision, subject to such new or additional conditions as are imposed by the Council provided, however, that the City Council shall not modify a decision or sustain, reverse or modify the decision subject to new or additional conditions without first giving the same notice and opportunity for hearing that was required by law for the original decision of the officer, board, commission or department appealed from. A notice of appeal shall not be effective unless the notice shall be filed and the required filing fee paid within the time frame, as required by Milpitas Municipal Code.

March 21, 2025

Mayor Montano and Members of Milpitas City Council
Milpitas Civic Center
Milpitas, CA 95035

Subject: Appeal of Planning Commission's March 13, 2024 Denial for a Conditional Use Permit (UP23-0013) to allow a new Head/Smoke/Tobacco shop at 1225 Jacklin Road

Dear Mayor Montano and Members of Milpitas City Council,

With this Appeal, I respectfully request that the Milpitas City Council grant my Appeal and my Application for a Conditional Use Permit UP23-0013 ("CUP") for a tobacco shop. I am a small minority owned business that is eager to invest in the vibrant community of the City of Milpitas. My tobacco shop is consistent with the General Plan Land Use Policies to maintain viable commercial uses throughout the City and promote reinvestment and revitalization of shopping centers. It is also consistent with the Neighborhood Commercial C1 zoning standards.

BACKGROUND:

I am a small minority owned business already operating one tobacco shop in a nearby city that is in good standing. Customers view my store as a unique business with high quality products and knowledgeable staff, and I take pride in running my business in full compliance with all laws.

Because demand at my current location is high, I began to explore a second location in Milpitas. I was drawn to the vacant unit at 1225 Jacklin Road because I was seeking a small place to begin with, to serve local residents and commuters. I took a chance and entered a lease in June of 2023 for my new business. At that time, I was unaware that I needed a Conditional Use Permit.

I applied for a Conditional Use Permit on November 7, 2023. The Planning Department recommended approval of the CUP to the Planning Commission on March 13, 2024. In their report to the Planning Commission, the Planning Department wrote that my shop is not injurious to the property or the public, is consistent with the zoning ordinance, and is consistent with the General Plan. (Planning Committee Report p.8)

At the hearing, I was also allowed to speak. **My testimony was commended by Commissioner Mercedes Albana, the Chair of the Planning Commission.** (See Hour 2, Minute 13, second 14 of the City's recording <https://www.youtube.com/watch?v=eds9P7BLRTg>, "As a matter of fact, he did very good in explaining himself.") Nevertheless, without making any findings or stating a reason, the Planning Commission denied the CUP in a 1-5 decision with Commissioner Gupta abstaining. Commissioner Gupta did not state any reason for why he chose to abstain.

ABOUT MY BUSINESS:

A head/smoke/tobacco shop sells tobacco and tobacco-related products. I do not and have never sold marijuana. The products I sell are high quality items intended for tobacco use and CBD products, along with some clothing and other natural hemp products. No sampling or tobacco consumption occurs on-site. There are a number of safeguards I put in place to ensure that my store only serves customers who are 21 and over. Just some of the safeguards include a highly trained staff, Age of Sale Warning Signs issued by the California Department of Health, and an electronic ID check at the entrance.

With this new location in Milpitas, my plan is to only sell products in alignment with the Milpitas Zoning Code, which defines a head/smoke/tobacco shop as:

A "retail establishment primarily engaged in the selling of smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substances. Tobacco products may include but are not limited to cigarettes, cigars, loose leaf tobacco, tobacco pipes, Electronic Smoking Devices and accessories, vaporizers and accessories and any other product, device or component used in the inhalation of tobacco, nicotine or other substance. For the purposes of this definition only, "primarily engaged" means when thirty percent (30%) or more of products sold at the retail establishment are smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substance." (Milpitas Municipal Code XI-10-2.03)

WHAT HAPPENED AT THE PLANNING COMMISSION MEETING?

During the hearing, the Planning Commission accepted the written and verbal Staff Report, viewed a presentation from Planner Randy Baez and heard public comments. Staff had also received five written comments which they passed along to the Commissioners. I have not been able to access those comments, and do not know what they say. I did attend and testify at the hearing, which remained respectful and calm throughout. However, there were some misunderstandings that I hope to clear up with this Appeal.

I think some of the confusion began when the issue on the City's tobacco license came up. The Planning Commissioners were asking questions about why Milpitas does not have a tobacco license. The Planning Director Jay Lee explained that Milpitas does not have a tobacco license because of staff limitations on enforcement. I had also experienced

some confusion on my part related to Milpitas licensing because based on my conversations with the City staff prior to opening my business, I also was under the impression that I didn't need a tobacco license to open my doors to the public.

