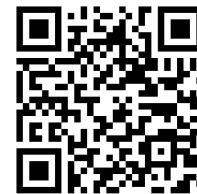




REGULAR MEETING OF THE MILPITAS CITY COUNCIL



AGENDA

TUESDAY, AUGUST 20, 2024
MILPITAS COMMUNITY CENTER AUDITORIUM
457 E. CALAVERAS BLVD, MILPITAS, CA
6:00 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3072

** To access written translation during the meeting, scan the QR Code.*

The City Council meeting is held in the Milpitas Community Center Auditorium,
457 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_5wDsoS7eTUKSYhE2X4K49g

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 (6:00 PM)

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2)
In the Matter of *McHarris vs. City of Milpitas*, Superior Court of California, County of Santa Clara, Case No. 23CV427505
City as Defendant

(b) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2):
Arash Motedaeiny v. City of Milpitas, WCAB case number ADJ16578112.

(c) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2):
Arash Motedaeiny v. City of Milpitas, WCAB case number ADJ16578113.

(d) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2):
Joseph Perez v. City of Milpitas, WCAB case number ADJ15568618.

CLOSED SESSION ANNOUNCEMENT:

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

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan)

PRESENTATIONS (7:05 PM)

- Women's Equality Day (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 August and September 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for August and September 2024.

C2. Approve City Council City Council Meeting Minutes of August 5, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of August 5, 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 Supporting the Build the Future (Childcare) Santa Clara County Campaign (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Recommendation: Adopt a resolution supporting the Build the Future Santa Clara County Campaign.

C6. Waive the Second Reading and Adopt Ordinance No. 38.856 Approving a Development Agreement between the City of Milpitas and Stratford Schools, Inc., Store Master Funding IV, LLC (Staff Contact: Jay Lee, Planning Director, 408-586-3077 and Kristina Phung, Senior Planner, 408-586-3278)

Recommendation: Move to waive the second reading and adopt Ordinance 38.856 approving a Development Agreement between the City of Milpitas and Store Master Funding IV, LLC to provide certainty to the applicable development standards for a new private middle and high school at 1323 Great Mall Drive (APN 086-024-046).

C7. Approve an Agreement with McCampbell Analytical, Inc. for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: Approve and authorize the City Manager to execute the Professional Service Agreement with McCampbell Analytical, Inc. for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services for a five-year term in an amount not-to-exceed \$556,790, subject to the availability of funds.

C8. Receive an Update on the Security Improvements at the McCarthy Ranch Sewer Lift Station (Main Lift) 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 security improvements at the McCarthy Ranch Sewer Lift Station; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (7:20 PM)

9. Potential Naming of the Milpitas Library (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Provide direction to staff on the potential renaming of the Milpitas Library to either (1) Refer the proposed name “Milpitas [insert name] Library to the next City Council Naming Ad Hoc Subcommittee tentatively scheduled for Wednesday August 21, 2024; or (2) Refer the proposed name “[Insert Name] Auditorium” within the Milpitas Library to the City Council Naming Ad Hoc Subcommittee tentatively scheduled for Wednesday August 21, 2024.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (8:30 PM)

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

ADJOURNMENT (8:35 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk’s office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on City website. City Council agendas and related materials can be viewed online: 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.

July 2024						
S	M	T	W	T	F	S
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Milpitas City Council Calendar

August 2024

September 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 2:30 PM-1000 Hillview Ct. stakeholders Group Meeting (CM/EC) 5:30 PM-Milpitas Chamber of Commerce Board (GB) 5:30 PM-Santa Clara VTA Board of Directors (CM)	2	3
4	5 5:30 PM- Special Council Meeting 7:00 PM-Parks, Recreation & Cultural Resources Commission (HL)	6 National Night Out – Citywide Neighborhood Events	7 5:30 PM-Veterans Commission (CM) 7:00 PM-Community Advisory Commission (EC)	8 4:00 PM-Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM-Santa Clara VTA Policy Advisory Committee (EC) 5:30 PM-CASCC Legislative Action Committee (CM) 6:00 PM-Youth Advisory Commission (HL) 7:00 PM-Cities Assoc of SCC (CM)	9	10
11	12 4:30 PM-Economic Development and Trade Commission (CM) (Milpitas Library)	13 5:30 PM-Special Council Meeting	14 5:00 PM-Silicon Valley Clean Energy Study Session (EC) (Cupertino) 7:00 PM-Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM-Planning Commission	15 10:00 AM-VTA Congestion Mgmt Program & Planning Committee (CM) 3:00 PM-CASCC Appt: Recycling and Waste Reduction Commission (CM) 6:00 PM-India Independence Day Flag-Raising Event (Cesar Chavez Plaza)	16	17
18	19	20 6:00 PM-Closed Session 7:00 PM-City Council	21 3:30 PM-Facilities Naming Subcommittee (CM/EC) 6:00 PM-Energy and Environmental Sustainability Commission (EC)	22 1:30 PM-Santa Clara County Emergency Operational Area Council (CM) (San Jose)	23	24
25	26 6:00 PM-HOD Community Meeting	27 1:30 PM-Senior Advisory Commission (CM)	28 11:00 AM-1000 Hillview Ct. Stakeholder Group Meeting (CM/EC) 7:00 PM-Planning Commission	29	30	31

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

MILPITAS CITY COUNCIL CALENDAR

September 2024

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

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 CITY HOLIDAY City Hall Closed 	3 6:00 PM -Closed Session 7:00 PM -City Council	4 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 7:00 PM -Community Housing Commission (EC)	5 5:00 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (GB)	6	7
8	9 4:30 PM -Economic Development and Trade Commission (CM)	10 4:00 PM - Milpitas HOPE	11 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)	12 4:00 PM -Silicon Valley Regional Interoperability Authority Board of Directors (GB) (Santa Clara) 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose) 5:30 PM -CASCC Legislative Action Committee (CM) (Los Altos) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -CASCC Board of Directors (CM) (Los Altos)	13	14
15	16 7:00 PM -Science, Technology, and Innovation Commission (GB) 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library)	17 6:00 PM -Closed Session 7:00 PM -City Council	18 6:00 PM -Energy and Environmental Sustainability Commission (EC)	19 10:00 AM -VTA Congestion Management Program & Planning Committee (CM) (San Jose) 3:00 PM -CASCC Appt: Recycling and Waste Reduction Commission (SB1383) (CM) (Cupertino) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Sequoia Room – Burlingame Community Center) 7:00 PM -Public Safety and Emergency Preparedness Commission (HL)	20 9:00 AM -Santa Clara VTA Board of Directors Workshop (CM)	21
22	23 7:00 PM -Arts Commission (EC)	24 5:30 PM -Special Council Meeting Place Holder	25 7:00 PM -Planning Commission	26 4:00 PM -Silicon Valley Regional Interoperability Authority Board of Directors (GB) 6:00 PM -Zoning Advisory Group	27	28
29	30					



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
MONDAY, AUGUST 5, 2024

The City Council of the City of Milpitas convened on the Special City Council meeting day in a Meeting of the Milpitas City Council on August 5, 2024, in the Milpitas Community Center, 457 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 Special City Council meeting to order at 5:31 PM. Roll Call was taken by City Clerk Guzzetta.

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

ABSENT: None.

PLEDGE OF ALLEGIANCE

Mayor Montano led the pledge of allegiance.

INVOCATION

Councilmember Barbadillo led the invocation.

PRESENTATIONS

There were no presentations.

PUBLIC FORUM

There were no public speakers.

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.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Vice Mayor Chua read the City Council Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Vice Mayor Chua/Councilmember Lien

Motion carried by the following:

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

NOES: None

AGENDA ITEMS

1. Adopt a Resolution Submitting the City of Milpitas Public Services Reauthorization Measure to the Voters at the November 5, 2024 General Municipal Election, Reiterating the City's Request that the Election be Consolidated with Other Elections Held on that Date and Taking Certain Related Actions (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

City Manager Thomas introduced the item. Assistant City Manager Cano presented the report.

Councilmember Lien questioned why attracting and retaining local businesses was missing from the city's top priorities in the presentation. Assistant City Manager Cano clarified that the listed priorities were based on resident feedback, but business retention is still allocated funds. He agreed to include it in future messaging if the council approves.

Councilmember Barbadillo asked about the outreach efforts for reauthorizing Measure F, particularly how the community is responding and what steps are being taken to inform residents. Assistant City Manager Cano explained that since July, the city has engaged in various outreach activities, including mailings, emails, utility bill inserts, and meetings with local groups. While some community groups have yet to be reached, he noted that the response has been generally positive, especially when residents understand that the measure is a reauthorization, not a new tax. He also agreed to consider additional outreach methods, like flyers and grassroots events, to ensure broader awareness.

Councilmember Barbadillo asked after the costs of placing the measure on the ballot. Assistant City Manager Cano noted that the estimated cost for placing the measure on the ballot and conducting outreach is around \$225,000, which includes expenses for the registrar of voters and ongoing outreach efforts. He confirmed that this cost was planned and requires a majority vote from the council to move forward. He elaborated on the requirements for the measure to pass and further required actions by the City Council.

Finally, Councilmember Barbadillo asked if there had been any public resistance to the measure. Assistant City Manager Cano responded that, so far, there has not been significant opposition, particularly when people understand that it's a reauthorization. Councilmember Barbadillo emphasized the importance of grassroots communication to ensure residents are well-informed leading up to the election.

Councilmember Phan questioned why the city is seeking to reauthorize Measure F so early and raised concerns about ongoing budget deficits despite previous planning efforts. He emphasized the need for accountability to voters, asking what assurances the city can provide that it won't continue to face financial shortfalls and require additional funding in the future. Councilmember Phan also suggested that the city should consider creating a budget policy that sets aside funds to ensure essential services are consistently funded. Assistant City Manager Cano responded by explaining that the city projected a \$9 million structural deficit back in 2020, which continues to be a concern. He noted that early reauthorization of Measure F is crucial to avoid a severe budget shortfall when the measure expires in 2029. He also acknowledged that while the city cannot guarantee it won't need to request more funding in the future, they are committed to better fiscal management. He indicated fiscal policies related to Measure F could be discussed further in the city's annual budget process, which could help ensure transparency and responsible spending.

City Manager Thomas noted that they had discussed bringing guiding principles to the council for how the Measure funds should be spent, facilitating a conversation on establishing related policies.

Vice Mayor Chua asked for detailed reports on how Measure F funds have been spent in previous years to ensure alignment with original promises. Assistant City Manager Cano agreed to provide both

the budget book details and information regarding the annual audit report. The Vice Mayor also inquired about the difference between the original Measure F and the proposed extension. Assistant City Manager Cano explained that the primary difference is that the new measure would remain in effect indefinitely unless ended by voters, as opposed to the original eight-year term. Vice Mayor Chua expressed concern about imposing a "forever tax" on residents, advocating instead for a limited extension to demonstrate the city's efforts in managing costs and revenues before asking for further extensions. Assistant City Manager Cano acknowledged her concerns and agreed to adjust the proposal based on the council's direction.

Councilmember Barbadillo asked after the disposition of funds from the Measure F sales tax. He inquired about the independent citizen oversight committee established to monitor these funds. Assistant City Manager Cano affirmed that the committee, active since the tax was enacted, reviews reports annually to the City Council. The Councilmember raised concerns about the transparency and visibility of these reports. Assistant City Manager Cano committed to improving the presentation of these reports to ensure the City Council is fully informed about the allocation of Measure F funds.

Mayor Montano asked Assistant City Manager Cano to explain the significance of the quarter-percent sales tax for Milpitas, noting that if the city does not utilize it, another regional entity could claim it through a county-wide vote, potentially resulting in the loss of local control over those funds. Assistant City Manager Cano confirmed that if Measure F expires and the tax is not reauthorized, another entity could take over that increment, leading to a loss of approximately \$7 million in locally controlled revenue.

The Mayor emphasized the city's history of fiscal responsibility and the importance of reauthorizing the tax, rather than introducing a new one, to sustain financial stability in uncertain economic times. She requested guidance from the city attorney on how council members can advocate for this reauthorization within legal parameters. Mayor Montano expressed strong support for reauthorizing the tax, citing its role in avoiding layoffs during previous financial challenges, and asked if any other council members had further questions before moving forward.

Vice Mayor Chua expressed support for reauthorizing the sales tax due to inflation and the need to recognize the sacrifices of public safety personnel. She spoke in support of an extension for the same duration as the original measure, rather than making it permanent.

Mayor Montano made a motion: to adopt **Resolution No. 9347** by 4/5 vote calling for the placement of a General Tax Measure on the Ballot for the November 5, 2024 General Municipal Election for submission to the qualified voters of an Ordinance to Re-Authorize the General Transactions and Use Tax at the Rate of One-Quarter Cent ($\frac{1}{4} \text{¢}$) until ended by voters, requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 5, 2024 with the Statewide General Election on that date and providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the election.

Vice Mayor Chua seconded the motion but requested an amendment to limit the term of the measure to eight years. Mayor Montano accepted the amendment.

