MILPITAS CITY COUNCIL AGENDA
TUESDAY, AUGUST 20, 2013

455 EAST CALAVERAS BLVD, MILPITAS, CA
7:00 P.M.

SUMMARY OF CONTENTS

I. CALL TO ORDER/ROLL CALL by the Mayor (7:00 p.m.)

II. PLEDGE OF ALLEGIANCE

III. INVOCATION (Councilmember Gomez)

IV. APPROVAL OF COUNCIL MEETING MINUTES – August 6, 2013

V. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – August and September 2013

VI. PRESENTATION Recognition of SAFE Team Leaders

VII. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with asterisks*)

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 member of the City Council, 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. If removed, this item will be discussed in the order in which it appears on the agenda.

XII. UNFINISHED BUSINESS

1. **Receive Progress Report on the Bay Area Rapid Transit Extension Project (Staff Contact: Jeff Moneda, 408-586-3345)**

XIII. NEW BUSINESS

2. **Consider an Agreement Between SJB Child Development Centers (SJB) and the City of Milpitas for Use of the Milpitas Teen Center Building as a Family Resource Center (Staff Contacts: Jaime Chew, 408-586-3234 and Tom Williams, 408-586-3050)**

*** 3. Consider Request from Fil-Am Association of Milpitas to Waive Fees for Adobo Festival to be held August 31 and September 1, 2013 at Milpitas Sports Center (Staff Contact: Mary Lavelle, 408-586-3001)**

*** 4. Consider Request from St. John the Baptist Catholic Church to Waive Fees for Autumn Festival to be held September 6-8, 2013 on Church Grounds (Staff Contact: Mary Lavelle, 408-586-3001)**

XIV. RESOLUTIONS

*** 5. Adopt a Resolution Granting Final Acceptance of and Releasing Subdivision Improvement Bond for Paragon Residential Project No. 3204, Tract No. 9775 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

*** 6. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)**

*** 7. Adopt a Resolution Approving the Memorandum of Understanding with the Milpitas Employees Association and Approve the Side Letter Agreement Regarding the LIUNA National Pension Fund (Staff Contact: Carmen Valdez, 408-586-3086)**

*** 8. Adopt a Resolution Authorizing the City Manager to Execute the Software Maintenance Contract Renewal with Tritech Software System in the Amount of $97,765.54 and Subsequent Annual Renewals Based on CPI Adjustments (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 9. Adopt a Resolution Adding One Secretary Position and Eliminating One Office Specialist Position in the Planning and Neighborhood Services Department (Staff Contact: Steven McHarris, 408-586-3273)**

XV. CONTRACTS

*** 10. Approve and Authorize the City Manager to Execute Amendment No. 4 to the Agreement with CalRecovery, Inc. for Solid Waste Consulting Services by Increasing Compensation by $20,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

*** 11. Approve Amendment No. 5 to the Agreement with Gachina Landscape Management, Inc. for the Civic Center and Library Landscape Maintenance Service by Increasing the Contract Total to $38,221 for Year Two and $36,744 for Years Three through Five (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 12. Approve Amendment No. 8 to the Agreement with Jensen Landscape Services, Inc. for McCarthy Ranch Landscape Maintenance Services Increasing the Contract Total to $261,923 through Year Three and $72,879 for Years Four and Five (Staff Contact: Chris Schroeder, 408-586-3161)**

XVI. DEMANDS

*** 13. Receive Report of Emergency Repair of the Marylinn Drive Sewer Main, Approve a Budget Appropriation from the Sewer Fund, and Authorize Staff to Pay Preston Pipelines and Presidio Systems for Emergency Repairs in an Amount not to Exceed $40,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

*** 14. Approve Payment to Peelle Technologies for Annual Software/Hardware Maintenance for Document Imaging for One Year, Not-To-Exceed $23,801 (Staff Contact: Chris Schroeder, 408-586-3161)**

XVII. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 3, 2013 AT 7:00 P.M.

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 agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the 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: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

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

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

All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

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

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.

AGENDA REPORTS

XII. UNFINISHED BUSINESS

1. Receive Progress Report on the Bay Area Rapid Transit Extension Project (Staff Contact: Jeff Moneda, 408-586-3345)

Background: At the August 20, 2013 City Council meeting, the Program Manager from Santa Clara Valley Transportation Authority (VTA) will present a report on the Silicon Valley BART Extension project, the 10-mile extension from the Warm Springs Station in Fremont to the Milpitas Station to be located near the Great Mall and Berryessa Station to be constructed in San Jose. The project is entering the second year of the four-year major construction phase. Construction activities include relocating municipal utilities, constructing street improvements, constructing the rail extension, and building the stations and campuses. This presentation will include a brief overall Project Overview along with a presentation of the aesthetic designs for the Station/Campus in Milpitas.

Fiscal Impact: None.

Recommendation: Receive report from Santa Clara VTA staff at the Council meeting on the Bay Area Rapid Transit (BART) Extension Project.

XIII. NEW BUSINESS

2. Consider an Agreement Between SJB Child Development Centers (SJB) and the City of Milpitas for Use of the Milpitas Teen Center Building as a Family Resource Center (Staff Contacts: Jaime Chew, 408-586-3234 and Tom Williams, 408-586-3050)

Background: SJB and the Health Trust are contractors funded through First 5 Santa Clara County ("First 5") for the purpose of operating Family Resource Centers throughout the County. First 5 was established in 1998 with the passage of California Proposition 10 and is funded by a tax on tobacco. This revenue is managed by First 5 and used to provide programs that focus on a child's early development in the areas of health, education, social/emotional development and safety during the first five years of a child's life. First 5, in partnership with the Health Trust and SJB, approached the City seeking to establish a Family Resource Center (FRC) within the City of Milpitas.

City staff worked closely with representatives from First 5, the Health Trust and SJB to identify and locate possible opportunity sites for a Family Resource Center. After review of several site locations, it was agreed by the delegation and City staff that the building on the south side of the Milpitas Sports Center, previously the Teen Center, would be an ideal location. First 5 will provide funding to SJB and the Health Trust (two non-profit organizations) for operating and staffing the Milpitas Family Resource Center. Services proposed include but are not limited to free school readiness, health, and language development information to families with children prenatal through age five. First 5's objective is to increase the capacity of families within the City to help ensure children inclusive of participation by their families, caretakers, or legal guardians are healthy and prepared to enter school.

The primary operator of the Milpitas Family Resource Center will be SJB, which in turn will use professional resources such as counselors from the Health Trust. As such, the proposed lease agreement requested by First 5 will actually be consummated solely with SJB, again a contractor to and funded by First 5. Funding allocated by First 5 to SJB and the Health Trust is for two years – through June 30, 2015 and totals $231,000 or $115,000 per annum for the Milpitas Family Resource Center. As such, First 5 has requested the City enter into a short term property use agreement/lease for a portion of the property located at 1325 E. Calaveras Blvd known as the Teen Center.

It should be noted that City staff notified First 5, SJB and the Health Trust that this property was transferred from the Milpitas Redevelopment Agency to the City in 2011. The State Controller and Milpitas Oversight Board (a majority of which is made up of County staff personnel) have notified the City that they believe the asset transfer was invalid and the property should be returned to the Successor Agency-the Milpitas Redevelopment Agency as a result of retroactive provisions found in AB1x26 and AB 1343 related to the dissolution of redevelopment. The City disputes this and the parties are currently involved in litigation. First 5, SJB and the Health Trust acknowledge the existence of the pending dispute and understand the City may have to terminate any agreement prior to the expiration of the term of the proposed agreement.

In review of the request by First 5, City staff proposed a lease rate of $.55/sq.ft. This rate is consistent with rates charged to other non-profits located in City-owned facilities. In response to the proposed lease, First 5 - in association with SJB and the Health Trust - is seeking to reduce its operational cost to the greatest extent possible and is requesting a write-down of the lease to a dollar per year as well as an additional $1,500 in offsets for building permits and inspections. Although the Family Resource Center will provide tremendous community benefit, City staff including the City Manager does not have the authority to waive costs or write down lease terms as requested; only the City Council has the ability to approve such requests. In general, the provisions of the proposed agreement include the following:

- Lease Term - Commences on August 20, 2013 and expires on June 30, 2015.
- Base Monthly Rent - $1,361.25 per month.
- Condition of Premises – SJB will lease the premises in its "As Is" condition.
- Shared Cost – SJB will pay all costs and expenses relating to the Teen Center including water, gas, electricity, sewer, janitorial and other costs associated with the Teen Center. Shared cost for water, gas, electricity, and garbage disposal agreed upon is $650.00 per month.
- Hours of operation – SJB may use the premises during normal business hours: Monday through Friday from 8:00 am – 5:30 pm, with occasional evening and weekends.
- SJB must meet the insurance requirement satisfactory to the City's risk manager.
- City will provide certain tenant improvements at no cost to SJB: paint first floor interior of the Teen Center, change locks to doors, install safety card key entry to doors leading to restrooms and pool, and install an exterior sign provided by SJB.

Recommendation: Consider agreement with SJB Child Development Centers commencing on August 20, 2013 and expiring June 30, 2015 for the use of the Milpitas Teen Center facility for a Family Resource Center and write down the rent amount of $1,361.25 per month ($.55/sq.ft) to $1.00/year; plus waiver of building permit and inspections fees up to $1,500.

* **3. Consider Request from Fil-Am Association of Milpitas to Waive Fees for Adobo Festival to be held August 31 and September 1, 2013 at Milpitas Sports Center (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: In late July, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from Fil-Am Association of Milpitas. The request is for the City Council to waive City fees for the upcoming "Adobo Festival" to be held on the grounds of the playing field at the Milpitas Sports Center. The location has been reserved and deposit fees paid in the amount of $520 toward the $1,000 cost for site rental. City fees to be incurred include a building permit for electrical inspection of the site when set up ($167.05), Fire Inspection permit fees ($2,081.77), and Special Events permit fee ($250) from Planning Department.

Per adopted Council policy, staff overtime costs may not be waived, and thus, fees that might be considered to be waived would be: Temporary Assembly Fire Permit ($1312), Archive fee ($25) and Building Permit ($167.05), totaling $1,504.05.

Fiscal Impact: $20,000 was approved and included in the FY 2013-14 City budget for City Council's Unallocated Community Promotions. If this request is approved, then $18,000 would be the remaining balance.

Recommendation: Move to approve fee waiver up to $1,500 maximum covering Fire and Building City fees related to Fil-Am Association Adobo Festival, scheduled August 31, 2013 and September 1, 2013.

* **4. Consider Request from St. John the Baptist Catholic Church to Waive Fees for Autumn Festival to be held September 6-8, 2013 on Church Grounds (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from St. John the Baptist Catholic Church on August 9. Volunteers for the Festival committee have applied for a Special Event Permit from the City, and the event will be considered separately for approval by the Planning Commission Subcommittee. At this time, the church is requesting that the City Council waive fees charged to St. John to put on its annual Autumn Festival.

City Fees charged to the church for Autumn Festival include:	
Special Event permit application – Planning Dept.	$ 250.00
Fire Marshal inspection permit + fees:	$ 1,343.77
Electrical Permit from building inspector	$ 167.05

Fiscal Impact: $20,000 was approved and included in the FY 2013-14 City budget for City Council's Unallocated Community Promotions. If the current donation (and the one above for Adobe Festival) request is approved, then $16,500 would be the remaining balance.

Recommendation: Consider the request from St. John the Baptist Catholic Church and move to waive Fire and Building inspection fees up to $1,500 maximum for those City fees related to Autumn Festival on the weekend of September 6, 7, and 8, 2013.

XIV. RESOLUTIONS

* **5. Adopt a Resolution Granting Final Acceptance of and Releasing Subdivision Improvement Bond for Paragon Residential Project No. 3204, Tract No. 9775 (Staff Contact: Ebby Sohrabi, 408-586-3335)**

Background: On April 3, 2012, City Council adopted Resolution No. 8170 approving the initial acceptance of the public improvements valued at approximately $800,000 for Paragon Townhomes, constructed by Western Pacific Housing (D.R. Horton). Western Pacific Housing (D.R. Horton) completed the corrective work on defects, damages, or imperfections for the one-year warranty, and therefore is ready for the final acceptance.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of and releasing subdivision improvement bond for Paragon Townhomes, Project No. 3204.

* **6. Adopt a Resolution Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for Council review and approval. Finance staff continues to monitor changes to California Government Code in

regards to investment parameters and allowable investments that may impact the City's investment policy.

Staff proposes two minor changes to the Investment Policy:

1) Competitive Bidding – The Policy requires at least three bidders on the purchase and sale of non- "new issue" securities. Staff proposes to add an exception to exclude competitive bidding for the purchase and sale of U.S. Treasury securities. While it is advantageous to obtain at least three quotes on the purchase or sale of all other securities because of price variations that one may receive from different brokers/dealers, the price of U.S. Treasury securities is standard and does not vary. Staff proposes to add "with the exception of U.S. Treasury securities" to the Investment Parameters Competitive Bidding Section on page 4 of the Policy to eliminate this requirement for the purchase and sale of U.S. Treasury securities.

2) Modify the maturity limitation from two years to five years for Negotiable Certificates of Deposit investment. The State Law allows investment in securities not to exceed five years maturity. The City's Investment Policy was more conservative and further restricted the maturity limit to two years for Negotiable Certificates of Deposit. Unlike non-negotiable Certificates of Deposit which are essentially time deposits, negotiable Certificates of Deposit are readily marketable and can be sold if necessary. The current two years maturity requirement limits the City's opportunity to obtain better yields in investing in negotiable Certificates of Deposit that have longer maturity. Staff proposes to change the two years limit to five years in the Authorized Investments Negotiable Certificates of Deposit Section on page 6 and Maximum Investment Maturity and Percentage Section on page 8 of the Investment Policy.

The Policy is in compliance with the provisions of California Government Code Sections 16429.1-16429.4 and 53600-53610, the authority governing investments for municipal governments.

Fiscal Impact: None.

Recommendation: Adopt a resolution of the City of Milpitas approving the Annual Investment Policy.

* **7. Adopt a Resolution Approving the Memorandum of Understanding with the Milpitas Employees Association and Approve the Side Letter Agreement Regarding the LIUNA National Pension Fund (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The most recent Memorandum of Understanding (MOU) with the Milpitas Employees Association (MEA) expired on December 31, 2012. City representatives and representatives from MEA met and conferred in good faith to negotiate a new contract and a side letter agreement for the Laborers International Union of North America (LIUNA) National Pension Fund. Agreement was reached with a new successor Memorandum of Understanding with effective date of January 1, 2013 to December 31, 2013. Copies of the MOU and Side Letter Agreement are included in the Council agenda packet and are on file in the City Clerk's office.

Fiscal Impact: This is a one year contract with approximately five months remaining, with the cost for the remaining five months of $65,000.

Recommendations:
1. Adopt a resolution approving Memorandum of Understanding with the Milpitas Employees Association (MEA) covering the period of January 1, 2013 through December 31, 2013.
2. Authorize the City Manager to execute a Side Letter Agreement with MEA regarding the LIUNA National Pension Fund.

* **8. Adopt a Resolution Authorizing the City Manager to Execute the Software Maintenance Contract Renewal with Tritech Software System in the Amount of $97,765.54 and Subsequent Annual Renewals Based on CPI Adjustments (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: City and Tritech Software Systems, Inc. entered into an agreement on October 21, 2003 for Computer Added Dispatching software. Tritech Software Systems has been the backbone of the Police and Fire Main computer systems since 2003. The system is proprietary and only Tritech can provide annual software maintenance services to the system. The current software maintenance term expires on August 31, 2013 and as part of the original agreement, software maintenance renewal is subject to annual agreement between the parties. Staff recommends adoption of a resolution authorizing the software maintenance renewal from September 1, 2013 to August 31, 2014 in the amount of $97,765.54 with the ability for staff to exercise up to four (4) subsequent annual renewals with annual software maintenance fee increases based on the national CPI index, subject to funding appropriation by the City Council and no other City Council approval required. It should be noted that the national CPI has ranged from 1% to 3% over the previous few years.

Fiscal Impact: None. Funding for this purchase is available from the Information Services operating budget for FY 2013-14.

Recommendations:
1. Adopt a resolution authorizing the City Manager to execute the software maintenance contract renewal with Tritech Software Systems, Inc. from September 1, 2013 to August 31, 2014 in the amount of $97,765.54.00; and
2. Authorize the City manager to exercise up to four (4) annual options with annual fee increases based on the national CPI, subject to appropriation of funds and without further City Council approval.

* **9. Adopt a Resolution Adding One Secretary Position and Eliminating One Office Specialist Position in the Planning and Neighborhood Services Department (Staff Contact: Steven McHarris, 408-586-3273)**

Background: The current economic recovery has resulted in a substantial increase in planning and building service activity within the Planning & Neighborhood Services Department. Calls for service regarding planning, zoning, code enforcement, housing, and enforcement are also on the rise. At present, the Department operates with one Office Specialist that provides basic clerical duties to the entire department. This position will be vacated due to an interdepartmental reassignment effective August 19, 2013. The Department Director proposes to eliminate the vacant Office Specialist position and establish a new Secretary position. The Secretary position will provide the ability to recruit an individual with more advanced skill sets, not only related to clerical, but also with professional organization skills, department coordination and liaison skills that will assist the Department Director and mid-managers in their daily management and work flow activities.

This position would serve as Secretary to the Director of Planning & Neighborhood Services and would include administrative support duties as those relate to budget tasks, files and records, customer service, preparing meeting notes and minutes for Commissions and Boards, maintaining appointment schedule and calendars, arrange meetings, conferences and travel arrangements, purchasing, personnel activities, compile data, prepare reports and special documents as assigned, handling service request from the public, monitor expenditures, establishing relationships with internal staff, officials, dignitaries, etc. The Secretary position would also provide skills and knowledge with various software programs such as Microsoft Word, Excel, PowerPoint, and other office programs related to equipment.

This position will assist the Director of Planning and Neighborhood Services and mid-managers with day-to-day management and organization of the department and allow the director to serve more effectively, independent from the day-to-day routine administrative duties.

Fiscal Impact: There will be no fiscal impact. There is funding available in the Department's FY 2013–14 operating budget.

Recommendation: Adopt a resolution authorizing a request to add one Secretary position and eliminating one Office Specialist position in the Planning & Neighborhood Services Department.

XV. CONTRACTS

*** 10. Approve and Authorize the City Manager to Execute Amendment No. 4 to the Agreement with CalRecovery, Inc. for Solid Waste Consulting Services by Increasing Compensation by $20,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: The City has an on-call contract with CalRecovery to provide expert consulting services for odor issues and other solid waste related matters. CalRecovery is currently working on issues related to the Newby Island landfill expansion Environmental Impact Report. To continue CalRecovery's support, staff recommends increasing the contract amount by $20,000 for a total contract value not to exceed $69,000.

Fiscal Impact: None. There are sufficient funds available in the FY 2013-14 Engineering operating budget.

Recommendation: Approve and authorize the City Manager to execute Amendment No. 4 to the contract with CalRecovery Inc. for solid waste consulting services by increasing compensation in the amount of $20,000, for a total not-to-exceed $69,000.

*** 11. Approve Amendment No. 5 to the Agreement with Gachina Landscape Management, Inc. for the Civic Center and Library Landscape Maintenance Service by Increasing the Contract Total to $38,221 for Year Two and $36,744 for Years Three through Five (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On September 21, 2011, Gachina Landscape Management, Inc. was awarded a three year contract with two one year options to provide landscape maintenance service for the Civic Center and the Library. The contract is based on an award of $30,620 per year and, over time, has increased to $34,713.48 with various amendments. Amendment No. 5 expands the scope of the contract to include annual plantings at City Hall and the Senior Center that were not contemplated in the original agreement. This will increase the total value of the five year contract to an amount not to exceed $180,392.

Fiscal Impact: None. This is a programmed expense approved in the FY 2013-14 budget for Public Works.

Recommendation: Approve Amendment No. 5 to the Agreement with Gachina Landscape Management, Inc. for the Civic Center, Library Landscape Maintenance Service increasing the contract total to $38,221 for year two, and $36,744 for years three through five for a total contract amount not to exceed $180,392.

*** 12. Approve Amendment No. 8 to the Agreement with Jensen Landscape Services, Inc for McCarthy Ranch Landscape Maintenance Services Increasing the Contract Total to $261,923 through Year Three and $72,879 for Years Four and Five (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On August 30, 2010, the City Council awarded Jensen Landscape Service, Inc. a three-year contract with two one-year options to provide landscape maintenance service in the McCarthy Ranch Landscape and Lighting Maintenance District 95-1. The contract is based on an award of $62,879 per year, totaling $188,637 for three years. The contract amount was increased over time by various amendments to $247,895 to pay for irrigation repairs and plant replacement not covered by the original scope of work. Amendment No. 8 will further increase the contract amount by $14,028 to cover current contract year's unforeseen incidental irrigation repairs and annual plantings. In the last two option years, staff proposes that the contract amount be increased by $10,000 in each year to cover incidental repairs.

Fiscal Impact: None: This is a programmed expense approved in the FY 2013-14 budget for the McCarthy Ranch Landscape Maintenance District No. 95-1.

Recommendation: Approve Amendment No. 8 to the Agreement with Jensen Landscape Services, Inc. for McCarthy Ranch Landscape Maintenance Services, increasing the contract total to $261,923 from August 30, 2010 to August 29, 2013 and $72,879 for each of the remaining two years of the contract.

XVI. DEMANDS

*** 13. Receive Report of Emergency Repair of the Marylinn Drive Sewer Main, Approve a Budget Appropriation from the Sewer Fund, and Authorize Staff to Pay Preston Pipelines and Presidio Systems for Emergency Repairs in an Amount not to Exceed $40,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: Per Council Resolution No. 7779 and Public Contracts Code Section 22050, the Director of Public Works must report all emergency public works repairs he ordered to the City Council. At about 11:00 a.m. on July 19, 2013, a 27-inch diameter reinforced concrete sewer main on Marylinn Drive collapsed at the intersection of Heath Street. The sewer main serves approximately 25% of the customers within the City and is one of only four crossings under Interstate 880. Public Works crews responded and identified the segment of collapsed pipe and closed the intersection to traffic.

Due to the size of the repair and the necessity to maintain sewer flow, the Director of Public Works authorized Preston Pipeline to make the repairs immediately rather than soliciting competitive bids from various contractors. Preston mobilized a crew by 4:00 p.m. and worked through the next two days with City crews to maintain sewer service to residents and businesses. In addition to the repairs, the sewer main needed to be cleaned and flushed to remove debris that had fallen into the line. The Director of Public Works authorized Presidio Systems on July 25, 2013 to perform the cleaning, flushing and video inspection of the line to determine if there were any other segments of the line that were damaged. The City's 2013 Street Resurfacing contractor who was working within the neighborhood, was directed by contract change order to complete the necessary street repairs associated with this work, which have been completed. Preston Pipelines and Presidio Systems have not submitted invoices for this work, but based on its known deployment of workers and equipment, cost is not expected to exceed $40,000. This repair is temporary and subsequent sewer work will be necessary.

The Marylinn Drive reinforced concrete sewer main was installed in 1953 and is reaching the end of its design life. Engineering is adding the segment of sewer main from Abbott Avenue to the westside of Interstate 880 for replacement within the Sewer Replacement Projects in the current Capital Improvement Program, and the design will start in the fall. This project is categorically exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines for restoration or rehabilitation of deteriorated or damaged structures.

Fiscal Impact: An appropriation from the Sewer Fund in the amount of $40,000 is needed due to insufficient funds in Public Works operating budget for this emergency work.

Recommendations:

1. Receive this report from the Public Works Director for emergency public works repair to the sewer main on Marylinn Drive.
2. Approve a budget appropriation of $40,000 from the Sewer Fund to the Public Works operating budget.
3. Authorize staff to pay invoices for emergency repair work to Preston Pipelines and Presidio Systems in an amount not to exceed $40,000.

*** 14. Approve Payment to Peelle Technologies for Annual Software/Hardware Maintenance for Document Imaging for One Year, Not-To-Exceed $23,801 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: In 2004, City staff went through a competitive process and evaluated document imaging software and hardware from a variety of different companies. Peelle Technologies was determined to have the best value for the City. Since then, the City also purchased Peelle's Kofax Ascent Capture software and two Fujitsu scanners to support the internal document imaging work performed by staff. Peelle Technologies is the only source for maintenance and support of its hardware and software, and staff therefore recommends payment of the Renewal Agreement. The renewal covers the period from June 28, 2013 to June 28, 2014.

Fiscal Impact: None. Funding for this purchase is available from the Information Services operating budget for FY 2013-14.

Recommendation: Approve renewal of the annual Peelle Technologies Software/Hardware Maintenance Agreement for one year from June 28, 2013 to June 28, 2014 for the not-to-exceed amount of $23,801.

XVII. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 3, 2013 AT 7:00 P.M.

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Regular Meeting of Milpitas City Council**
Date:	**Tuesday, August 6, 2013**
Time:	**6:00 PM**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:01 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano, Gomez, and Montano

ABSENT: None

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:17 PM.

ANNOUNCEMENT

On the agreement with Milpitas Employees Association (MEA), City Attorney Mike Ogaz announced that the City had reached agreement with MEA for a new one-year agreement, terms of which included a 3% salary restoration upon adoption, plus a 3% additional salary increase if the MEA picked up payment of LIUNA pension contributions.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Pastor Dan Griffiths provided invocation prayer to start the meeting.