It wasn't until early August of 2023 that I learned from a City Inspector who came to my store that while I didn't need a tobacco license, I did need a Conditional Use Permit. When I was cited by the City on August 9, 2023 for not having a Conditional Use Permit, I did not know that I needed a Conditional Use Permit. Once I learned that I needed one, I shut my doors immediately, but did not want to lose hope that I could never open my business again. And so, I continued to honor my lease in hopes of obtaining a Conditional Use Permit through the application process.

Since August, the store was closed and has remained closed. The Planning Department Memo mentions that I was cited for conducting an interior remodel in September. To be clear, I was **not** remodeling my store at that time, so I have no idea what this violation is about. I also did **not** receive any communication verbally or in writing about being in any violation of a remodeling ordinance. I still have not received a copy of this violation, and the first time I heard about it was at the Planning Commission meeting.

I do want to say that I was contacted by email on October 25, 2023 by Michelle Fossati, a Senior Planner at City of Milpitas, letting me know I should take down a flag. I did so immediately.

I want to use this opportunity to apologize in writing for not knowing more about the Milpitas regulations at the time that I opened my store and put out a flag. What I failed to understand but what I now know, of course, is that I need a Conditional Use Permit to operate a tobacco shop and a sign permit for any signage. I can imagine that having two citations (one of which I never received) would give the Planning Commission and City Council the wrong impression that I was not interested in complying with the law. At the Hearing, the Planning Commission reminded me that I should have known about the Conditional Use Permit prior to opening my business. I thought that operating a small business in another city had given me enough experience, but I was wrong to think that I could open a store without more help. As a result, I inadvertently violated Milpitas regulations.

Now I know that I need to do better when it comes to operating a business in Milpitas. I am eager to demonstrate that I am a reliable business owner who can contribute positively to the community. This is especially important to me because seven members of the public raised concerns that children would be able to see and access my business, the hours of operation were too long, the potential noise and traffic would bother residents, and that the signage was too large. It also has come to my attention that the owner of Bonfare Fine Foods next door, who also sells cigarettes, is in opposition to my store. My intention is to not compete with his ability to earn a living in Milpitas; I believe that Milpitas has enough opportunities for many types of businesses and that operating next to one another can benefit the both of us.

MY REQUEST FOR APPEAL:

Appeal point 1: No Explanation, Findings, Evidence, or Analysis in writing or stated out loud. I believe that the Planning Commission did not follow their own rules. Their by-law 6.12 says, "Public decisions must be accompanied with coherent reasons." But I left the hearing not understanding the standards that the Planning Commission applied when they decided that a tobacco store at this location was a problem. I listened to the youtube recording at home, and heard, "Ok. I, um, well before I make a motion, I think um so many concerns about the audience also where the location, the operating hours. I've heard about smoking in the parking lot. It's going to be a case I think so I like to make a motion to deny, um, this, um, this project."

Based on what I experienced, this seems like an unfair and arbitrary decision. The Planning Commission testified at the Hearing that my store complies with the General Plan and Zoning. Given that the store is in alignment with Milpitas law, what makes this location a problem? A Police Officer also testified at the Hearing that my store has not been the source of any complaints, incidents, or trouble. While there was testimony about people's concerns about what *could* happen in the future, the Planning Commission voted to deny the CUP without findings, analysis, explanation or evidence.

A big reason why I need to understand why the Planning Commission made their decision is so that I can decide whether I should file this Appeal, which costs over \$2,000. In an email, Planner Randy Baez wrote to me that the Planning Commission may adopt Minutes in their *next* meeting, but I don't have access to those Minutes now, before my right to Appeal expires. So, I don't know what those Minutes will say. This seems really unfair and puts me in a bind because it keeps me from making an informed choice about whether I should appeal.

Another reason why this troubles me is that I do not know how to best argue this Appeal, because I have no explanation why the Planning Commission denied the CUP. I can't understand their analysis because they never gave me one. What if their denial is due to some of those comment letters I have never been able to access? What if the denial is due to the remodeling violation that I still don't understand? I don't know what to do about this.

Appeal point 2. The vote. One reason that the vote doesn't follow the Planning Commission's own rules is that they didn't clarify whether they were denying my CUP with or without prejudice based on Bylaw 5.05. This just makes me all the more confused because as of today, there is nothing in writing that allows me to understand the terms of the Planning Commission's decision or tells me whether I should appeal to City Council or re-apply to the Planning Commission.

Appeal point 3: Concerns regarding underage access. No children would ever be allowed in my store. I have an Age of Sale Warning Sign issued by the California Department of Health outside the store. I also have a We Check ID Window Cling issued by the California Department of Health to remind customers that the age of sale for tobacco and e-cigarettes is 21 inside of my store that makes it clear that my store is 21 and over. My staff and I take this law seriously and use an electronic ID machine at the entrance to ensure that no children gain access to the store.