Motion/Second: Mayor Montano/Vice Mayor Chua

Motion carried by the following:

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

NOES: None

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Vice Mayor Chua mentioned the ongoing Senior Olympics and encouraged support for the event.

City Manager Thomas reminded the City Council that a member of the public recommended a resolution on childcare be approved by council. Councilmember Phan asked for the resolution to be brought back to the City Council. There was unanimous consensus to return with the item.

Mayor Montano asked to recognize Olympians from Milpitas with either a Key to the City or commendation. There was unanimous consensus in support.

Councilmember Barbadillo proposed renaming the Milpitas Library after former Mayor Jose Chavez, acknowledging his instrumental role in its creation. There was unanimous consensus in support to return with a discussion to the August 20, 2024 City Council meeting.

ADJOURN TO CLOSED SESSION

City Attorney Mutalipassi briefed the City Council on the Closed Session items.

(a) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2)

In the Matter of McHarris vs. City of Milpitas, Superior Court of California, County of Santa Clara, Case No. 23CV427505

City as Defendant

The City Council adjourned to Closed Session at 6:38 PM and reconvened in Open Session at 8:36 PM.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi noted there was nothing to report out.

ADJOURNMENT

Mayor Montano adjourned the meeting at 8:37 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 8/15/2024

September 3, 2024 – Regular Meeting

CLOSED SESSION

INVOCATION (Councilmember Phan)

PRESENTATION

- National Suicide Prevention Week (Proclamation)
- National Preparedness Month (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for September 2024 (City Clerk)
2. Approve City Council meeting minutes of August 13 and 20, 2024 (City Clerk)
3. Preview list of items for September 17, 2024 (City Clerk)
4. Councilmember Request List (City Clerk)
5. NeoGov Contract (Finance / Human Resources)
6. Contract Award Design Services AH 1 and 2 (Public Works)
7. Emergency Declaration Update - Main Sewer Lift Station Security Measures (Public Works)
8. City/School Indoor Spaces JUA (Recreation)

LEADERSHIP AND SUPPORT SERVICES

9. Investment Policy (Finance)

**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	Look into a property for sale on Main Street to investigate the cost and feasibility of creating a museum for downtown or Old Town Main Street as part of the revitalization efforts.	Montano	8/13/2024	No status update at this time.
2	Send a letter to Supervisory Otto Lee regarding the weeds on Montague Expressway	Montano	8/13/2024	No status update at this time.
3	Look into adopting an ordinance similar to San Jose allowing ADUs (Accessory Dwelling Units) to have a separate title and be sold separately.	Chua	8/13/2024	No status update at this time.
4	Bring back information on the process and steps required for renaming the Milpitas library after former Mayor Jose S. Esteves, including consultation with the library JPA and the naming subcommittee, for discussion at the August 20th council meeting.	Barbadillo	8/5/2024	This item is being brought forward for consideration at the 8/20/2024 city council meeting.
5	Prepare commendations or keys to the city for local Olympians representing Milpitas at the Olympics, to be presented after the conclusion of the Olympic games.	Montano	8/5/2024	No status update at this time.
6	Return with a ceremonial resolution on childcare	Phan	8/5/2024	This item is being brought forward for consideration at the 8/20/2024 city council meeting.
7	Send a letter signed by the Mayor and City Council to the County Administrator and Supervisor Lee, asking the county to investigate the treatment of horses by Chaparral Corporation at Ed Levine Park and the adjacent Chaparral Ranch	Chua	5/21/2024	This letter was sent to the County on June 7, 2024.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
8	Conduct a traffic study on Escuela Parkway to address circulation concerns	Montano	5/7/2024	Approved for prioritization at 6/11/24 meeting
9	Explore the possibility of augmenting the Planning Commission stipend	Barbadillo	4/16/2024	Approved for prioritization at 6/11/24 meeting
10	Explore changing or enhancing the focus of the community advisory commission to add housing	Chua	4/2/2024	This was completed at the 8/13/2024 City Council meeting.
11	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 6/11/24 prioritization report.
12	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 6/11/24 prioritization report.
13	Workshop for retailers focusing on best practices and safety with plans for quarterly sessions	Chua	1/23/2024	An update was included in the 6/11/24 prioritization report.
14	Explore possibility of naming the County library on Main Street	Phan	1/23/2024	An update was included in the 6/11/24 prioritization report.
15	Consideration of the 20% Low Income Below Market Rate Housing	Montano	12/5/2023	An update was included in the 6/11/24 prioritization report.
16	Bring back Bingo and the Tour at the Senior Center	Chua	11/7/2023	An update was included in the 6/11/24 prioritization report.
17	Referral for utility infrastructure cost on Main Street from Carlo to Corning Streets	Montano	10/17/2023	An update was included in the 6/11/24 prioritization report.
18	Consider a possible ordinance or policy regarding solicitations at home	Barbadillo	10/3/2023	An update was included in the 6/11/24 prioritization report.
19	Main Street International Festival	Lien	10/3/2023	An update was included in the 6/11/24 prioritization report.

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:
20	Have the Police Chief direct staff to complete an analysis in partnership with the County to determine if it would be beneficial to have a location where residents can pickup Narcan	Chua	9/5/2023	An update was included in the 6/11/24 prioritization report.
21	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	An update was included in the 6/11/24 prioritization report.
22	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 6/11/24 prioritization report.
23	Pickleball Pilot Project	Chua	2/28/2023	An update was included in the 6/11/24 prioritization report.
24	Main Street Infrastructure Projects	Montano	2/28/2023	An update was included in the 6/11/24 prioritization report.
25	Main Street Flooding at Library	Chua	2/28/2023	An update was included in the 6/11/24 prioritization report.
26	Satellite Consulate Office	Montano	2/28/2023	An update was included in the 6/11/24 prioritization report.
27	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update was included in the 6/11/24 prioritization report.
28	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	An update was included in the 6/11/24 prioritization report.
29	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 6/11/24 prioritization report.
30	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 6/11/24 prioritization report.
31	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	An update was included in the 6/11/24 prioritization report.
32	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	An update was included in the 6/11/24 prioritization report.
33	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	An update was included in the 6/11/24 prioritization report.
34	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 6/11/24 prioritization report.
35	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	An update was included in the 6/11/24 prioritization report.
36	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 6/11/24 prioritization report.
37	Consider Community Museum and Park on Main St.	Phan	8/20/2019	Discussions with the property owner of this site are ongoing.

NOTE: Deferred and Completed Items are not listed



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Supporting the Build the Future (Childcare) Santa Clara County Campaign (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)
Category:	Leadership and Support Services
Meeting Date:	8/20/2024
Recommendation:	Adopt a resolution supporting the Build the Future Santa Clara County Campaign

BACKGROUND:

On June 18, 2024, a representative from the Berryessa School District commented during the “Public Forum” portion of the City Council meeting and requested that the Council consider adopting a resolution in support of the “Build the Future” Santa Clara County campaign. On August 5, 2024, during the “Announcements and Future Agenda Items” section of the City Council meeting, City Manager Ned Thomas reminded the Council of this request and asked if they would like staff to bring forward a resolution for City Council consideration at their next regular meeting. This request received unanimous support from the Council.

The Build the Future Santa Clara County campaign is a movement to build a brighter future for all Santa Clara County residents by advocating for affordable, quality childcare for all. Providing affordable childcare not only helps working parents and kids but also helps our entire community by reducing poverty, improving community safety and building a stronger economy. Further information can be found on their website here: [Build the Future Santa Clara County \(buildthefuturescc.org\)](https://buildthefuturescc.org)

ANALYSIS:

The City of Milpitas has been proactive in supporting childcare within our community, including but not limited to awarding over \$128,000 in childcare subsidy grants to low-income Milpitas resident families, supporting increased employment, higher quality care, more stable care and improved educational attainment. Additionally, the City of Milpitas has provided low-cost after-school care to Milpitas elementary school children for more than two decades, with additional opportunities for low-income families to receive scholarships to help pay for the enrollment costs through the Milpitas Assistance Program.

The attached resolution commits to the City to the following items, which are all supported by staff as they are aligned with the City’s plans and values:

- The City of Milpitas will promote and advocate for public funding streams in support of universal childcare, from birth through school age, prioritizing our most underserved children and their families; and
- The City of Milpitas will support policies and practices that align with our City plans and priorities, and facilitate expedited zoning, permitting and licensing processes for both center-based and home-based childcare facilities; and
- The City of Milpitas will empower our City departments to promote the importance of childcare businesses in this City and provide support for providers who desire to operate within this City; and
- The City of Milpitas joins with community-based advocates in supporting comprehensive and collaborative solutions to solve our childcare crisis, including but not limited to building a coalition of stakeholders across all sectors including small and large businesses, community based organizations, neighborhood associations, law enforcement authorities, local governments including school and special districts and city councils, and labor and trades unions for the purpose of identifying and implementing solutions to this economic and social crisis.

Currently, the following cities and agencies in the Bay Area have signed onto this, or a similar, resolution according to Working Partnerships USA:

- Gilroy
- Los Altos
- Los Altos Hills
- Morgan Hill
- Mountain View
- San Jose

POLICY ALTERNATIVE(S):

Alternative 1: Do not support this resolution

Pros: As there is no cost to the City to support this resolution and the commitments align to the City's plans and policies, no pros to this alternative can be identified.

Cons: The City would not be part of a wider coalition of supporters.

Reason for Not Recommending: Staff recommends the City Council support this resolution as it will demonstrate partnership with the regional coalition focused on providing greater access to childcare opportunities.

FISCAL IMPACT:

There is no fiscal impact as the commitments in this resolution already align with City policies and plans.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

RECOMMENDATION:

Adopt a resolution supporting the Build the Future Santa Clara County Campaign

ATTACHMENT(S):

(a) Draft Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, SUPPORTING THE EXPANSION OF AND INVESTMENT IN AFFORDABLE CHILDCARE TO PROMOTE ECONOMIC STABILITY, FAMILY WELL-BEING, AND COMMUNITY DEVELOPMENT

WHEREAS, the Council for a Strong America issued a report in early 2023 which details that the shortage of infant-toddler childcare costs the United States \$122 billion in lost earnings, productivity, and revenue every year; and

WHEREAS, this shortage translates to a \$15 billion economic threat to California and a \$3 billion threat to Santa Clara County; and

WHEREAS, a family living in Silicon Valley needs to pay an average of \$26,450 per child-year for infant care and \$21,900 per year for one preschooler's childcare; and

WHEREAS, the two most significant monthly expenses faced by working families are rent and childcare; and

WHEREAS, the lack of an affordable childcare option leads to underemployment, greater housing instability, less consumer spending, depressed business productivity and the near impossibility of seeking, securing, and maintaining employment; and

WHEREAS, investing in affordable childcare provides vital infrastructure to working parents, supports early childhood development, allows families to remain in the Build the Future geographic area, creates a stronger economy, improves business productivity and consumer spending, decreases poverty, leads to safer communities, and provides additional revenue for cities; and

WHEREAS, there are currently 42 licensed childcare centers and 42 licensed family childcare homes operating in the City of Milpitas; and

WHEREAS, the City of Milpitas has provided low-cost after school care to Milpitas elementary school children for more than two decades, with additional opportunities for low-income families to receive scholarships to help pay for enrollment costs through the Milpitas Assistance Program; and

WHEREAS, cities have a direct interest in building strong local economies, supporting and benefiting from local small businesses, attracting and retaining families and employers; and

WHEREAS, one of the most impactful tools we can deploy to solve our greatest economic and societal challenges is investing in broadly accessible, high-quality childcare immediately; and

WHEREAS, the City of Milpitas awarded over \$128,000 in childcare subsidy grants to low-income Milpitas resident families, supporting increased employment, higher quality care, more stable care, and improved educational attainment; and

WHEREAS, investments in the childcare sector should prioritize supporting our most underserved children and their families, including but not limited to families of color, families of children with special needs, low-income families, and undocumented families.

THEREFORE BE IT RESOLVED, the City Council of the City of Milpitas hereby find, determines and resolves as follows:

1. That the City of Milpitas supports all efforts to provide universal childcare to all children and families in the County of Santa Clara and the State of California;
2. That the City of Milpitas will promote and advocate for public funding streams in support of universal childcare, from birth through school age, prioritizing our most underserved children and their families;
3. That the City of Milpitas will support policies and practices that align with our City plans and priorities, and facilitate expedited zoning, permitting and licensing processes for both center-based and home-based childcare facilities;
4. That the City of Milpitas will empower our City departments to promote the importance of childcare businesses in this City and provide support for providers who desire to operate within this City; and
5. That the City of Milpitas joins with *community-based advocates in supporting* comprehensive and collaborative solutions to solve our childcare crisis, including but not limited to building a coalition of stakeholders across all sectors including small and large businesses, community based organizations, neighborhood associations, law enforcement authorities, local governments including school and special districts and city councils, and labor and trades unions for the purpose of identifying and implementing solutions to this economic and social crisis.