MINUTES

Motion: to approve meeting minutes of June 18, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

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

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for August 2013, as amended

City Manager Tom Williams noted that the Sister Cities Commission would not meet this month (no meeting on August 22 as typed on calendar).

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

PRESENTATIONS

Mayor Esteves presented three items:

1. A commendation to Mr. and Mrs. John Leonie along with their two sons Leonard and Daniel for Heroic Acts, performed during a recent emergency, a residential fire, in Milpitas.
2. A proclamation promoting Volunteerism in the Community and the Milpitas Cares organization, accepted by Pastor Dan Griffiths and resident Robert Maize.
3. Recognition of Milpitas Resident Lou Horyza for his participation in Fremont's 4th of July Parade. He volunteered to drive Mayor and Gomez in his own made-in-Milpitas 1964 Ford Mustang convertible car on that holiday.

PUBLIC FORUM

Mr. Sharma, a Milpitas resident, spoke to the City Council about the disappointing condition of 1.7 acres of land next door to the Milpitas Library. He felt it was turning into a dumping area with piles of soil and debris on the undeveloped land, including cement, concrete, and other truck debris. He asked to put this matter on a future agenda for action.

Mayor Esteves asked the City staff to take note of the report from Mr. Sharma.

Pete McHugh, Milpitas resident, and two other members of St. John the Baptist Catholic Church, asked the Council to consider changing the maximum amount that can be awarded in bingo games for non-profit organizations. State law recently changed to allow a higher maximum prize, beyond the City's $250 current amount. Church volunteers requested the City change to the maximum $500, in order to attract as many people as would like to play popular bingo on Monday nights.

Mayor Esteves asked staff to place this subject on a future meeting agenda for consideration.

Aminja Kaur, Milpitas resident, asked to bring the issue of taxi regulation and to promote licensing of taxicabs in the City. It was questionable to continue with unregulated taxicabs in the City and she sought regulations like other nearby cities San Jose and Santa Clara. She had valuable suggestions for new regulations with concern especially for safety, but also licensing could bring new revenue to the City if licenses or permits were issued.

Mayor Esteves asked staff to report back on her suggestion.

ANNOUNCEMENTS

City Clerk Mary Lavelle announced that there was a ballot box to drop off Measure A Library tax ballots, for those participating in the vote-by-mail election this month. The secure box was located on the 3rd floor of City Hall and would be available until August 27, the final voting day.

Vice Mayor Polanski had recently visited a new dental mobile clinic and it was very nice. She recently brushed up on SAFE training with the City at Fire Station 1 in July. National Night Out was planned for Thursday night, August 9 with many neighborhood parties scheduled and participation by police officers that night.

Councilmember Giordano sent out a request to all car buffs to participate in the upcoming Veterans Commission Car Show, planned for October 19. It would be a fun "car meet" to display older model cars while raising funds for the Commission to help out veterans in Milpitas. Applications would be available at all City facilities to join the show.

Mayor Esteves recognized two Korean officials present in the audience: Consul General of Korea from San Francisco and also the President of the Korean American Federation.

Also, the Mayor asked the Police Chief to provide Councilmember with the current list of the various neighborhood parties for National Night Out.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions and the response was none for both.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

Councilmember Gomez asked to remove item no. 5 (report from PG&E) from the agenda.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Montano requested removal of the following agenda items from consent:
No. 11 Recycling Grant from State of California
No. 13 Resolution of Initial Acceptance of Alviso Adobe Renovation
No. 19 Resolution approving Contracts for Senior Nutrition Program
No. 21 Plans and Specifications for Soundwall Renovations
No. 24 Agreement for Assessment to Prepare for Standards of Response Coverage

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

Mayor Esteves presented signed Resolutions to Korean officials for agenda item no. 20.

* 3. Receive odor reports — Received June and July 2013 odor control reports.

* 4. Commission Appointments — Confirmed the following Mayor's appointments to five Commissions:

Emergency Preparedness Commission:
Re-appointed Don Clendenin to a term that will expire in June 2016.
Appointed Betty Jo Reutter as a regular member to a term that will expire in June 2016.
Newly appointed Nasir Lalani as Alternate No. 1 to a term that will expire in June 2015.
Newly appointed Evelyn Chua as Alternate No. 2 to a term that will expire in June 2015.

Library Advisory Commission:
Re-appointed Sonny Wang to a term that will expire in June 2015.

Parks, Recreation, and Cultural Resources Commission:
Re-appointed Vishnu Mathur to a term that will expire in June 2016.

Recycling and Source Reduction Advisory Commission:
Appointed Madan Arora as a regular member to a term that will expire in October 2013.
Appointed Eddie Inamdar as Alternate No. 1 to a term that will expire in October 2013.
Newly appointed Conrad Chua as Alternate No. 2 a term that will expire in October 2014.

Senior Advisory Commission:
Appointed Patrick Yung as Alternate No. 1 to a term that expires in December 2013.
Newly appointed Jae Kuk Wi as Alternate No. 2 to a term that expires in December 2014.

* 6. Economic Development Commission By-Laws — Approved amending the Economic Development Commission By-Laws to include economic development aspects as it relates to Sister Cities Commission.

* 7. Library Advisory Commission By-Laws — Approved changes to Sections 5 (Officers) and 6 (Meetings) of the Library Advisory Commission's By Laws.

*10. Donation Request — Approved a $500 donation to BAPS Charities for July walkathon benefit.

*12. Investment Portfolio — Received the investment report for the quarter ended June 30, 2013.

*14. Resolution — 1. Adopted Resolution No. 8279granting initial acceptance of the Fairfield (Cerano) Project No. 3170, subject to a one-year warranty period and reduction of the faithful performance security to $440,000.
2. Accepted fee title to Cerano Park in accordance with CA Government Code.
3. Authorized budget appropriation in the amount of $361,776 from the park funds for the reimbursement to the developer for park improvements.

*15. Resolution — Adopted Resolution No. 8280 granting final acceptance of and releasing subdivision improvement bond for MIL Aspen Family Apartments Project No. PJ 3199.

*16. Resolution	Adopted Resolution No. 8281 granting final acceptance of Department of Energy Grant Program, Project No. 5094 and releasing the contractor's bond.
*17. Resolution	Adopted Resolution No. 8282 approving the Letter of Agreement between the City of Milpitas and the Association of Milpitas Battalion Chiefs.
*18. Resolution	Adopted Resolution No. 8283 authorizing filing an application for funding assigned to MTC in the amount of $1,652,000, committing necessary matching funds of $215,000, stating the assurance to complete the 2014 Road Rehabilitation Project, CIP No. 3412, in compliance with the grant program, and authorizing the City Manager to negotiate and execute all grant-related documents.
*20. Two Resolutions	Adopted Resolution No. 8285 requesting investigation by U.S. officials of claims of sexual slavery in World War II. Adopted Resolution No. 8286 recognizing July 27, 2013 as Korean War Armistice Day.
*22. Agreement with County for Grant Funds	Approved entering into an agreement with the County of Santa Clara to finalize the grant process for 2010 Homeland Security Grant funds that were used by the City.
*23. Amendment to Agreement with CDM Smith Inc.	Approved and authorized the City Manager to execute Amendment No. 3 to the consultant services agreement with CDM Smith Inc. (formerly Camp, Dresser & McKee) for solid waste program support by increasing compensation in the amount of $16,780, for a total not-to-exceed amount of $55,400.
*25. Contract with Renne Sloan Law Firm for Legal Services	Approved the contract with the law firm of Renne Sloan Holtzman Sakai, LLP, in the not-to-exceed amount of $70,000 and an appropriation from the contingency reserve fund in that amount to fund the contract.
*26. Payment to Vendor	Authorized payment to Cayenta for software support and maintenance for the financial and utility billing system in the not-to-exceed amount of $132,194.65 for FY 2013-14.
	Councilmember Gomez thanked Councilmember Montano for bringing forward Item No. 6 regarding economic development efforts with Sister Cities and for placing it on the agenda.

PUBLIC HEARINGS

1. Request for Flag Ceremony

City Clerk Mary Lavelle reported receipt of an application for a flag ceremony on August 16, from the Federation of Indo Americans of Northern California, as well as a facility rental application form for use of the City Hall rotunda and outside back patio.

Two representatives from FIA addressed the City Council about their planned event, invited the City Council to visit Fremont for the Festival of India and parade on August 18 in Fremont. They looked forward to having the first-ever event in Milpitas to serve the growing population of Indo-Americans who live here and invited the Councilmembers.

Mayor Esteves opened the public hearing, and heard no speakers.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

Motion: to approve a flag ceremony by Federation of Indo Americans at City Hall rotunda and outside back patio on Friday, August 16, 2013 from 6:00 to 8:00 PM

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

2. Weed Abatement Assessments

Fire Marshal Albert Zamora described the need to remove the public nuisance, namely weeds, on certain properties in the City of Milpitas. Those whose properties were cleared of weeds by the Santa Clara County Agriculture Department, following notification, would be liened for the costs on their property tax bill. He referred to the list of properties and the owners who were notified (per list with Resolution in the Council's agenda packet). Mr. Zamora introduced Mr. Moe Kumre from the County Department of Agriculture who was present to answer any questions.

Councilmember Giordano inquired about the fee amounts on the list. Mr. Kumre explained the fees ranged $250 to higher amounts, the lowest being the failed inspection fee. Higher fee included the cost for the contractor doing the abatement, cutting weeds.

Mayor Esteves opened the public hearing for speakers.

Bill Silker, a hills resident and property owner on the list, complained that the County did not tell owners when they were going to come up and inspect property. So, he disagreed with the whole procedure, and noted types of soil in hills, with the dry/damp cycle and soil erosion that occurred. He did not mow until mid-May usually, needing to maintain the seed base. He suggested a need to correct the process.

Don Peoples, a hills resident, discussed cutting grass on hillside property and the moisture content of grass. The timing of weed cutting was very important, he realized.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Polanski

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

Councilmember Montano appreciated comments from the speakers. Soil erosion was important to keep track of, so she wanted staff to re-visit this, create a waiver if possible and/or determine a certain time period for weeds to be cut.

Mayor Esteves asked County staff to respond. Mr. Kumre said there were two issues: safety and understanding conditions on the hill as different from flat lands, and the fact that property owners could always ask for a change in time frame. He had discussed the first issue with the Fire Marshal (about seeds, etc.), and so would like to ask for scientific input from the Department of Agriculture and biologists from University of California, to best deal with hillsides. In January, he could return to City Council with input.

Councilmember Giordano wanted to know if it was a county policy, not just the City. Mr. Kumre said different cities have different deadlines. She was glad the existing policy was flexible already and the county could work it out with property owners. She did not see the need to change what was is in place.

Vice Mayor Polanski noted that looking at terrain with experts and a recommendation to come in January was an excellent way to move forward, and thanked Mr. Kumre.

(2) Motion: to adopt Resolution No. 8277 confirming assessments on tax bills for the weed abatement in 2013; and, also to ask staff to review policy for any issues to change and bring those back to the Council, if needed

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

REPORTS

Three items were approved on consent calendar.

5. Request regarding PG&E

This matter was removed item from the agenda.

NEW BUSINESS

8. Chamber Request to Approve Festival Event

Planner Director Steve McHarris explained the request the City had received from the Milpitas Chamber of Commerce to host its "International BBQ and Festival" on South Milpitas Blvd. over the weekend of September 28-29, 2013. The Chamber sought either the City to be a co-sponsor of the event, or, a simple fee waiver up to $1500.

Councilmember Giordano was excited about the Festival. Diversity in this community was significant, and the festival would help promote business so she said yes. She wanted the City of Milpitas to support the effort for the festival.

Councilmember Montano felt it had been a long time since she had seen a community event like this. She believed it was a good way to bring people together cohesively, and she supported Option 2 to co-sponsor.

Vice Mayor Polanski loved barbeque, so she could not say no. She thought it was wonderful to have such a type of event in Milpitas. She asked where the funds would come from to cover the fees not collected, if the city was a co-sponsor.

City Manager Tom Williams said there were sufficient funds in contingency reserves to cover the costs.

Vice Mayor Polanski moved, and Councilmember Gomez seconded, Option 2 to have the City of Milpitas be a co-sponsor of the Chambers' International Festival and BBQ and waive fees in the total amount of $12,450.

Mayor Esteves asked what did "co-sponsor" mean? Staff responded it would include participation beyond the policy for a fee waiver. Carol Kassab, Chamber of Commerce executive, expressed that the City logo would be on all marketing material, on banners, city-wide events, inviting all from Silicon Valley to visit Milpitas on festival dates.

Ms. Kassab responded to the Mayor about insurance for liability purposes and understood that certificates were necessary. Mayor Esteves asked her the goals for attendance at the event. She anticipated 5,000 per day, had done some marketing, and described advertising for the event to date. With expenses expected to be $77,000 to put on the festival, the Chamber was seeking more sponsors even beyond the City.

Mayor Esteves asked for comments.

Tom Valore, from Chamber of Commerce Board, emphasized past actions of the City Council supporting the Chamber. This event was critical for financial survival of the Chamber of Commerce, and to ensure that the Chamber makes it through the future. It was imperative to have success.

Councilmember Montano asked about any conflict with St. John Autumn Festival. Chamber staff noted other events were on different weekends. Ms. Montano asked about public safety and alcohol served at the event.

Police Chief Pangelinan commented on police service based on the past Art & Wine Festivals, noting that few problems were anticipated. Fire Chief Sturdivant suggested having a dedicated response unit for the event and possibly even a contracted dedicated ambulance, mostly due to alcohol sales.

Councilmember Giordano asked the police chief about parking. He said the Chamber and City would have to work it out. In the past, unoccupied office buildings on Milpitas Blvd. allowed parking on the weekend. Ms. Kassab said the Chamber was working with Flextronics for an agreement for vendor parking and would need to negotiate with all property owners for parking at those business buildings.

Motion and second for the approval of co-sponsorship of the Chamber's Festival event (Option 2 recommended by staff) are noted above.

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

9. Demonstration of New Mobile Application

Telecommunications Commission Chairman Dinesh Gupta addressed the Council to introduce the new mobile application ("app") program designed by staff that Commissioners had already seen and wholeheartedly supported. He hoped the Council would be as impressed as the Commission was.

Acting Director of Information Services Mike Luu presented the product for use on mobile communication devices, starting with iphone. The new City of Milpitas mobile application would be available for the public to stay informed about City business and provide a fast way to report service needs when residents were out and about in the community. The program was developed in-house for no extra cost or fee, versus a costly off-the-shelf product, as used in other cities.

Mr. Luu introduced Daniel Nam, the developer of the app. Mr. Nam explained features of the app, showed a video, and discussed objectives.

Many positives reactions were received in comments from the City Council.

In response to inquiry from the Mayor, Councilmember Giordano recommended that City staff evaluate the efficiency of being able to respond to calls for service, since that was important. Perhaps in 60-90 days, staff would come back to Council with a report on how it was going (especially Public Works).

Motion: to receive the report from staff and approve the implementation of the new City of Milpitas mobile application

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

11. Receive Cal Recycle Grant

Councilmember Montano expressed her desire to receive a copy of the grant document, and City Engineer Jeff Moneda agreed to provide that to her.

Motion: to approve receipt of the CalRecycle Grant in the amount of $18,177, from State of California from Resources Recycling and Recovery Beverage Container Program

Motion/Second: Councilmember Montano/Vice Mayor Polanski

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

RESOLUTIONS

Six Resolutions were adopted on the consent calendar.

13. Resolution for Initial Acceptance of Alviso Adobe Renovation Phase IV

Councilmember Montano asked about the warranty period, the process for final approval of projects and why the performance bond was released. The City Manager explained it was set up so that if a contractor did not complete the work on a project, funds were

available from bond proceeds to finish. Once the work was finally done, the bond was released and project accepted. The City Attorney noted a typical one year warranty period, for contractor's duty to correct steps necessary to City's satisfaction.

Motion: adopt Resolution No. 8278 granting initial acceptance of Alviso Adobe Renovation Phase IV, Project No. 5055, subject to a one year warranty period, and reduction of the faithful performance bond to $256,793.11

Motion/Second: Councilmember Montano/Councilmember Giordano

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

Vice Mayor Polanski stepped away from the podium briefly.

19. Resolution for Senior Nutrition Program Agreements

Councilmember Montano removed this item from consent in order to inquire of staff whether they surveyed the senior citizens about the menu options offered for the lunch program, and whether this program included "Meals on Wheels." Stephanie Douglas, Recreation Supervisor at the Senior Center, responded to the question indicating that each year the seniors were surveyed by the County, in order to best meet the needs of the senior lunch participants. Staff said program did not include Meals on Wheels.

City Council was then requested to take action to approve the following:

1. Authorize the City Manager to execute Amendment No. 2 to the Master Senior Nutrition Program Agreement with the County of Santa Clara retroactively effective from July 1, 2013 to June 30, 2014 in the amount of $168,955.
2. Authorize the City Manager to execute an agreement for the Senior Nutrition Program with Compass Group USA dba Bateman retroactively from July 1, 2013 to July 31, 2014 with four one-year options in the initial amount of $74,976 and authorize the City Manager to exercise annual option(s) based on the approved annual budget from Santa Clara County and subject to annual appropriation of the City Council for the Senior Nutrition Program.
3. Authorize the City Manager to execute an agreement for the Senior Nutrition Program with Frank Szeto, an individual, dba New Orient Restaurant retroactively from July 1, 2013 to December 31, 2013 in the amount of $18,774.

Motion: to adopt Resolution No. 8284 authorizing three actions listed above for the Senior Nutrition Program

Motion/Second: Councilmember Montano/Councilmember Giordano

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

CONTRACTS

Three agreements and other documents were approved on consent calendar.

21. Plans and Specifications for Project No. 4267

Councilmember Montano had removed this item from consent, in order to request that staff provide the documentation (in agenda packet) in larger style font so that she could more easily read the detailed information in the agenda packet. She also inquired about "sound control" mentioned in the report.

Motion: to approve the plans and specifications for Soundwall Renovations 2013 Project No. 4267 and authorize advertisement for bid proposals

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5

NOES: 0

24. Agreement for Standards of Response Coverage

Councilmember Montano asked questions to be clear about the purpose for this agreement, and Fire Chief Sturdivant responded explaining the value of ultimately having the Standards of Coverage document for Milpitas Fire Department. The action requested on this agenda was only the first step, in a scientific approach.

Motion: to authorize the Fire Chief to execute an agreement with the Center for Public Safety Excellence for technical support services and development of the Milpitas community risk assessment and Milpitas Fire Department Standards of Coverage document

Motion/Second: Councilmember Montano/Councilmember Giordano

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

DEMAND

One demand for payment was authorized on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:28 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

July 2013						
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			

September 2013						
S	M	T	W	T	F	S
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Council Calendar

August 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 **5:30 PM**-VTA Board of Directors (JE)	**2**	**3**
4	**5** **10:00 AM-**SVRT Program Committee (JE) **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP)	**6** **6:00 PM**-Closed Session **7:00 PM**-City Council	**7** **5:30 PM**-Veterans Commission (DG) **7:00 PM**-Community Advisory Commission (AG)	**8** **4:00 PM**-VTA Policy Advisory Committee (AG) **7:00 PM**-Youth Advisory Comm. (DG) **30th Annual National Night Out** **6:00-9:00 PM**	**9**	**10**
11	**12** **6:00 PM**-Economic Development Commission (CM)	**13**	**14** **7:00 PM**-Planning Commission	**15** **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose)	**16**	**17**
18	**19** **7:00 PM**-Telecommunications Commission (AP)	**20** **7:00 PM**-City Council	**21** **5:30 PM**-Veterans Commission Special Meeting (DG)	**22** **7:00 AM**-Milpitas Chamber of Commerce Board (DG)	**23**	**24**
25	**26** **4:00 PM**-Oversight Board (AG) **7:00 PM**-Public Arts Committee Special Meeting (DG)	**27** **1:30 PM**-Senior Advisory Commission (JE)	**28** **7:00 PM**-Planning Commission	**29** **12:00 PM**-Terrace Gardens Board of Directors (DG) **3:30 PM**-Recycling and Source Reduction Advisory Commission Special Meeting (site visit to Wrigley Ford Pump Station)	**30**	**31**

08/13/2013

August 2013						
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

October 2013						
S	M	T	W	T	F	S
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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		

Council Calendar

September 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 **6:00 PM**-Closed Session **7:00 PM**-City Council	4 **7:30 AM**-VTA Northeast Group (JE) **5:30 PM**-Veterans Commission Special Meeting (DG) **7:00 PM**-Community Advisory Comm. (AG)	5 **5:30 PM**-VTA Board of Directors (JE) **7:00 PM**-Bicycle Pedestrian Advisory Commission (AG)	6 **8:30 AM**-Coyote Flood Protection and Watershed Advisory Committee (CM)	7
8	9 **6:00 PM**-Economic Development Commission (CM) **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP) (at the Community Center)	10	11 **7:00 PM**-Planning Commission	12 **4:00 PM**-VTA Policy Advisory Committee (AG) **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose) **7:00 PM**-Cities Assoc of SCC (JE) **7:00 PM**-Youth Advisory Comm. (DG)	13	14
15	16 **7:00 PM**-Telecommunications Commission (AP) **7:00 PM**-Library Advisory Commission (CM)	17 **6:00 PM**-Closed Session **7:00 PM**-City Council	18 **5:30 PM**-Veterans Commission Special Meeting (DG)	19 **12:30 PM**-VTA Admin & Finance Committee (JE) **7:00 PM**-Bay Area Water Supply Consv. Agency (AG) (Foster City)	20	21
22	23 **6:00 PM**-Arts Commission (DG) **7:00 PM**-Public Art Committee (DG)	24	25 **7:00 PM**-Planning Commission	26 **7:00 AM**-Milpitas Chamber of Commerce Board (DG) **12:00 PM**-Terrace Gardens Board of Directors (DG) **6:00 PM**-Sister Cities Commission (CM) **7:00 PM**-Emergency Preparedness Commission (AP) (at City Hall, 4th Floor Conference Room)	27 **9:00 AM**-VTA Board of Directors Workshop (JE)	28
29	30					

08/13/2013

2

PROPERTY USE AGREEMENT
BY AND AMONG
THE CITY OF MILPITAS
AND
SJB CHILD DEVELOPMENT CENTERS

THIS Agreement (this "Agreement"), dated as of August 20, 2013 (the "**Effective Date**"), is entered into by and among the City of Milpitas, a municipal corporation of the State of California (hereinafter "**City**" or "**City**") and SJB Child Development Centers, a California 501(c)(3) non-profit corporation (hereinafter "**Tenant**"). Each City and Tenant are hereineafter referred to as a "**Party**" and collectively referred to as the "**Parties**."

RECITALS

A. WHEREAS, FIRST 5 Santa Clara County (hereinafter "**First 5**") was established in 1998 with the passage of California Proposition 10 and funded by a tax on tobacco to provide programs that focus on a child's early development in the areas of health, education, social/emotional development and safety during the first five years of a child's life.

B. WHERAS, First 5 funds corporations and other not for profit organizations who provide free school readiness, health and oral language development information to families with children prenatal through age five, seeking to increase the capacity of families and communities to ensure children are healthy and prepared to enter school.

C. WHEREAS, each Tenant are, and remain, existing grantees of First 5.

D. WHEREAS, First 5 seeks to establish Family Resource Centers located in the City of Milpitas and Santa Clara County, operated by its grantees, SJB Child Development and The Health Trust, who will use the Family Resource Center to offer free, safe, high-quality, hands-on learning environments where parents/caregivers can access information, resources and services for children prenatal through age five.

E. WHEREAS, City is the owner of fee title to the real property located at 1325 East Calaveras Boulevard, as more particularly descried in Exhibit A and commonly called the "Milpitas Sports Center", attached hereto and incorporated herein by this reference (the "**Property**").

F. WHEREAS, Tenant desires to lease a portion of the Property commonly called the "Teen Center" as more particularly described in Exhibit B, attached hereto and incorporated herein by this reference (the "**Premises**") for the purpose of providing free school readiness, health and oral language development information to families, and seek to increase the capacity of families to ensure children are healthy and prepared to enter school.

G. WHEREAS, the California State Legislature enacted Assembly Bill 26 (hereinafter "**AB 26**") to dissolve redevelopment agencies formed under the Community Redevelopment

Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law").

H. WHEREAS, fee title to the Property, including the Premises, was transferred from the Milpitas Redevelopment Agency ("Agency") to the City in 2011 and the State Controller has notified the City that it believes the asset transfer was invalid and the Property, along with other properties transferred from the Agency to the City, should be returned to the Successor Agency to the Milpitas Redevelopment Agency ("Successor Agency").

I. WHEREAS, there is a dispute between the City, Successor Agency, Santa Clara County and State Controller relating to previous assets transferred between the Agency and City and the parties are currently involved in two separate litigations (hereinafter collectively "**Litigation**").

J. WHEREAS, Tenant acknowledges the existence of the pending dispute and Litigation surrounding the Property, including the Premises, and that the City, may have to terminate this Agreement prior to the expiration of the term as further provided herein.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant hereby agree as follows.

ARTICLE I

DEMISE OF PREMISES

1.1. Creation of Agreement. City hereby leases to Tenant, and Tenant hereby leases from City, the Premises for the Term (as defined in Section 2.1 below) subject to the terms and conditions set forth in this Agreement.