Appeal point 4: Concerns about signage. At the hearing, people spoke against a sign I put up temporarily because I heard they think it is too big. I have taken down my temporary signage until I hear the terms of the permit. If the community or City Council thinks parameters about my signs should be in place, I am ready to apply for a sign permit based on the criteria specified by City Council stated by the CUP.

Appeal point 5. Hours of business. While I do hope that my business generates customers, I respect that neighbors want quiet evenings and that the late-night hours I proposed on the application are not acceptable to the community. Accordingly, I am eager to obtain guidance from City Council about appropriate hours of operation. As a point of information, the business hours of the Bonfare Market end at 10 p.m. Tuesday. Bonfare closes at 11 p.m. on Wednesday, Sunday, and Monday. They close at 12 a.m. on Friday and Saturday.

Appeal point 6. Name of business. Some testimony suggested that the name of my business should be more narrowly tailored to appeal to upscale adult tobacco clientele. Alternative names could be Tobacco Shop or Smoke Shop. I am willing to receive guidance on this topic.

THANK YOU

I appreciate the time you are taking to consider my CUP application and Appeal. I believe the Planning Commission didn't follow the rules when they voted with no explanation. With this CUP, I am seeking to get direction from you so that I can move forward to build a successful minority owned business in Milpitas. I am ready to pay all permit fees for a new, smaller sign, and change the name of my business and be zealous in ensuring that I serve customers who are only 21 and older.

Sincerely,

Kareem Al Salahi

Small Business Owner



MILPITAS PLANNING COMMISSION STAFF REPORT

March 13, 2024

APPLICATION: **NEW HEAD/SMOKE/TOBACCO SHOP (RETAIL USE) – Conditional Use Permit No. UP23-0013** - A Conditional Use Permit to allow for the retail sales of tobacco products within an existing 870-square foot tenant space of a 9,960-square foot multi-tenant commercial building, located at 1225 Jacklin Road on a 0.9-acre lot within the C1 Neighborhood Commercial zoning district.

RECOMMENDATION: **Staff recommends that the Planning Commission consider the exemption in accordance with CEQA and adopt Resolution No. 24-013, approving Conditional Use Permit No. UP23-0013, subject to the findings and attached Conditions of Approval.**

LOCATION:

Address/APN: 1225 Jacklin Rd. (APN: 029-09-057)
Area of City: Northwest corner of Jacklin Road. and North Park Victoria Drive

PEOPLE:

Project Applicant: Kareem Al Salahi (Representative and Business Owner)

Property/Business Owner: Hartman Property Management Inc.
Project Planner: Randy Baez, Associate Planner

LAND USE:

General Plan Designation: Neighborhood Commercial (NC)
Zoning District: Neighborhood Commercial (C1)