Passed and adopted this 20th day of August, 2024 by the following vote:

AYES: (0)

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

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:	Waive the Second Reading and Adopt Ordinance No. 38.856 Approving a Development Agreement Between the City of Milpitas, Stratford Schools, Inc., and Store Master Funding IV, LLC (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Kristina Phung, Senior Planner, 408-586-3278)
Category:	Consent Calendar-Community Development
Meeting Date:	8/20/2024
Recommendation:	Move to waive the second reading and adopt Ordinance 38.856 approving a Development Agreement between the City of Milpitas, Stratford Schools, Inc., and Store Master Funding IV, LLC to provide certainty to the applicable development standards for a new private middle and high school at 1323 Great Mall Drive (APN 086-024-046).

BACKGROUND:

This Ordinance was introduced at the City Council meeting held on August 13, 2024. The Ordinance is now ready for its second reading and adoption.

The City of Milpitas received an application from Jeremy Theodore of Inhabit Design (Applicant) requesting a Conditional Use Permit, Site Development Permit, Environmental Assessment, and Development Agreement to operate a new private middle/high school (Stratford Preparatory School) in an existing 51,740 square-foot, two-story office building, and develop a new 7,883 square-foot, 35-foot-tall gymnasium building and other site improvements on a 3.0 acre lot located at 1323 Great Mall Drive, Milpitas, CA 95035 (the "Project"). The Site Development Permit, Conditional Use Permit, Environmental Assessment, and the first reading for the Development Agreement Ordinance for the Project was approved at the August 13, 2024 City Council hearing.

The proposed school would serve up to 500 students and include 41 classrooms (general/biochemistry/art/physical engineering), eight offices, four media common rooms, a library, and a theater. The proposed Project also includes exterior alterations to the building façade, including a new 7,883 square-foot gymnasium, an outdoor play area, and various site improvements. The site improvements include a new trash enclosure and a 14,695 square-foot artificial turf playfield to the west of the new gymnasium building.

A Development Agreement (DA) is needed to provide certainty regarding the applicable development standards. The California Legislature adopted the Development Agreement Statute (Section 65864 et seq. of the Government Code) to strengthen public planning, encourage private participation, and reduce development risks. This statute allows cities to enter binding agreements with property owners, establishing certainty as to the development standards and rights for a particular project, thereby encouraging investment and redevelopment. On May 6, 1997, the City Council adopted Resolution No. 6642, which sets forth comprehensive procedures and requirements for the institution of development agreements.

The Project is eligible for a Development Agreement because the opening and pre-enrollment of a school requires significant front-end investment, and thus requires long-term certainty on the part of the Applicant, at least for the five-year term of the currently proposed DA.

Through the proposed DA, the landowner and City would preserve the floor area ratio (FAR) and side and front setbacks previously allowed for the subject property under the Transit Area Specific Plan (TASP), and thereby allow for the beneficial reuse of an existing building developed under previous standards with additional construction and improvements only allowable through the benefit of this DA.

In consideration, the landowner shall provide the following offsetting public benefits to the City:

1. Payment of One Million Dollars (\$1,000,000) as a voluntary contribution to the City and community benefit to fund City services and infrastructure improvements at the discretion of the Council, payable at the time of issuance of final occupancy; and
2. Design and construction of an all-electric building with no natural gas infrastructure in furtherance of the City's Climate Action goals.

The proposed DA therefore allows redevelopment of a site long underutilized, including during the entirety of the TASP, subject generally to existing standards and select recently revised TASP standards so the existing structure and site configuration can be beneficially reused. The proposed DA will hold these standards open for a period of five (5) years, should further redevelopment of the site be sought during this period. If changes are proposed that would expand the building footprint or increase student capacity over 500 students, the Project would need to be re-entitled in conformity with the current development standards adopted by the City. The proposed DA is included as Exhibit 1 of Attachment A.

FISCAL IMPACT:

The Project is subject to the following impact fees:

Public Art Fee - Per Milpitas Municipal Code Section XI-10-14, private developments must include publicly accessible works of art for placement on the development site or contribute a Public Art Program In-Lieu Contribution as a condition of project approval. The Applicant is seeking the payment of the In-Lieu fee, which is currently set at one-half of one percent of building development costs, which would result in a fee payment of \$100,000 based on the estimated building development costs of \$20,000,000.

Transit Area Specific Plan Development Impact Fee (TADIF) - The TADIF is currently \$32.75 per Commercial-square-foot. The exact TASP fee will be calculated once a temporary or final Certificate of Occupancy is ready for issuance. Based on approval for the development of a new 7,883-square-foot gymnasium, the estimated TADIF for this project is \$258,168.25. The City's annual budget process automatically adjusts this fee each fiscal year. The Applicant shall pay the fee before the issuance of a temporary or final Certificate of Occupancy.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

In accordance with the California Environmental Quality Act (CEQA), the City has prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Project in accordance with CEQA Guidelines Section 15064, 15071, and 15370. On May 29, 2024, the City provided a Notice of Intent (NOI) to adopt a mitigated negative declaration to the public, responsible agencies, trustee agencies, and the County Clerk. The Draft IS/MND was available for public review and comment from May 29, 2023, through June 28, 2023. At the time of publishing this report, the City has received no public comment regarding the IS/MND.

RECOMMENDATION:

Move to waive the second reading and adopt Ordinance 38.856 approving a Development Agreement between the City of Milpitas, Stratford Schools, Inc., and Store Master Funding IV, LLC to provide certainty to the applicable development standards for a new private middle and high school at 1323 Great Mall Drive (APN 086-024-046).

ATTACHMENT(S):

- (a) Ordinance No. 38.856
- (b) Exhibit 1 to the Ordinance – Development Agreement

REGULAR

NUMBER: 38.856

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
MILPITAS AND STRATFORD SCHOOLS, INC., STORE MASTER FUNDING IV,
LLC**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on July 28, 2023, an application was submitted by Jeremy Theodore of Inhabit Design Inc. (“Applicant”) to allow the operation of a private high school in an existing 51,740 square-foot, two-story office building (“Project”). The Project site is on a 3-acre lot located at 1323 Great Mall Dr. Milpitas, CA 95035 (APN 086-024-046) and;

WHEREAS, the City and the applicant wish to memorialize the rights to development in the document entitled “Development Agreement By and Between the City of Milpitas and STRATFORD SCHOOLS, INC., STORE MASTER FUNDING IV, LLC.” (hereinafter referred to herein as the “Development Agreement”), a draft of which is attached hereto as **Exhibit 1**; and

WHEREAS, the Planning Department completed an environmental impact assessment for the project in accordance with the California Environmental Quality Act (“CEQA”) and, based on this assessment, decided to prepare an Initial Study and Mitigated Negative Declaration (IS/MND) for the Project in accordance with CEQA, and State and local guidelines implementing CEQA.

WHEREAS, on June 26, 2024, the Planning Commission held a duly noticed public hearing, during which the Planning Commission, by the adoption of Resolution No. 24-021, recommended that the City Council approve SD23-0012, EA24-0001 and DA24-0001 and Resolution No. 24-023, recommending that the City Council approve UP23-0008 based on the findings and subject to the Conditions of Approval; and

WHEREAS, on _____, the City Council held a duly-noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section § 65864.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. FINDINGS

The City Council makes the following findings based on the evidence in the public record in support thereof:

- A. The City Council finds that the proposed project meets the requirements for development agreement eligibility specified in City Resolution No. 6642, including because the opening and pre-enrollment of the proposed private school requires significant front-end investment and otherwise requires long-term certainty on the part of the applicant, at least for the five year term of the currently proposed Agreement. The City Council finds that the public health, safety and general welfare of the citizens of the City will be best served by accepting this application.

- B. The City Council finds that the proposed Development Agreement is consistent with the City's General Plan and other applicable plans, policies, and regulations of the City currently in effect, is not detrimental to the health, safety, and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with the applicable State law and City Resolution No. 6642, as amended.
- C. The City Council finds that the proposed Development Agreement complies with all the applicable procedural and eligibility requirements for the approval and execution of development agreements outlined in City of Milpitas Resolution No. 6442 and Government Code Section 65864. A valid application as submitted to the Planning Department by an applicant with proper legal standing. The proposed Development Agreement would eliminate uncertainty in land use planning and help ensure the orderly development of a Private High School in an appropriate zoning district and location. The proposed Development Agreement would also result in a project that would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed Development Agreement would also be beneficial to the health, safety, and general welfare of the community.

SECTION 3. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement between the City of Milpitas and Stratford Schools Inc., Store Master Funding IV, LLC, attached hereto as **Exhibit 1**. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder if it has not been so recorded by the applicant or otherwise prior to that date.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, provision, or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

RECORDING REQUESTED BY

CITY OF MILPITAS
City Attorney's Office
455 East Calaveras Boulevard
Milpitas, CA 95035

WHEN RECORDED MAIL TO

CITY OF MILPITAS
City Attorney's Office
455 East Calaveras Boulevard
Milpitas, CA 95035

Record at No Fee per Government Code section 6103 [Space above this line for Recorder's use only]

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MILPITAS
AND
STRATFORD SCHOOLS, INC., STORE MASTER FUNDING IV, LLC
AND THE CITY OF MILPITAS**

Project name: Private Middle School and High School Project

THIS DEVELOPMENT AGREEMENT, dated for convenience _____, 2024, at Milpitas, California ("Agreement") is entered into by and between STORE Master Funding IV, LLC ("STORE"), the owner of the Property, and Stratford Schools, Inc., a California corporation ("Stratford"), the operator and developer of the Project under a long-term lease with the STORE (STORE and Stratford being referred to collectively herein as- "Landowner") and the City of Milpitas, a general law city created and existing under the laws of the State of California (the "City"). This Agreement creates legal obligations pertaining to the Private Middle School and High School Project development as more particularly described below.

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and adopted certain development agreement procedures

and requirements through the enactment of Resolution No. 6642, adopted on May 6, 1997 (hereinafter referred to as the "Development Agreement Resolution"). The terms of the Development Agreement Resolution supersede any inconsistent part of this Agreement.

C. Property. The subject of this Agreement is the development of that certain property located at 1323 Great Mall Drive in the city of Milpitas, California, County of Santa Clara, Assessor's Parcel Number APN 8624046 consisting of one parcel totaling approximately 3.00 acres. It is improved with a commercial office building of approximately 54,000 square feet, and an improved parking area with landscaping ("the Property"), described and shown on Exhibits A-1 and A-2 attached hereto and incorporated herein by reference. The Landowner either owns, or is the sole member of each of the entities that own, the Property in fee. Subject to the terms of Section 8.5 and Section 11.2 hereof, all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

D. Milpitas Metro Specific Plan. The subject Property is located within the area subject to the Milpitas Metro Specific Plan (the "MMSP"). The MMSP was originally adopted on February 7, 2023. Prior to that, the subject Property was located within the area subject to the Milpitas Transit Area Specific Plan ("TASP"), which the MMSP generally updated, expanded upon, and replaced. The TASP was adopted in 2008, and for the subject Property would have allowed development with a floor area ratio ("FAR") of .48 for this proposed use and would not have limited maximum side and front setbacks for this parcel.

E. Project. Landowner proposes to renovate the existing building and to construct a new building of approximately 8,200 square feet, to make related site improvements including parking, landscaping and space for outdoor activities, all for the operation of a private school on the site (the "Project").— The adopted MMSP allows for some educational uses, and the existing zoning allows such use in appropriate density with approval of a Conditional Use Permit and a Site Development Permit.

F. Environmental Review. The City examined the environmental effects of this Agreement and the Development Approvals (as defined in Recital ~~LM~~ below) in an initial study that concluded that all environmental effects had been analyzed and will be mitigated pursuant to the Environmental Impact Report (the "EIR") prepared pursuant to the California Environmental Quality Act (CEQA) for the MMSP and a Mitigated Negative Declaration ("MND") prepared specifically for this Project. -The MND has not been approved.

G. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for development of the Project as set forth herein, and in the Specific Plan and Development Approvals. The City has determined that the development of the Project pursuant to the MMSP is a development for which a development agreement is appropriate. A development agreement will provide certain benefits to the City, as described in Article 2, will eliminate uncertainty in the City's land use planning, will provide orderly development of the Property in accordance with the policies and goals set forth in the City's General Plan and MMSP, and will otherwise achieve the goals and purposes of the Development Agreement Resolution. The Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. Through

this Agreement, the Landowner and City intend to preserve the Floor Area Ratio ("FAR") and absence of maximum side and front setbacks previously allowed for the subject Property under the TASP and thereby allow for the beneficial reuse of an existing building developed under previous standards with additional construction and improvements only allowable through the benefit of this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

H. Relationship of City and Landowner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that the Landowner is an independent entity and not an agent or partner of City. City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Landowner joint venturers or partners.

I. Planning Commission Recommendations of Approval. The application for approval of this Agreement and the appropriate California Environmental Quality Act (Public Resource Code Section 21000 *et seq.*; "CEQA") documentation required for approval of this Agreement, were considered by the Planning Commission, on _____, 2024. After conducting a duly noticed public hearing, the Commission recommended the adoption of this Agreement to the City Council.

J. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council approved and introduced this Agreement by the first reading of Ordinance No. _____ (the "Enacting Ordinance") on _____, 2024. On _____, 2024, the City Council adopted this Agreement by the second reading of Ordinance No. _____ (the "Adoption Date"), and authorized its execution.

K. Consistency with Milpitas General Plan and MMSP. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, the MMSP, and the Development Approvals as further described in Paragraph M, below. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the MMSP, or as allowed herein the TASP, the General Plan of the City, and with the Development Approvals, except where explicitly modified. This Agreement satisfies the requirements of Government Code Section 65867.5.

L. Project Entitlements; Development Approvals. The following approvals, entitlements, and findings have been adopted by the City with respect to the Property, and constitute the Project Entitlements:

a. The Environmental Impact Report for the MMSP (SCH #2006032091) (comprised of the Draft Environmental Impact Report and the Final Environmental Impact Reports, collectively the "FEIR"), the written findings and a Mitigation Monitoring and Reporting Program adopted on February 7, 2023.

- b. The MND prepared for this Project.
- c. The MMSPP adopted -on February 7, 2023.
- d. This Agreement.
- e. The Conditional Use Permit and Site Development Permit (File Numbers P-UP23-0008 and P-SD23-0012, respectively) for the Project, to be considered concurrently with this Agreement. The Conditional Use Permit and Site Development Permit constitute the Development Approvals as of the time of their approval; as used herein, the term “Development Approvals” also includes any Subsequent Approvals as defined in Section 1.2.7 below.
- f. Approved Interior Demolition Permit B-DM23-0039.

M. Development Agreement Resolution. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Resolution.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and the Development Agreement Resolution and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties, agree as follows.

ARTICLE 1

RECITALS, DEFINITIONS AND DATES

1.1 Incorporation of Recitals. The Preamble, the Recitals and all the defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement

1.2.1 Applicable Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.2 Assignee. Any person, business entity, association, organization or other similar entity succeeding to some or all of Landowners’ rights and obligations under this Agreement by sale, transfer, or otherwise, including, but not limited to, purchasers, mortgagees, or long term ground lessees of individual lots, parcels, or of any of the buildings located within the Property.

1.2.3 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City, governing the permitted uses of land, density, design,

improvements and construction standards and specifications applicable to the development of the Property, all as of the Effective Date hereof. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the MMSP, the City's Zoning Ordinance, and the City's Subdivision Ordinance.

1.2.4 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under City Laws, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.5 Director. The Director of the Planning Department.

1.2.6 Party. A signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.2.7 Subsequent Approvals. Any and all Development Approvals applied for by Landowner that are approved by City during the Term of this Agreement, including but not limited to, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments to the Conditional Use Permit or Site Development Permit to allow construction of the Project.

1.3 Effective Date; Recordation. The Enacting Ordinance became effective on _____, 2024. The obligations of the Parties under this Agreement shall be effective as of the effective date of the Enacting Ordinance (the “Effective Date”), pursuant to Government Code Section 36937. Not later than ten (10) days after the Effective Date, the Landowners shall cause this Agreement to be recorded in the Official Records of the County of Santa Clara, State of California, as provided for in Government Code Section 65868.5 and Resolution No. 6642. However, failure to record this Agreement and any amendment thereto within ten (10) days shall not affect its validity or enforceability by and between the Parties.

1.4 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter (“Term”); Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or during the term of this Agreement, except as expressly set forth in those entitlements.

1.5 Capitalized Terms. If any capitalized terms contained in this Agreement are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Agreement.

ARTICLE 2

BENEFITS TO THE CITY

Landowner shall provide the following public benefits to the City:

1. Payment of the sum of One Million Dollars (\$1,000,000) as and for a voluntary contribution to the City as a community benefit payable at the time of issuance of final occupancy;
2. Design and construction of all electric building with no natural gas infrastructure in furtherance of the City’s Climate Action Plan goals.

ARTICLE 3

GENERAL DEVELOPMENT OF THE PROJECT; VESTED ENTITLEMENTS

3.1 Project Development. Landowner shall have a vested right to develop the Project on the Property in accordance with the Vested Entitlements (defined in Section 3.2) in effect as of the Effective Date and pursuant to all the terms of this Agreement.

3.2 Vested Entitlements. During the term of this Agreement, the Landowner has certain vested entitlements (collectively, “Vested Entitlements”), including: (a) the certified EIR for the MMSP, the MMSP, and this Agreement; (b) the Development Approvals; (c) the Subsequent Approvals; (d) any other conditions of development applicable to the Property are as set forth in the General Plan, the MMSP, the Zoning Code, the Subdivision Code and other City Laws, all as applicable on the Effective Date of this Agreement (“Applicable Rules”).– The Landowner shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of the Vested Entitlements, as the same may be amended from time to time upon application by the Landowner. Except as otherwise specified herein, the Vested Entitlements shall control the overall design, development, construction, use and occupancy of the Project, and all improvements and appurtenances in connection therewith, including without limitation, the permitted uses on the Property, density and intensity of uses, the maximum height and sizes of buildings, and the allowable floor area ratios.

322 Except as provided herein, development of the Property shall be governed by the Vested Entitlements as defined above.

323 This Agreement does not impose affirmative obligations on the Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so. The expiration of any entitlements or approvals shall remain as set forth in any entitlement or approval.

324 City agrees that it will accept, in good faith, for processing, review and action all applications for use and development of the Property in accordance with the Vested Entitlements, and shall act upon such applications with regular diligence as set forth in this

Agreement, including without limitation, Article 4 hereof.

325 Developer shall be allowed to develop the Project with a floor area ratio (“FAR”) of up to .48 and without the maximum front and side setback limit specified in the MMSP. Notwithstanding the expiration of this Agreement, The Development Approvals shall continue without expiration in accordance with and subject to all applicable City rules and regulations, excluding those allowing for project expansion, but including without limitation the City's Zoning Code, which shall guide any proposed change or intensification of use or building and site modification. Developer understands and acknowledges that the Development Approvals limit the private school’s enrollment to 500 students as provided for in the Conditional Use Permit and the physical development of the site, including the building footprints, is limited by the Site Development Permit. Developer understands and agrees that any Major Modification of the Project shall result in the need to re-entitle the project in conformity with then current development standards. A Major Modification shall include any modification that expands the project building footprint, increases the capacity of the Stratford High School Project to serve more than 500 students, or changes the use.

3.3 Timing of Development. The project shall be completed within 4 years of the execution of this Agreement. For the purpose of this Agreement, the project shall be deemed complete upon the City’s issuance of a certificate of occupancy for the primary structure.

3.4 Compliance with Requirements of Other Government Entities.

3.4.1 During the term of this Agreement, Landowner, at no cost to City, shall comply with lawful requirements of, and obtain all permits and approvals required by other local, regional, State and Federal agencies having jurisdiction over Landowner’s activities in furtherance of this Agreement. Landowner shall pay all required fees when due to Federal, State, regional, or other local governmental agencies and acknowledges that City does not control the amount of any such fees.

3.4.2 As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations (“State or Federal Law”). In the event changes in State or Federal Law prevent or preclude compliance with one or more provisions of this Agreement, this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal Law. The Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended as may be necessary to comply with changes in the law and City and Landowner shall agree to such action as may be reasonably required. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary and to preserve to the extent possible the original intent of the Parties in entering into this Agreement. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such State or Federal Law. Nothing in this Agreement shall preclude the City or Landowner from contesting by any available means (including administrative or judicial proceedings) the applicability to the Property of any such State or Federal Law.

3.5 As provided in Section 10.0 of the Development Agreement Resolution, the City may apply new rules, regulations, and policies which do not conflict with those rules, regulations, and policies set forth in this Agreement, or such rules, regulations, and policies that are required for the health, safety, or welfare of the general public, nor shall the City be prohibited from denying or conditionally approving any subsequent development project application on the basis of such existing new rules, regulations, and policies.

3.6 Reservations of Authority. Notwithstanding any other provision of this Agreement, at the time Subsequent Approvals are applied for, the following regulations and provisions shall apply only to those Subsequent Approvals:

3.6.1 Processing fees and, subject to the terms of Section 3.6 of this Agreement, charges of every kind and nature imposed by the City, including application, inspection, and monitoring fees, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for on an area-wide basis, which shall be paid at the rate then in effect.

3.6.2 All taxes, assessments, impact fees of any type, inclusionary including housing impact fees and transportation impact fees, other fees, or other monetary and non-monetary exactions imposed by the City, which are in force and effect within the jurisdiction of the City for other similarly situated projects in the City on a City wide or area wide basis, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed shall be imposed..

3.6.3 If the City forms an assessment district including the Property and the assessment district is City-wide or area-wide, as defined in Section 3.6.6, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. Any subsequently created assessment district is subject to collection solely based on the special assessment statute and shall not affect the development rights for the Project.

3.6.4 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for.

3.6.5 Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all provisions of the Milpitas Municipal Code, and all other uniform construction codes, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied at the time the building permit in question is applied for.

3.6.6 For purposes of this Agreement, “area-wide” shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the

Property and located in the combined area of the MMSP. The Parties acknowledge that the provisions contained in this Section are intended to implement the intent of the Parties that the Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.7 Subsequently Enacted Rules and Regulations. The City may, during the term of this Agreement, apply such newer City Laws that are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for and which are not inconsistent or in conflict with the intent or purposes or any terms, standards or conditions of this Agreement. To the extent any changed City Law is in conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

3.8 Moratorium, Quotas, Restrictions or Other Limitations. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing, sequencing or permission of development or construction of all or any part of the Property, whether imposed by ordinance, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, or otherwise) affecting parcel or subdivision maps (tentative, vesting tentative or final), building permits or any other Approvals (including entitlements to use or service, such as water, sewer and/or storm drains) shall apply to the Property during the term of this Agreement. Landowner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or impose any other limitation that may affect the Property.

3.9 [Reserved]

3.10 Mutual Obligations of the Parties. City has agreed to provide Landowner with the long term assurances, Vested Entitlements, and other City obligations described in this Agreement in consideration for the Landowner obligations contained in this Agreement. Landowner has agreed to provide City with the Landowner obligations contained in this Agreement. To ensure that the understanding of the Parties and mutual consideration remain effective, should either Party bring any administrative, legal, or equitable action or other proceeding to set aside or otherwise make ineffective any of the City or Landowner obligations described in this Agreement, this Agreement may be terminated by the Party against whom the proceeding is brought at that Party's sole discretion.

3.11 Landowner's Right to Rebuild. Landowner may rebuild the Project or element of the Project should it become necessary due to damage from any event, natural disaster or changes in seismic requirements during the Term of this Agreement, notwithstanding any contrary provisions of the City of Milpitas Municipal Code. Landowner may renovate the Project at any time within the Term of this Agreement as long as such renovation does not cause a change of use to a use not allowed by this Agreement or applicable City Laws. Any such rebuilding or renovation shall be subject to the Vested Entitlements, shall comply with the Subsequent Approvals and the building regulations existing at the time of such rebuilding or reconstruction, as well as the requirements of CEQA.

ARTICLE 4

SPECIFIC CRITERIA OF THE PROJECT

4.1 Permitted Development. Notwithstanding anything to the contrary herein or in the Development Approvals, the Landowner is hereby allowed to develop the Property consistent with the definition of the Project in the Recitals hereto.

4.2 Landowner Obligations. As a material consideration for the long term assurances, Vested Entitlements, and other City obligations provided by this Agreement, and as a material inducement to City to enter into this Agreement, Landowner has offered and agreed to provide the public benefits to the City listed in Article 2 of this Agreement.

ARTICLE 5

CONCURRENT AND SUBSEQUENT APPROVALS

5.1 Subsequent Approvals. Landowner will submit the Development Approvals for the Project which shall be considered concurrently with this Agreement for approval by the Planning Commission. The development of the Project may require additional Subsequent Approvals from the City.

Applications for Subsequent Approvals are anticipated to be submitted to the City by the Landowner. Applications for Subsequent Approvals shall be accepted, reviewed for completeness, and processed to completion with ordinary diligence by the City and considered in a manner consistent with the rights granted by this Agreement and the Applicable Laws.

With the Vested Entitlements, the City has made a final policy decision that the development of the Property, consistent with the MMSP and the Applicable Laws, is in the best interests of the public health, safety, and general welfare. Nothing herein shall limit the ability of the City to require the necessary reports, analysis, or studies to assist in determining whether the requested Subsequent Approval is consistent with the Applicable Laws and Applicable Rules and this Agreement. City's review of the Subsequent Approvals shall be consistent with City Laws and this Agreement, including without limitation Section 3.6 of this Agreement. To the extent that it is consistent with CEQA, as determined by the City in its reasonable discretion, City shall utilize existing CEQA documentation to review the environmental effects of any Subsequent Approvals. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval. Landowner shall defend, indemnify and hold the City harmless from or in connection with any litigation seeking to compel the City to perform additional environmental review of any Subsequent Approvals.