1.2. Condition of Title. City leases the Premises to Tenant subject to all easements, covenants, conditions, restrictions and other title matters of record or not of record existing as of the Effective Date, and all matters that would be apparent from an inspection of the Premises on the Effective Date.

1.3. Condition of Premises. Tenant will lease the Premises in its "AS IS" condition. Tenant acknowledges that City makes no representations or warranties expressed or implied regarding the condition of the Property or Premises or the fitness or suitability thereof for the Tenant's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property or Premises shall affect the rights of the Tenant or the City hereunder. Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Property and Premises. Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property and Premises, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as Tenant deemed necessary to determine the condition of the Property and Premises,

and has approved all such characteristics and conditions and shall lease the Premises in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS. Tenant further acknowledges that the City has made available all data and information on the Property available to the Tenant, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

1.4 Incorporation of Recitals. The Parties hereby acknowledge the truth of the Recitals set forth above, and such Recitals are hereby incorporated into this Agreement.

ARTICLE II

TERM OF AGREEMENT

2.1 Term. The term of this Agreement (the "**Term**") commences on the Effective Date and expires on June 30, 2015, subject to earlier termination by City as provided below. The expiration or sooner termination of the Term shall be referred to as "**Agreement Termination**."

2.2 Surrender. Upon the expiration or earlier termination of this Agreement, or upon the exercise by City's right to reenter the Premises without terminating this Agreement, Tenant shall surrender the Premises in good condition and repair except for ordinary wear and tear.

ARTICLE III

RENT; MONETARY OBLIGATIONS

3.1 Rent. The Parties acknowledge the significant public benefit Tenant will provide to the City of Milpitas and its residents under this Agreement as further explained in the Recitals of this Agreement. In exchange for the significant public benefit, City agrees to allow Tenant to lease the Premises, subject to the terms and conditions herein, for the sum of One Thousand Three Hundred Sixty Seven Dollars and Twenty-Five Cents ($1,361.25) ("Rent") per month. Payments shall be made to City on or before the first day of each month during the Term. The first month shall be prorated and payment is due upon execution of this Agreement.

3.2 Shared Cost. In addition to Rent, Tenant shall pay all costs and expenses relating to the Premises of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, paid or incurred in connection with the ownership, operation, repair, restoration, maintenance and management of the Premises; real property taxes; rent taxes; gross receipt taxes (whether assessed against the City or assessed against the Tenant and collected by the City, or both); water and sewer charges; insurance premiums; utilities; refuse disposal; lighting (including outside lighting); fire detection systems including monitoring, maintenance and repair; security; janitorial services; labor; air-conditioning and heating; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; and all other costs and expenses paid or incurred with respect to the Premises. Payments shall be made to City within ten (10) days of the date of invoice submitted to Tenant.

Tenant agrees to pay City the sum of Six Hundred and Fifty Dollars ($650.00) per month for the following: (i) water, (ii) gas, (iii) electricity, and (iv) refuse disposal. Payment shall be

made to City on or before the first day of each month during the Term. The first month shall be prorated and payment is due upon execution of this Agreement.

ARTICLE IV

TAXES, ASSESSMENTS AND OTHER CHARGES

4.1 Impositions. Throughout the Term, Tenant shall pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Premises or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Premises or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the income received by the Tenant, if any, (c) any use or occupancy of the Premises or part thereof, or (d) this transaction or any document to which the Tenant is a party creating or transferring an estate or interest in the Premises or part thereof. All of the foregoing are hereinafter referred to as "Impositions."

4.1.1 Installments. If by law any Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest accrues on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term of this Agreement will be prorated between the Tenant and the City.

4.1.2 Evidence of Payment. Upon request by City, Tenant shall furnish, in a form satisfactory to City, evidence of payment prior to delinquency of all Impositions payable by Tenant.

4.2 Tenant Duty to File. Tenant shall have the duty of making or filing any declaration, statement or report which may be necessary or advisable in connection with the determination, equalization, reduction or payment of any Imposition which is or which may become payable by Tenant under the provisions of this Article IV, and shall notify City in writing upon making such filing, declaration, statement or report, and City shall not be responsible for the contents of any such declaration, statement or report.

ARTICLE V

ALTERATIONS AND NEW CONSTRUCTION

5.1 Improvements. Subject to all required City review and approvals, City, at its sole cost and expense, may install on the Premises the fixtures, furniture and equipment within the Premises as set forth in the attached Exhibit C for Tenant's use during the Term of this Agreement.

5.2 Changes and Alterations. During the Term of this Agreement, Tenant shall not make any changes, improvements, repairs, alteration, addition or otherwise to the Premises (collectively, the "**Improvements**") without the prior written consent of City. Any approved alterations and additions shall be made at the sole cost and expense of the Tenant and shall comply with all of the following:

(a) The change or alteration shall not materially impair the value or structural integrity of the Premises.

(b) The change or alteration shall be for a use which is permitted hereunder.

(c) No change, alteration or addition shall be undertaken until Tenant shall have obtained and paid for, so far as the same may be required from time to time, all required permits from the City of Milpitas, or where otherwise appropriate, and authorizations of any federal, state or local government or departments or subdivisions of any of them, having jurisdiction.

(d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial construction of the Improvements or the construction of any change, alteration or addition in, to or of, the Improvements, new construction or any restoration, Tenant shall comply with the insurance requirements set forth in Article VIII, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements or the Property.

(f) Prior to commencement of any construction, change, alteration or repair Tenant shall deliver to City no later than ten (10) business days written notice of the proposed work and a general description of the proposed work. Such work shall not proceed until City has approved in writing:

(i) Tenant's contractor;

(ii) The amount and coverage of public liability and property damage insurance, with City named as an additional insured;

(iii) Complete and detailed plans and specifications for such work; and

(iv) A schedule for the work.

5.3 No Right to Demolish. Notwithstanding any other provisions of this Article V, Tenant shall have no right to remove or demolish any Improvement, once built, without prior written consent of City.

5.4 Indemnity. Tenant agrees to indemnify, defend and hold City, its officers, employees, agents, and representatives harmless for any work or omission relating or arising from this Section 5 of the Agreement.

ARTICLE VI

USE OF THE PREMISES; UTILITIES; MAINTENANCE

COMPLIANCE WITH LAWS

6.1 Use of Premises

6.1.1 Permitted Uses. It is agreed that the Premises shall be used by Tenant for the sole purpose of providing First 5 funded services directed at improving the quality of life for parents/caregivers consistent with Recital B and Recital D of this Agreement.

6.1.2 Hours of Operation. It is agreed that the use of the Premises are those consistent with normal business hours: Monday through Friday, from 8 a.m. to 5:30 p.m., with occasional evenings and weekends. City will provide Tenant with keys to the Premises and Tenant and its employees, invitees, patrons and others shall have access to the Premises from the outside entrance door marked with an "X" on Exhibit B only.

6.1.3 Parking. Tenant, and its employees, invitees and patrons, will have nonexclusive use, in common with the City and others, of the non-reserved common automobile parking spaces. Tenant agrees to cause its employees, patrons, invitees, and others to park their automobiles in accordance with City's parking rules and regulations as established from time to time.

6.1.4 Signs. Tenant may not install any exterior signs on the Premises without obtaining prior written consent from City or by going through other appropriate permitting channels to obtain City approval.

6.1.5 Prohibited Uses. Tenant shall not use the Premises for or carry on or permit in or upon the Premises, or any part thereof, any offensive, noisy or dangerous trade, business, manufacture or occupation, or any nuisance, or anything against public policy, or interfere with the business of any other tenants or occupants in the Property, or permit any going-out-of-business, auction, liquidation, fire or bankruptcy sale to be held or conducted in and about the Premises. Tenant agrees not to cause, permit or suffer any waste, damage disfigurement or injury to the Premises, to the fixtures or equipment thereon, or to the Common Areas, not to permit or suffer any overloading of the floor of the Premises or other parts of the Property.

6.1.6 Permits. Prior to opening and operating the Premises as provided herein, Tenant shall obtain all required approval(s) from the Milpitas Building Department and Fire Department, including Certificate of Occupancy permit.

6.1.7 Electrical Equipment. Tenant shall not install, operate or maintain in the Premises any electrical equipment which does not bear the Underwriters Laboratory approval, or

which equipment would overload any portion of the electrical system of the Property in City's sole determination.

6.1.8 Nuisance. Tenant shall not do or permit anything to be done in or about the Premises which shall in any way obstruct or interfere with the operation of the Property or Common Area or with the rights of other tenants or occupants of the Property or Common Areas or injure, disturb or annoy other tenants or occupants of the Property of Common Areas.

6.1.9 Access by City. City reserves the right for City and City's Authorized Representatives to enter the Premises at any reasonable time: (a) to inspect the Premises; (b) to supply services to be provided by City to Tenant under this Agreement; (c) to show the Premises to prospective lenders, purchasers or tenants; (d) to alter, improve, maintain or repair the Premises or any portion of the Property; (e) to install, maintain, repair, replace or relocate any pipe, duct, conduit, wire or equipment serving other portions of the Property but located in the ceiling, wall or floor of the Premises; (f) to determine whether Tenant is complying with Tenant's obligations hereunder; (g) to perform any other obligation of Tenant after Tenant's failure to perform same; or (h) upon default by Tenant under this Agreement. If City enters the Premises for the purposes set forth in items (b), (d), (e) or (g) of the preceding sentence, City may erect scaffolding and store tools, materials, and equipment in the Premises when required by the character of the work to be performed.

6.2 Nondiscrimination. Tenant hereby covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are 9 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall Tenant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

6.3 Utilities. Tenant acknowledges that a separate meter will not be installed to provide gas and electricity to the Premises. City shall not be liable to Tenant in damages or otherwise: (i) if any utility, whether its water, gas, electricity or otherwise, becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility; or (ii) for any disruption in any utility service caused by the making of any repairs or improvements or by any cause; or (iii) for any disruption of any utilities services whatsoever.

6.4 Maintenance, Repairs and Inspection of the Premises.

6.4.1 Tenant's Maintenance and Repairs Obligations. At Tenant's sole cost and expense throughout the Term, Tenant shall operate, maintain, repair and manage the Premises in good order and repair and in neat, clean sanitary and safe condition in compliance with all local,

state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Premises. Tenant shall ensure that the Premises is served by adequate lighting in accordance with applicable building codes. Tenant shall promptly, at the Tenant's own cost and expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. Tenant shall keep and maintain all portions of the Premises in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. All repairs shall be completed by contractors approved by City, subject to all City review and prior approval. Any replacements required of Tenant shall be made with equipment and/or materials equal to the specification and quality of the original as approved by City. Tenant's failure to maintain the Premises in accordance with this Agreement shall, in City's discretion, be grounds for termination of this Agreement pursuant to Article XII.

6.4.2. City's Maintenance and Repairs Obligations. City will maintain: a) roofs (excluding interior ceilings), foundations, and exterior walls at the Premises (excluding all doors, plate glass, storefronts, display and other windows) and (b) plumbing, pipes and conduits. Tenant shall reimburse City within ten (10) days of receipt of an invoice for all costs and expenses incurred by City which are required to make any repair to the Premises in connection with or resulting from (i) any alteration or modification to the Premises performed by, for or because of Tenant or to special equipment or systems installed by, for or because of Tenant, (ii) the installation, use or operation of Tenant's property, fixtures and equipment, (iii) the moving of Tenant's property into or out of the Premises or in and about the Premises, (iv) Tenant's use or occupancy of the Premises in violation of this Agreement or in a manner not contemplated by the parties at the time of execution of this Agreement (e.g., subsequent installment of special use rooms), or (v) the acts or omissions of Tenant or Tenant's invitees, subtenants, and/or licensees, all of which shall be solely Tenant's obligation.

6.4.3 Common Area Maintenance. The Parties agree that maintenance of the landscaping, pedestrian walkway, refuse collection area serving the Property, and abutting public sidewalks (collectively, the "Common Area") will be responsibility of City.

6.4.4 Inspection. At any time during the Term during normal business hours, City may conduct interior inspections of the Premises to confirm that it is being properly maintained as required by this Agreement. Following its inspection, City may deliver to the Tenant written notification of any portions of the Premises which the City has determined are not being properly maintained, and Tenant shall promptly prepare and deliver to City the Tenant's proposed plan for remedying the indicated deficiencies. Tenant's failure to deliver a remedial plan and to complete remedial work within a reasonable time as determined by City in its discretion shall be a default under this Agreement. City's failure to deliver, following any City's inspection, any notice of deficiency to Tenant, shall not be a waiver of any default by Tenant under this Article. Tenant shall defend, indemnify and hold the Indemnitees, defined below, harmless from and against any and all Claims arising out of the Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Premises as required hereunder.

6.5 City's Right to Perform Tenant Obligations. If Tenant fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this

Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Tenant, and the Tenant shall reimburse the City for all expenditures the City incurs in connection with such work. City's election to undertake such obligation shall not operate as a waiver of any other right or remedy City may have pursuant to this Agreement.

6.6 City Not Obligated to Perform Repairs. Notwithstanding any contrary provision in this Agreement, City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises caused by Tenant during the Term of this Agreement nor shall City be obligated to maintain or operate the Premises.

6.7 Compliance with Laws. Tenant, at its sole cost and expense, shall comply with all applicable state and federal laws and regulations, including without limitation, all applicable state and federal labor laws and standards, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Section 51, et seq. Tenant shall comply with all City ordinances and regulations relating to noise, business hours, pertaining to the use, operation, and management of the Premises. (All of the foregoing state, federal and local laws, regulations and ordinances are referred in this Agreement as the "Applicable Laws.") Tenant shall not use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law. Tenant shall not permit any permittees, licensees, guests or invitees to use the Property or Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Premises which would result in a nuisance or a violation of law.

ARTICLE VII

ENVIRONMENTAL MATTERS

7.1 Tenant's Covenants. Tenant hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and Tenant shall not cause or permit the Premises or any portion thereof to be in violation of any Hazardous Materials Laws.

(b) Tenant shall not permit the Property or Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Property or Premises.

(c) Upon receiving knowledge of the same, Tenant shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Tenant, the Premises or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations,

demands, inquiries, reports, or notices made or threatened by any third party against the Tenant, the Premises or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises or the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may in any way affect the Premises or Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "Hazardous Materials Claims." City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by Tenant.

(d) Without City's prior written consent, Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises or the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material on the Premises or the Property results in any contamination of the Property in violation of Hazardous Materials Laws, except to the extent such contamination is caused directly by City, Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Premises or Property as required by law; provided that the City's approval of such actions shall first be obtained. All costs and expenses of any Remedial Work shall be paid by Tenant, it being understood that City shall incur no cost, expense or liability in connection with any Remedial Work. City shall have the right, but no obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "Remedial Work" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or request of any federal, state or local governmental City, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Premises or the Property.

7.2 Release of Claims. Tenant hereby waives, release and discharges forever the Indemnitees from all present and future Claims the Tenant may have arising directly or indirectly from the presence or alleged presence of Hazardous Materials on, under, in or about the Property or Premises.

Tenant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

> A GENERAL REAGREEMENT DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT `THE TIME OF EXECUTING THE REAGREEMENT, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section 7.2, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

_____
Tenant Initials

7.3 Environmental Indemnity. Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against all Claims arising during the Term and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property or Premises during the Term, (ii) the failure of the Tenant, the Tenant's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws, or (iii) the breach by the Tenant of any of its covenants contained in this Article VII. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or Premises or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section 7.3 shall survive the expiration or earlier termination of this Agreement.

7.4 Definitions.

7.4.1 Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8(CarpenterPresley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials ReAgreement Response Plans and Inventory); (iv) defined as a "hazardous substance" under

Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended; or (xii) as otherwise defined by law.

7.4.2 Hazardous Materials Laws. As used in this Agreement "Hazardous Materials Laws" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 7.4.1, as any of the foregoing may be amended from time to time.

ARTICLE VIII

INDEMNITY AND INSURANCE

8.1 Indemnity. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold City, its employees, officers, agents, contractors and representatives ("Indemnitees") harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Premises, (ii) any work or thing done on or in the Premises, (iii) any condition of any alteration or addition constructed by the Tenant on the Premises, (iv) any breach or default by the Tenant in the performance of any covenant or agreement to be performed by the Tenant pursuant to the terms of this Agreement, (v) any negligence of the Tenant, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Property or Premises, and (vii) the furnishing of labor or materials by the Tenant or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against the City by reason of any such Claim, the Tenant, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. If an insurer under insurance required to be maintained by the Tenant hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and the City shall deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. This Section shall survive the expiration or earlier termination of this Agreement.

8.2 Insurance Requirements. Tenant shall procure, at its sole expense, and maintain in full force and effect during the Term, the following insurance naming the City as additional insured and/or loss payee:

8.2.1 Minimum Scope of Insurance: (Check Mark Indicates Required)
Coverage must be at least as broad as:

(X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
(X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
(X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
( ) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
( ) Architects' and Engineers' coverage is to be endorsed to include contractual liability.

8.2.2 Minimum Limits of Insurance

Tenant shall maintain limits no less than:

(a) General Liability. (Including operations, products and completed operations as applicable.) **$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.

(b) Automobile Liability. $1,000,000.00 per accident for bodily injury and property damage.

(c) Workers Compensation Employer's Liability. Statutory compliance: $1,000,000.00 each accident; $1,000,000.00 disease-policy limit; $1,000,000.00 disease-each employee.

(d) Professional Liability or Errors & Omissions Liability. $1,000,000.00 each occurrence; $1,000,000.00 policy aggregate.

8.2.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

8.2.4 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(a) **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, operated, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an

endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.

(b) For any claims related to this operation on the Property or Premises, the **Tenant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Tenant's insurance and shall not contribute with it**.

(c) The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Tenant's Workers' Compensation policy.

(d) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Tenant's insurer refuses to provide this endorsement, Tenant shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

8.2.5 Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

8.2.6 Verification of Coverage. Tenant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Carmen Valdez, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

8.2.7 Subcontractors. Tenants must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

8.2.8 Absence of Insurance. If the Tenant allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Tenant shall cause all operations on the Premises to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Tenant's delay and shall not be considered to increase cost to the City or increase time in which the Premises shall be Agreementd.

Tenant agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement.

ARTICLE IX

DAMAGE AND DESTRUCTION

9.1 Damage or Destruction. In the event of any damage to or destruction of the Property or Premises during the Term, the City shall elect by written notice delivered to Tenant within sixty (60) days following the date of the occurrence of the damage to either remove the Premises or restore and rebuild the Premises as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in any Applicable Law. If City does not elect to restore the Premises and the City does not exercise its right to terminate this Agreement within 120 days following the date of the occurrence of the damage, then at the City's option this Agreement shall terminate upon delivery of written notice to the Tenant.

9.2 Notice Required. In the event of material damage to or destruction of the Premises, or any part thereof, the Tenant shall promptly give the City notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article IX, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Five Thousand Dollars ($5,000).

9.3 City's Right to Terminate. Notwithstanding any contrary provision of this Article IX, the City shall have the option to terminate this Agreement and be relieved of the obligation to restore the Property or Premises where all or substantially all of the Property or Premises are substantially damaged or destroyed.

ARTICLE X

CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

10.1 If Tenant shall at any time fail to pay any Imposition or other charge payable by the Tenant to a third party as required by this Agreement, or to comply with the requirements set forth in Section 8.2 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Agreement, then the City, may (but shall not be required to): (i) pay such Imposition or other charge payable by the Tenant; (ii) pay for and maintain the insurance policies required pursuant to this Agreement, or (iii) make such other payment or perform such other act on the Tenant's part to be made or performed under this Agreement; and the City may enter upon the Premises for such purpose and take all such action thereon as may be reasonably necessary therefore.

ARTICLE XI

ASSIGNMENT

11.1 Assignment and Subletting. Tenant shall not assign, transfer, let or sublet the whole or any portion of the Premises without the prior approval of the City, which City may provide or withhold at its sole discretion.

ARTICLE XII

DEFAULT; REMEDIES; TERMINATION

12.1 Events of Default.

12.1.1 Tenant Event of Default. Tenant shall be in default under this Agreement upon the occurrence of any of the following ("Events of Default"):

(a) Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation required by this Agreement;

(b) Insurance. Tenant fails to obtain and maintain any policy of insurance required pursuant to this Agreement;

(c) Abandonment. Tenant abandons or ceases to use the Property or Premises in accordance with Section 1951.3 of the California Civil Code except when prevented by Force Majeure;

(d) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant's interest in this Agreement occurs in violation of the provisions of Article XI;

(e) Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(f) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of Tenant in the Property or Premises and such execution, attachment or similar process is not reAgreementd, bonded, satisfied, or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant;

(g) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of 20 sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(h) Nonmonetary Obligations. Tenant is in default in any other of its promises, covenants or agreements contained in this Agreement.

12.2 City's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to terminate this Agreement and/or the Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Premises and take possession thereof and of any Improvements, and except as otherwise provided in this Agreement, to remove all persons and property therefrom, and to store such property at the Tenant's risk and for the Tenant's account, and the Tenant shall have no further claim thereon or hereunder. The City's re-entry or taking of possession of the Premises shall not be construed as an election on the City's part to terminate this Agreement unless the City shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the City's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement.

12.2.1 Remedies Upon Abandonment. If the Tenant should default under this Agreement and abandon the Premises, the City may, at its option, enforce all of its rights and remedies under this Agreement, including the right to recover the rent as it becomes due hereunder. Additionally, the City shall be entitled to recover from the Tenant all costs of maintenance and preservation of the Premises, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Premises and the City's interest under this Agreement.

12.2.2 City Right to Continue Agreement. In the event of any default under this Agreement by the Tenant (and regardless of whether or not the Tenant has abandoned the Premises), this Agreement will not terminate (except by an exercise of the City's right to terminate under this Section 12.3) unless the City makes such election by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate the Tenant's right to possession. For so long as this Agreement continues in effect, the City may enforce all of the City's rights and remedies under this Agreement, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Agreement, the following shall not constitute termination of the Tenant's right to possession: (a) acts of

maintenance or preservation or efforts to relet the Premises; or (b) the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement.

12.2.3 Right to Injunction; Specific Performance. In the event of a default by the Tenant under this Agreement, the City shall have the right to commence an action against the Tenant for damages, injunction and/or specific performance. The Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Agreement.

12.3 Remedies Cumulative. No remedy specified in this Article XII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth in this Agreement.

12.4 No Election of Remedies. The rights given in this Article XII to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of the City upon the conditions and subject to the provisions in this Agreement to terminate the Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Agreement beyond the applicable cure period.

12.5 Survival of Obligations. Nothing in this Agreement affects the right of the City under VIII of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything in this Agreement be deemed to affect the right of the City to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof will relieve the Tenant of its previously accrued liabilities and obligations hereunder, all of which survive such expiration, termination or repossession.

12.6 Termination. Notwithstanding any other provision in this Agreement, City may terminate this Agreement for any reason whatsoever with thirty (30) calendar days notice to Tenant.

ARTICLE XIII

GENERAL PROVISIONS

13.1 Force Majeure. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or

failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (all of the foregoing "Force Majeure"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

13.2 City's Right to Enter the Premises. The City and its agents may enter the Premises from time to time with reasonable notice, except in the case of emergency in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge the Tenant's obligations hereunder when the Tenant has failed to do so within a reasonable time after written notice from the City.

13.3 Representations of Tenant.

13.4.1 Representations of the Tenant. Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Tenant has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth in this Agreement. This Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth in this Agreement do not violate any court order or ruling binding upon the Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Tenant.

13.4 Venue. In the even that litigation is commenced by any party hereunder, the parties agree that such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California, San Jose.

13.5 Miscellaneous.

13.5.1 Holding Over. Tenant shall not be entitled to any hold over rights. If Tenant or any subtenant remains in possession of the Premises after the expiration or termination of this Agreement, without City's consent, such Tenant shall be deemed to be trespassing and

City shall have the right to seek such Tenant's or subtenant's immediate ejectment from the Premises in accordance with State law.

13.5.2 Binding on Successors and Assigns. Each provision of this Agreement to be performed by Tenant shall be deemed both a covenant and a condition. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their personal representatives, successors and assigns.

13.5.3 Notices. Whenever under this Agreement a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by registered mail or certified United States mail, postage prepaid, addressed as set forth below, or to such other address as a Party may designate in writing for the purpose of receiving notices:

to City at:	City of Milpitas Attn: City Manager 455 East Calaveras Boulevard Milpitas, CA 95035 Phone: (408) 586-3050 Fax: (408) 586-3056
to Tenant at:	SJB Child Development Attn: Executive Director 65 Civic Avenue Pittsburg, CA 94565 Phone: (925) 252-4850 Fax: (925) 252-4851

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this Section 13.5.3.

13.5.4 Mail. No Tenant mail shall be delivered to the Premises.

13.5.5 Waivers. No waiver by City of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provisions.

13.5.6 Legal Effect. Although this Agreement has attempted to express the rights and duties of the Parties in simple language understandable to a layman, Tenant understands that this Agreement will be treated as a formal legal instrument and will be binding on all persons having any future dealings with the Premises. If more than one copy is signed, all copies will be equally effective. If more than one person is named as Tenant, City may hold any such person legally responsible for all of the obligations of Tenant under this Agreement.

13.5.7 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the

Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

13.5.8 Not Construed Against Drafter. No Party shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis that the particular Party is the drafter of any part of this Agreement.

13.5.9 Non-Liability of Officials, Employees, and Agents. No member, official, employee or agent of City or City shall be personally liable in the event of any default or breach hereunder by either Party.