ENVIRONMENTAL: This Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

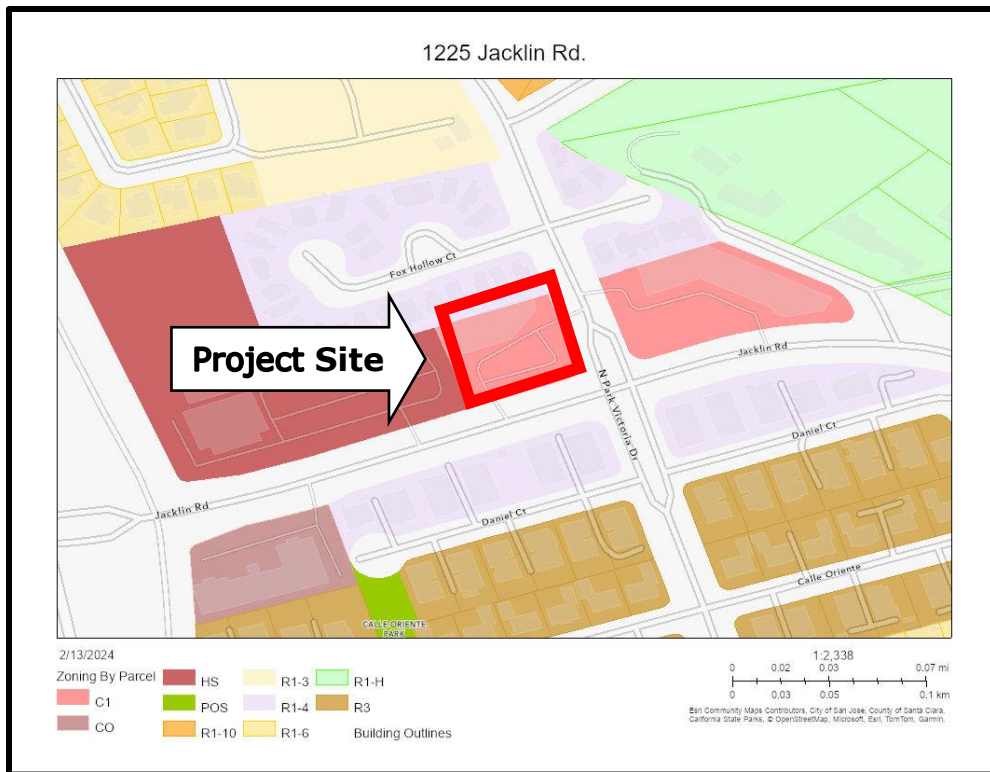
EXECUTIVE SUMMARY

Puff City Smoke Shop is requesting a Conditional Use Permit (CUP) to allow for the retail sales of tobacco products for off-site use only within an existing commercial tenant space. The Project tenant space is 870 square feet in size and located within a multi-tenant commercial building totaling 9,960 square feet. No consumption or sampling of the products will be allowed on-site. The proposed business hours are Monday through Sunday, 10am to 12am.

Map 1:
Project Location



Map 2
Project Zoning Map



BACKGROUND

History

The subject site has an existing one-story, 9,960-square foot multi-tenant commercial building first approved by the Planning Commission in 1983. The existing building consists of eight tenant spaces occupied by various uses ranging from restaurants to personal services. Puff City Smoke Shop (Applicant) proposes to occupy an 870-square foot tenant space addressed as 1225 Jacklin Road. The tenant space was formerly occupied by an insurance office for approximately 30 years.

Background

On August 9th, 2023, the Building Safety & Housing Department conducted an inspection of the property in response to a notice of violation of the Milpitas Municipal Code (MMC). That inspection found that the property was in violation of MMC Sec. XI-10-5.02(A)(1) for operating a Head/Smoke/Tobacco shop without the benefit of an approved Conditional Use Permit. On September 5th, 2023, the Building Safety & Housing Department conducted another inspection of the property and found the property to be in violation of conducting an interior remodel of tenant space without the benefit of a permit. This Project (UP23-0013) seeks to address these violations and bring the property into compliance.

Application

On November 7, 2023, Kareem Al Salahi, the applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow for the retail sale of tobacco products within the subject tenant space. The business will be known as Puff City Smoke Shop, which plans to operate daily from 10am to 12am (midnight). Pursuant to Milpitas Municipal Code (MMC) Table XI-10-5.02-1 and Ordinance No. 227.6, the proposed head/smoke/tobacco shop use requires a Conditional Use Permit to be approved by the Planning Commission.

PROJECT DISCRIPTION

Overview

The applicant (Puff City) is requesting a Conditional Use Permit (CUP) to allow for the retail sale of tobacco and tobacco-related products for off-site consumption or use only. A list of items for sale include cigars, tobacco pipes, tobacco containers, tobacco grinders, tobacco wraps, hemp wraps, rolling papers, rolling machines, rolling tips, butane, lighters, backpacks, clothing, kratom, hemp products and CBD. The subject tenant space is 870 square feet, which includes the main retail area as well as ancillary storage, an office and a bathroom at the rear of the suite. Only cosmetic improvements such as display areas are proposed.

Location and Context

The Project site is located within a single-story multi-tenant commercial building at the northwest corner of North Park Victoria Drive and Jacklin Road, just east of the I-680 Interstate Freeway. The 0.9-acre site includes one multi-tenant commercial building with eight tenant spaces ranging from 674 square feet to 2,052 square feet in size. North Park Victoria Drive bounds the site to the east, and Jacklin Road to the south. Table 1 below summarizes the Project site's land use designation and surrounding uses.

Table 1:
Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Uses
Subject Site	Neighborhood Commercial (NC)	Neighborhood Commercial (C1)	Multi-Tenant Commercial
North	Medium Residential (MDR)	Single-Family Residential (R1-4)	Single-family homes
South	Medium Residential (MDR)	Single-Family Residential (R1-4)	Multi-Family homes
East	Neighborhood Commercial (NC)	Neighborhood Commercial (C1)	Multi-Tenant Commercial
West	Neighborhood Commercial (NC)	Highway Services (HS)	Entertainment (GolfLand)

Site Improvements

Puff City is not proposing any site improvements at this time.

No exterior building wall signage is proposed at this time. Still, there is a condition of approval requiring approval of a sign permit under a separate application for any future sign.