Any conditions, terms, restrictions, procedures or requirements imposed by the City on Subsequent Approvals shall not be inconsistent with the Development Approvals (including this Agreement) or the Applicable Laws and Applicable Rules and shall not prevent

development of the Property for the uses and the density of development, and at the rate, timing and sequencing, contemplated by this Agreement, except as and to the extent required by state or federal law or as allowed herein. In connection with approval of any Subsequent Approvals that implement and are consistent with the Development Approvals in effect on the Effective Date (including without limitation any minor modifications thereto), the City shall not impose conditions of approval that require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Development Approvals, except to the extent required by CEQA review conducted in accordance with Section 5.1.2 of this Agreement. Landowner may protest any conditions, dedications or fees imposed on Subsequent Approvals while continuing to develop the Project, such protest by Developer shall not delay or stop the issuance of building permits or certificates of occupancy.

5.2 Life of Development Approvals. The terms of the Development Approvals shall automatically be extended for the duration of this Agreement (including any extension to this Agreement as permitted by Section 1.4) if the term otherwise applicable to such Approval is shorter than the duration of this Agreement (including any extension).

ARTICLE 6

AMENDMENT OF AGREEMENT AND DEVELOPMENT APPROVALS; OPERATING MEMORANDA

6.1 Amendment or Cancellation. Either Party may propose an amendment to or cancellation of this Agreement in whole or in part, in the manner provided for in Government Code Section 65868 and Resolution No. 6642. No amendment to or cancellation of this Agreement or any provision hereof shall be effective for any purpose unless adopted pursuant to the procedures included in Resolution No. 6642 and specifically set forth in a writing, which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties.

6.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the Landowner not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation. Landowner shall also similarly record a notice of expiration or expunge this Agreement and any amendments thereto upon the competition of this Agreement's term and any extensions thereto.

6.3 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of California Government Code Section 65864 et seq. relating to development agreements and the Development Agreement Resolution, as those provisions existed at the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected unless the Parties mutually agree in writing, after following the procedures in Section 6.1, to amend this Agreement to permit such applicability

6.4 Amendment of Development Approvals. To the extent permitted by local, state, and federal law, any Development Approval may, from time to time, be amended or modified by submittal of an application from the Landowner and following the procedures for such amendment or modification contained in the Milpitas Municipal Code. Upon any approval of such an amendment or modification, the amendment or modification shall automatically be deemed to be incorporated into the Development Approvals without any further procedure to amend this Agreement.

6.5 Operating Memoranda. Separate and apart from provisions contained herein for a formal amendment of this Agreement, the parties agree that the provisions of this Agreement require a close degree of cooperation between City and Landowners, and refinements and further development of the Project may demonstrate that clarifications with respect to the details of performance of City and Landowners or minor revisions to the Project are appropriate. If and when, from time to time, during the term of this Agreement, City and Landowners agree that such clarifications or minor modifications are necessary or appropriate, they may effectuate such clarifications through operating memoranda approved by City and Landowners, which, after execution, shall be attached to and become a part of this Agreement. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section 6.5 or whether the requested clarification is of such a character to require an amendment hereof. The City Manager may execute any operating memoranda hereunder without City Council action.

ARTICLE 7

ANNUAL REPORT

7.1 Time of Review. To determine Landowner's good faith compliance with this Agreement, in accordance with Government Code Section 65865.1, and in compliance with the Development Agreement Resolution, Landowner shall submit a report approximately every twelve (12) months from the Effective Date, commencing on the first anniversary of the Effective Date detailing all actions taken with respect to the development of this Property. Upon receipt of the report, the Community Development Director may schedule an annual review of the report to be heard by the Planning Commission. This obligation for annual reporting shall expire upon Project occupancy.

Consistent with Development Agreement Resolution, the Community Development Director or designee shall give notice to the Landowner that the City intends to schedule an annual review of the Agreement at least thirty (30) days in advance of the time at which the matter will be considered by the Planning Commission and shall include the statement that review may result in an election to terminate this Agreement as provided herein.

7.2 Determination of Good Faith Compliance. Such annual report shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1. The Planning Commission shall conduct a public hearing. If the Planning Commission determines that, based upon substantial evidence in the record, Landowner has

substantially complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period shall be concluded. If the Planning Commission determines that, in good faith and based upon substantial evidence in the record, Landowner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall forward its report and recommendation to the City Council.

If the City Council determines, in good faith and based upon substantial evidence in the record, that Landowner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the City Council may issue a Notice of Breach (as defined in Section 8.2) and exercise the remedies set forth in Section 8.1.

7.3 No Waiver. Failure of Landowner to provide an annual report or failure of City to conduct an annual review hearing shall not constitute a default under this Agreement or a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor shall Landowner have or assert any defense to such enforcement by reason of any failure to conduct an annual review. City does not waive any claim of defect or breach by Landowner if, following periodic review pursuant to this Article 7, City does not propose to modify or terminate this Agreement.

ARTICLE 8

DEFAULT, REMEDIES AND TERMINATION

8.1 Remedies for Breach. City and Landowner acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. City and Landowner agree that to determine a sum of money which would adequately compensate either Party for choices they have made which would be foreclosed should the Property not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Landowner agree that in the event of a breach of this Agreement, the only remedies available to the non-breaching Party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, and/or 1094.5, and (4) termination or cancellation of this Agreement or, at the option of City in the event of breach by Landowner, termination of the rights of Landowner under this Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either Party. This exclusion on damages is limited to a breach of this Agreement and shall not preclude actions by a Party to enforce payments of monies due or the performance of obligations requiring the expenditures of money under the terms of this Agreement or Applicable Laws. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

8.2 Notice of Breach. Prior to the initiation of any action for relief specified in Section 8.1 above because of an alleged breach of this Agreement, the Party claiming breach (the "Complaining Party") shall deliver to the other Party (the "Defaulting Party") a written notice of breach (the "Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The Defaulting Party shall have thirty (30) days to either:

(a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during the thirty (30) day period and diligently complete such cure; or (b) if in the determination of the Defaulting Party, the event does not constitute a breach of this Agreement, the Defaulting Party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the Complaining Party a "Notice of Non-Breach," which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the Complaining Party may proceed to pursue its remedies under this Article 8.

8.2.1 Mutual Agreement for Cure of Certain Defaults. If the Defaulting Party believes that the breach cannot practically be cured within the thirty (30)-day period, the Defaulting Party shall not be deemed in breach provided that: (a) the cure shall be commenced during the thirty (30)-day period after receipt of the Notice of Breach; (b) within the thirty (30)-day period, the Defaulting Party provides a schedule to the Complaining Party for cure of the breach, subject to the reasonable approval of the Complaining Party; and (c) the cure is completed in accordance with the schedule agreed to by the Parties, or such additional time as may be agreed to by the Complaining Party. If the Parties cannot mutually agree on a schedule for cure of the breach, at the conclusion of the initial thirty (30)-day period, the Complaining Party may issue a Notice of Breach and proceed to pursue its remedies under this Article 8.

8.3 Failure to Assert; No Waiver. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies, irrespective of the length of the delay, shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies, nor constitute a waiver of such party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a breach shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a party to take any action with respect to such breach.

8.4 Termination by Mutual Consent. This Agreement may be voluntarily terminated in whole or in part by the mutual consent of the Parties or their successors in interest, in the sole and absolute discretion of each as to its consent, in accordance with the provisions of Resolution No. 371-81 and the Development Agreement Statute.

8.5 Effect of Termination on Landowner's Obligations.

8.5.1 Notwithstanding any other provision to the contrary, termination or cancellation of this Agreement or termination of the rights of Landowner as to the entire Property, or any part the Property, shall not affect any requirement to comply with the Vested Entitlements the terms and conditions of any other Subsequent Approval, nor any payments then due and owing to City, nor shall it affect the covenants of Landowner specified in Section 8.5.2 below, to continue after the termination or cancellation of this Agreement, nor shall termination of this Agreement as to all or any portion of the Property result in termination of Subsequent Approvals that would not otherwise have expired pursuant to Existing City Laws.

852 Notwithstanding anything in this Agreement to the contrary, the following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect with respect to claims or rights of City arising prior to termination or cancellation:

- (a) Section 8.1 (Remedies; limitation on damages and exceptions thereto; accrued obligations);
- (b) Section 8.5.1 (Landowner's obligations upon termination or cancellation);
- (c) Section 12.2 (Indemnification); and
- (d) Section 14.1 and 14.1.1 (Third Party Challenges; Indemnification).

ARTICLE 9

ESTOPPEL CERTIFICATE

Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of any defaults, and (d) such other information as the other Party may reasonably request. The Party receiving a request under Article 9 shall execute and return the certificate within thirty (30) days following receipt of the request. The City Manager shall be authorized to execute any certificate requested by Landowner. Landowner and City acknowledge that a certificate hereunder may be relied upon by transferees, tenants, investors, partners, bond counsel, underwriters, and Mortgagees. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days following receipt of the second request shall be deemed approval of the estoppel certificate.

ARTICLE 10

TRANSFERS, ASSIGNMENTS

10.1 Agreement Runs with the Land.

10.1.1 This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.

10.1.2 All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the California Civil Code. Each

covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of the Property and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon Landowner and each successive owner during its ownership of the Property or any portion thereof (subject to the terms of Section 11.2 below), and each person or entity having any interest in the Property. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

10.2 Right to Assign. Landowner shall have the right to assign (by sale, transfer, or otherwise) its rights and obligations under this Agreement as to any portion of the Project to any person, business entity, association, organization, or other similar entity ("Assignee"). Landowner's right to assign shall not be subject to City's approval.

10.3 Release Upon Assignment. Upon the express written assumption by the Assignee of Landowner's rights and interests under this Agreement (the "Assignment Agreement"), and Landowner's delivery of a conformed copy of the recorded Assignment Agreement to City, Landowner shall be free from any and all liabilities accruing on or after the date of assignment with respect to those obligations assumed by the Assignee pursuant to the Assignment Agreement.

ARTICLE 11

MORTGAGEE PROTECTION

11.1 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion of the Property after the date of recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including but not limited to City's remedies to terminate the rights of Landowner (and its successors and assigns) under this Agreement, to terminate this Agreement, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 11.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements on the Property, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements on the Property other than those uses or improvements provided for or authorized by this Agreement, or otherwise under Applicable Law.

11.3 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee, Landowner or any approved assignee requesting a copy of any notice of default given Landowner or any approved or permitted assignee and specifying the address for service, then City shall deliver to the Mortgagee at Mortgagee's cost (or Landowner's cost), concurrently with service

to Landowner, any notice given to Landowner with respect to any claim by City the Landowner is in default under this Agreement, and if City makes a determination of default, City shall if so requested by the Mortgagee likewise serve at Mortgagee's cost (or Landowner's cost) notice of noncompliance on the Mortgagee concurrently with service on Landowner. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice.

11.4 No Supersedure. Nothing in Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Property outside this Agreement, nor shall any provision of Article 11 constitute an obligation of City to the Mortgagee, except as to the notice requirements of Section 11.3.

ARTICLE 12

INDEMNIFICATION

12.1 No Duty of City; Hold Harmless. It is specifically understood and agreed by the Parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Landowner shall have full power over and exclusive control of the Property subject only to the limitations and obligations of Landowner under this Agreement.

12.2 Indemnification and Duty to Defend.

(a) To the fullest extent permitted by law, Landowner hereby agrees to and shall immediately defend, indemnify, and hold City and its elected and appointed representatives, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Landowner's operations under this Agreement, excepting suits or actions brought by Landowner for default of the Agreement or to the extent arising from the intentional acts, sole negligence, or willful misconduct of City, its elected and appointed representatives, officers, agents, employees, contractors or subcontractors, or of a third party ("Indemnified Party").

(b) This indemnification and hold harmless agreement apply to all damages and claims for damages suffered or alleged to have been suffered by reason of Landowner's performance of its obligations under this Agreement, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Property, but does not apply to damages and claims for damages caused by City with respect to public improvements and facilities after City has accepted responsibility for them.

(c) The duty to defend is a separate and distinct obligation from Landowner's duty to indemnify. Subject to the limitations or requirements stated in this Agreement, Landowner shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by the Indemnified Party immediately upon tender to Landowner, which shall be made to Landowner promptly upon it becoming known to the Indemnified Party. An allegation

or determination of the sole negligence or willful misconduct by the Indemnified Party shall not relieve Landowner from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel of Landowner's sole choosing if Landowner asserts that liability is caused in whole or in part by the sole negligence or willful misconduct of the Indemnified Party.

ARTICLE 13 **NOTICES**

13.1 Notices. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

13.2 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

With a copy to: City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attn: City Attorney

Landowner: Stratford Schools, Inc.
1999 S. Bascom Ave.
Suite 400
Campbell, CA 95008
Attn: Mark Philpott

With a copy to: STORE Master Funding IV, LLC
8377 E. Hartford Drive, Suite 100
Scottsdale, AZ 85255
Attn:

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effectuated or, if

mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission or email, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

ARTICLE 14

MISCELLANEOUS

14.1 Third-Party Legal Challenge. In the event of any legal action, claim, or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the CEQA documentation of this Agreement or any approvals hereunder, or the Vested Entitlements ("Third Party Challenge"), the responsibilities of the Parties shall be as follows.