13.5.10 Essence of Time. Time is of the essence for every provision, covenant and condition of this Agreement.

13.5.11 Severability. The determination by a court of competent jurisdiction that a provision of this Agreement is illegal or unenforceable shall not affect any other provision of this Agreement.

13.5.12 Entire Agreement. This Agreement contains all the agreements of the Parties and supersedes all prior negotiations. There have been no representations by City or understandings made between City and Tenant other than those set forth in this Agreement.

13.5.13 Amendment. This Agreement may only be modified or amended by a written instrument duly executed by the Parties.

13.5.14 Captions; Construction. The section headings and captions used in this Agreement are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

13.5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

13.5.16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, Tenant and City have entered into this Agreement as of the Effective Date.

CITY:
CITY OF MILPITAS

By:_____
Tom Williams, City Manager

TENANT:
SJB CHILD DEVELOPMENT

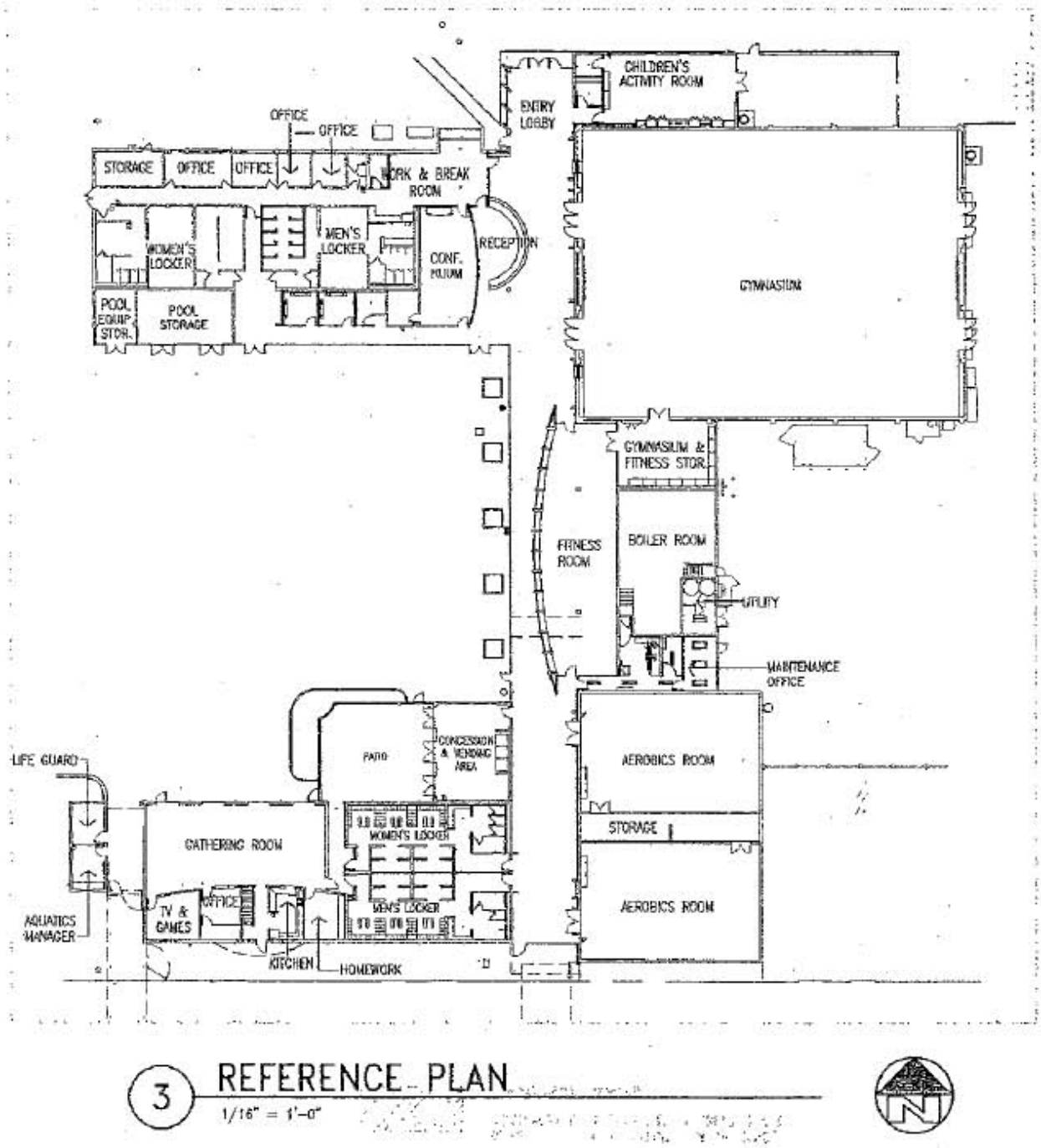
By:_____
Name:
Title:

APPROVED AS TO FORM

By:_____
Michael J. Ogaz, City Attorney

EXHIBIT A

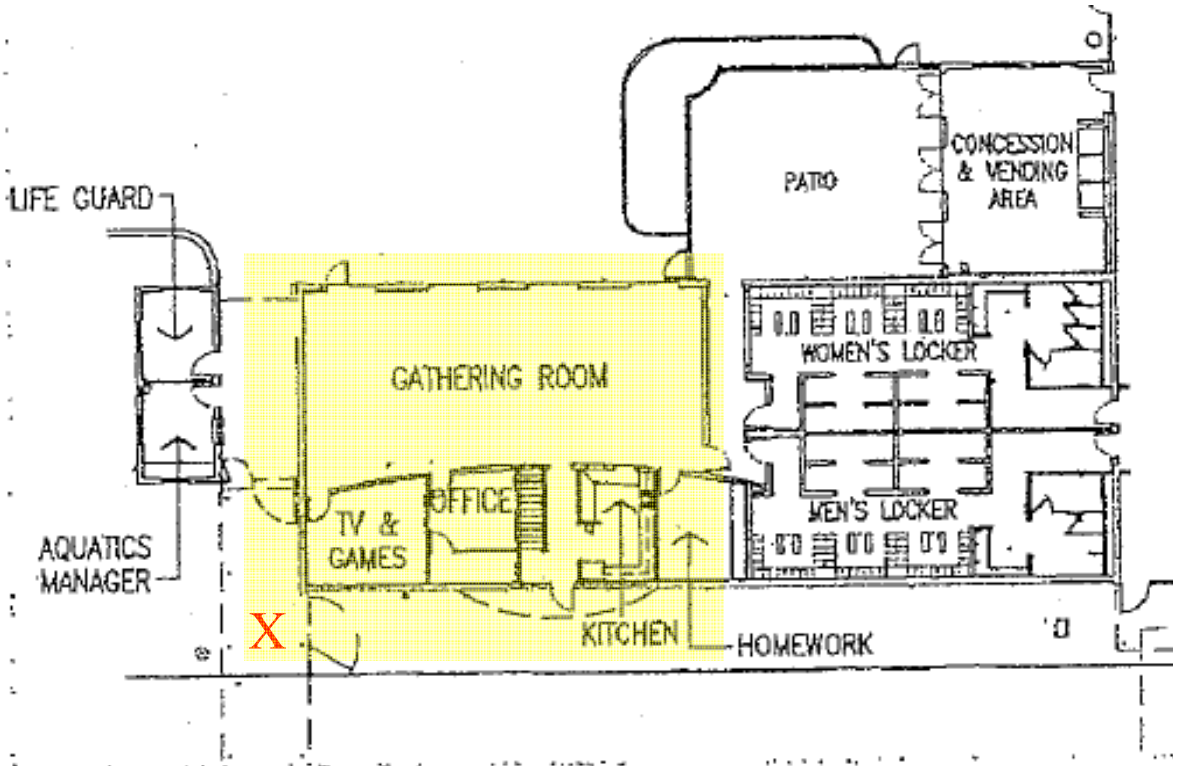
MILPITAS SPORTS CETNER ("PROPERTY")



3 REFERENCE PLAN

1/16" = 1'-0"

EXHIBIT B
TEEN CENTER ("PREMISES")



- "X" above indicates separate entrance to the Teen Center
- Yellow highlighted area indicates the Teen Center

EXHIBIT C
TENANT IMPROVEMENTS TO BE COMPLETED BY CITY PRIOR TO CERTIFICATE OF OCCUPANCY

1. Change door lock at youth locker rooms so no access is permitted to the Milpitas Sports Center and secure door in Teen Center which leads directly onto the pool deck and cover up Exit sign.

2. Set up a safety card key entry to access doors that lead to restrooms and pool.

3. Paint the interior first floor of the Teen Center.

4. Install an exterior sign provided by Tenant identifying Tenant's business at the same location of the existing "Teen Center" sign. New sign shall be same or smaller size of the existing sign.

*3

City Clerk's Office
JUL 25 2013
RECEIVED

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form
for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: FIL-AM ASSOCIATION OF MILPITAS CORPORATION

Is there a Milpitas branch or affiliation? NONE OR N/A

Mailing Address: 175 ALLEN CT.
MILPITAS, CA 95035

Contact Person: DR. DEM NITAFAN Telephone No. 408-307-9372

Email Address: DEMREALTY1@AOL.COM

What is your request? Donation Amount Requested ~~$500~~ Jm.

Fee Requested to be waived (type and $ amount) $1,500 ~~FOR ALL FEES~~ PERMIT FEES OR RENTAL ~~OR AND~~ REQUIRED BY THE CITY.

Event date(s): 8/31/2013 AND 9/01/2013

What is the purpose of the event? CELEBRATION OF FILIPINO FOOD AND MUSIC. ADOBO FESTIVAL AT MILPITAS SPORTS CTR/FOOTBALL FIELD

How will the Milpitas community benefit from this event? FILIPINO-AMERICAN AND OTHER ETHNIC GROUPS WILL COMING TO MILPITAS FOR SUCH CELEBRATION. THESE PEOPLE FROM MILPITAS AND SURROUNDING CITIES WILL EXPERIENCE THE HOSPITALITY OF CITY.

What % of the fund raising proceeds will benefit Milpitas community? NONE, THIS IS NOT A FUNDRAISING EVENT.

How will the City's contribution (if granted) be recognized in any publicity? FLYERS AND MEDIA PUBLICITY FOR THE EVENT MAKE OR INCLUDED IN ALL THESE MATERIALS.

Within 60 days after completion of the event for which a donation was received or a fee waiver/ reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: [signature] Date: 7-25-2013

Print Name & Title: DR. DEM NITAFAN, PRESIDENT & CEO

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: SEP 04 2009

FIL-AM ASSOCIATION OF MILPITAS
CORPORATION
175 ALLEN CT
MILPITAS, CA 95035-7713

Employer Identification Number:
30-0540554
DLN:
17053100004019
Contact Person:
ERIC KAYE ID# 31612
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
June 30
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
March 10, 2009
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

FIL-AM ASSOCIATION OF MILPITAS

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Publication 4221-PC

Letter 947 (DO/CG)

No. 1-7
Effective: 04/16/2013

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY

---

1. Purpose

The City of Milpitas recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents. To that end, the City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. Donation and Fee Waiver Budget

With each budget cycle, the City Council will establish an annual budget amount for donations or fee waivers/ reductions for unspecified community events. Except for extraordinary circumstances, donations and or fee waivers/reductions will not be granted once the budgeted amount has been expended.

3. Requirements

a) Any requests for donation or fee waiver/reduction must be submitted in writing using the attached application form.

b) Requests for donations or fee waivers/reductions will be considered by the City Council during a regularly scheduled meeting.

c) To be eligible, the organization must be a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency. In either case, only events that provide community benefit within the City of Milpitas shall be eligible. If fund raising is involved, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community. The organization must be non-discriminatory, and non-political in nature, based in Milpitas or have a local affiliation within the City.

d) If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.

e) Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any City staff overtime costs required due to the event cannot be waived.

f) The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have in the City.

g) The fee waiver/reduction amount is further subject to $1,500 maximum annually and the donation amount is subject to $500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.

h) To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising.

i) Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

j) Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

City Clerk's Office
*4
AUG 0 9 2013
RECEIVED

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form
for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: St. John the Baptist Catholic Parish

Is there a Milpitas branch or affiliation? _____

Mailing Address: 279 S. Main St.
Milpitas, CA 95035

Contact Person: Rizalina H. Santoro Telephone No. 408.234.1294

Email Address: rizalinasantoro@gmail.com

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and $ amount) Fire Marshall $1343.77, Electrical 167.05 Planning $250.00, Carnival $500.00

Event date(s): September 6, 7, 8, 2013

What is the purpose of the event? AUTUMN FESTIVAL is a three day event from Sept. 6-8, 2013, carnival, food etc. to raise funds for pastoral needs that benefits both the church and school.

How will the Milpitas community benefit from this event? Gather the larger community beyond the parish & Milpitas community for a three day event.

What % of the fund raising proceeds will benefit Milpitas community? 100% of the profit benefits St. John's which is in the city of Milpitas.

How will the City's contribution (if granted) be recognized in any publicity? Mentioned in our Autumn Festival Souvenir Program, publicity via entertainment publicty, publicized in San Jose diocese parishes, Milpitas Post.

Within 60 days after completion of the event for which a donation was received or a fee waiver/ reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: Rizalina H. Santoro Date: 8.9.13

Print Name & Title: Rizalina H. Santoro - Autumn Festival Chairperson

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: June 27, 2012

Person to Contact:
Roger Meyer ID# 0110429
Toll Free Telephone Number:
877-829-5500
Employer Identification Number:
53-0196617
Group Exemption Number:
0928

United States Conference of Catholic Bishops
3211 4th Street, NE
Washington, DC 20017-1194

Dear Sir/Madam:

This responds to your June 26, 2012, request for information regarding the status of your group tax exemption.

Our records indicate that you were issued a determination letter in March 1946, that you are currently exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and are not a private foundation within the meaning of section 509(a) of the Code because you are described in sections 509(a)(1) and 170(b)(1)(A)(i).

With your request, you provided a copy of the *Official Catholic Directory for 2012*, which includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions that are subordinate organizations under your group tax exemption. Your request indicated that each subordinate organization is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual, and that no substantial part of their activities is for promotion of legislation. You have further represented that none of your subordinate organizations is a private foundation under section 509(a), although all subordinates do not all share the same sub-classification under section 509(a). Based on your representations, the subordinate organizations in the *Official Catholic Directory for 2012* are recognized as exempt under section 501(c)(3) of the Code under GEN 0928.

Donors may deduct contributions to you and your subordinate organizations as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for federal estate and gifts tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code.

Subordinate organizations under a group exemption do not receive individual exemption letters. Most subordinate organizations are not separately listed in Publication 78 or the EO Business Master File. Donors may verify that a subordinate organization is included

in your group exemption by consulting the *Official Catholic Directory*, the official subordinate listing approved by you, or by contacting you directly. IRS does not verify the inclusion of subordinate organizations under your group exemption. *See* IRS Publication 4573, *Group Exemption*, for additional information about group exemptions.

Each subordinate organization covered in a group exemption should have its own EIN. Each subordinate organization must use its own EIN, not the EIN of the central organization, in all filings with IRS.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Cindy Thomas

Cindy Thomas
Manager, Exempt Organizations
Determinations

No. 1-7
Effective: 04/16/2013

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY

---

1. Purpose

The City of Milpitas recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents. To that end, the City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. Donation and Fee Waiver Budget

With each budget cycle, the City Council will establish an annual budget amount for donations or fee waivers/ reductions for unspecified community events. Except for extraordinary circumstances, donations and or fee waivers/reductions will not be granted once the budgeted amount has been expended.

3. Requirements

a) Any requests for donation or fee waiver/reduction must be submitted in writing using the attached application form.

b) Requests for donations or fee waivers/reductions will be considered by the City Council during a regularly scheduled meeting.

c) To be eligible, the organization must be a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency. In either case, only events that provide community benefit within the City of Milpitas shall be eligible. If fund raising is involved, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community. The organization must be non-discriminatory, and non-political in nature, based in Milpitas or have a local affiliation within the City.

d) If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.

e) Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any City staff overtime costs required due to the event cannot be waived.

f) The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have in the City.

g) The fee waiver/reduction amount is further subject to $1,500 maximum annually and the donation amount is subject to $500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.

h) To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising.

i) Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

j) Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

RESOLUTION NO. _____ ***5**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING FINAL ACCEPTANCE OF PARAGON TOWNHOMES, PROJECT NO. 3204, AND RELEASING IMPROVEMENT BOND

WHEREAS, certain improvements were installed in Paragon Townhomes, Project No. 3204, under and pursuant to the provisions of an improvement contract between the City of Milpitas, a municipal corporation of the State of California, and Western Pacific Housing, Inc., a Delaware corporation (Developer); and

WHEREAS, Developer, as principal, and Safeco Insurance Company of America, as surety, executed a certain faithful performance bond conditioned upon the faithful performance of the provisions of the improvement contract and upon the faithful performance of all improvement work required thereunder; and

WHEREAS, the improvements were completed, finally inspected by the City Engineer of the City of Milpitas, and accepted; and

WHEREAS, a period of one year or more has expired after the date of the initial acceptance of the improvements; and

WHEREAS, the City Engineer of the City of Milpitas has advised the City Council that Developer has remedied, restored, repaired, or replaced at their sole expense and to the satisfaction of the City Engineer all defects, damages, or imperfections, if any there were, due to or arising from faulty materials or workmanship and appearing within the period of one year from the date of initial acceptance; and

WHEREAS, the City Engineer recommends to the City Council that the faithful performance bond be released.

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

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

2. The City of Milpitas does finally accept the improvements. That certain faithful performance bond furnished by the above-named Developer, as principal, and the above-named surety in connection with those certain improvements for the above-designated project, is hereby released and discharged; provided however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the Developer or its surety or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

*6

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE ANNUAL INVESTMENT POLICY

WHEREAS, the Legislature of the State of California has declared that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern; and

WHEREAS, the legislative body of a local agency may invest surplus monies not required for the immediate needs of the local agency in accordance with the provisions of California Government Code Section 53601 *et seq.*; and

WHEREAS, the Treasurer of the local agency shall annually prepare and submit a statement of investment policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

WHEREAS, the previous Annual Investment Policy was last reviewed and approved by the City Council pursuant to Resolution 8191 on August 7, 2012.

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

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

2. The City Council has reviewed and considered the attached Annual Investment Policy, including any changes, and the attached Annual Investment Policy is hereby approved.

PASSED AND ADOPTED this ___ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

CITY OF MILPITAS
INVESTMENT POLICY

POLICY OVERVIEW

PURPOSE

The purpose of this policy is to establish overall guidelines for the management and investment of the City of Milpitas (the City) unexpended funds under authority granted by the City Council. This policy is in compliance with the provisions of the California Government Code, Sections 16429.1-16429.4, and 53600-53610, the authority governing investments for municipal governments.

INVESTMENT OBJECTIVES

The primary objectives of this investment policy, in order of priority, are safety, liquidity, and yield:

1) **Safety -** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. This objective shall be accomplished by mitigating credit risk and market risk.
2) **Liquidity -** The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This objective shall be accomplished by structuring the portfolio so that securities mature concurrently with anticipated needs. The portfolio shall consist largely of securities with active secondary or resale market. Furthermore, a portion of the portfolio may be placed in money market mutual funds or Local Agency Investment Fund (LAIF) which offer same day liquidity for short term funds.
3) **Yield -** The investment portfolio is designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Nevertheless, investment performance shall be continually monitored and evaluated by the City Treasurer by comparison with other investment portfolio benchmark yields.

SCOPE

The investment policy applies to all financial assets of the City of Milpitas as accounted for in the Comprehensive Annual Financial Report (CAFR), including but not limited to the funds listed below:

- General Fund
- Special Revenue Funds
- Capital Projects Funds

- Debt Service Fund
- Enterprise Funds
- Internal Service Fund
- Trust and Agency Funds
- Any new fund created by the City Council unless specifically exempted with the exception of the following:
  1) The City's Deferred Compensation Plan is excluded because it is managed by a third party administrator and invested by individual plan participants.
  2) Proceeds of debt issuance shall be invested in accordance with the investment objectives of this policy. However, such proceeds are generally invested in accordance with permitted investment provisions of their specific bond indentures. If the City Treasurer determines that the matching of bond reserve fund with the maturity schedule of an individual bond issue is prudent, the investment policy authorizes extending beyond the five year maturity limitation as outlined in this document.

STANDARDS OF CARE

1) **Prudence** - The City investment officials shall act as a fiduciary subject to the Prudent Investor Standard. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The City Treasurer and other individuals assigned to manage the investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, shall be relieved of personal responsibility and liability for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.
2) **Ethics and Conflict of Interest -** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or could impair their ability to make impartial investment decisions. City employees involved in the investment process shall disclose to the City Manager any material financial interest in financial institutions that conduct business within the jurisdiction. They shall further disclose any large personal financial/investment positions that could affect the performance of the investment portfolio.
3) **Delegation of Authority -** Authority to manage the investment program is granted to the City Treasurer and derived from Section VI-1-3.04 of the City of Milpitas Municipal Code. Under the oversight of the City Treasurer, responsibility for the operation of the investment program may be delegated to the Finance Administration staff, who shall act in accordance with established written procedures and internal controls consistent with the investment policy. The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of the subordinate staff members. The system of internal controls includes separation of duties, custodial safekeeping, avoidance of physical delivery securities, development of wire transfer agreement, and clear delegation of authority to subordinate staff members.

INVESTMENT GUIDELINES

SAFETY OF PRINCIPAL

Safety of principal is the primary objective of The City. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker/dealer default or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk, credit risk and market risk:

Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in investment grade securities and by diversifying the investment portfolio so that the failure of any one issuer does not unduly harm the City's capital base and cash flow.

Market risk, defined as market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by limiting the average maturity of the City's investment portfolio to two years, the maximum maturity of any one security to five years, structuring the portfolio based on historic and current cash flow analysis eliminating the need to sell securities prior to maturity and avoiding the purchase of long term securities for the sole purpose of short term speculation.

LIQUIDITY

The City's financial portfolio shall be structured in a manner to ensure that the securities mature concurrent with anticipated cash demands. The portfolio should consist largely of securities with an active secondary or resale market to meet any unanticipated cash demands. A portion of the portfolio may be placed in money market mutual funds or LAIF which offer same day liquidity for short term funds.

It is the full intent of the City to hold all investments until maturity to ensure the return of all invested principal. However, securities may be sold prior to maturity under the following circumstances:

- A security with declining credit may be sold early to minimize loss of principal,
- A security swap would improve the quality, yield, or target duration in the portfolio, or
- Liquidity needs of the portfolio require that the security be sold.

INVESTMENT PARAMETERS

1) **Diversification** - The investment shall be diversified by:
   - limiting investments to avoid over concentration in securities from a specific issuer or business sector (excluding U.S. Treasury and Federal Agency securities),
   - limiting investment in securities that have higher credit risks,
   - investing in securities with varying maturities, and
   - continuously investing a portion of the portfolio in readily available funds such as LAIF or money market mutual funds to ensure that appropriate liquidity is maintained in order to meet unanticipated cash demands.

2) **Maximum Maturities** - To the extent possible, the City shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than five (5) years from the date of purchase. The intent to invest in securities beyond the five year maturity limitation shall be disclosed in writing to the City Council no less than 3 months prior to the investment. As a general rule, the weighted average maturity of the investment portfolio will not exceed two years. Reserve funds established by the issuance of bonds and other funds with longer-term investment horizons may be invested in securities exceeding five years if the maturity of such investments are made to coincide with the expected use of funds.
3) **Competitive Bidding** - It is the policy of the City to require competitive bidding for investment transactions that are not classified as "new issue" securities. For the purchase of non "new issue" securities and the sale of all securities, with the exception of U.S. Treasury securities, at least three bidders must be contacted. Competitive bidding for security swaps is also recommended, however, it is understood that certain time constraints and broker portfolio limitations exist which would not accommodate the competitive bidding process. If time or portfolio constraining condition exists, the pricing of the swap should be verified to current market conditions and documented for auditing purposes.

PERFORMANCE EVALUATION/BENCHMARK

- Investment performance is continually monitored and evaluated by The City Treasurer. Investment performance statistics and activity reports are prepared on a quarterly basis for presentation to the City Manager and City Council within 30 days of the end of the quarter.
- The investment portfolio benchmark yield shall be the 12 month average yield of the two-year U.S. Treasury note. This benchmark yield coincides with the City's intended weighted average maturity of two years.

SAFEKEEPING OF SECURITIES

- To protect against fraud or embezzlement or losses caused by collapse of an individual securities dealer, all securities owned by the City shall be held in safekeeping by a third party bank trust department, acting as agent for the City under the terms of a custody agreement or master repurchase agreement. All trades executed by a dealer will settle delivery vs. payment (DVP) through the City's safekeeping agent.
- Securities held in custody for the City shall be audited by the City's internal auditor quarterly to verify investment holdings.

INTERNAL CONTROL

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits to be derived and that the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- Control of collusion
- Separation of transaction authority from accounting and record keeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third party custodian

REPORTING

- The City Treasurer shall review and render quarterly reports to the City Manager and City Council which shall include the par and dollar amount of the investment, the classification of the investment, the percentage of the total portfolio which each type of investment represents, the name of the institution or entity, the rate of interest, the maturity date, the current market value, and the source of the market value.
- Statement that the projected cash flow is adequate to meet expected obligations over the next six months.
- The weighted average maturity of the investment portfolio.
- The average weighted yield to maturity of the portfolio as compared to the applicable benchmark.
- Statement of compliance with the investment policy.
- The report is due within 30 days of the end of the quarter.
- The City Manager may, at his discretion, require this reporting on a monthly basis based upon market conditions.