Safety and Security

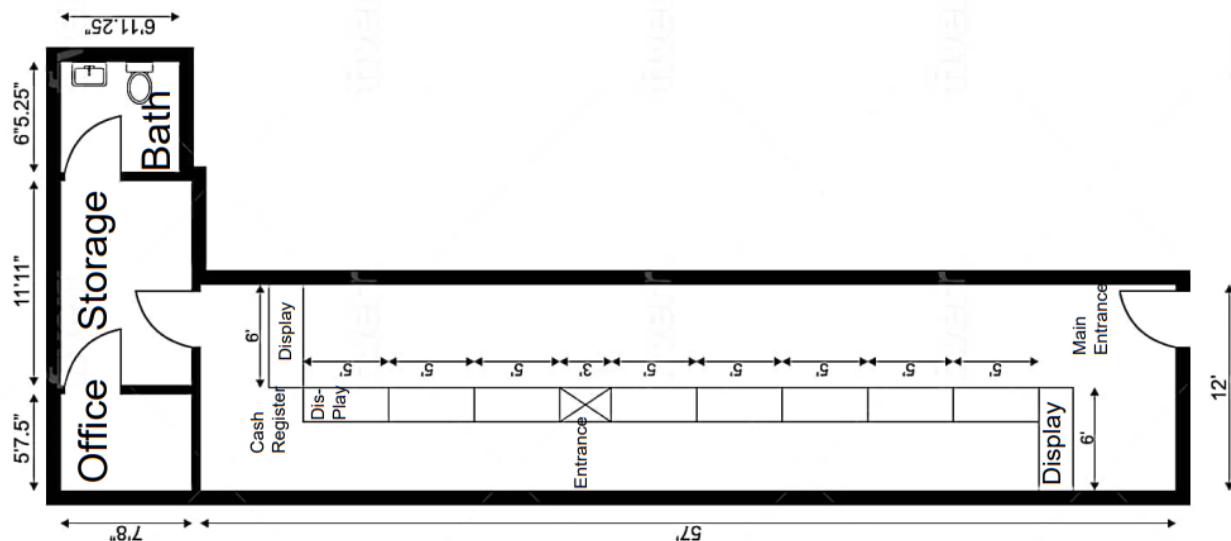
The Milpitas Police Department reviewed the Project and prescribed measures to ensure the safety and security of the overall site and its occupants, including video surveillance and filing emergency contact information with the Police Department. These measures have been included as conditions of approval (20 through 27) within the attached Resolution. Examples include:

1. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours.
2. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police department if needed.

Floor Plan and Operations

The applicant is not proposing any modifications to the existing floor plan at this time other than cosmetic changes to include display cases and a cash register (Figure 1). The tenant space was most recently occupied by an insurance office that had been in operation for approximately 30 years. No structural modifications are proposed as part of this project and no modifications are proposed to the building's exterior. Any new exterior modifications including signage would

Figure 1:
Floor Plan



General Plan, Midtown Specific Plan & Zoning Conformance

The General Plan land use designation for the subject property is Neighborhood Commercial (NC). The subject property is currently zoned Neighborhood Commercial (C1).

Table 2:
General Plan Consistency

General Plan Policy	Consistency Finding
<i>LU 6-4: Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix</i>	Consistent. The proposed smoke shop will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. The proposed smoke shop

General Plan Policy	Consistency Finding
<i>of commercial uses including retail, service, office, entertainment, and assembly uses.</i>	will be located in an existing shopping center that includes a diverse mix of uses including retail and restaurants.
<i>LU 6-5: Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.</i>	Consistent. The proposed smoke shop will reinvest in an existing shopping center by occupying a previously vacant tenant space.

Zoning Ordinance

The proposed use will occupy an existing tenant space within an existing multi-tenant commercial building. No changes to the exterior of the building are proposed and therefore maintains compliance with the Neighborhood Commercial development standards for setbacks, height, floor area ratio, and parking. Table 3 demonstrates project consistency with the Neighborhood Commercial (C1) development standards:

Table 3:
Zoning Conformance

	C1 Standard	Existing	Complies?
Front (South)	20'	~110'	Yes, no change
Side Yard (East/West)	0' 15' when abutting Residential	2' (west) 33' (east)	Yes, no change
Rear (North)	0' 15' when abutting Residential	2'	Yes, no change
<u>Floor Area Ratio</u> (Max)	0.35	~0.25	Yes, no change
<u>Bldg Height</u> (Max)	35' or 3 stories	~15' 1 story	Yes, no change
<u>Landscaping</u>	None	~25	Yes, no change

Traffic, Parking, Access, and Circulation

Traffic

A traffic operations analysis report was not conducted for the Project because there are no anticipated significant increases in trip generation or parking demand. The proposed Project is

consistent with the land uses permitted per the City of Milpitas General Plan. The number of daily trips (including a.m. and p.m. peak hour trips) is not expected to significantly impact the level of service (LOS) in the immediate vicinity.

Parking

A total of 45 parking spaces are available for all uses within the eight-tenant site. Five parking spaces are allocated to the proposed smoke shop. Table 4 shows the proposed smoke shop and adjacent uses within the existing shopping center and demonstrates the Project's compliance with the Zoning Ordinance parking standard per *Section XI-10-53 Off-Street Parking Regulations*.