14.1.1 Indemnification

(a) The Landowner shall defend, indemnify, and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees and agents from any Third Party Challenge against the City, its City Council, its boards and commissions, officials, officers, employees and agents to attack, set aside, void, or annul this Agreement, or the Vested Entitlements and shall indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees and agents against any and all third-party attorneys' fees, court costs and other liabilities determined by a court to be arising out of such Third Party Challenge.

(b) The City shall promptly notify the Landowner of the Third Party Challenge and shall cooperate fully in the defense of the Third Party Challenge, including but not limited to decisions about selection of counsel, settlement, preparation of the administrative record (if any) and litigation strategies.

(c) Under no circumstances shall subsections (a) – (b) above require Landowner to pay or perform any settlement arising out of a Third Party Challenge unless the settlement is expressly approved by Landowner.

14.1.2 Invalidity. If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unlawful as the result of a Third Party Challenge or otherwise, the Parties shall use their best efforts to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then to adopt or re-enact such part of this Agreement as necessary or desirable to permit implementation of this Agreement.

14.2 Applicable Law/Venue/Attorneys' Fees and Costs. This Agreement shall be construed and enforced in accordance with the laws of the State of California, excluding its conflict of laws provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California. Should any legal action or arbitration be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and such other costs

as may be found by the court.

143 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

144 Nondiscrimination Clause. Landowner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the development of the Property in furtherance of this Agreement. The foregoing shall run with the land.

145 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

146 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

147 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California, excluding its conflict of laws provisions.

148 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

149 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.10 Subsequent Projects. After the Effective Date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that the Landowner's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future

approved development on public facilities.

14.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.12 Form of Agreement; Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement, including its exhibits constitutes the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A-1 and A-2: Property Description and Site Map

14.13 No Third Party Beneficiary. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successor in interest) and not for the benefit of any other individual or entity.

14.14 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

14.15 Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

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

"City"

CITY OF Milpitas,
A Charter City

By: _____
Ned Thomas,
City Manager

Date: _____

Attest:

Suzanne Guzzetta, City Clerk

Approved as to Form:

Michael Mutalipassi, City Attorney

"Stratford Schools, Inc., Landowner"

By _____
Name:
Title: President

By _____
Name:
Title: Chairman of the Board

Date: _____

STORE Master Funding IV, LLC

By _____
Its

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A-1"
Legal Description

EXHIBIT “A-2”
Site Plan



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve an Agreement with McCampbell Analytical, Inc. for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/20/2024
Recommendation:	Approve and authorize the City Manager to execute the Professional Services Agreement with McCampbell Analytical, Inc. for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services for a five-year term in an amount not-to-exceed \$556,790, subject to the availability of funds.

BACKGROUND:

The City permit to operate and maintain our drinking water supply system is administered by the California State Water Resources Control Board Division of Drinking Water. Under this permit, the City is required to test and monitor drinking water quality on a regular basis to protect public health and safety. This includes routine weekly bacteriological, monthly general physical samples, and any required special and emergency samples collected from the water distribution system.

On May 22, 2019, the City entered into an agreement with McCampbell Analytical, Inc. to perform water quality laboratory testing services, for a five-year contract term. The contract will expire on September 30, 2024. As such, Public Works staff coordinated with the Purchasing Division to issue an Invitation for Bids (IFB) to provide continued water quality laboratory testing services, and adding analytical laboratory services to the scope.

The City currently has an existing agreement with Eurofins Eaton Analytical, LLC to perform quarterly analytical laboratory testing services; this contract expires June 30, 2027. In preparation for that expiry, the issued IFB combined both scopes of laboratory services, which will allow the City to transition to a single contractor for water laboratory testing services, streamlining sample pickup coordination and reporting starting July 1, 2027. Until then, McCampbell Analytical, Inc. will provide weekly and monthly required laboratory testing, while Eurofins Eaton Analytical, LLC will continue to provide quarterly services.

ANALYSIS:

On April 16, 2024, the City issued IFB 24-095 for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services. The IFB was advertised through the City procurement platform, OpenGov Procurement, with a proposal due date of May 10, 2024; no proposals were received. As authorized by City Municipal Code I-2-3.08(f) and by the City Purchasing Agent, staff went to the open market to seek out proposals from qualified vendors and negotiated a scope of services with McCampbell Analytical, Inc. for a not-to-exceed amount of \$556,790.

The recommended agreement would be for a five (5) year period, fixed-price contract for analytical, bacteriological, and general physical laboratory analysis services. The number of samples required on an annual basis varies and is a not-to-exceed amount.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve and authorize the City Manager to execute maintenance services agreement with McCampbell Analytical, Inc.

Pros: None.

Cons: The City would risk non-compliance with State Water Board requirements and regulations and put the public water system at risk of contamination.

Reason for Not Recommending: Analytical, bacteriological, and general physical (water quality) laboratory analysis services are required pursuant to the City's water supply and wastewater permits administered by the State.

FISCAL IMPACT:

\$58,839 is budgeted for analytical lab analysis and bacteriological and general physical laboratory analysis services. For the remainder of FY 2024-25, it is estimated an additional \$20,000 will be needed in the Department of Public Works Operating Budget to allow for increases due to the recommended contract award to McCampbell Analytical, Inc. The Department plans to absorb the additional cost of service with vacancy savings. Funding for the remaining years of this contract will be subject to annual appropriations.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Analytical Laboratory Services	\$17,346	\$17,346	\$17,346	\$17,346	\$17,346	\$86,730
Water Quality Laboratory Services	\$94,012	\$94,012	\$94,012	\$94,012	\$94,012	\$470,060
Five-Year Not-to-Exceed Amount						\$556,790

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

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

RECOMMENDATION:

Approve and authorize the City Manager to execute the Professional Services Agreement with McCampbell Analytical, Inc. for Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services for a five-year agreement in an amount not-to-exceed \$556,790, subject to the availability of funds.

ATTACHMENT(S):

1. Agreement

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND MCCAMPBELL ANALYTICAL, INC**

CONTRACT NO. 24-095

This Agreement is made and entered into as of _____, (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **McCampbell Analytical, Inc.**, a California corporation with its principal place of business at **1534 Willow Pass Road, Pittsburg, CA 94565** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

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

Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis Services
(hereinafter referred to as “the Project”).

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

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

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

2. Compensation.

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

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Five Hundred Fifty-Six Thousand Seven Hundred Ninety Dollars and Zero Cents (\$556,790.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis. Consultant may reassess costs and potentially increase fees by up to 5% for both years four (4) and five (5).

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

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

5. Term.

The term of this Agreement shall be from **October 1, 2024** to **September 30, 2029**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Subconsultant

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

10. Independent Consultant

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

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

12. Indemnification.

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

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

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other

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

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

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

14. Verification of Employment Eligibility.

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

15. Laws and Venue.

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

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be

immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

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

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

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

18. Organization

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

19. Limitation of Agreement.

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

20. Notice

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

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Christian Di Renzo, Public Works Director

CONSULTANT:

McC Campbell Analytical, Inc.

1534 Willow Pass Road

Pittsburg, CA 94565

Attn: Nicole Hisamoto

and shall be effective upon receipt thereof.

21. Third Party Rights

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

22. Equal Opportunity Employment.

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

23. Entire Agreement

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

24. Severability

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

25. Successors and Assigns

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

26. Non-Waiver

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

27. Time of Essence

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

28. City's Right to Employ Other Consultants

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

29. Prohibited Interests

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

30. Wage Theft Prevention

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND MCCAMPBELL ANALYTICAL, INC**

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

CITY OF MILPITAS

Approved By:

Ned Thomas, City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Luz Cofresí-Howe
Finance Director/Risk Manager

Approved As To Content:

Christian Di Renzo, Public Works Director

MCCAMPBELL ANALYTICAL, INC

Signature

Name

Title

Date

EXHIBIT A

SCOPE OF SERVICES AND TECHNICAL SPECIFICATIONS

1.01 Overview/Project Description

The Analytical Laboratory Services and Bacteriological and General Physical (Water Quality) Laboratory Analysis. Consultant is a certified analytical laboratory to provide timely, high-quality analytical testing of the City's domestic water system in addition to provide analysis and reporting of routine weekly bacteriological, monthly general physical samples, and any required special and emergency samples collected from the City's water distribution system. As such, some of the work will be scheduled and some unscheduled.

Consultant will provide the City sample collection containers and preservatives, and chain-of-custody forms. The Consultant shall perform analysis for drinking water samples in accordance with Title 22 of the California Code of Regulations and Code of Federal Regulations and report results electronically to the City and California Division of Drinking Water.

The maximum turnaround time for the results of the analysis for bacteriological samples is thirty (30) hours from the time of pick-up. The Consultant must also be able to pick up and analyze emergency samples during off-hours (nights and weekends) as necessary. The Laboratory shall provide, on an as needed basis, other technical support services required by the City as required for compliance with current and changing federal, state, and local regulations for clean drinking water.

1.02 Background

The City purchases drinking water from two wholesalers: two thirds from the San Francisco Public Utilities Commission (SFPUC) and one-third from the Santa Clara Valley Water District (SCVWD). SFPUC water is primarily from the Hetch Hetchy watershed located in the Sierra Nevada Mountains and is supplemented by water from the Alameda watershed. SCVWD water is primarily from the Sacramento-San Joaquin Delta watershed and is supplemented by local water sources such as Anderson and Calero Reservoirs.

The City is committed to providing its customers with a safe and reliable supply of high-quality drinking water that meets Federal and State standards. Each year, the City provides a summary of the water quality sampling results and other information through a Consumer Confidence Report. The report is prepared in accordance with the Federal Safe Drinking Water Act and California Department of Public Health (CDPH) requirements. Interested bidders seeking additional background information can access that report by visiting the City's website: www.milpitas.gov.

1.04 General Description of Services to Be Provided

- A. The scope of services to be provided by the Consultant includes, but is not limited to:
 - a. Analysis and reporting results from samples collected by City staff.
 - b. Analysis and reporting of routine weekly bacteriological, monthly general physical samples, and any required special and emergency samples collected by City staff from the City's water distribution system.

Bacteriological Samples	
Frequency & Number	# in 12-Month Period
34 weekly	1,768
General Physical Samples	
Frequency & Number	# in 12-Month Period
27 monthly	324

- i. There may be additional unforeseen samples, including:
 1. Confirmation coliform and *E coli* after positive coliform result;
 2. Heterotrophic plate county after a no chlorine residual result;
 3. Special and emergency samples as necessary
- B. The Consultant shall provide, on an as needed basis, other technical support services required by the City as required for compliance with current and changing federal, state, and local regulations for clean drinking water.
- C. Estimated quantities, methods, and further descriptions of the samples are included on the Bid Form for this solicitation.

1.05 Testing Methods

- A. The Consultant shall comply with all federal, state, and local laws, rules, regulations, ordinances, and statues and use current, approved EPA methodologies and Title 22 of the California Code of Regulations for all drinking water standards that are regulated by the State Water Board – Division of Drinking Water (unless instructed otherwise).

1.06 For Analytical Lab Testing

- A. The Consultant will perform the following minimum tasks:
 1. Provide sample bottles and preservatives for each sampling event in accordance with five (5) working days' notice. Provide blue ice for sample preservation and ice chests for various sizes as needed.
 2. Deliver coolers with sample containers to the City and pick-up samples.
 3. Retrieve samples from City Hall or Corporation Yard (as may be selected by City) on the designated sample collection day by 2:00 p.m.
 4. Provide all necessary materials for testing samples, sample containers and preservatives, blue ice; ice chests of various sizes as needed, chain-of-custody forms, etc.
 5. Provide analysis for drinking water samples in accordance with Title 22 of the California Code of Regulations.
- B. All laboratory analysis work must be performed at the Consultants location.
- C. Laboratory work must be performed in a manner that is both prompt and in compliance with all drinking water regulations as noted in the California Code of Regulations Title 22 and the Federal Safe Drinking Water Act and amendments.
- D. Testing methodologies must satisfy the California State Water Board Division of Drinking Water (SWB-DDW) and the United States Environmental Protection Agency (US-EPA) requirements.

- E. If the Consultant chooses to propose an alternate method of analysis from that specified, the alternate method should conform to appropriate regulatory standards. The alternate shall be clearly indicated for each line item on the Bid Schedule.