QUALIFIED BROKER/DEALERS

- The City shall transact business with financial institutions and security broker/dealers after careful review of their qualifications and creditworthiness. All dealers who desire to do business with the City shall provide the necessary information (e.g. audited financial statements, proof of state registration, proof of National Association of Securities Dealers certification, etc.) from which the City can determine their creditworthiness, the existence of any pending legal action against the firm or the individual broker as well as an understanding of the security markets that they service.

- The City Treasurer shall annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the City. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the City's investment policies and intends to sell the City only appropriate investments authorized by this investment policy.

COLLATERAL REQUIREMENTS

Collateral is required for investments in non-negotiable certificates of deposit and repurchase agreements. In order to reduce market risk, the collateral level shall be at least 102% of market value of principal and accrued interest and marked-to-market weekly. Securities acceptable as

collateral shall be the direct obligations of, or are fully guaranteed as to principal and interest by the United States or any agency of the United States.

AUTHORIZED INVESTMENTS

Investment of City funds is governed by the California Government Code Sections 16429.1-16429.4 and 53600 et seq. Within the context of the limitations, the following investment are authorized, as further limited herein:

1) **United States Treasury Bills, Bonds, and Notes** or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no percentage limitation of the portfolio which can be invested in this category, though a five year maturity limitation is applicable.

2) **Federal Agency Obligations** - Obligations issued by the Federal Government agencies such as Government National Mortgage Association (GNMA), the Federal Farm Credit Bank (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Federal Home Loan Mortgage Corporation (FHLMC). There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable.

3) **Bills of Exchange/Time Drafts**- Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Purchase of banker's acceptances may not exceed 180 days maturity or 20% of the cost value of the portfolio. Furthermore, no more than $5 million or 10% of the cost value of the portfolio may be invested in the banker's acceptances of any one commercial bank.

4) **Commercial Paper** of the highest letter and number rating as provided by at least two nationally recognized statistical rating organizations, issued by general corporations organized and operating within the United States, having assets in excess of $500,000,000 and having an AA or better rating on their long term debentures as provided by at least two nationally recognized statistical rating organizations . Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper of the issuing corporation. Purchases of commercial paper may not exceed 15% of the cost value of the portfolio.

5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, state or federal savings institutions, or state-licensed branch of foreign banks. Purchases of negotiable certificates of deposit may not exceed 30% of the cost value of the portfolio. A maturity limitation of five years is applicable.

6) **Repurchase Agreements** - Repurchase agreements may be made on any investment authorized by this investment policy. The maturity of the repurchase agreements shall not exceed one year. The market value of the securities used as collateral for the repurchase agreements shall be monitored by the investment staff weekly and shall not be allowed to fall below 102% of the value of the repurchase agreement. A Master Repurchase agreement is required between the City and the dealer for all repurchase agreements transacted.

7) **Time Deposits -** Time deposits, non-negotiable and collateralized in accordance with the California Government Code, may be purchased through banks or savings and loan associations. Since time deposits are not liquid, no more than 10% of the investment portfolio may be invested in this investment type. A maturity limitation of two years is applicable.

8) **Medium-Term Corporate Notes** issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States with a maximum maturity of five years may be purchased. Securities eligible for investment shall be rated AA or better by at least two nationally recognized statistical rating organizations. Purchase of medium-term notes may not exceed 30% of the cost value of the portfolio and no more than 10% of the cost value of the portfolio may be invested in notes issued by one corporation. Commercial paper holdings should also be included when calculating the 10% limitation.

9) **Local Agency Investment Fund (LAIF) -** a State of California managed investment pool may be used up to the maximum permitted by California State Law.

10) **Money Market Mutual Funds -** Mutual funds invested in U.S. Government securities are permitted under this policy and under the California Government Code Section 53601. In order to be eligible for investment under this section, an investment objective of such a fund must be the maintenance of a price per share of $1.00. Investment in such funds shall not exceed 20% of the City's total portfolio and no more than 10% of the City's total portfolio may be invested in any one mutual fund. In addition, either one of the following criteria must be met:
    - The fund shall have achieved a rating of Aaa by at least two nationally recognized statistical rating organizations, or
    - shall have retained an advisor who is registered or exempt from registration with the Security Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

For both the LAIF and Money Market Mutual Funds investment, a thorough investigation of the investment pool is required on a continual basis. The types of investment and average maturity as reported by LAIF on their monthly investment reports and by the Money Market Mutual Funds on their semi-annual reports will be examined closely to ensure that the criteria for qualifying these investment pools remain unchanged.

11) **Security Swaps** - The City may take advantage of security swap opportunities to improve the overall quality, yield or target duration of the portfolio. A swap that improves the portfolio yield may be selected even if the transactions result in an accounting loss. Documentation for swaps will be included in the City's permanent investment file documents.

12) **Ineligible Investments -** Ineligible investments are those that are not described herein, including but not limited to, common stocks, reverse repurchase agreements, inverse floaters,

range notes, mortgage derived interest only strips, derivatives securities, or any security that could result in zero interest accrual.

MAXIMUM INVESTMENT MATURITY AND PERCENTAGE

The following matrix of maximum maturity and percentage limits, by instrument, are established for the City's total pooled funds portfolio:

Investment Type	Maturity	Percentage
Repurchase Agreements	1 Year	0 to 100%
Local Agency Investment Fund	Upon Demand	$50,000,000 per account
U.S. Treasury Bonds/Notes/Bills	5 Years	0 to 100%
U.S. Government Agency Obligations	5 Years	0 to 100%
Bankers' Acceptances	180 Days	0 to 20%
Commercial Paper	270 Days	0 to 15%
Negotiable Certificates of Deposit	5 Years	0 to 30%
Time Certificates of Deposit	2 Years	0 to 10%
Medium-Term Corporate Notes	5 Years	0 to 30%
Money Market Mutual Funds	Upon Demand	0 to 20%

LEGISLATIVE CHANGES

Any State of California legislative action, that further restricts allowable maturities, investment type or percentage allocations, will be incorporated into the City's Investment Policy and supersede any and all previous applicable language.

INTEREST EARNINGS

All moneys earned and collected from investments authorized in this policy shall be allocated monthly to various fund accounts based on the cash balance in each fund as a percentage of the entire pooled portfolio.

POLICY CONSIDERATIONS

1) **Exemption** - Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
2) **Amendments** - The City's investment policy shall be adopted by resolution of the City Council on an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.

GLOSSARY OF TERMS

Accrued Interest- Interest earned but not yet received.

Active Deposits- Funds which are immediately required for disbursement.

Amortization- An accounting practice of gradually decreasing (increasing) an asset's book value by spreading its depreciation (accretion) over a period of time.

Arbitrage- Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets.

Asked Price- The price a broker dealer offers to sell securities.

Banker's Acceptance- A high quality, short term money market instrument used to finance international trade. There has never been an instance of a failure to pay a banker's acceptance in full at its maturity date.

Basis Point- One basis point is one hundredth of one percent (.01).

Bid Price- The price a broker dealer offers to purchase securities.

Bond- A financial obligation for which the issuer promises to pay the bondholder a specified stream of future cash flows, including periodic interest payments and a principal repayment.

Book Value- The value at which a debt security is shown on the holder's balance sheet. Book value is acquisition cost less amortization of premium or accretion of discount.

Broker- Someone who brings buyers and sellers together and is compensated for his/her service.

Certificate of Deposit- A deposit insured up to $250,000 by the FDIC at a set rate for a specified period of time.

Collateral- Securities, evidence of deposit or pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposit of public moneys.

Commercial Paper- Short-term, negotiable unsecured promissory notes of corporations.

Comprehensive Annual Financial Report (CAFR)- The official annual financial report for the City, prepared in conformity with Generally Accepted Accounting Principles (GAAP).

Coupon- The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.

Credit Risk - Defined as the risk of loss due to failure of the issuer of a security.

Current Yield- The interest paid on an investment expressed as a percentage of the current price of the security.

Custodian- A bank or other financial institution that keeps custody of stock certificates and other assets.

Defeased Bond Issues- Issues that have sufficient money to retire outstanding debt when due so that the agency is released from the contracts and covenants in the bond document.

Delivery vs. Payment (DVP)- Delivery of securities with a simultaneous exchange of money for the securities.

Derivative- Securities that are based on, or derived from, some underlying asset, reference date, or index.

Discount- The difference between the cost of a security and its value at maturity when quoted at lower than face value.

Diversification- Dividing investment funds among a variety of securities offering independent returns and risk profiles.

Duration- A measure of the timing of the cash flows, such as the interest payments and the principal repayment, to be received from a given fixed-income security. This calculation is based on three variables: term to maturity, coupon rate, and yield to maturity. The duration of a security is a useful indicator of its price volatility for given changes in interest rates.

Fannie Mae- Trade name for the Federal National Mortgage Association (FNMA), a U.S. sponsored corporation.

Federal Reserve System- The central bank of the U.S. which consists of a seven member Board of Governors, 12 regional banks and 5,700 commercial banks that are members.

Federal Deposit Insurance Corporation (FDIC)- Insurance provided to customers of a subscribing bank which guarantees deposits to a set limit (currently $250,000) per account.

Fed Wire- A wire transmission service established by the Federal Reserve Bank to facilitate the transfer of funds through debits and credits of funds between participants within the Fed system.

Freddie Mac- Trade name for the Federal Home Loan Mortgage Corporation (FHLMC), a U.S. sponsored corporation.

Ginnie Mae- Trade name for the Government National Mortgage Association (GNMA), a direct obligation bearing the full faith and credit of the U.S. Government.

Government Accounting Standards Board (GASB)-A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

Guaranteed Investment Contracts (GICS)- An agreement acknowledging receipt of funds, for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

Inactive Deposits- Funds not immediately needed for disbursement.

Interest Rate- The annual yield earned on an investment, expressed as a percentage.

Investment Agreements- An agreement with a financial institution to borrow public funds subject to certain negotiated terms and conditions concerning collateral, liquidity and interest rates.

Liquidity- An asset that can easily and rapidly be converted into cash without significant loss of value.

Local Agency Investment Fund (LAIF)-A pooled investment vehicle for local agencies in California sponsored by the State of California and administered by the State Treasurer.

Local Agency Investment Pool- A pooled investment vehicle sponsored by a local agency or a group of local agencies for use by other local agencies.

Market Risk - Defined as market value fluctuations due to overall changes in the general level of interest rates.

Market Value- The price at which a security is trading and could presumably be purchased or sold.

Maturity- The date upon which the principal or stated value of an investment becomes due and payable.

Modified Duration-A measure of exposure to market risk of a security or a portfolio. It is the percent change in the price of a security (portfolio) or a 100 basis point change in the security's (portfolio's) yield.

Mutual Funds- An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

Negotiable Certificate of Deposit-A large denomination certificate of deposit which can be sold in the open market prior to maturity.

New Issue- Term used when a security is originally "brought" to market.

Note- A written promise to pay a specified amount to a certain entity on demand or on a specified date.

Par Value- The amount of principal which must be paid at maturity. Also referred to as the face amount of a bond, normally quoted in $1,000 increments per bond.

Perfected Delivery- Refers to an investment where the actual security or collateral is held by an independent third party representing the purchasing entity.

Portfolio- Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

Primary Dealer- A group of government securities dealers that submit daily reports of market activity and security positions held to the Federal Reserve Bank of New York and are subject to its informal oversight.

Principal- The face value or par value of a debt instrument, or the amount of capital invested in a given security.

Prospectus- A legal document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement")

Prudent Investor Standard- A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling and managing funds. The test of whether the standard is being met is if a prudent person acting in a similar situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

Purchase Date- The date in which a security is purchased for settlement on that or a later date.

Rate of Return- The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

Repurchase Agreement (REPO)- A transaction where the seller agrees to buy back from the buyer (City) the securities at an agreed upon price on demand or at a specified date.

Reverse Repurchase Agreement (REVERSE REPO)- A transaction where the seller (City) agrees to buy back from the buyer the securities at an agreed upon price on demand or at a specified date.

Risk- Degree of uncertainty of return on an asset.

Rule G-37 of the Securities Rulemaking Board- Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

Safekeeping Service- An arrangement under which a third party institution holds securities or valuables under safe, controlled conditions. A safekeeping arrangement is evidenced by a safekeeping receipt.

Sallie Mae- Trade name for the Student Loan Marketing Association (SLMA), a U.S. sponsored corporation.

Secondary Market- A market made for the purchase and sale of outstanding issues following the initial distribution.

Securities and Exchange Commission (SEC)- The federal agency responsible for supervising and regulating the securities industry.

Settlement Date- The date on which a trade is cleared by delivery of securities against funds.

Tax and Revenue Anticipation Notes (TRANS)- Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

Time Certificate of Deposit-A non-negotiable certificate of deposit which cannot be sold prior to maturity.

Treasury Bills- U.S. Treasury Bills which are short-term, direct obligations of the U.S. Government issued with original maturities of 13 weeks, 26 weeks and 52 weeks; sold in minimum amounts of $10,000 in multiples of $5,000 above the minimum. Issued in book entry form only. T-bills are sold on a discount basis.

Trustee or trust company or trust department of a bank- A financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

Underwriter- A dealer which purchases a new issue of municipal securities for resale.

U.S. Government Agencies- Instruments issued by various US Government Agencies most of which are secured only by the credit worthiness of the particular agency.

U.S. Treasury Obligations- Debt obligations of the United States Government sold by the Treasury Department in the forms of Bills, Notes, and Bonds. Bills are short-term obligations that mature in 1 year or less and are sold on the basis of a rate of discount. Notes are obligations which mature between 1 year and 10 years. Bonds are long-term obligations which generally mature in 10 years or more.

Weighted Average Maturity (WAM)- The average maturity of all the securities that comprise a portfolio that is typically expressed in days or years.

Yield- The rate of annual income return on an investment, expressed as a percentage. It is obtained by dividing the current dollar income by the current market price of the security.

Yield to Maturity- The rate of income return on an investment, minus any premium or plus any discount, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond, expressed as a percentage.

Yield Curve- A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

*7

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE MEMORANDUM OF UNDERSTANDING WITH THE MILPITAS EMPLOYEES ASSOCIATION (MEA) FOR THE PERIOD JANUARY 1, 2013 THROUGH DECEMBER 31, 2013 AND A SIDE LETTER EXECUTED BY MEA ON AUGUST 6, 2013

WHEREAS, the City of Milpitas ("City") and the Milpitas Employees Association ("MEA") have considered entering into a Memorandum of Understanding with the effective dates of January 1, 2013 through December 31, 20013 ("MOU") and a related Side Letter;

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

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

2. The MOU between the MEA group is hereby adopted to be effective from January 1, 2013 through and including December 31, 2013.

3. The Side Letter executed by MEA representatives on August 6, 2013, is hereby approved and adopted to be effective from this date forward in perpetuity.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____
Mary Lavelle, City Clerk

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

MEMORANDUM OF UNDERSTANDING

BETWEEN

MILPITAS EMPLOYEES ASSOCIATION

(An Affiliate of Laborers' International Union of North America (LIUNA/UPEC)

AND THE

CITY OF MILPITAS

January 1, 2012 through December 31, 2013

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As Adopted by the Milpitas City Council on August 20, 2013

Deleted: June 7, 2011

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CITY OF MILPITAS AND MILPITAS EMPLOYEES' ASSOCIATION
COMPREHENSIVE MEMORANDUM OF UNDERSTANDING ON
SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS

January 1, 2012 – December 31, 2013

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This Memorandum of Understanding (hereafter "Agreement") is made between the City of Milpitas ('the City") and the Milpitas Employees Association (hereafter "the Union"). The Union confirms that it is an affiliate of the Laborers' International Union of North America (LIUNA/UPEC), AFL-CIO, Local 792.

SECTION 1.00 - PREAMBLE

1.01 The term of this Agreement shall commence at 12:01 a.m. on, January 1, 2012, and terminate at 12:00 midnight, on December 31, 2013. It is subject to all ordinances, resolutions, and personnel rules of the City, except as expressly provided to the contrary by this Agreement, and all applicable federal and state laws.

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1.02 The Union and the City shall attempt to create a working environment free from hostility and intimidation. To that end, the Union and the City shall encourage all employees to treat their fellow employees with dignity and respect.

1.03 The terms and conditions of employment set forth in this Agreement have been discussed in good faith by the authorized representatives of the City and the authorized representatives of the Union. The authorized representatives of the Union agree to recommend acceptance by the employees of all terms and conditions set forth herein. Following said acceptance by the employees, authorized representatives of the City agree to recommend to the Milpitas City Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.

SECTION 2.00 - NO DISCRIMINATION

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

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

SECTION 3.00 - EMPLOYEE RIGHTS

3.01 Employees receiving permanent appointment prior to July 1, 1986, are subject to the provisions of this subsection:

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

3.01.2 The right to join a labor union or any association of municipal employees also includes the right not to join. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation, or pressure of any kind from any person. Any attempt by one City employee to unduly influence or pressure another employee regarding the employee's membership in any organization or association is contrary to this Memorandum of Understanding, and any offender shall be subject to disciplinary action. Undue influence or pressure for these purposes is an attempt to persuade an employee to change their mind by any means other than written or verbal discussion of the pros and cons of membership or non-membership.

3.01.3 For employees who may wish to belong to the employee's union, the City shall cause dues to be deducted from their paycheck where specifically authorized by the employee in advance. Employees shall authorize deduction of dues in writing. The employee may, at any time, and for any reason, cancel his/her authorization for such a payroll deduction. The employee's cancellation of such authorized deductions shall in no way affect his/her job or standing as an employee. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation or pressure of any kind from any person.

3.02 All represented employees receiving a permanent appointment on or after July 1, 1986 shall be required to pay an amount, established by the Association, not to exceed the monthly membership dues, to the Association. The City agrees that the payment of said amount shall be a condition of employment, and further agrees to cause deduction of one-half the monthly sum due, from each of the first two payroll checks issued in each calendar month. The Association agrees that membership and participation in Association or union activities is not required beyond the payment of the monthly charge. The above subsection shall be applied in accordance with federal, state and local law.

3.02.1 The City and the Association recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

Accordingly, membership in the Association shall not be compulsory. A unit member has the right to choose, either: to become a member of the Association; or to pay to the Association a fee for representation services, or to refrain from either of the above courses of action upon the grounds set forth in Paragraph 3.02.07 below.

3.02.2 A bargaining unit member who does not fall within one of the exempted categories as set forth in Paragraph 3.02.07 below, and who has not voluntarily made application for membership in the Association within thirty, (30), days of either the date upon which this Agreement is executed, or the date upon which said unit member has been employed by the City, whichever is later, must, as a condition of employment in the City, pay monthly by payroll deduction to the Association, a representation/ service fee in exchange for representation services necessarily performed by the Association in conformance with its legally imposed duty of fair representation on behalf of said unit member.

3.02.3 The representation/service fee to be collected from non-Association unit members shall be an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the Association.

3.02.4 Any dispute as to the amount of the representation fee shall be resolved by an arbitration panel consisting of three members: 1) Milpitas Employees Association Treasurer, 2) City Director of Financial Services, 3) member selected by the grieved party. Pending such resolution, the representation/service fees deducted shall be held in an escrow account pending a determination of the correct amount of the fee.

3.02.5 Unit members on voluntary leave without pay, and unit members who are on laid-off status shall be exempt from these provisions herein; except that the election as to the membership or payment of a fee as set forth in Paragraph 3.02 above must be exercised within the first ten, (10), workdays upon return to paid status.

3.02.6 Any unit member may be exempted from payment of any representation/service fees to the Association if that person is a member of a bona fide religious body or section which he/she historically held conscientious objections to joining or financially supporting public employee organizations. Such exempt unit member shall, as an alternative to payment of a representation/service fee to the Association, pay an amount equivalent to such representation/service fee to a choice of any of the following: American Cancer Society, American Heart Association, Sickle Cell Anemia Foundation or any other recognized minority service organization which qualifies for tax exemption under Section 501 (c)3 of the IRS code.

3.02.7 The City, upon written request from the Association, shall require such exempt unit member to submit a written affidavit to the Association verifying the existence and nature of the allowable objection to payment of a representative/service fee and in addition, shall require such exempt unit member to submit proof of payment of an amount equivalent to such representation/service fee to the organizations listed above.

3.02.8 A unit member shall sign and deliver to the City a written authorization to deduct the properly established representation/service fee as defined in Paragraph 3.02 above. Upon receipt of the authorization duly completed and executed, the City shall deduct from the pay of unit members and pay to the Association the normal and regular monthly representation/service fee.

3.02.9 In the event that a unit member who is not exempted from payment under Paragraph 3.02.7 above does not sign and deliver to the City an authorization pursuant to Paragraph 3.02.8 above, the Association shall request in writing that the City deduct

from the pay of the unit member and pay to the Association the normal and regular monthly representation fee without the approval of the unit member. In such case, the City shall begin automatic payroll deduction for the representation/service fee due from the date of ratification of this Agreement or the first date of the unit member's employment, whichever is later. There shall be no charge to the Association for such mandatory representation/service fee deductions.

3.02.10 Prior to beginning such payroll deduction pursuant to Subsection 3.02.9, the Association shall certify to the City in writing that the unit member whose pay is affected by the deduction has: 1) not joined the Association; 2) not voluntarily tendered the amount of the representation/service fee as defined herein; and 3) has not qualified for an exemption under Paragraph 3.02.7 herein. The Association shall also notify the unit member in writing that due to the unit member's failure to fulfill any of the above three, (3), requirements, the Association has requested the City to begin automatic payroll deduction of the representation/service fee. The Association shall provide the City with a copy of said written notice to the unit member. Thereafter, the City shall begin the automatic deductions.

3.02.11 The City is under no obligation to make payroll deductions for periods during which a unit member is either terminated from employment or not on the City's payroll for any reason, including, but not limited to, layoff and voluntary leave of absence for more than thirty, (30) days.

3.02.12 Upon the rehiring of any unit member, the City shall treat such unit member as a new unit member for purposes of this Section.

3.02.13 The City's sole and exclusive obligation under this Section is to notify any unit member who has failed to comply with the provisions of this Section that, as a condition of employment in the City, such unit member must either become an Association member, pay a representation/service fee, either through voluntary or involuntary deductions, or establish an exempt status and make payment pursuant to Paragraph 3.02.7 of this Section, and to make payroll deductions pursuant to Paragraph 3.02.8 of this Section. Under no circumstances shall the City be required to dismiss any unit member for failure to fulfill his/her obligation to pay the fees established herein.

3.02.14 The Association, as defined in this Section, shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges, or penalties incurred In responding to or defending against claims, dispute, challenges which are actually brought against the City or any of its agents, in connection with the administration or enforcement of any subsection of the Section pertaining to representation/service fee. Such reimbursement shall include, but not be limited to, court costs, litigation expense, and attorney's fees incurred by the City.

3.03 City employees participating in organizational or other labor union activities or similar activities of any employee association are required to conduct such activities on their own time and not during regularly assigned working hours, with the following exceptions:

3.03.1 A steward representing or assisting a fellow employee in the presentation of a grievance may utilize such time as is essential for the presentation of the grievance to

management during working hours; however, solicitation of grievances shall be on the steward and employee's own time.

3.03.2 Officials of any organization representing City employees may meet on City time with the City Manager or other City officials when such meeting times are approved by the City Manager.

3.03.3 Business agents or representatives of the union or other association, or their affiliates, having business, (other than recruiting of members), with the officers or individual members of the union or other recognized employee groups may meet and confer with such officers or members during the course of the working day for a reasonable period of time provided that permission is first obtained from the department head, if on duty, and the employee's immediate supervisor, and further provided that the conduct of such business shall in no way conflict with the performance of City business.

3.04 Use of the work place or premises for organizational activities other than the presentation of a grievance or the conduct of business as provided for above, is permitted before or after working hours only with the advance approval of the City Manager or his/her designee; is subject to the availability of the desired facility, and shall in no way interfere with the performance of official duties of on-duty personnel. Official bulletin boards may be used only for notice of meetings of any employee organizations and for no other organizational purpose. The City shall, however, provide space upon request at any City facility for a union or employee association furnished, installed and maintained bulletin board for posting of notices and bulletins and a magazine rack for the distribution of union or association literature.

3.05 Time Off For Association Meeting/Training:

The City shall provide annual paid release time for Association Business such as negotiations, conventions symposia, etc., excluding political activity, upon reasonable written notice to and prior approval by the appropriate department head. Release time shall not result in overtime by any employee. These events shall include but are not limited to:

Event	**Personnel**	**Time**
Labor Negotiations Training	2	5 days
LTD/Health Benefit Meetings	2	4 hours
PERS Meetings	2	1 day
Association Conferences	1	5 days
	Total	144 hours

SECTION 4.00 - CITY RIGHTS

4.01 The City continues to possess exclusively the rights listed below, plus all other rights to which by law the City is entitled. These rights may not be abridged or modified in any way, except by formal legislative action by the City Council (i.e. resolution or ordinance). The City has the right and may exercise its discretion:

1. To determine the mission of its constituent departments, commissions and boards;

2. To set standards of service.
3. To direct employees, make assignments and require overtime work;
4. To take disciplinary action;
5. To relieve its employees from duty because of lack of work or other legitimate reasons;
6. To determine the methods, means and personnel by which government operations are to be conducted;
7. To determine the procedure and standards for selection for employment and determine the content of job classifications;
8. To determine when an emergency exists and to take all necessary action to carry out its mission in emergencies, including recalling and deploying off-duty personnel and requiring that employees work overtime;
9. To exercise complete control and discretion over its organization and technology of performing its work;
10. To transfer or reassign employees, as outlined in the MOU;
11. To layoff employees by position as a result of: a material change in duties, organization, or shortage of work or funds in the Department or the City.