Table 4:
Parking Summary

Uses	Area (sq. ft.)	Parking Standard	Total Parking Required
Smoke shop Market Gift shop (Retail)	4,108	1 space per 200 sq. ft.	4,180 sq. ft. /200 sq. ft. = ~21 spaces
Massage	619	2 spaces per treatment room	1 treatment room = 2 spaces
Dry Cleaners	1,320	1 space per 200 sq. ft.	1,320 sq. ft. / 200 sq. ft. = 6.6 Total for office = ~7 spaces
Restaurants	2,726 (gross)	1 per 39 sq. ft. of dining area	425 sq. ft./ 39 sq. ft. = ~11 spaces
Salon (personal services)	964	1 per 200 sq. ft.	964/200 = ~5 spaces
Total Parking Spaces required per Section XI-10-53			45
Existing parking spaces for the shopping center			45

Access and Circulation

The project site is at the corner of North Park Victoria Drive and Jacklin Road, near Interstate 680. The Project utilizes two existing two-way driveways: one on North Park Victoria Drive and one on Jacklin Road. A public sidewalk along both streets provide pedestrian access to the site. Regular VTA bus service runs along Jacklin Rd. with two transit stops at the nearby Golfland, approximately 400 feet away.

FINDINGS

A finding is a statement of fact relating to the information the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit (Section XI-10-57.04(F)(1))

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed head/smoke/tobacco use is consistent with this finding because the Project is in the existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposed retail business selling tobacco and tobacco related products provides retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and the retail sales will be conducted within the building. No consumption of the products will be made in the premises. As discussed above, the site meets all development standards and off-street parking requirements.

2. *The proposed use is consistent with the Milpitas General Plan.*

As described in Table 2, the Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by operating a retail business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The proposed head/smoke/tobacco use are a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. As demonstrated in Table 3, the Project conforms to the development standards as set forth in Milpitas Municipal Code Sections XI-10-5.02 and XI-10-5.03. Table 4 demonstrates the Project's compliance with the Zoning Ordinance parking standard per Section XI-10-53 Off-Street Parking Regulations.

ENVIRONMENTAL REVIEW

This Project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Project includes

a conditionally permitted use within an existing commercial center in an urbanized area. The Project is also consistent with the Milpitas General Plan and Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and close the public hearing;
2. Consider the exemptions in accordance with CEQA; and
3. Adopt Resolution No. 24-013 approving Conditional Use Permit No. UP23-0013 subject to the findings and attached Conditions of Approval.

ATTACHMENTS

A: Resolution No. 24-013

B: Project Plans

RESOLUTION NO. 24-013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP23-0013 TO OPERATE A HEAD/ SMOKE/ TOBACCO SHOP, WITHIN 870 SQUARE FEET OF AN EXISTING 9,960 SQUARE-FOOT, ONE-STORY, MULTI-TENANT COMMERCIAL BUILDING LOCATED ON AN 0.9-ACRE SITE WITHIN THE NEIGHBORHOOD COMMERCIAL (C1) ZONING DISTRICT AT 1225 JACKLIN ROAD (APN 029-09-057) AND MAKING FINDINGS OF CEQA EXEMPTION.

WHEREAS, on November 13, 2023, Kareem Al Salahi, the Applicant and business owner, submitted a Conditional Use Permit application (Permit No. UP23-0013) to allow a Head/ Smoke/ Tobacco shop (Puff City) to allow for the retail sales of tobacco products; and

WHEREAS, the Planning Department completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

WHEREAS, on March 13, 2024, the Planning Commission held a duly noticed public hearing on the subject application, and considered the evidence presented by City staff, the applicant, and other interested parties.

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

SECTION 1: Recitals

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

SECTION 2: California Environmental Quality Act

This project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and; as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the Conditional Use Permit will allow for the retail sales of tobacco products within an existing commercial shopping center in an urbanized area and will not have a negative impact on the surrounding area. The project is also consistent with the Milpitas General Plan, Zoning Ordinance, and there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

SECTION 3: Conditional Use Permit (Section XI-10-57.04(F)(1))

The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP22-0007:

- a. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed head/smoke/tobacco use is consistent with this finding because the Project is in the existing commercial building and is permitted under the Zoning Ordinance with a Conditional Use Permit. The proposed retail business selling tobacco and tobacco related products provides retail options for the patrons. The proposal increases economic opportunity, and as conditioned, will not be detrimental to property or improvements in the vicinity nor to the public health, safety, and general welfare because the building exists and the retail sales will be conducted within the building. No consumption of the products will be made in the premises. As discussed above, the site meets all development standards and off-street parking requirements.

- b. *The proposed use is consistent with the Milpitas General Plan.*

As described in Table 1, the Project is consistent with the Milpitas General Plan, which encourages activity within existing commercial centers. The proposed head/smoke/tobacco retailer will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. In addition, the proposed retail sales will encourage economic pursuits by operating a retail business in an existing unoccupied commercial tenant space with Conditional Use Permit approval. The proposal will provide economic opportunities to the Milpitas residents and around the region by providing different retail options.