1.07 For Water Quality Lab Testing

- A. The expected types and number of chemical analyses to be performed over the life of the contract are estimated on the Bid Form in Exhibit B, though the actual number may vary.
- B. Laboratory work must be performed in a manner that is both prompt and in compliance with all drinking water regulations as noted in the California Code of Regulations Title 22 and the Federal Safe Drinking Water Act and amendments. All laboratory analysis work must be performed at the lab location specified in the bid and subsequent contract awarded from this solicitation.
- C. It is expected that the Consultant will perform the following minimum tasks:
 - 1. Retrieve samples from City Hall or Corporation Yard (as may be selected by City). Samples shall be retrieved on Monday or Tuesday of every week, unless otherwise notified. Regular weekly samples will be ready for pick-up between the hours of 3:00 p.m. and 5:00 p.m.
 - 2. Provide sample containers and preservatives. Provide blue ice for sample preservation and ice chests for various sizes as needed.
 - 3. Immediately notify designated City staff during normal business hours via telephone or e-mail as soon as there is presence (even though it is an early positive) of any drinking water sample results that are positive for coliform or E.coli, or have heterotrophic plate counts greater than 500.
 - 4. **Bacteriological and General Physical (Water Quality) Laboratory services required under this IFB must be performed within 24 hours. All results are required within 24-hours of testing.**
 - 5. Acknowledge receipt of samples by correctly completing the chain-of-custody form for each set of samples.
 - 6. Submit monthly analysis results reports to the City (via e-mail), with corresponding invoices for services rendered.
 - 7. Be available to pick-up any unscheduled samples and analyze unforeseen special samples within 24-hour notice, as required before or after 4:00 p.m.

1.08 REPORTING

- A. The Consultant will perform the following minimum tasks:
 - 1. Return a copy of the completed chain-of-custody with the corresponding analysis reports.
 - 2. Prepare analysis reports to include the following information:
 - i. Sample identification and sample type.
 - ii. Sample preservation and container type.
 - iii. Analysis methodology used.
 - iv. Analysis results and corresponding method detection limits or practical quantification limits.
 - v. Name of individual(s) collecting or submitting the sample.
 - vi. Date and time of sample collection.
 - vii. Laboratory performing the analysis of each parameter.

1.09 TURN-AROUND TIME

- A. **For Analytical Lab Testing:** The Consultant must meet an expected standard sample turn-around time of 15 days for most samples and rush turn-around times as needed.

1.10 CHAIN-OF-CUSTODY

- A. Must provide a copy of your current Chain-of-Custody form.
- B. Must have secured sample holding location facility (Describe and/or submit photo).
- C. Must provide Sample Receiving & Chain-of-Custody standard operating procedures.

1.11 SAMPLING SERVICES

- A. Must provide weekday courier service for pick-up of samples and delivery of reports and sample bottles.
- B. May provide weekend and holiday courier service pick-up of samples. Please include fees for weekend services if different, (list on pricing form provided).
- C. Must provide and deliver sample bottles when requested. Sample bottles must meet EPA Cleaning Protocol and/or have appropriate preservation solution added.

1.12 RE-SAMPLING/RE-ANALYSIS

- A. The Consultant will notify the City of any sample analyses that cannot be extracted or completed within EPA mandated holding times so re-sampling can occur. If there is need for the City to re-sample due to an error that is the fault of the contracted laboratory, (i.e. requested analysis isn't completed by the lab, sample is dropped, holding times are expired before analysis is complete, etc.), the analysis of the re-sample will be done at no extra charge to the City.

1.13 EMERGENCY ACTION PLAN

- A. Consultant shall assure its ability to provide water quality testing at 100% availability during the term of the contract. This would include performance at times when other services may be disrupted due to natural or unexpected occurrences. The successful bidder shall provide an Emergency Action Plan that will assure this criterion to the satisfaction of the City. This plan should include, but is not limited to, the following features: separate back-up communication equipment; principals' emergency telephone numbers; back-up mobile water testing; emergency power; reserve supplies/resources; and on-call, expedient testing during emergency situations.

EXHIBIT B

Schedule of Charges/Payments

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

In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Five Hundred Fifty-Six Thousand Seven Hundred Ninety Dollars and Zero Cents (\$556,790.00)**. Consultant may reassess costs and potentially increase fees by up to 5% for both years four (4) and five (5).

Base Bid Schedule

1. Analytical Laboratory Services

ITEM	ESTIMATED QUANTITY	DESCRIPTION OF LABORATORY ANALYSIS	METHOD (indicate/circle selected method)	UNIT PRICE	EXTENDED AMOUNT
1.	12	General Mineral/ General Physical <i>*Includes True Color (Filtered), Odor, pH, & Turbidity</i>	Various	\$64	\$768
2.	3	Inorganic Chemicals (IOC)	Various	Included	Included
3.	3	Volatile Organics (VOC) <i>*excludes Acro/Acry/2CEVE</i>	EPA 524.3	\$95	\$285
4.	3	Synthetic Organics (SOC) <i>*Reports only EDP & DBCP</i>	EPA 504.1	\$56	\$168
5.	3	SOC NP Pesticides <i>*See attached target list for reporting</i>	EPA 507/EPA 525.3	\$115	\$345
6.	3	SOC OC Pesticides <i>*See attached target list for reporting</i>	EPA 508/EPA 505	\$110	\$330
7.	3	SOC Herbicides <i>*See attached target list for reporting</i>	EPA 515.1	\$134	\$402
8.	3	SOC Semi-volatile Organics	EPA5 224.3	\$160	\$480

		*See attached target list for reporting			
9.	3	SOC Carbamate Pesticides *See attached target list for reporting	EPA 531.1	\$152	\$456
10.	3	SOC Glyphosate	EPA 547	\$120	\$360
11.	3	SOC Endothall	EPA 548.1	\$120	\$360
12.	3	SOC Diquat	EPA 549.2	\$125	\$375
13.	3	SOC 2,3,7,8 TCDD (Dioxin)	EPA 1613	\$240	\$720
14.	3	Nitrite	EPA 300.1	\$30	\$90
15.	3	Cyanide	SM 4500CN-F	\$55	\$165
16.	3	Perchlorate	EPA 314.0	\$64	\$192
17.	40	Lead and Copper Rule (every three years starting in 2025)	EPA 200.8	\$30	\$1200
18.	3	Nitrate	EPA 300.1	\$30	\$90
19.	32	Trihalomethane (THM)	EPA 552.3	\$75	\$2400
20.	32	Haloacetic Acid (HAA5)	EPA 552.3	\$135	\$4320
21.	32	Disinfection Byproducts	Various	n/a	n/a
22.	8	UCMR 5/6 (every five years starting in Fall 2024)	EPA 533 EPA 537 Metals (Li) 200.7	\$250 \$200 \$30	\$2000 \$1600 \$240
				TOTAL	\$17,346

2. Water Quality Laboratory Services Base Bid Schedule

ITEM	ESTIMATE D QUANTITY	DESCRIPTION OF LABORATORY ANALYSIS	METHOD (Indicate/Circle selected method)	UNIT PRICE	EXTENDED AMOUNT
1.	1,768	Bacteriological- Coliform (Presence/Absence) (weekly scheduled pick-ups by 4:00 p.m.)	SM 9223	\$40	\$70,720
2.	12	Bacteriological-Total Coliform (Most Probable Number) (as needed and unscheduled pick- ups)	SM 9221	\$50	\$600
3.	12	Bacteriological- <i>E.coli</i> /Fecal Coliform (as needed and unscheduled pick-ups) <i>*Unscheduled pick ups that require an outside standard courier hours will need to be quoted case by case our estimate per occurrence is + \$300</i>	SM 9221	\$75	\$912
4.	12	Bacteriological- Heterotrophic Plate Count (as needed and unscheduled pick-ups) <i>*Unscheduled pick ups that require an outside standard courier hours will need to be quoted case by case our estimate per occurrence is + \$300</i>	SM 9221	\$37	\$444
5.	324	General Physical (includes pH, color, odor, and turbidity) (monthly scheduled by 4:00 p.m.)	Various Standard Examinations	\$64	\$20,736
6.	1	Pricing for late <u>batch of</u> Bacteriological-Coliform (Presence/Absence) 34 or so samples picked-up and analyzed unscheduled and including after 4:00 p.m. <i>*Unscheduled pick ups that require an outside standard courier hours will need to be quoted case by case our estimate per occurrence is + \$300.</i>	SM 9223	\$300	\$300
7.	1	Pricing for each non-scheduled Bacteriological-Coliform (Presence/Absence) sample picked up and analyzed unscheduled and including after 4:00 p.m. <i>*Unscheduled pick ups that require an outside standard courier hours will need to be</i>	SM 9223/SM9221	\$300	\$300

		quoted case by case our estimate per occurrence is + \$300.			
				TOTAL	\$94,012

	Year 1	Year 2	Year 3	Total
Analytical Laboratory Services	\$17,346	\$17,346	\$17,346	\$86,730
Water Quality Laboratory Services	\$94,012	\$94,012	\$94,012	\$470,060
Five-Year Not-to-Exceed Amount				\$556,790

Line item bid prices includes the cost for travel and materials. Actual quantities may vary, unit prices shall prevail. The City reserves the right to choose all items, none of the items, or any combination of items that is in the best interest of the City.

Pick-up of samples and delivery of sample bottles must be included in above bid items. First sample analysis is expected to begin on **October 1, 2024**.

Where there is a discrepancy between item unit price and extended total, UNIT PRICE WILL GOVERN. Please check your calculations before submitting your bid as the City of Milpitas will not be responsible for Bidder miscalculation.

Award of bid will be made to the lowest responsible and responsive bidder based upon the unit prices indicated on this bid form. All prices are firm and fixed for the contract term.

EXHIBIT C
Activity Schedule

[Reserved]

EXHIBIT D

INSURANCE REQUIREMENTS

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

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

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

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

Commercial General Liability (CGL):

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

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

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

Automobile Liability:

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

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

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

Professional Liability (Errors and Omissions):

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

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

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

Workers' Compensation Insurance:

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

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

Builder's Risk (Course of Construction):

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

Contractor's or Consultant's Pollution Legal Liability:

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

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

Cyber Liability Insurance

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

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

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

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
____ Performance Bond
____ Payment Bond

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

Other Insurance Provisions:

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

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

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

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

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

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

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

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

X Waiver of Subrogation:

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

Completed Operations

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

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

Acceptability of Insurers:

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

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

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

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

Subcontractors:

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

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

Verification of Coverage:

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

Special Risks or Circumstances

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

Failure to Comply:

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

Applicability of Coverage:

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on the Security Improvements at the McCarthy Ranch Sewer Lift Station (Main Lift) and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	8/20/2024
Recommendation:	(1) Receive an update on the security improvements at the McCarthy Ranch Sewer Lift Station; 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 [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 July 30, 2024, the Public Works Director declared an emergency and authorized the City to contract with Trofholz Technologies and Diamond Fencing to implement various security and access control improvements to the McCarthy Ranch Sewer Lift Station (Main Lift). Further, within the required timeframe the Public Works Director informed the City Council via [Information Memorandum](#) on July 31, 2024, of the emergency authorization, the reasons for the authorization, and the cost for repairs in a not-to-exceed amount of \$700,000.

STATUS UPDATE:

The Finance Department (Purchasing Division) is working on finalizing agreements with contractors to provide security and access control improvement services to the Main Lift Station.

An amendment to a current City of Milpitas contract with Trofholz Technologies, Inc. will include a new scope of work for the installation of security cameras, card readers, and motion sensors at the Main Lift facility. The use of Trofholz Technologies, Inc. as the sole source provider is justified due to the advantages of integrating this equipment with the City’s existing security system, which ensures interoperability and results in cost savings by avoiding the need for a separate security system.

The City will also issue a new contract with Diamond Fencing to demolish and properly dispose of the existing fence, and install approximately 1,760 linear feet of new, code-compliant fencing using ClearVU reinforced panels topped with ribbon wire, integrated into the current gate structure. This type of security fencing is an anti-climb and anti-cut fence suited for high security facilities.

FISCAL IMPACT:

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget. CIP Project 6124 – Sewer Pump Station Rehabilitation Project will fund the installation of security cameras, card readers, and motion sensors. The funding source of this CIP project are Sewer Infrastructure Fund. The available balance as of 8/13/2024 is \$709,541. CIP 6130 – Main Lift Odor Emission Control Project will fund the removal and replacement of the perimeter fencing. The funding source of this CIP Project are Sewer Infrastructure Fund, and Sewer Treatment Fund. The available balance as of 8/13/2024 is \$596,812.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction. Separately and independently, the project entails the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use and is exempt from CEQA pursuant to Cal. Code Regs., tit. 14, § 15301.

RECOMMENDATION:

1. Receive an update on the security improvements at the McCarthy Ranch Sewer Lift Station.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

ATTACHMENT(S):

None.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Potential Naming of the Milpitas Library (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	8/20/2024
Recommendation:	Provide direction to staff on the potential renaming of the Milpitas Library to either (1) Refer the proposed name "Milpitas [insert name] Library to the next City Council Naming Ad Hoc Subcommittee tentatively scheduled for Wednesday August 21, 2024; or (2) Refer the proposed name "[Insert Name] Auditorium" within the Milpitas Library to the City Council Naming Ad Hoc Subcommittee tentatively scheduled for Wednesday August 21, 2024.

BACKGROUND:

The Milpitas Library facilities and garage are the property of the City of Milpitas. The Milpitas Library lease agreement between the City and the Santa Clara County Library Joint Powers Authority, effective starting October 21, 2008, has a term of 30 years with the option of two additional periods of 10 years for a total of 50 years. The Milpitas Library is operated by the Santa Clara County Library District. The Santa Clara County Library District (SCCLD) serves nine cities in Santa Clara County, California, as well as the unincorporated area: Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Milpitas, Monte Sereno, Morgan Hill, and Saratoga. All operations including the programming, staffing, marketing, and outreach are the responsibility of the SCCLD.