Any violation of the policies and procedures created by this MOU may be subject to disciplinary action as defined by this MOU. Any agreement between the City and the Association evidenced by a Memorandum of Understanding pursuant to Government Code section 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights. Such a Memorandum of Understanding will be honored in good faith during the life of this contract.

Except in cases of emergency the City shall give written notice (30 days in advance of any contract with third parties) which shall result in the lay-off, demotion, or transfer of any employee represented by the Association and shall meet and confer with the Association regarding the same upon reasonable notice.

SECTION 5.00 - ADVANCE NOTICE

5.01 Except in cases of emergency as provided in this section, the City shall give reasonable written notice to each recognized employee organization affected by an ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation including actions taken under City Rights that affect wages, hours and other terms and conditions of employment proposed to be adopted by the City and shall give such recognized employee organizations the opportunity to meet with City representatives.

SECTION 6.00 - DISCIPLINARY ACTION/APPEALS PROCEDURE

6.01 The City may take disciplinary action against any Employee for just cause. The City recognizes the practice of progressive discipline; however, depending on the severity of the offense, the City may immediately impose more severe discipline.

6.02 Causes for Disciplinary Action:

6.02.1 Grounds for Discipline: Discipline may be imposed for just cause, including without limitation for the following grounds:

(a) Fraud in securing appointment or falsification concerning records, fellow employees, or work performed.

(b) Failure to satisfactorily perform the duties and responsibilities of an employee's position.

(c) Neglect of Duty.

(d) Insubordination.

(e) Reporting for or performing duty under impairment as a result of alcohol and/or drug use.

(f) Dishonesty or misuse of or misappropriation of City property and funds.

(g) Conviction of any crime involving moral turpitude, or substantially relating to the function of an employee's position.

(h) Unauthorized absence without leave.

(i) Non-observance of work hours, including tardiness, and abuse of sick leave privileges.

(j) Discourteous or non-cooperative treatment of the public or other employees.

(k) Conduct, either during or outside of duty hours, which is of such a nature that it causes discredit to the employee's department or the City.

(l) Failure to abide by any condition of employment stipulated in the: Municipal Code; Personnel Rules and Regulations; any City or department policies or procedures; or Memoranda of Understanding approved by formal action of the Council;

(m) Knowingly filing or pursuing a false charge;

(n) Acts of violence towards fellow employees or members of the public in the workplace.

(o) Abuse of any City and/or Department policies and procedures.

(p) Abandonment of job (5 days absence without authorization).

6.03 Disciplinary Action:

6.03.1 Written Reprimand: Repeated violations or more severe misbehavior may require a more formal response by the supervisor to the employee. In this case the employee is provided with a written memorandum, which outlines the violation(s) and the expected actions to be taken by the employee in response to the memorandum. The written reprimand contains an indication of subsequent disciplinary steps to be taken in the

event that the employee fails to respond appropriately. A copy of the written reprimand shall be placed in the employee's official personnel record.

6.03.2 Suspension: In the event of more severe or repeated violations, the employee may be relieved of duty by the City for a specified period of time without pay. Such suspension shall not exceed thirty (30) calendar days and shall be subject to the procedures outlined in Section 6.05.

6.03.3 Reduction in Salary Range: In the event of more severe or repeated violations, the employee's salary may be reduced by the City within the range for the position held. Such reduction in salary shall be subject to the procedure outlined in Section 6.05. Reduction shall be made on a permanent or temporary basis.

6.03.4 Involuntary Demotion: In the event of more severe or repeated violations, the employee may be reduced in rank and pay by the City. Such demotion shall be in conformance with Section 6.05 Demotions shall be made on a permanent or temporary basis.

6.03.5 Termination of Employment: The City may terminate the employment of an employee for more severe or repeated violations of the City or Department rules, regulations, policies or procedures. Such termination shall be in conformance with Section 6.05.

6.04 Authority for Disciplinary Actions:

The Department Head, or designated representative, shall have authority to take disciplinary action.

6.05 Proposed Discipline Notice to Employees:

6.05.1 Prior to taking any disciplinary action, as defined in Section 6.03, against a permanent employee, the City shall notify the employee in writing of the following:

(a) The proposed disciplinary action;

(b) The nature of the charges and/or violation of City ordinances, resolutions, written procedures, municipal code, or departmental regulations and policies;

(c) The reasons for the proposed action;

(d) The materials upon which the action is based;

(e) The opportunity of the employee to appear before a designated City representative and respond to the charges at a specified place and time;

(f) The right of the employee to be represented by an attorney or other representative at any disciplinary conferences or proceedings.

6.05.2 Any employee notified pursuant to 6.05.1 above who desires an opportunity to respond may do so by appearing at the appointed place and time. Said response may be oral or in writing. The employee is not entitled to an evidentiary hearing, and the sole purpose

of the meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the City determines that the presentation of witnesses is necessary. If the City representative determines that he or she cannot be impartial, or upon timely written request by the employee, the Human Resources Director or designee may hear the employee's response.

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

As soon as practical after the employee has had an opportunity to present a response, the City will notify the employee in writing of the nature and extent of the discipline, if any, and the time of commencement thereof. Said notification will also advise the employee of any right of appeal.

6.05.3 For the purposes of the application of the procedures outlined in Sections 6.05, a disciplinary action shall be defined as a suspension of at least three (3) working days for those employees assigned to a standard 40-hour week, or an equivalent reduction in salary, demotion or discharge.

6.06 Notification – Disciplinary Action: The City agrees that in any disciplinary action, except oral reprimand, taken against employees represented by the Association, the Association shall be notified by memorandum within forty-eight hours (48) hours following employees notification of pending disciplinary action, subject to employee's consent to such notification.

6.07 Right of Appeal:

6.07.1 Reprisals:

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

6.07.2 Written Reprimand:

The Human Resources Director shall remove a letter of reprimand from a personnel file upon written request by the employee, provided there have been no additional disciplinary actions of a similar nature during the subsequent twelve (12) months.

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

Written reprimands are not subject to the Discipline Appeal process covered in Arbitration (Section 6.07.3) and/or the Grievance Process (Section 10.00).

6.07.3 Appeals of Suspensions, reduction in step, involuntary termination: Arbitration

Within ten (10) working days of the receipt of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request. The request for arbitration shall be made to the Department Head with a copy sent to the Human Resources Director.

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

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

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the disciplined employee, or employee organization, if the employee organization represents the disciplined employee at the arbitration. The services of the certified court reporter are optional. However, both parties must agree if a certified court reporter is employed. Financial responsibility shall be established before the selection of an arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the issue of whether the grievant was disciplined for good or just cause, and if not, what the appropriate remedy should be. The arbitrator shall be without power or authority to make any decision or award that requires the City or the administration to do an act prohibited by law.

If, as a result of an arbitration award, an employee's disciplinary action is deleted or modified in any way and if the employee's performance appraisal review contains any reference to the disciplinary action, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the disciplinary action shall be deleted.

Decision - Final and Binding: The decision of the arbitrator shall: (a) be made in writing within thirty (30) working days of the close of the hearing or submission of written briefs and (b) shall be final and binding upon both parties.

6.08 Every effort shall be made to schedule meetings for the processing of disciplinary actions/appeals procedure at times which will not interfere with the regular workday of the participants. If any disciplinary meeting or hearing must be scheduled during duty hours, any employee required by either party to participate in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.

6.09 Waiver of Steps or Time Limits: Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived or extended upon written consent of all parties.

SECTION 7.00 - LAYOFF

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

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

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

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

7.01.4 No layoffs or new outsourcing of MEA positions during term of this contract, except if the State eliminates any portion of RDA impacting the City and/or the General Fund's deficit exceeds $7 million or more in any fiscal year.

SECTION 8.00 - RESIGNATION

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

SECTION 9.00 - OTHER EMPLOYMENT

9.01 Employees may engage in other employment or business activity that is not inconsistent, incompatible or in conflict with the Employee's duties and which does not involve time demands that would reduce the Employee's efficiency.

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

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

(b) Involves receipt or acceptance by the Employee of any money or other consideration from anyone other than the City for the performance of an act which the Employee, if not performing such act, would be required or expected to render in the regular course of hours of City employment or as a part of regular duties.

(c) Involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other Employee of the City.

(d) Involves such time demands as would reduce the Employee's efficiency

9.03 Employees must notify the Human Resources Director of other employment or business activities in writing prior to engaging in such activities. Unless such notice is impossible or impractical; in such cases notice shall be submitted on the Employee's next working day. Disapproval of other employment may be appealed to the City Manager whose decision shall be final. Documents concerning other employment shall be kept in the employee's personnel file.

9.04 In application of MOU Section 9.00 - Other Employment, the City does not intend to take disciplinary action against any employee covered by the MEA Memorandum of Understanding who inadvertently and unintentionally fails to submit a notice of intent to engage in outside employment pursuant to Section 9.01, provided that such outside employment is not inconsistent, incompatible or in conflict with the employee's duties as defined in Section 9.02 (a) through (d).

Employees who engage in outside employment that conflicts with duties or who intentionally fail to submit a timely notice to engage in outside employment shall be subject to disciplinary action.

SECTION 10.00 - GRIEVANCE PROCEDURE

10.01 Definitions:

(a) A grievance is any dispute which involves the interpretation or application of any provision of this MOU. A grievance does not include disciplinary actions, as a different review procedure for disciplinary matters is otherwise provided in this MOU. Performance appraisal reviews are not grievable.

(b) A "grievant" is any employee, or union representative on behalf of an employee adversely affected by an alleged violation of the specific provisions of a Memorandum of Understanding.

(c) A "working day" is any day in which the City Hall is open for business.

(d) "Employee organization" is the Milpitas Employees Association, an affiliate of LIUNA/UPEC, Local 792.

10.02 Representation:

At any step in the grievance procedure, the employee concerned may choose to represent himself/herself; or be represented by the certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned; or by legal counsel. The employee concerned shall be personally present at all stages of the grievance procedure unless that employee specifically waives the right in writing.

10.03 Scheduling/Attendance:

Every effort will be made to schedule meetings for the processing of grievances at times which will not interfere with the regular workday of the participants. If any grievance meeting or hearing must be scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released from regular duties without loss of pay for

a reasonable amount of time. Overtime is not provided for off-duty time except f o r witnesses requested by the City.

10.04 Informal Grievance

It is the intent to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible. In any instance of grievance, the Grievant shall first raise the issue with their immediate supervisor within thirty (30) calendar days following the occurrence, or knowledge of the events on which the grievance is based. Employees waive the right to grieve beyond this thirty (30) day period. Every effort shall be made to resolve such grievance at this level.

10.05 Formal Grievance--Level 1

If a mutually satisfactory solution of a grievance as specified in the paragraph above is not reached, then within ten (10) working days of the immediate supervisor's decision, the grievant shall submit a grievance statement in writing. The written grievance shall set forth all of the issues involved; shall be dated and signed by the grievant; and shall be submitted to the Department Head. The grievance shall contain each of the following (providing the grievant possesses the knowledge required in order to comply):

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

The Department Head, or designated representative, shall investigate the facts and issues and reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the department's business. Upon reaching such conclusion, but in any event within ten (10) working days of the receipt of the grievance statement, the Department Head or designated representative shall reply in writing stating the department's view of the issue involved.

10.06 Formal Grievance--Level II

If the grievance has not been disposed of at Level I, the grievant, within ten (10) working days after receipt of the department's written reply at the completion of Level I, shall forward the said written grievance to the City Manager or designated representative. The City Manager or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten

(10) working days of the receipt of the grievance statement, the City Manager or designee shall issue a written decision on the grievance appeal.

10.07 Arbitration

Within ten (10) working days of the receipt of City Manager's final decision, the Grievant may request arbitration by filing a written request to the Human Resources Director.

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

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

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

The arbitrator's power and authority is limited to the interpretation of this Agreement. The arbitrator shall be without power or authority to render any decision or award that requires the City or the administration to do an act prohibited by law.

10.08 Decision - Final and Binding:

The decision of the arbitrator shall (a) be made in writing within thirty (30) working days of the close of the hearing or the submission of written briefs; and (b) shall be final and binding upon both parties.

10.09 Waiver of Steps or Time Limits:

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

SECTION 11.00 - WORK SCHEDULES

11.01 Employees shall work a 37.5 or 40 hour workweek. The department head shall have the authority to review, and as necessary, modify the work schedule each April 1, and September 1. However, any such modification shall not include changing from a four day work week to any alternative schedule without meeting and conferring on the specifics of the proposed change. Said schedule shall be circulated 30 calendar days prior to the beginning of each April 1, and September 1,

respectively to all affected employees. In establishing the schedule, consideration shall be given to the staffing needs of the department and the concerns of the employees. It is understood and agreed, however, that this shall not restrict or limit the ability of the City to modify schedules to respond to emergencies or immediate service needs of the City.

11.02 In all cases, employees who are assigned to shifts in which one-half of their hours fall between the hours of 6:00 p.m. and 8:00 a.m. three or more times within an established work week shall receive a five percent (5%) premium.

SECTION 12.00 - WORKING TITLES

12.01 It is agreed that working titles may be adopted within established job classifications with approval of the Department head.

SECTION 13.00 - TEMPORARY APPOINTMENTS

13.01 Any employee receiving a temporary appointment to a vacant position shall serve in accordance with the City's Personnel Rules and Regulations. Any employee who has satisfactorily served in a temporary capacity for three months or longer, and is selected for a permanent appointment to the same class by the appointing authority, shall receive credit towards completion of the probationary period for the duration of the temporary appointment from the first date of the assignment. A performance appraisal of the employee is required at the time of the permanent appointment. The City shall make every effort to fill vacancies within six months.

SECTION 14.00 - ATTENDANCE

14.01 General:

Employees shall be in attendance at their work place in accordance with the rules regarding hours of work, holidays, and leaves.

14.02 Unauthorized Absence:

14.02.1 An employee whose absence is not authorized shall not receive pay or benefits for the absent period and may be subject to discipline. Failure on the part of the employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the Department Head of the reason the employee is absent and of the employee's availability for duty.

14.02.2 Any employee shall report his/her absence by 10:00 a.m. of the same day to the supervisor or higher authority. Failure to do so may result in unauthorized absence.

14.03 Breaks:

Employees shall be entitled to the privilege of two 15-minute breaks during each standard work day.

14.04 Responsibility to Maintain Service:

No employee shall schedule a break at such time as to leave the office in which the employee works unstaffed.

14.04.1 Persons whose responsibility includes public contact shall advise a responsible person in their office before leaving for a break.

14.04.2 Persons alone in an office should leave a sign on the door, lock the door, and advise the receptionist before leaving for a break, in order to ease the handling of incoming phone calls and customers that may call at the office.

14.05 Limitations for Breaks:

14.05.1 For work days from 8:00 a.m. to 5:00 p.m., the morning break shall be taken between 9:30 a.m. and 11:00 a.m., and the afternoon break shall be taken between 2:30 p.m. and 4:00 p.m.

14.05.2 For irregular work days, breaks shall be taken after the first one and one-half hours and before the last hour of each half shift.

SECTION 15.00 - PAY PLAN

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

The following is the basis of compensation for Employees on a five-step range.

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

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

15.01.3 Step "C" represents the rate at which a qualified and experienced employee should be paid after a reasonable period of service. An employee shall become eligible for step "C" only after he/she has proven himself/herself satisfactory in the given classification for a period of at least one year after completion of his/her probationary period, upon recommendation of the Department Head and approval of the City Manager.

15.01.4 Step "D" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall become eligible for step "D" after completion of one year at step "C" upon recommendation of the Department Head and approval of the City Manager.

15.01.5 Step "E" represents an incentive adjustment for increasingly satisfactory performance. An employee shall be eligible for step "E" after completion of one year at step "D" upon recommendation of the Department Head and approval of the City Manager.

15.01.6 A merit increase prior to the normal anniversary date may be granted to a Permanent Employee for outstanding performance or unusual employment conditions at any time, on the recommendation of the Department Head and the approval of the Human Resources Director or City Manager.

15.02 Performance Appraisal Review - Performance appraisals are an important personnel tool, and the City should endeavor to conduct them in a timely manner.

15.03 The City shall evaluate employees annually, (1) from their date of hire, or (2) the date they entered their class (when promoted or demoted the classification date shall supersede the hire date). In any case, an employee shall be evaluated at the completion of probation, be it initial, or as a result of promotion. Effective January 1, 2007, if an employee does not receive a performance appraisal on the date it is due and is not at top step of the salary range for his/her classification, the Human Resources Department shall process the forms necessary to advance the employee to the next step in the pay range effective with the nearest full pay period to eligibility. The nearest full pay period are defined in Section 15.06. Supervisors must complete a Performance Appraisal Review (PAR) on a timely basis if they intend to withhold a step advancement for the employee.
If a supervisor subsequently finds that the employee would have been entitled to a step increased, (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within at least 30 working days after it is due, the employee shall have the right to file a grievance under Section 10 of this Understanding.

15.04 Salary Following Promotion:

Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.

15.05 In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment. Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the Director of Financial Services.

15.06 All salary advancements specified within this section shall be effective with the nearest full pay period to eligibility. The nearest full pay period shall be defined as follows:

For eligibility dates which fall within the first seven (7) days of a pay period, any increase shall be effective at the beginning of that pay period.

For eligibility dates which fall within the second seven (7) days of a pay period, any increase shall be effective at the beginning of the following pay period.

15.07 "Y" Rate Policy - Whenever an employee would sustain an actual decrease in salary as a result of downward reclassification or reorganization within an existing department unit, without fault or inability on the part of the employee, the City Council shall adopt a "Y-Rate" to apply only to the

employee so attached. A "Y-Rate" is defined as a monthly salary rate for an individual employee, which is greater than the established range for the employee's class. An employee for whom a "Y-rate" is established shall not receive an increase in salary until such time as the employee's rate of compensation is within the established range for the employee's class. An employee who accepts a reassignment to a lower paid position in lieu of layoff shall not be "Y-Rated."

SECTION 16.00 - SALARY

16.01 The monthly salary schedule labeled Appendix "A" and attached hereto is hereby made a part of this Memorandum of Understanding.

SECTION 17.00 - OVERTIME

17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 37.5 or 40 hour workweek, said employee shall be compensated as follows:

17.02 A minimum of two hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties.

17.03 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.

17.04 All other overtime, scheduled or unscheduled, shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off at the option of the employee, however, that employees required to work up to eight (8) minutes beyond their normal work hours shall not receive overtime.

17.05 Overtime occurring on a paid City holiday shall result in pay, or compensatory time off, at the rate of time and one-half in addition to base pay.

17.06 Compensatory time off credits may be accrued by employees, up to a maximum of 160 hours on the last day of the pay period that includes December 31 of any year. Employees shall receive pay for the hours of compensatory time off earned which exceeds the 160-hour limit at calendar year end.

17.07 In the event an employee is required to work overtime beyond his/her regular shift and does not receive at least four, (4), hours off before the next day's shift, he/she shall be deemed not to have left work and shall receive overtime compensation, until a break of four, (4), hours or greater is taken.

17.08 After working overtime and not having at least eight consecutive hours of off duty, an employee shall not be required to report to work until eight hours after the completion of the overtime assignment. The employee shall be paid from the beginning of the employee's next regular shift.

17.09 The City reserves the option to specify whether the employee shall be compensated in overtime pay at the rate of time and one-half or compensatory time off at the rate of time and one-half when

the employee works scheduled overtime which is charged to a Capital Improvement Project. The City shall inform the employee of the City's choice prior to the employee's acceptance of the overtime assignment. The City's choice shall apply equally to all employees working this assignment. Acceptance of the assignment shall indicate the employee's acceptance of the method of overtime payment as designated by the City.

17.10 Permanent MEA employees will be given the first priority in the assignment of scheduled and unscheduled overtime. Temporary employees will not be assigned to scheduled or unscheduled overtime if appropriate permanent employees are reasonably available or except in the case of an emergency and/or immediate service need of the City.

17.11 Any paid accrued leave, specifically sick leave, vacation leave, worker's compensation leave, or compensatory time off, taken by an employee during any work week shall be counted as hours worked for the purpose of calculating overtime.

17.12 All overtime is subject to prior authorization from the supervisor.

SECTION 18.00 - STANDBY ASSIGNMENT

18.01 The City reserves the right to assign employees to standby status during non-work hours, including week nights, weekends and holidays. Employees assigned to this status shall be required to be available for immediate return to work upon notification by their supervisor or the Police Department Communications Dispatcher. No employee shall be required to respond to a call back via cell phone, pager or other electronic device provided by the City unless they are compensated for such time waiting or on Stand-by.

When assigned to standby status, the following conditions shall apply:

18.01.1 Standby assignments shall be made to Maintenance Worker II's or higher with a Class B license and tanker endorsement (excepting Facility Maintenance Workers)

18.01.2 A radio equipped City vehicle shall be provided for use by the employee.

18.01.3 In the event the employee leaves home, the location and telephone number where that employee may be contacted must be provided to the Police Department Communications Dispatcher.

18.01.4 Travel precluding reasonable response time shall not be permitted.

18.01.5 Failure to respond shall automatically result in a loss of compensation for the shift of standby during which the failure to respond occurred, and may cause further disciplinary action if warranted when taking the circumstances into consideration.

18.01.6 Preliminary stand-by schedules for a six month period shall be prepared six weeks in advance. The schedule shall be distributed to stand-by eligible personnel for a two week review for changes prior to release.

18.01.7 Employees shall have the right to refuse a standby assignment only in the case of a personal emergency defined as a time-sensitive and serious or life threatening medical

situation for the employee or the employee's immediate family member, or in the case of the death of an employee's immediate family member. Employees have the right to execute two changes (trades), three weeks prior to their scheduled stand-by week, each fiscal year. In the event of a trade, the accepting employee shall not be deemed to have exercised one of his/her trades/changes.

18.01.8 No employee shall be assigned mandatory standby when at least two volunteers are available for assignment.

18.01.9 Employees on standby assignments shall provide coverage for the entire week and be paid three hundred ($300) per week per employee on standby. For each holiday which occurs while an employee is on standby, the employee shall receive an additional fifty ($50) dollars.

18.01.10 Employees on standby who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provides advice, shall be paid at an overtime rate or the equivalent in compensatory time off for the actual time on the phone, or one hour or the equivalent in compensatory time off, whichever is more.

18.01.11 Employees must complete lateral cross-training within a year to be considered for the stand-by program in an area outside of their assigned area (e.g. utility, facilities, signal, pump station alarm, etc.).

18.01.12 Employees on light duty or with a performance below standard (2 or less) will not be eligible for stand-by duty.

SECTION 19.00 - BILINGUAL ASSIGNMENT

19.01 The City agrees to pay a premium of 2.5% of base pay to employees with bilingual skills, who occupy positions where the City has determined said skills are necessary or desired to adequately serve the Milpitas community

19.02 Qualifying languages for bilingual assignment include:

(a) Spanish
(b) Vietnamese
(c) Any other foreign language as determined by the City
(d) American Sign Language (ASL)

19.03 Upon written recommendation of the Department Head the Human Resources Director may approve a bilingual assignment once the employee has undergone appropriate testing and been certified as bilingual. The Human Resources Director reserves the right to terminate a bilingual assignment when it is determined that the need for such assignment no longer exists.

19.04 An eligible employee may request to be tested for bilingual certification at any time. The method for such certification shall be the same for all bargaining units having bilingual assignment provisions.

19.05 This section shall not apply to employees who may be called upon periodically for interpretation, where Subsections 19.02, 19.03, and/or 19.04 are not met.

SECTION 20.00 - WORK OUT OF CLASS

20.01 The City agrees that upon specific assignment by the Department Head, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions.

20.02 Employees assigned to duties of a higher class for at least one shift shall be compensated at a rate of 10% above the employee's current base salary while working out of class, except where such increase exceeds the pay range allocated of the assigned position. The employee shall be compensated at the appropriate rate commencing with completion of one shift. Assignments shall not be made for less than one shift. Should an assignment be made for less than one shift the 10% rate shall be paid for the full shift.

20.03 General:

(a) Work out of class assignments shall be given on a rotational basis, when practical.
(b) Work out of class assignments shall not, as a matter of routine practice, be given to probationary employees or Maintenance Worker 1's.
(c) Work out of class Assignments shall not, as a matter of routine practice, be given to employees performing at less than a competent level as determined by the last performance appraisal.

20.03.1 Out of class Supervisor assignment shall be made (a) when a supervisor is unavailable for one shift, (b) usually to the next lower classification in the section, (c) for specific assignment where a lower classification must serve in a capacity of a higher class, (d) when required to perform the duties of a classification with a higher pay range and outside the bargaining unit (i.e., inspection work in lieu of a Public Works Inspector). Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.

20.03.2 Out of class Maintenance Worker III assignment shall be made (a) in the scheduled or unscheduled absence of the III normally assigned, (b) when assigned to operate certain heavy equipment. Exception: Work out of class assignments may not be made where permanent schedules exist without an assigned Maintenance Worker II on duty.