Table 1: General Plan Consistency

General Plan Policy	Consistency Finding
<i>LU 6-4: Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.</i>	Consistent. The proposed smoke shop will serve surrounding neighborhoods by providing goods not typically found nearby, which will help minimize vehicle miles traveled. The proposed smoke shop will be located in an existing shopping center that includes a diverse mix of uses including retail and restaurants.
<i>LU 6-5: Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.</i>	Consistent. The proposed smoke shop will reinvest in an existing shopping center by occupying a previously vacant tenant space.

c. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The proposed head/smoke/tobacco use are a conditionally permitted use in the Neighborhood Commercial (C1) Zoning District and complies with the applicable development standards. As demonstrated in Table 2, the Project conforms to the development standards as set forth in Milpitas Municipal Code Sections XI-10-5.02 and XI-10-5.03. Table 3 demonstrates the Project's compliance with the Zoning Ordinance parking standard per Section XI-10-53 Off-Street Parking Regulations.

Table 2: Zoning Conformance

	C1 Standard	Existing	Complies?
Front (South)	20'	~110'	Yes, no change
Side Yard (East/West)	0' 15' when abutting Residential	2' (west) 33' (east)	Yes, no change
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<u>Floor Area Ratio</u> (Max)	0.35	~0.25	Yes, no change
<u>Bldg Height</u> (Max)	35' or 3 stories	~15' 1 story	Yes, no change
<u>Landscaping</u>	None	~25	Yes, no change

Table 3: Parking Summary

Uses	Area (sq. ft.)	Parking Standard	Total Parking Required
Smoke shop Market Gift shop (Retail)	4,108	1 space per 200 sq. ft.	4,180 sq. ft. /200 sq. ft. = ~21 spaces
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<i>Restaurants</i>	2,726 (gross)	1 per 39 sq. ft. of dining area	425 sq. ft./ 39 sq. ft. = ~11 spaces
<i>Salon (personal services)</i>	964	1 per 200 sq. ft.	964/200 = ~5 spaces
Total Parking Spaces required per Section XI-10-53			45
Existing parking spaces for the shopping center			45

SECTION 5: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 24-013 approving Conditional Use Permit Amendment No. UP23-0013 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1, incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on March 13, 2024

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on March 13, 2024, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana				
Dipak Awasthi				
Michael Caulkins				
Chia Ling Kong				
Alexander Galang				
Sonia Medina-Ashby				
Parveen Gupta				

EXHIBIT 1**CONDITIONAL USE PERMIT NO. UP23-0013
1225 JACKLIN ROAD (APN 029-09-057)**

The City of Milpitas Planning Commission approves this Conditional Use Permit No. UP23-0013 in accordance with Section XI-10-57.04 of the Milpitas Municipal Code, subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below. This permit is to allow the conditional use of a new off-sale only head/smoke/tobacco shop within 870 square feet of an existing 9,960 square-foot, one-story, multi-tenant commercial building located on a 0.9-acre site within the Neighborhood Commercial (C1) Zoning District at 1225 Jacklin Road (APN 029-09-057), subject to all other necessary reviews, approvals, permits, licenses, studies, and inspections necessary for such use. This permit does not permit the operation or use of these premises for a smokers' lounge or other on-site commercial tobacco or smoking use.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Conditional Use Permit Amendment No. UP23-0013 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. The Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on March 13, 2024, in accordance with these Conditions of Approval. **(P)**
3. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
4. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Ordinance, the date of approval of this Permit is the date on which the decision-making body approved this Permit.

5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Department prior to the expiration date of the approval. **(P)**
9. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval

of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. Permittee shall enter into an indemnification agreement with the City that incorporates the provisions of this condition prior to commencing the use authorized in this Permit. (CA)

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
16. Fire Department. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as demonstrated in the Fire Department's Memorandum, dated November 27, 2023, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. (F)
17. Building Department. The project/development shall comply with the requirements of the Building Department and the Building Code, as demonstrated in the Building Department's Memorandum, dated November 14, 2023, as may be amended by the City of Milpitas. (B)
18. Smoking and On-site Use of Products Generally Prohibited. The Permittee shall comply with and ensure compliance with all state, local, federal, and other laws and regulations prohibiting or regulating smoking on the premises, including California Labor Code section 6404.5, California Health and Safety Code sections 104495 and 114371, California Government Code sections 7596-7598, and Title V, Chapter 215 of the Milpitas Municipal Code. In addition, the Permittee shall not cause, permit, aid, abet, suffer, conceal, or allow the consumption, smoking, or use of any goods or other products, including samples, obtained from the business on the premises or anywhere in the surrounding shopping plaza, including the parking lot, walkways, and common areas. Nor shall the Permittee cause, permit, aid, abet, suffer, conceal, or allow customers to consume, smoke, or use any tobacco or tobacco products on the premises or anywhere in the surrounding shopping plaza, including the

parking lot, walkways, and common areas. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.