On April 21, 2006, the City Council adopted Standard Operating Procedures (SOP) for naming City streets, parks and facilities through Council Subcommittee recommendation and Council action. After naming several streets and facilities, the Council at that time discontinued the subcommittee. On January 7, 2016, the City Council established a Streets, Parks and Facilities Naming Subcommittee that made recommendations to the existing Naming Policy, the Naming Lists, and naming several City streets, parks and facilities. On February 26, 2019, City Council sunset the Streets, Parks and Facilities Naming Subcommittee and directed staff to assign naming recommendations for streets to the Planning Commission and for parks and facilities to the Parks, Recreation and Cultural Resources Commission. In 2022, at City Council direction, staff updated the policy for naming streets, parks and facilities in the new City Council Policy format. On June 21, 2022, City Council approved the updated City Council Policy for Naming Streets, Parks and Facilities which placed the approvals for all facility naming back with the City Council Naming Subcommittee.

During the City Council meeting on January 23, 2024, Councilmember Anthony Phan requested staff research the process for naming the Milpitas Library. This request received City Council consensus and since the initial work effort was less than four hours of staff time staff proceeding with the outreach. Staff provided a status update in the June 2024 City Council prioritization process project update tracker that staff had reached out to the County of Santa Clara and would prepare an informational report for the City Council on the process. During the City Council meeting on August 5, 2024, Councilmember Barbadillo requested that staff return to City Council timely to provide options to name the Milpitas Library after former Milpitas Mayor Jose Esteves.

ANALYSIS:

The Milpitas Library facility is the property of the City of Milpitas, and the City Council may name the facility and update the facility sign on the exterior of the building. However, SCCLD has control over their website, social media and marketing material and is responsible for any name changes in those areas. For reasons discussed further below, it is important for the SCCLD that the name that is used on their website, social media and other marketing materials, not be changed.

Name Change Logistics

SCCLD Library branches are branded and publicized consistently across all nine county locations. Library branches are named to instill and support: 1) City pride of ownership, 2) Familiarity in the community with easy recall, and 3) Intuitive search power on the web and social media. The following components related to brand management are considerations to the discussion on naming the Milpitas Library. These are the protocols that SCCLD followed in partnership with the City of Morgan Hill when they renamed their library the Morgan Hill Steve Tate Library.

Facility Signage

For the name of the library to be consistent with other SCCLD branch branding, the Library name wording order would be “Milpitas [insert name]” Library.” The City would be responsible for all work and costs associated with changing facility exterior signage. Recent City facility signage installations had project costs between \$25,000 to \$40,000. The SCCLD would not make changes to the existing digital sign. There would be no changes made to interior facility signage. Any ceremony(ies) associated with a facility name change would be the responsibility of the City and depending on the ceremony components and anticipated attendance, may have costs between \$2,000 to \$4,000.

SCCLD Website and Social Media

The Milpitas Library Website is operated and maintained by the SCCLD. The Milpitas branch would remain listed as Milpitas Library. All social media handles would also be maintained as @MilpitasLibrary.

Library Program Publicity and Logos

For Milpitas-only Library community events, Milpitas specific Library naming will be used. Additionally, Milpitas-only Library program and/or event flyers would have a SCCLD logo and a special logo for the new Milpitas Library name. The SCCLD is responsible for all Library program and service media content, and associated logos.

City Council Policy Process for Naming Streets, Parks and Facilities

The City Streets, Parks, and Facility Naming Policy outlines naming criteria and the naming process in sections 2. Policy and 3. Procedure.

Naming Criteria

The following criteria and factors should be considered with naming or renaming a street, park, or facility:

- Neighborhood or geographical identification, such as street, school, or other descriptive names;
- Natural or geological features of the area;
- Historical or cultural significance: the name of a historical figure can be considered, if the figure had a significant and extraordinary historical influence on the area, state, national, or international level;
- The name of any person or family that has made a significant impact in the community and/or in development of the street, park, or facility;
- An individual or organization that contributed significantly to the acquisition or development of the park or facility to be named. This can include either a deed or substantial monetary contribution, or contribution toward the acquisition, and/or development of the park or facility. (Naming rights are not guaranteed if the donation is a dedication as required by the subdivision.)
- The articulated preference of residents of the neighborhood surrounding the street, park, facility;
- A name should represent community values and consider future generations and ethnic diversity;

The policy also states that:

- If the name of an individual or family is to be considered, the use of such name shall have the approval of the individual (or his/her surviving family) or family when reasonably possible;
- No seated elected official shall have their name added to a naming list or have a street, park or facility named after them while serving on the City Council.

Naming Process

The naming process is outlined as:

- City street, park and facilities naming recommendations shall be brought to the City Council Ad Hoc Naming Subcommittee for recommendation to the City Council and may be considered at any regular

or special City Council meeting.

- Naming recommendations shall be from the City Council approved List of Names available from the Director of Recreation and Community Services.

Additional Naming Options at the Milpitas Library

As part of the opening of the Milpitas Library in 2009, the City subcommittee, using the 2006 Naming SOP, named several rooms and areas in the Library. They include:

- Ed Cavallini Tower
- Cesar E. Chavez Reading Area
- Josephine Guerrero Children's Activity Room
- Martin Luther King, JR. Academic and Career Center
- Robert Keely Reading Area

Each named area has a plaque, and each named room has a sign that includes additional historical information about the namesake and the space. These spaces and their names are used during In-Library announcements for daily programs and have high visibility on the Library website with event listings, thus have a high visibility with Library patrons.

Examples of unnamed areas in the Milpitas Library are the Historic Auditorium and the Computer Training Center which is planned for conversion to additional program space. The Historic Auditorium has the highest attendance in the Library across all patron ages. Regarding the use of the name, the auditorium name is used and announced more frequently by the SCCLD than the name of the library branch due to the large number of annual events in the auditorium.

Alternative Option

As opposed to referring a proposed name to the City Council Naming Ad Hoc Subcommittee (Subcommittee), the Mayor and City Council could consider providing final approval of the proposed name, pending consensus at the next scheduled Subcommittee meeting.

FISCAL IMPACT:

There is no fiscal impact associated with this current discussion. However, if City Council provides direction to change the name of the Milpitas Library at this, or a subsequent City Council meeting, staff anticipates a one-time cost of between \$25,000 to \$40,000 to change the sign on the exterior of the building, with any potential ceremonial costs recognizing the facility name change between \$2,000 and \$4,000.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

RECOMMENDATION:

Provide direction to staff to either (1) Refer the proposed name "Milpitas [insert name] Library to the City Council Naming Ad Hoc Subcommittee; or (2) Refer the proposed name "[Insert Name] Auditorium" within the Milpitas Library to the City Council Naming Ad Hoc Subcommittee.

ATTACHMENT:

City Council Naming Policy



CITY OF MILPITAS

Revision	Date
Original	04/21/2006
	6/21/2022

CITY COUNCIL POLICY

Policy No: Click or tap here to enter text.	CITY STREETS, PARKS AND FACILITIES NAMING POLICY	Effective Date: 6/21/2022
Revision No: 1	Policy Administrator: Recreation and Community Services	Next Review Due: As needed
Related Policies and Procedures: Incorporates and replaces SOP 1.3	Approved by: Click or tap here to enter text. Council meeting date, agenda item #, and vote	Date Approved: 6/21/2022

1. PURPOSE

- 1.1. This Policy establishes the guidelines, criteria, and processes for naming City streets, parks, and other facilities.
- 1.2. This Policy is consistent with Milpitas [Municipal Code, Title XI-1000](#) and [Government Code Section 34093](#).

2. POLICY

- 2.1. The City shall have the sole authority and the City Council shall have the final authority to approve names of City Streets, Parks, and other Facilities.
- 2.2. The City Council Ad Hoc Naming Subcommittee shall evaluate names of City streets, parks and facilities, and shall make recommendations to the City Council.
- 2.3. Although the City will have full control and final decision-making authority on any names selected, public input will be received, and other names may be raised and requested to be considered by the City Council.
- 2.4. From time to time, the City Council shall approve names to be added to a list(s) of names suitable for streets, parks, and facilities.
- 2.5. No duplication of names within an asset type (i.e., park, facility, plaza) will be approved.
- 2.6. A deliberative process by City staff will be conducted to ensure that renaming of a street, park, and facility will not diminish the original justification for the name of the prior contributors. Parks and facilities named after individuals shall not be changed unless it is found that because of the individual's character the continued use of their name would not be in the best interest of the community. Parks that have been named by deed restriction shall not be considered for renaming.
- 2.7. The following criteria and factors shall be considered with naming or renaming a street, park, or facility:
 - 2.7.1. Neighborhood or geographical identification, such as street, school, or other descriptive names;
 - 2.7.2. Natural or geological features of the area;
 - 2.7.3. Historical or cultural significance: the name of a historical figure can be considered, if the figure had a significant and extraordinary historical influence on the area, state, national, or international level;



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- 2.7.4. The name of any person or family that has made a significant impact in the community and/or in development of the street, park, or facility;
- 2.7.5. An individual or organization that contributed significantly to the acquisition or development of the park or facility to be named. This can include either a deed or substantial monetary contribution, or contribution toward the acquisition, and/or development of the park of facility. (Naming rights are not guaranteed if the donation is a dedication as required by the subdivision.)
- 2.7.6. The articulated preference of residents of the neighborhood surrounding the street, park, facility;
- 2.7.7. A name should represent community values and consider future generations and ethnic diversity;
- 2.7.8. If the name of an individual or family is to be considered, the use of such name shall have the approval of the individual (or his/her surviving family) or family when reasonably possible;
- 2.7.9. No seated elected official shall have their name added to a naming list or have a street, park or facility named after them while serving on the City Council.
- 2.7.10. Avoid confusing or similar sounding names (Public Safety Dispatch test);
- 2.7.11. Avoid changing street names along any continuous alignment (Continuity test).
- 2.8. Naming of parks and facilities near schools shall be coordinated with the Milpitas Unified School District as much as possible.
- 2.9. All naming and/or renaming of a park or facility will be set forth by a Council Resolution.
- 2.10. Should policy conflict with any City Ordinance, Code or other laws and regulations, the respective City Ordinance, Code or other laws and regulations shall prevail.

3. PROCEDURE

- 3.1. Maintaining a List of Names for Naming Streets, Parks, and Facilities.
 - 3.1.1. The Recreation and Community Services Department shall maintain a List of Names for Naming Streets, Parks, and Facilities.
 - 3.1.2. As needed, the Director of Recreation and Community Services shall bring additions to the List of Names for Naming Streets, Parks, and Facilities to Council for approval at any regular or special meeting.
- 3.2. Naming of Streets, Parks, and Facilities
 - 3.2.1. City street, park and facilities naming recommendations shall be brought to the City Council Ad Hoc Naming Subcommittee for recommendation to the City Council and may be considered at any regular or special City Council meeting.”.
 - 3.2.2. Naming recommendations shall be from the City Council approved List of Names available from the Director of Recreation and Community Services.
- 3.3. Proposed names for new City streets, parks, and facilities should be considered during the entitlement process prior to the final map approval.
- 3.4. Names being considered for streets shall be reviewed by the City and County emergency services dispatch and Post Office to discourage names that are too similar or confusing that may hinder emergency response; or are otherwise inappropriate for public safety purposes.



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- 3.5. The following City Departments will contribute to the establishment and maintenance of databases for named streets, parks, and facilities:
 - 3.5.1. Information and Technology Department – Maintain database of all City assets (streets, parks, and facilities)
 - 3.5.2. Recreation and Community Services Department – Maintain Naming Lists, information about historical references, person's full names, ancestry, dates of birth and death, and other information of interest about the person or group, and the significance of their name to Milpitas' history and/or to that particular named asset.
 - 3.5.3. Planning Department – Coordinate Street Naming related to new development, prepare, and maintain GIS databases for mapping of new facilities.
- 3.6. Renaming of a street, park, or facility
 - 3.6.1. The renaming of a street, park, or facility may be initiated by City Council, City Commission, City staff, a group, or individuals.
 - 3.6.2. The initiation of renaming by non-City organizations or individuals shall be made by participating during Public Forum at the appropriate advisory City Commission or City Council meeting.
 - 3.6.3. The City Commission may place the request on the agenda for review of the proposed name(s), taking of public comment, and discussion of the renaming proposal consistent with this Policy.
 - 3.6.4. When a City Commission considers the renaming proposal of a street, park, or facility, staff shall notify the surrounding neighborhood in a ¼ mile radius.
 - 3.6.5. If the City Commission supports the renaming proposal, it will make a recommendation to the City Council for Council consideration.
- 3.7. The name of a park or facility that is sold, transferred to non-city ownership, or otherwise deemed to no longer be a City of Milpitas property, should be transferred to another location eligible for naming. Should there not be an appropriate location, the name shall be added to the appropriate Naming List for future use.