20.04 Exceptions to this policy due to working conditions and/or the needs of the City may be approved by the Division Head.

20.05 An employee seeking additional training in another class may waive his/her right to work out of class pay in order to pursue desired training.

SECTION 21.00 - LATERAL TRANSFERS

21.01 Employees shall be considered for lateral transfer subject to the following conditions:

21.01.1 The transfer must be recommended by both the outgoing and incoming supervisor and approved by the Department Head.

21.01.2 The transfer must be approved by both the outgoing and incoming Department and/or Division Head. Employees hired on or after January 1, 2007 must be within the same classification to be eligible for a lateral transfer. Any employee within the same classification who can clearly demonstrate knowledge and experience would be eligible to apply.

21.01.3 Probationary employees shall not be eligible for lateral transfer.

21.01.4 Employees who are transferred by request between Departments or between different Classifications shall be subject to a new six-month Probationary Period. Employees failing to complete Probation following such a transfer shall be reinstated to the Position from which transferred.

21.01.5 Employees who are performing “below expectations” or “unsatisfactory” shall not be considered. This shall be determined by examination of the most recent employee appraisal on file. If the appraisal on file is more than twelve (12) months old, a new appraisal shall be done prior to the time the transfer is finalized.

21.02 All vacant permanent positions shall be opened to lateral transfer prior to consideration for filling that position from an outside source.

21.02.1 Written notice of a vacant permanent position shall be circulated by the affected section's supervisor. The notice shall include the opening and closing dates for the acceptance of lateral transfer requests.

21.02.2 A period of ten (10) working days shall be allowed during which written requests for lateral transfer must be submitted by any interested employee.

21.02.3 Requests shall be reviewed and all applicants notified of their status and scheduled for an oral interview within five (5) working days of the closing date.

21.02.4 Oral interviews of eligible employees shall be conducted by the hiring supervisor. Lateral transfer applicants shall be rated using a rating form pre-approved by the Department Head.

21.02.5 Written notice of the results of the interview process shall be made by the incoming supervisor within five (5) working days of the last interview.

21.02.6 Exceptions to the above process due to working conditions and/or the needs of the City may be approved by the Department Head.

SECTION 22.00 - HOLIDAYS

22.01 The following shall be paid holidays for employees:

1. January 1 (New Year's Day)

2. Third Monday in January (Observance of Dr. Martin Luther King Jr's Birthday)
3. February 12 (President Lincoln's Birthday)
4. Third Monday in February (Observance of President Washington's Birthday)
5. Last Monday in May (Observance of Memorial Day)
6. July 4 (Independence Day)
7. First Monday in September, (Labor Day)
8. November 11 (Veteran's Day)
9. Thanksgiving Day
10. Day after Thanksgiving
11. Christmas Eve, (to be observed last working day prior to Christmas Day)
12. Christmas Day
13. Each employee shall be credited with one (1) floating holiday each calendar year, which must be used by December 31, or it is lost without compensation. Section 22.03 applies in the case of the floating holiday.
14. In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday instead.
15. In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday instead.
16. Any other holiday declared by the City Council as a City holiday for City employees.
17. For other than 5-day work weeks, any work week which includes one or more holidays shall be reduced in hours commensurately. The number of days worked during the work week shall be subject to the approval of the Department Head.
18. Employees shall be permitted to take Good Friday as a vacation day by submitting a written request at least two weeks in advance to the Department Head.

22.02 Where one of these holidays falls on a working day, employees shall be granted the day off with pay and City offices shall be closed except for such municipal services that must be maintained on an around-the-clock basis seven days a week. Employees who work less than full-time shall be entitled to credit for paid holidays on a pro-rated basis. Employees required to perform their regular duties on a holiday shall be granted pay or compensatory time off, at the rate of time and one-half in addition to base salary. For the purposes of this section, a holiday shall be deemed to begin and end at 12 midnight.

22.03 Employees assigned to four-day, 37.5 hour work schedules shall work four 9.5 hour days at straight time and be paid for 37.5 hours. The additional one half hour per week worked shall be credited toward accrued holiday leave hours. During weeks in which one or two full day paid holidays occur, those employees shall work 9.5 hour days for four days less the number of paid holidays at 7.5 hours per holiday. The balance shall be paid from the accrued holiday hours for a total of 37.5 hours for the holiday week (less any paid or unpaid leave).

Any positive balance remaining at the time of separation of employment by an employee shall be paid at the employee’s current hourly rate.

22.04 Employees who work less than full-time shall earn holiday leave on a pro-rated basis based on their regularly scheduled assignment.

SECTION 23.00 - VACATION LEAVE

23.01 All employees shall be entitled to paid annual vacation leave beginning at the end of the first six months of service with the City. However, vacation credits shall be accrued beginning with the date of initial appointment. The accrual rates, in hours per pay period, are as follows:

	37.5 Hour Workweek In Hours/pay period	40 Hour Workweek In Hours/pay period
From date of hire through the fourth year of employment	3.17	3.38
From fifth through ninth year of employment	4.61	4.92
From tenth through fourteenth year of employment	6.05	6.46
From fifteenth through nineteenth year of employment	7.50	8.00
From twentieth year of employment and on	8.94	9.53

23.02 Employees who work less than full time shall earn vacation credits on a pro-rated basis based on their regularly scheduled assignment.

23.03 Each employee shall be required to have served the equivalent of one year of continuous service in the City in order to be eligible for the employee's full annual vacation leave, provided however, that after six month of continuous service, the employee may be permitted to take vacation leave not to exceed 37.5 or 40 work hours, depending on the employee's regular work schedule. During the first six months of initial employment an employee shall not qualify for any vacation leaves regardless of paycheck stub figures.

23.04 The times during a calendar year at which an employee may take vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the municipal service. If the requirements of the municipal service are such that an employee must defer part or all of his/her annual vacation in a particular calendar year, the appointing power shall permit the employee to take such deferred vacation during the following calendar year or allow the employee to cash out said vacation at his/her option, to the extent of the deferred portion.

23.05 No employee may accumulate and carryover more than 300 hours of vacation as of the last day of the pay period that includes December 31 without the express written consent of the City Manager. No employee shall be allowed to be on paid leave for a period of over 225 consecutive work hours.

23.06 In the event one or more municipal holidays fall within the annual vacation leave, such holidays shall not be charged as vacation leave.

23.07 Upon separation from the City for any reason, an employee shall be compensated for accrued vacation leave.

23.08 Approval shall be granted after the supervisor and department head give consideration to the employee's wishes and the needs of the City. Employees may change vacation dates with the approval of the department head. In the event, the needs of the City necessitate canceling of vacation scheduled for a minimum of 90 days in advance, which results in a financial loss to an employee, the City shall reimburse the employee the full amount of loss provided the employee

demonstrates the impossibility of obtaining a refund and can document the amount of loss. At the time of making an expenditure, each employee shall advise the department head of the amount of said expenditure. In the event an employee fails to advise the department head, the employee may lose all rights to reimbursement.

23.09 An employee may elect to cash-out a maximum of 40 hours accrued annual leave per fiscal year as follows. An employee whose accrued annual vacation leave exceeds 120 hours may elect to cash out a maximum of 80 hours per fiscal year.

Cash-outs are subject to the following:

(a) The employee uses at least one full work day of paid vacation leave. Vacation cash-out must be requested in advance and contingent upon having an approved vacation leave within thirty (30) calendar days, either before or after.
(b) Requests for cash-outs other than during approved vacations must be submitted to Finance for payment in June by May 31 or December by November 30 of each year.
(c) Vacation leave may not be carried-over to cash-out in subsequent years, (except upon separation from City service).

SECTION 24.00 - SICK LEAVE

24.01 Employees shall be granted paid sick leave credits beginning with the date of original employment at the rate of 3.46 hours biweekly for 37.5 hour employees and 3.69 hours for 40 hour employees on a bi-weekly basis. Employees become eligible to take accrued sick leave upon completion of one full month of continuous services. Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of necessity and actual sickness or disability. Medical or dental appointments may be charged against sick leave, but shall be limited to a maximum of four (4), hours per appointment and should be scheduled and approved in advance. Approval of sick leave for appointments in excess of four, (4), hours are subject to the discretion of the Department/Division Head. The Human Resources Director shall direct and enforce such administrative control as may be necessary to prevent abuse of sick leave privilege.

24.02 Employees who work less than full-time shall earn sick leave on a pro-rated basis based on their regularly scheduled assignment.

24.03 The City agrees to provide PERS Credit for Unused Sick Leave (GC 20965) provision—see MOU section 31.0—for all employees retiring from the City through PERS.

24.04 Employees hired on or before July 17, 1999, each November, an employee with five or more years of service may elect to cash out accrued sick leave. Payout shall be in accordance with appropriate pay out formulas described in Section 24.05. However, the maximum annual amount shall not exceed 50% of employee's sick leave balance. Employees eligible for this benefit shall at all times maintain a sick leave balance of at least 240 hours.

24.05 For employees hired on or before July 17, 1999, the City agrees to provide PERS Credit for Unused Sick Leave (GC 20965) or pay an employee who is separating from the City in good standing with at least five, (5), years of service an amount equal to 2.5% per year of service for unused accrued sick leave. The pay-out formula shall be 2.5% x years of service x highest hourly

rate x sick leave hours accrued. Good standing shall be based on the employee's overall work record and the decision of the Human Resources Director.

SECTION 25.00 - FAMILY LEAVE

25.01 Employees with available sick leave accruals may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.

25.01.1 In this section, family medical purposes shall mean illness, accident, medical appointments or other related occurrences.

25.01.2 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.

25.01.3 Each employee shall be allowed to use a maximum of up to half (50%) of the employee's annual earned sick leave per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.

25.01.4 Employees may use accrued sick leave up to fourteen (14) consecutive calendar days leave for birth or adoption of a child beginning with the day of adoption or birth.

SECTION 26.00 - COMPASSIONATE LEAVE

26.01 The City agrees to provide compassionate leave when death occurs to a member of the employee's immediate family, not to exceed one work week. (37.5 or 40 hours).

26.02 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.

26.03 Salary paid during this leave is not deducted from any leave balance. Additional leave may be granted in special circumstances by the Human Resources Director.

26.04 In special circumstances, the Human Resources Director may allow an employee to utilize compassionate leave for individuals who are not members of the employee's immediate family.

SECTION 27.00 - MILITARY LEAVE

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

SECTION 28.00 - WORKERS' COMPENSATION LEAVE

28.01 Employees unable to work because of a work-related illness or injury are eligible for workers' compensation leave, provided that the Employee has notified superiors of the illness or injury and the claim has not been denied by the Human Resources Director or worker's compensation insurance administrator authorized by the City.

Workers' Compensation leave shall be 100% of regular pay for two (2) calendar weeks,(80 hours or 75 hours, depending on the employee's regular work schedule), followed by 80% of regular pay for six weeks (32 hours or 30 hours per week, depending on the employee's regular work schedule) to a maximum of sixty (60) calendar days. This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available worker's compensation leave. Leave accruals shall be prorated accordingly.

In addition, any employee incurring such an injury or disability shall be entitled to compensation to the extent provided in the State Workers' Compensation Insurance Act. An employee who has exhausted eligible workers compensation leave shall receive full salary to the extent the employee's accrued sick leave or vacation time may be integrated. Charges to the employee's leave accounts shall be based on the ratio with Workers' Compensation Insurance temporary disability payments payment received by the City to the employee's salary for the same time period, provided that such full salary payments are subject to the following conditions:

(a) Compensation insurance payments received by the employee, except for payments received for permanent total or partial disability, shall be withheld by the City for the period subject employee continues to receive full salary from the City through the use of leave balances.
(b) Upon expiration of available workers' compensation leave, all time lost (including doctors' appointments and therapy treatments less than one full workday) shall be charged to earned vacation and sick leave, if available.
(c) Upon expiration of available earned comp time, vacation and sick leave, payment of salary by the City shall be discontinued and compensation insurance payments shall be sent to the subject employee.

28.02 An employee returning from a work-related injury shall be reinstated to the position occupied at the time the injury occurred subject to written release by the attending physician.

28.03 Injured employees designated permanent and stationary or accepted into a qualified rehabilitation program and unable to return to their prior occupations may be retired (if eligible) or involuntarily terminated.

SECTION 29.00 - LEAVE OF ABSENCE

29.01 The Human Resources Director may grant a Permanent employee leave of absence without pay not to exceed one year. Leave shall be considered upon written request of the Employee.

29.01.1 In evaluating employee requests, the Human Resources Director shall consider the recommendation of the Department Head, departmental workload, the best interests of

the City, the employee's duration of employment, the employee's performance record, and the reason for the leave.

29.01.2 Any Permanent employee with a non-work-related injury or medical condition who has exhausted all sick leave may request a leave of absence with a doctor's certificate. At the City's discretion and expense, the City at any time may require a medical exam at a facility selected by the City.

29.01.3 An employee who is on leave without pay status shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement benefits, credit for time employed or seniority entitlements of any kind) for the period of such status. It is the intent of this subsection that one on leave without pay status is deemed unemployed for the period of such status in terms of earning benefits.

29.01.4 The Human Resources Director may authorize continuation of the employee's elected medical and/or dental coverage for all or part of the duration of leave without pay. This shall be done only in extraordinary circumstances and when it is deemed to be in the best interest of the City.

29.02 A department head shall have the authority to approve an unpaid leave not to exceed 150 work hours each fiscal year.

29.03 Nothing herein shall preclude an employee from waiving in writing the right to reinstatement as a condition to approval for a leave of absence. Any employee who waives the right may be reinstated in accordance with the City's Personnel Rules & Regulations as if they had been subject to a reduction in workforce, except that they shall be placed at the bottom of a reemployment list for any position for which they qualify.

29.04 Failure on the part of an employee on leave to report to duty on the date and time that leave terminates may be cause for discharge.

SECTION 30.00 - LIGHT DUTY

30.01 The City recognizes the importance of providing support and encouragement to employees who are recovering from an injury or illness in an effort to assist in making a complete and healthy recovery. Therefore, the City agrees to make every reasonable effort to temporarily provide light duty as follows:

30.01.1 Any assignment of light duty shall be conditioned upon receipt of a statement from a physician which either recommends or requires light duty.

30.01.2 No employee assigned to light duty shall be required to return to their regular duties without a written release from a physician.

30.01.3 The temporary assignment of light duty may be in any department of the City provided that the assignment is compatible with the employee's ability, consistent with the written recommendations of the employee's physician, and is subject to the approval of the Department Head.

30.01.4 Said employee shall not be increased nor reduced in pay or benefit solely by virtue of said temporary transfer.

30.01.5 Provided that the City may verify said disability by having said employee examined by a physician of the City's choosing at the City's expense.

30.01.6 In the event of conflicting medical opinions, no employee shall be required to accept a light duty assignment.

30.01.7 The City is currently developing a policy on the subject of light duty. MEA agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 31.00 - RETIREMENT

31.01 The City will provide the 2% at 60 plan to all new hires including the 3-year final compensation second tier (Section 20475: Different Level of Benefits Provided for New Employees) hired on or after July 1, 2011 or such time thereafter that a PERS ordinance adopted by the City Council becomes effective. Employees shall be responsible for the employee contribution to PERS retirement.

For employees hired before July 1, 2011, the City shall continue, during the term of this Understanding, the present retirement plan, commonly referred to as the 2.7% at 55 plan, including the final year compensation amendment and 1959 Survivors Benefit in full force and effect. Employees shall be responsible for 8% contribution to PERS retirement.

31.02 Upon retirement, disability retirement or death, for those employees who were hired on or before July 17, 1999 only, and who had at least five (5) years of service, the City shall pay the separating employee, or his or her estate, for unused accrued sick leave. The amount paid shall be equal to 2.5% per year of service for unused sick leave. The pay-out formula shall be: 2.5% x years of service x highest hourly rate x sick leave hours accrued; or

31.02.1 Upon retiring with PERS, all eligible employees may participate in the PERS Credit for Unused Sick Leave (GC 20965) provision of the City's PERS retirement plan.

31.03 For the purpose of this section, an employee who is retiring is one who has submitted an application for retirement to the Public Employees Retirement System, (PERS), and had it approved.

31.04 Sick leave Payout provision for Retiring Employees - Medical continuation:

The City agrees to permit retiring employees to apply sick leave pay out funds to the cost of continuing a medical plan for family members provided that there shall be no additional cost to the City in permitting the employee to continue medical coverage, except for reasonable administrative costs.

31.05 Retiree Medical

31.05.1 For employees hired before June 30, 1996, the City agrees to pay the premiums for employee-only health coverage for all employees, with at least five (5) years of service, who retire after July 17, 1999 and as long as the employee maintains enrollment in one of the City health plans. Employees receiving disability retirements shall be eligible for retiree health coverage until they are covered by another health plan (such as another employer or through a spouse). Retirees may elect to continue coverage for a spouse under the retiree group medical plan provided that the spouse is covered by the group plan at the time the employee retires and maintains enrollment. The retiree is responsible for the additional monthly premium.

31.05.2 When the City contributes toward retiree premiums, the maximum allowable shall be based on the lowest single rate for active employees. This maximum allowable City contribution shall not apply to persons who retire prior to the date this MOU is adopted by the Milpitas City Council.

31.05.3 Employees hired after June 30, 1996, shall be subject to the following provisions with respect to the retiree health plan benefits:

Upon completion of the first through the ninth year of service, and upon retirement, the City shall provide 25% of the lowest cost single medical insurance premium payment for the employee only (no more than any active employee's single lowest cost premium rate), as long as the employee remains in one of the City sponsored health care programs.

Upon completion of the ninth year, this payment of the retiree's medical insurance shall increase to 50%.

Upon completion of the fourteenth year, this payment of the retiree's medical insurance shall increase to 75%.

Upon completion of the nineteenth year, this payment of the retiree's medical insurance shall increase to 100%.

31.06 Effective December 22, 1996, the City agrees, as allowed under Internal Revenue Code Section 414(h)(2), the implementation of the Public Employees' Retirement System (PERS) "Pick-Up" program (TDMC) as outlined in PERS Circular Letter 100-364. In completing the conversion to the IRC 414 (h) (2) program, the increase in salary shall be calculated on the employee's base salary. The City implemented a one-time increase of 7.53% for this purpose.

31.07 PERS Contract Amendment - Credit for Unused Sick Leave

31.07.1 Effective July 18, 1999, the City has amended its PERS contract to provide for the Credit for Unused Sick Leave as set forth in Government Code Section 20862.8.

31.07.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out and Sections 24.03 and 31.02 of the MOU shall not apply to them.

SECTION 32.00 - BENEFITS

32.01 The City shall provide active employees the CalPERS medical insurance for health benefits. The total monthly health benefit per employee shall be based on the Kaiser rates for employee, employee +1, and family plan. Only employees who have eligible dependents shall be compensated above the single rate plans.

1. The aforementioned health care plan is currently being offered by the City of Milpitas. The City reserves the right to discontinue offering CalPERS due to the following:

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

2. If the City discontinues use of CalPERS they will provide a health care provider with similar services.

3. The City will provide a life insurance policy in the amount of $50,000.00 for each member of the Association.

4. The City shall provide a Short Term Disability Plan that at a minimum will provide similar coverage to the one the members of the Association possess as of June 30, 1999.

5. The City shall provide a Long Term disability Plan that at a minimum will provide similar coverage to the one the members of the Association possess as of June 30, 1999.

6. The City will provide a vision plan for each member of the Association and eligible dependents.

7. MEA agrees to discuss a “cafeteria style” benefit plan upon request of the City.

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

9. Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars ($125.00) per month. Employees who wish to waive health insurance coverage must complete the City of Milpitas’ “Health Insurance Waiver” indicating they agree to abide by the terms and conditions of the waiver.

32.02 Benefit Contribution Part Time Employees: The City agrees to contribute monthly premiums for medical, dental and life insurance in an amount to reflect hours budgeted, pro-rated against the amount contributed for full time employees. For example if an employee is budgeted to work twenty (20) hours per week, the City will contribute fifty percent (50%) of the benefit contribution for full time employees. Similarly, if a part-time employee is budgeted to work thirty (30) hours per week, the City will contribute seventy-five percent (75%) of the benefit contribution. The City agrees to provide short-term disability and long-term disability insurance benefits, with similar

coverage to the one the members of the Association possesses as of June 30, 1999, at no cost to part-time employees.

SECTION 33.00 - TRAINING

33.01 If an employee is directed to participate in a training program, which is related to their job, the City shall provide compensation for the following:

a. Regular wages for time away from the job (if during working hours);
b. Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the scheduled work day;
c. Costs of tuition and/or registration for the training;
d. Reimbursement for authorized transportation cost to and from the training. (i.e. Mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employee car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).

33.02 Participation in and successful completion of training course may be considered in making employment advancements and promotions.

33.03 The City agrees to provide all supervisors who have MEA members under their authority a copy of the most recent MOU.

33.03.1 The City of Milpitas will provide a tuition reimbursement program for educational activities, which are job related and approved in advance by the Department Head and the Human Resources Director. The amount of the fund shall not exceed the amount budgeted for this purpose. Subject to the availability of monies in the fund, individual employees are subject to a total reimbursement of $1,400 per fiscal year. Reimbursement is subject to the guidelines outlined in the Tuition Reimbursement S.O.P.

SECTION 34.00 - UNIFORMS

34.01 The City agrees to provide uniform work clothes for M.E.A. employees who are required to wear such uniforms on an annual basis. Uniforms are to identify City employees. Shirts and hats shall have the city emblem, Public Works or Parks & Recreation and/or the words City of Milpitas.

34.02 The following shall be provided:

a. Nine (9) work pants; and
b. A combination of fourteen (14) tee-shirts, polo shirts and tailored shirts. A maximum of nine (9) may be the tailored shirts.
c. Four (4) sweatshirts
d. One (1) jacket
e. Choice of five (5) baseball type or brim type hats per employee annually with two (2) beanies

34.02.1 The City shall provide each employee with four (4) sweatshirts annually and one jacket during the term of the MOU. If the jacket gets damaged in the course of work, the City will replace it.

34.02.2 In the event a uniform becomes damaged in the course of work, the City shall replace the damaged item.

34.03 Exemption from wearing uniform:

34.03.1 If it is determined by a physician that there is a medical reason which prevents an employee from wearing a City uniform (i.e., fiber content), then such employee shall not be required to wear a uniform. To be eligible for this exemption, the employee must submit a physician's statement to his/her supervisor verifying the above. The City reserves the right to have the employee examined by the City physician (at the City's expense) at any time.

34.04 Uniform option: It is agreed that field maintenance employees shall be allowed to wear tailored walking shorts. No athletic shorts or “cut-offs” are permitted.

34.05 Uniform colors:

34.05.1 The City agrees to allow field maintenance employees to wear different color uniforms as differentiated by the work section to which they are assigned (i.e., Parks, Street Landscape, Equipment Maintenance, Fleet Maintenance, Utilities, Streets, Facilities, Recreation, Finance), under the following conditions:

(a) All employees in the same work section shall wear the same color, however, older shirts, regardless of color may be worn as long as the Section is identified.

(b) The color and quality shall be approved by the supervisor after voted upon by employees prior to purchase of uniforms.

(c) The final decision for the quality of uniforms shall be approved by the Department Head.

SECTION 35.00 - HEALTH & SAFETY

35.01 Employees’ Safety Committee:

The City is committed to the concept that the workplace be a safe environment for all employees. In recognition of the City's and the Association's mutual interest in mitigating and/or eliminating present and future health hazards in the workplace, an Employees’ Safety Committee shall be maintained. The committee's duties are, but shall not be limited to, developing training, subject to the City's review, for the following:

(a) equipment and vehicle operation;
(b) job safety while on stand-by duty, and;
(c) handling hazardous material, traffic control, and Corp Yard shop safety.

The Committee shall develop the guidelines for equipment operation and the City shall implement this program within six (6) months of the execution of this agreement.

35.02 The City shall reimburse up to $175 ($200 for bifocals) per employee per year towards the purchase of safety prescription eyeglasses provided that they are not covered by the employee's health plan. Replacement costs may be covered upon approval of the City Manager or his/her designee if there has been a significant change in the employee's prescription or damage occurred as a result of a work-related incident.

35.03 In addition, the City shall provide a maximum of $200 reimbursement per employee annually for the purchase of safety shoes. If additional funds after the purchase of the shoes are available the employee may use the funds for related footwear accessories or repairs. The wearing of said items is mandatory and said footwear must meet safety guidelines set by the City.

35.04 Employee Fitness Program:

35.04.1 Purpose: To provide employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.

35.04.2 Scope of Services: This program shall allow employee participation in all adult fitness and sports related activities offered by the Recreation Services Division. Employees shall be granted use of all sports facilities operated and/or maintained by the Recreation Services Division at the Milpitas Sports Center.

35.04.3 Cost: Programs shall be offered at no cost to employees. Spouses shall be required to pay full registration and non-resident fees if applicable. Each non-employee participant in an organized team activity shall be required to pay a fee equal to the team registration fee divided by the number of participants. The City agrees to waive fees for use of City parks by employees for softball team practice, except for costs if field lights are used.

35.04.4 Restrictions:

(a) Each employee shall be required to complete a registration form, medical history card, and a contract and/or a participant waiver form limiting the City's liability during the employee's participation in a particular program or activity.

(b) Organized adult athletic programs and leagues, such as softball or basketball, require that employees register in advance. Employees choosing to participate in any of the drop-in programs shall either be issued a pass (for programs which utilize passes) or use their employee ID card (which is issued to all employees at the time of initial appointment) for admission purposes.