19. Laws and Licenses for Tobacco Retail. Obey all laws and regulations, including the Cigarette and Tobacco Products Licensing Act, and obtain all necessary permits, licenses, certifications, and approvals necessary for retail sale of tobacco and tobacco products, including maintaining in good standing a Cigarette and Tobacco Products Retailer's License with the California Department of Tax and Fee Administration. Any violation of this condition shall be an independent and sufficient basis for revocation, suspension, or modification of this Permit.

Police Department Conditions

20. Parking. Parking is not affected by the proposed permit, and the current parking lot is of sufficient capacity to accommodate additionally parked vehicles. No changes are recommended for the parking lot. **(PD)**
21. The parking lot should continue allowing accessible circulation for police patrols (vehicles, foot, and bicycles) to prevent and reduce the likelihood of criminal activity occurring in the area. **(PD)**
22. Visibility. Lighting shall be of sufficient wattage to adequately illuminate and make visible the presence of any person in or about the outside premises during hours of darkness. **(PD)**
23. Line of sight obstructions, including business signs, advertisements, or other markings, should be avoided on the exterior windows to maximize natural surveillance during the business's closed hours. **(PD)**
24. Security. Video/security cameras shall be required for the site, with coverage at all access points into the business. The interior video/security cameras shall record in high definition and cover any cash register, safe, or other device that stores currency, entrances/exits, and hallways or paths leading to a restroom. The video/security system shall have the capability to be downloaded. A copy of video/security footage shall be made available to law enforcement upon request for investigative purposes. It is recommended the employees of the business be appropriately trained on how to use the security surveillance camera system so that footage can be reviewed and collected in a timely fashion by the Police department if needed. **(PD)**
25. The cashier area, safe, or other devices that stores currency should be away from the front doors, windows of the business, and not in plain view to help prevent burglaries when the company is closed. If these areas cannot be moved, window treatments such as shades or blinds preventing the site from being visible from the outside should be considered. **(PD)**
26. Accessibility. An up-to-date map of the interior of the building should be provided to the Police Department. The map should minimally identify the locations of each entry/exit point, storage area, maintenance area, etc.

27. Miscellaneous. Applicant shall file an emergency notification form with the Police Department so law enforcement can contact the applicant in case of any significant accident, emergency, or unforeseen circumstance. **(PD)**

Building Department Conditions

28. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department.

Fire Department Conditions

29. Please do not consider this an approval from Fire Department. Additional requirements may be made during the construction permit process. These notes are a general list of the applicable code requirements, and it is provided to assist with the construction permit process.
30. No changes shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of the current code(s). California Fire Code (CFC) Section 102.3
31. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505.1
32. Assembly Use. This facility/business/site is not approved for assembly use as defined by the CA Building Code (50 or more occupants).
33. Maximum Occupancy. The maximum number of occupants within this business/facility shall be limited to the permitted number by the Planning Department, but not to exceed the permitted occupancy load under the CA Building and Fire Codes.
34. Portable fire extinguishers for general area shall be installed in occupancies and locations as set forth in the CFC Section 906 and as required by the Fire Code Official.
35. Egress based on occupant load and common path of egress travel distance. Two exits or exit access doorways from any space shall be provided where the design occupant load or the common path of egress exceeds the values listed in 2022 California Fire Code Table 1006.2.1. The cumulative occupant load from adjacent rooms, areas or spaces shall be determined in accordance with section 1004.2.

36. Exit doors shall swing in the direction of exit travel when serving an occupant load of 50 or more. CFC Section 1010.1.2.1
37. Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. CFC Section 1010.1.9
38. Manually operated flush bolts or surface bolts are not permitted. CFC Section 1010.1.9.5
39. Exits and exit access doors shall be marked by an approved exit sign readily visible from any direction of egress travel. Exit sign placement shall be such that no point in a corridor is more than 100 feet or the listed viewing distance for the sign, whichever is less, from the nearest visible sign. Additional signs may be required if clear path of exit access is not readily defined. CFC Section 1013.1
40. Complete plans and specifications for all aspects of fire-protection systems shall be submitted to the Fire Department for review and approval prior to system installation or alteration. CFC Section 105.4
41. Means of egress shall be provided in conformance with the CA Building Code Chapter 10.
42. The Milpitas Fire Department shall approve new installation and/or modifications to existing fire protection, alarm or monitoring system(s). A separate submitted is required to the Milpitas Fire Department, for review and approval, prior to the commencement of any work. CFC Section 901.2

(P) = Planning (PD) = Police Department (B) = Building (E) = Engineering
(F) = Fire Prevention (CA) = City Attorney