(c) Employees shall not be afforded preferential treatment in instances where a program or activity has already reached its maximum enrollment, and shall be added to an established waiting list as appropriate.

(d) Participation in program requiring advanced registration shall follow the same time schedule as those established by the Division for local residents.

(e) No limit shall be placed on the number of programs or activities in which an employee may participate except that the activity must be within the scope of services offered by the Recreation Services Division.

(f) Participation in the program is voluntary and must not conflict with normal work schedules and shall take place during off-duty periods.

35.04.5 These items are not meant to be an all-inclusive list of provisions and restrictions that shall otherwise need to be applied to this program, as it is likely that instances will arise that will require further adjustments. This program shall be evaluated annually with respect to its overall effectiveness and possible application to other Recreation Services programs outside of those offered at the Milpitas Sports Center.

SECTION 36.00 - MISCELLANEOUS

36.01 When available, the City shall furnish vehicles from the City's car pool to conduct official City business. In the event a pool car is unavailable, the employee shall use the employee's own vehicle on a temporary basis.

(a) An employee shall receive authorization from their Department Head or their designee prior to using the employee's own vehicle.

(b) Temporary basis shall be defined as no more than five (5) consecutive working days unless otherwise agreed to by the employee. Employees who use their car on a temporary basis shall be reimbursed by the City at the rate established by the IRS.

(c) Any employee who drives their own vehicle on official City business must have a valid California driver's license and proof of valid insurance.

(d) The City assumes liability in connection with the use of a vehicle while on official City business unless the employee is found guilty of being negligent, reckless or under the influence of a controlled substance.

36.02 The City recognizes that air-conditioned City-owned/leased vehicles can contribute to a comfortable and productive working environment. When ordering new vehicles, the City intends within reason to order air-conditioning in said vehicles when said equipment is offered by the manufacturer as an option.

36.03 Experimentation, Working Hours - Any experimentation with hours of employment or other related criteria shall be subject to meeting and conferring.

36.04 Replacement of Personal Articles - The City shall replace, within reason, personal articles damaged or stolen during performance of duty upon recommendation of the individual's immediate supervisor and Department Head, and approval of the City Manager. The prior condition of the article, precautions taken to protect the article, and the exercise of proper judgment of wearing or using an expensive article on the job that has certain hazards connected with it shall be considered

in determining the amount of replacement. An employee shall obtain approval from his/her supervisor to bring in and use personal articles in the line of work.

36.05 Seniority - The City agrees to recognize and consider seniority as a factor in approving requests for vacation leave, work schedules, work assignments, and lateral transfers, when all other factors for employees are equal. The needs of the City, however, shall also be considered, and may in some instances be the determining factor for approving such requests.

36.06 Printing of Sick Leave and Vacation Accrual Rates - The City agrees to print sick and vacation accruals rates on employee's biweekly timesheets or pay stubs.

36.07 Employees assigned as pesticide applicators shall be able to use required respirator equipment safely.

36.08 Copying Charges: The City agrees to waive copying charges for Association business that fall below $10.00 per month providing that:

(a) the Association shall not use City copying facilities or supplies to promote positions or causes which could be inflammatory or cause adverse reactions against the City;

(b) if the copying charge for any one month exceeds $10.00, then the full amount shall be payable to the Accounting Office within 30 days of receipt of statement;

(c) the City shall have the right to withdraw this privilege for non-compliance with 1 and 2 above.

36.09 Special Equipment Operation: A field maintenance employee who is assigned to operate the ten-wheel dump truck or the ten-wheel hydraulic vacuum line cleaning truck shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding.

36.10 Audit of Records: The City agrees to perform and pay for an audit of the Benefit Fund's financial records at least once a year during the term of the Memorandum of Understanding.

36.11 All employees shall be permitted release time to vote in public elections as provided for in Election Code 14000.

36.12 Overpayment Reimbursement: In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment. Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. Effective June 19, 2007 and with going forward only, the City may obtain reimbursement by payroll deduction. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the City Finance Director.

36.13 The City and MEA are aware that department heads and/or their designees do periodically promulgate SOPS. The City acknowledges that when the effect of any such SOP is a change regarding matters within the scope of representation, the SOP implementation shall be undertaken in accord with the Millias-Meyers-Brown-Act.

36.14 The City and MEA agree that ongoing communication between their representatives is conducive to a positive and productive working environment. Therefore, the parties agree to calendar regular meetings between their representative in order to discuss matters of mutual concern regarding the working environment. Subject to the exceptions described herein, the meeting attendees shall include the department head or designee and the Union President or their designees and Human Resources. By agreement of the department head and the Union president or designees, additional individuals may be invited to attend the meeting. In order for the meetings to serve their intended purpose, it is desirable that the parties exchange agenda items not less than one week before a scheduled meeting.

It is understood that the demands of business and/or pressing personal matters shall periodically require that meetings be canceled, rescheduled or otherwise delayed.
Additionally, the holdings of said meetings can be temporarily or permanently suspended at the request of either the City or MEA.

36.15 The yard clock shall be recognized as the official timepiece for the public works maintenance division. The yard clock shall not be supplemented by any noise making device. When the noise making device is eliminated, management will take corrective discipline actions for employees who are abusing the tardiness policy.

SECTION 37.00 - NO LABOR ACTION

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

SECTION 38.00 - FMLA

38.01 The City intends to implement a revised FMLA policy. The City and MEA / Local 792 agree to meet and confer to the extent required by law prior to implementation.

SECTION 39.00 - SEASONAL WORKERS

39.01 Seasonal workers shall be limited to nine hundred ninety nine (999) hours of work per fiscal year. Seasonal workers shall be limited to the duties they may perform according to section. Seasonal workers may operate any class C vehicle that is not equipped for a special purpose. The only power equipment they may operate is equipment in the 600 & 6000 series, with the exception of chain saws and augers.

SECTION 40.00 - RETIREE CONTRIBUTION FUND

40.01 The City shall contribute half (50%) of 82% of the bargaining unit's 1% of payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.

40.02 Effective January 1, 2009 the City shall contribute 82% of the bargaining unit's 1% of payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.

40.03 The City's commitment to the fund will be determined as of the last full pay period of June of each year. At that time, the benefit figure will be recalculated. Approximately fifteen (15) days from the last day of the full pay period in June, the computed amount will be contributed to the MILPITAS EMPLOYEES TRUST fund.

40.04 This agreement does not guarantee or commit future City funding for retiree or retiree dependent health insurance premiums.

SECTION 41.00 - INCENTIVE PAY

41.01 The City may at the discretion of the Department Head, provide a four percent (4%) base salary increase for up to forty-two (42) special certifications, licenses, or special assignments within the Public Works and Parks & Recreation Departments. This program does not apply to job classifications that require certificates or licenses. Said 4% base salary increases/incentives shall be available for assignment effective January 1, 2001. Types of incentives may be increased or modified at the discretion of the Department Head.

41.02 Longevity Pay

Effective the first full pay period following City Council adoption (June 19, 2007), employees shall be eligible for longevity pay as follows:

(a) Effective the first full pay-period after the employee's 9th year of service, a longevity incentive of one half percent (.5%) over base pay.
(b) Effective the first full pay-period after the employee's 14th year of service, a longevity incentive of one-half percent (.5%) over base pay, (i.e. an additional one-half percent above the previous one-half percent (.5%) for a total of 1% over base pay).
(c) Effective the first full-pay period after the employee's 19th year of service, a longevity incentive on one-half percent (.5%) over base pay, (i.e. an additional one-half percent (.5%) over the previous 1% for a total of 1.5% over base pay).

SECTION 42.00 - LIUNA NATIONAL (INDUSTRIAL) PENSION FUND

42.01 By Side Letter Agreement adopted August 20, 2013 and attached hereto as Appendix D, the City of Milpitas no longer has an ongoing obligation to contribute to the LIUNA National Industrial Pension Fund. Reference to that Side Letter is made for additional details.

42.02 The amounts payable shall be paid to the LIUNA National (Industrial) Pension Fund, to an address specified by MEA.

42.03 This MOU provision shall not be construed to create a vested right that can be asserted against the City.

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Deleted: The City of Milpitas shall make a total contribution equal to $1.00 (effective June 19, 2007) per hour per employee covered by this MOU up to forty (40) hours per week of budgeted/approved work hours that the employee is on paid status. ¶

Deleted: 42.03 . The amount shall be prorated for employees working less than forty (40) hours weekly.¶

Deleted: 42.04 . The City shall not make contributions for hours in excess of forty hours per week.¶

Deleted: 42.05 . The monthly payments shall be for the term of this MOU. The subject payment shall be for every regular employee that is covered by this agreement.¶

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Deleted: and shall not be construed to guarantee any future funding for the LIUNA pension fund beyond the term of this MOU. Future funding shall be subject to negotiations.

Deleted: Unless specifically amended by the terms of this Understanding, all other terms and conditions of employment remain as previously established.¶
¶
The terms and conditions set forth in this Agreement represent the full and complete understanding and commitment between the parties. The terms and conditions may be altered, changed, added to, deleted from, or modified only through the voluntary and mutual consent of the parties in a written amendment to the Agreement. During the term of this Agreement, the parties agree that neither the Union nor the City shall be obligated to reopen or renegotiate any of the provisions of this agreement.¶

SECTION 43.00 - SAVINGS CLAUSE

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

Date:_____

City Representatives:

Union Representatives:

Carmen Valdez

Robert DeLong

Mary Lavelle

Steve Pangelinan

Steve Allen UPEC Local 792

Deleted: Bill Marion

Deleted: Paul Mullett

Deleted: Carmen Valdez

Deleted: Russell Casselberry

Deleted: Emma Karlen

Deleted: . Robert DeLong

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Mary Lavelle

Deleted: Curtis McGann

Deleted: Sunny Gallegos

Appendix "A" – Salary Schedule

REPRESENTED CLASSIFICATIONS
MILPITAS EMPLOYEES ASSOCIATION

SALARY SCHEDULE

The monthly base salary will be adjusted as follows:

.

Deleted: A 10% Total Compensation which equates to a 16% base salary reduction effective the first full pay period in July 2011.

Job Classification	Monthly Salary Range	
Equipment Maintenance Worker I	$ 4,483.32 - $ 5,449.54	**Deleted:** 4,184.54... ... [1]
Equipment Maintenance Worker II	$ 4,931.69 - $ 5,994.52	**Deleted:** 4,603.03... ... [2]
Equipment Maintenance Worker III	$ 5,556.67 - $ 6,754.14	**Deleted:** 5,186.36... ... [3]
Fleet Maintenance Assistant - 40	$ 4,454.39 - $ 5,414.38	**Deleted:** 4,157.54... ... [4]
Fleet Maintenance Assistant - 37.5	$ 4,175.97 - $ 5,075.97	**Deleted:** 3,897.68... ... [5]
Fleet Maintenance Worker I	$ 4,306.54 - $ 5,234.58	**Deleted:** 4,019.54... ... [6]
Fleet Maintenance Worker II	$ 4,737.18 - $ 5,758.03	**Deleted:** 4,421.49... ... [7]
Fleet Maintenance Worker III	$ 5,447.73 - $ 6,621.79	**Deleted:** 5,084.68... ... [8]
Maintenance Custodian I - 37.5	$ 3,304.26 - $ 4,016.41	**Deleted:** 3,084.06... ... [9]
Maintenance Custodian II - 37.5	$ 3,634.75 - $ 4,418.06	**Deleted:** 3,392.52 ... [10]
Maintenance Custodian I - 40	$ 3,524.58 - $ 4,284.13	**Deleted:** 3,289.70... ... [11]
Maintenance Custodian II - 40	$ 3,877.09 - $ 4,712.62	**Deleted:** 3,618.71... ... [12]
Maintenance Custodian III	$ 4,179.91 - $ 5,080.76	**Deleted:** 3,901.35... ... [13]
Maintenance Worker I - 37.5	$ 3,634.75 - $ 4,418.06	**Deleted:** 3,392.52... ... [14]
Maintenance Worker II - 37.5	$ 3,998.20 - $ 4,859.82	**Deleted:** 3,731.75... ... [15]
Maintenance Worker I - 40	$ 3,877.02 - $ 4,712.62	**Deleted:** 3,618.65... ... [16]
Maintenance Worker II - 40	$ 4,264.73 - $ 5,183.80	**Deleted:** 3,980.52... ... [17]
Maintenance Worker III	$ 4,597.86 - $ 5,588.81	**Deleted:** 4,291.45... ... [18]
		Deleted: Printing Services Techn ... [19]
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Water Meter Reader I	$ 3,634.66 - $ 4,418.01	**Deleted:** 3,392.44... ... [21]
Water Meter Reader II	$ 3,998.20 - $ 4,859.82	**Deleted:** 3,731.75... ... [22]
Assistant Water Operator	$ 4,931.69 - $ 5,994.52	**Deleted:** 4,603.03... ... [23]
Water Systems Operator	$ 5,556.64 - $ 6,754.14	**Deleted:** 5,186.34... ... [24]

Appendix "B" – Side Letter to Memorandum of Understanding (October 2006): Delta Dental

MEMORANDUM OF UNDERSTANDING
REGARDING PILOT DENTAL PLAN PROGRAM
CITY OF MILPITAS AND THE UNDERSIGNED
LABOR ORGANIZATIONS

WHEREAS, the parties have discussed ways in which to achieve cost savings and other reforms relative to the dental insurance program affecting various employees and officials of the City of Milpitas; and

WHEREAS, the City has met and conferred with the appropriate labor organizations representing affected City employees; and

WHEREAS, the parties have come to an agreement on a pilot dental program; and

WHEREAS, this plan will cover all employees who are represented by the labor unions listed on Attachment A, as well as other employees and officials listed on Attachment A; and

WHEREAS, this plan is projected to achieve a substantial cost savings to the City, while nevertheless providing excellent dental coverage to City employees and officials;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The City will seek to contract with Delta Dental to serve as the third party administrator for the City's self-funded, dental insurance program with an annual calendar year maximum. The program will cover the employees, retirees, dependents of employees and retirees, and officials listed in Attachment A (hereafter the "covered employees"). The contract will become effective January 1, 2007. If there are any delays or problems with the contract and its effective date, the City will notify affected labor organizations and discuss alternative arrangements.

2. For active employees and officials, the City will contribute up to the monthly premium toward dental benefits. For eligible retirees, the City will contribute up to 50% of the contribution for actives per retiree, per month, toward dental benefits. MSA Retirees please refer to MSA MOU section 32.07.

3. The annual calendar year maximum for the program shall be $3500 per covered employee and dependent(s) per calendar year after satisfaction of the first, second, and third year calendar year maximum designations based on length of employment. Unused amounts may not be carried forward into a succeeding calendar

year. Claims payment is subject to the rules, exclusions and procedures provided for in the dental plan administered by Delta Dental on behalf of the employees covered by this MOU.

4. This is a pilot program that the parties intend to evaluate after approximately one year. This program supersedes and replaces all other dental programs. No later than October 2007, the parties agree to meet to review the cost, administration, and overall effectiveness of the program and to make a determination whether to adopt, continue, alter, or discontinue the program. When the parties meet they also agree to review the plan's overall costs in order to consider a potential 15% reduction in the premiums paid by retirees. If the parties do not agree to continue the program, they will meet and confer on an alternative program.

5. The labor organizations who are parties to this MOU agree to multi-union negotiations, such that one labor organization cannot drop out and obtain different benefits.

For the City of Milpitas:

Carmen Valdez, Acting Director of Human Resources	10/18/06 Date
Leslie Stobbe, Representative of LIUNA For: Mid-Management & Confidential Unit	10/12/06 Date
Dorsey Wiseman, PROTECH President For: Milpitas Professional and Technical Group	10/23/06 Date
Eddie Loredo, MSA President For: Milpitas Supervisors Association	13 Oct. 06 Date
Paul Mullett, MEA President For: Milpitas Employees Association	10/18/06 Date
Tim McCormick, Business Agent For: LIUNA Local 270	10/20/06 Date

Appendix "C" - Side Letter Water Distribution Certifications

SIDE LETTER AGREEMENT
BETWEEN THE
CITY OF MILPITAS
AND THE
MILPITAS EMPLOYEES ASSOCIATION/LIUNA LOCAL 270

This Side Letter Agreement is entered into by and between the City of Milpitas ("CITY"), and Milpitas Employees Association ("MEA"). This addresses the result of several meetings with representatives of the union, Paul Mullett, Curt McGann, and Al Bennett; and City representatives, Blair King, Dennis Cuciz, Steve Smith, and Cherie Rosenquist. The effects of these proposals were reviewed and negotiated for impacts, and the following was subsequently agreed upon:

1. The City may require all employees assigned to the Public Works Utility section to possess State of California Water Distribution Operator Certificate, appropriate to the requirements the state imposes on the City of Milpitas.
2. The City may also require all stand-by employees for Utilities to possess a State of California Water Distribution Operator Certificate.
3. The Water System Operator classification must possess a higher level certification (D-5).
4. Assigned Utilities employees must achieve certification within twenty-four months of hire, promotion, or lateral transfer.
5. Employees who currently possess "interim" certification must achieve certification before December 31, 2006.
6. Any Utilities employee that does not successfully meet the certification requirements is subject to reassignment, within the classification , to a vacant position or through lateral transfer at the discretion of the Public Works Director. Assignments made within Utility Maintenance will be at the supervisor's discretion. Incentive pay may be affected as a result of the reassignment.
7. Employees who achieve Water Distribution Operator Certification will be eligible for a 4% incentive pay.
8. Employees who already receive one 4% incentive pay will also be eligible for water certification pay of 4%; with a maximum of two incentives.
9. Holders of "interim" certification will receive 4% incentive pay effective the first full pay period in January 2005.
10. If holders of "interim" certification take and fail the test, they will forfeit their 4% incentive pay until they pass the test—they will have until December 31, 2006.
11. This side letter reconfirms a previous side letter amendment of the MOU dated December 2000 pertaining to Section 41 Incentives, excepting the "job classifications that require certificates…" The exception will allow for a 4% incentive for the Water Distribution Operator Certificate.
12. Job descriptions will be modified for all classifications assigned to the Utilities Unit pertaining to Water Distribution Operator duties and certificate requirements.

The MEA signed below signifies that s/he is the authorized representative(s) and is the proper party to this Letter; that all actions necessary for the parties to ratify and accept this Letter as a binding resolution has been completed in the manner required by that party or the law; and that this Letter is hereby entered into without the need for further ratification by MEA and will take effect upon approval by the City Council of Milpitas. This Letter is valid through the term of the MEA MOU.

12/22/04
Date

Paul Mullett, MEA President

12/22/04
Date

Al Bennett, LIUNA 270 Representative

12/22/04
Date

Cherie Rosenquist, City of Milpitas

Mea/sideletter/121404waterdistribopcert

7501

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Appendix "D"

SIDE LETTER AGREEMENT BETWEEN CITY OF MILPITAS AND MILPITAS EMPLOYEES ASSOCIATION

The following is hereby agreed to and stipulated by and between the City of Milpitas (City) and Milpitas Employees Association (MEA), (jointly referred to as the Parties), which MEA represents its membership employees did approve by a majority vote:

1. MEA members currently participate in the LIUNA National Pension Fund under terms set forth in Section 42.00 of the MOU approved by City Council on June 7, 2011, (hereafter "MOU") and the Standard Form of Participation Agreement signed by the City and MEA in 2002. It is agreed between the Parties that this side letter (LOU) shall replace that Section 42.00 for now and in the future until such time as MEA, or its successor bargaining group or individual employee successors no longer participate in the LIUNA National Pension Fund and there exists no obligation on behalf of the City or MEA or its successor bargaining group or individual employee successors to contribute funds to the LIUNA National Pension Fund, or this LOU is rescinded or modified by mutual agreement.

2. It is agreed by the Parties that all obligation to make payments to the LIUNA National Pension Fund (including the $1.00 City contribution referred to in Section 42.01 of the MOU) for pension coverage for MEA employees shall be paid by the employees and the City will have the right to deduct the payment from MEA employee wages and make such payments as are due directly to the LIUNA National Pension Fund. This shall include any obligation to make payments to the LIUNA National Pension Fund, as now exist or increased amounts which may be imposed in the future for rehabilitation plans imposed, plan restructuring, election for "preferred" benefits under the current Rehabilitation Plan or any other reason. It is further agreed that the City as employer shall elect, if such option is available, the "preferred" payment option, allowing MEA employees enhanced benefits, payment for which MEA employees will be responsible, as agreed and set forth above, but with the understanding that if payments are also due for past obligations under the "preferred" plan, then MEA employees shall be responsible for such amounts which the City may also deduct in reasonable payment amounts from MEA employee wages.

3. Employee liability for LIUNA pension payments as described in paragraph 2 above does not include any fund liability for the City's unilateral withdrawal from the LIUNA National Pension Fund, were that to occur in the future. Responsibility for such liability, were it to occur, shall remain subject to future negotiations between the Parties.

4. Deductions from MEA employee wages, as set forth in paragraph 2 above, shall be processed and deducted as pre-tax pension benefit payments from current and future MEA employees and will include a pro rata share of the indebtedness owed for MEA

employees, including retirees, for the period from January 1, 2012, through the time of execution of this Side Letter, until such time as that indebtedness is satisfied.

This LOU shall constitute a change in conditions from those set forth in the current MOU governing MEA and the City. To the extent this LOU is inconsistent with the current MOU, this LOU shall constitute the intent and govern the rights of the Parties.

By execution of this LOU, all Parties agree that this matter has been fully discussed amongst the Parties and all meet and confer obligations of the law, including the Meyers Milias Brown Act, have been complied with fully.

Upon execution, this LOU shall be a valid contract between the Parties. Implementation of the terms of this LOU is specifically conditioned upon City Council approval.

_____	_____
Dated	Robert Delong, MEA President
_____	_____
Dated	UPEC Local 792 Representative
_____	_____
Dated	Thomas C. Williams, City Manager
_____	_____
Dated	Carmen Valdez, HR Director

Approved as to Form:

_____	_____
Dated	Michael J. Ogaz, City Attorney

RESOLUTION NO. _____ ***8**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE THE SOFTWARE MAINTENANCE AMENDMENT RENEWAL WITH TRITECH SOFTWARE SYSTEMS, INC. FROM SEPTEMBER 1, 2013 TO AUGUST 31, 2014 IN THE AMOUNT OF $97,765.54 AND AUTHORIZE THE CITY MANAGER TO EXERCISE UP TO FOUR (4) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES BASED ON THE NATIONAL CONSUMER PRICE INDEX, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL

WHEREAS, the City of Milpitas ("City") entered into a Consulting Services Agreement with Tritech Software Systems, Inc. ("Tritech") on October 21, 2003 for the purchase and installation of a computer aided software dispatch system for the Milpitas Police and Fire Departments ("Agreement"); and

WHEREAS, Tritech is the creator of the software that runs the City's computer aided dispatch for the Milpitas Police and Fire Departments and is the only company that can provide software maintenance and support of the system; and

WHEREAS, the software maintenance renews each year on September 1st based on agreement between the parties of the renewal fee; and

WHEREAS, the parties desire to enter into a renewal of the software maintenance from September 1, 2013 to August 31, 2014 in the amount of $97,765.54; and

WHEREAS, subsequent annual software maintenance renewal will be based on the national Consumer Price Index, which ranges from 1% to 3%, during the past few years;

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

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

2. The City Manager is authorized to execute the Software Maintenance Renewal Amendment with Tritech Software Systems, Inc. in the amount of $97,765.54 in the form attached to this Resolution as Exhibit A.

3. The City Manager is further authorized to exercise up to four (4) annual options with annual fee increases based on the national Consumer Price Index, subject to appropriation of funds and without further City Council approval.

PASSED AND ADOPTED this _____ day of _____ 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN**:**

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

TRITECH
SOFTWARE SYSTEMS

June 14, 2013

City of Milpitas
Attn. Chris Schroder
1265 N. Milpitas
Milpitas, CA. 95035

Renewal of Software Support Agreement (revised)

This letter is an important notice to renew your Software Support Agreement for your TriTech System, which expired on August 31, 2013. The renewal of the Software Support Agreement will allow you to continue to take advantage of the software support and maintenance services provided by TriTech Software Systems and allow you to receive upgrades to your TriTech System.

Please complete and sign this Support Renewal Agreement and return it to TriTech along with your payment to assure uninterrupted software support and maintenance services coverage. Action on this Support Renewal Agreement is time sensitive; services to support your system will not be provided if you have not paid your Support Renewal Fee by the Expiration date of your Software Support Agreement.

TriTech Support Services Renewal Agreement Amendment

Client agrees to renew its Software Support Agreement dated October 2003, the terms of which are incorporated by reference herein as though set forth in full, and according to the terms and conditions included herein. Except as modified herein, all other terms and conditions of the Software Support Agreement shall remain in full force and effect. With respect to the content herein, in the event of any conflict between this Software Support Renewal Agreement Amendment and the Software Support Agreement, the terms of this Software Support Renewal Agreement Amendment shall control. **This Support Renewal Agreement Amendment and applicable support fees must be signed, paid and returned by September 1, 2013** to avoid any interruptions in the software support and maintenance services provided by TriTech. Payment of $97,765.94 for this period is due by August 31, 2013.

Consumer Price Index Adjustment

For support renewals that go into effect within calendar year 2013, the support renewal fee has been increased by the consumer price index (CPI) rate of 1.1%.

Note: Escrow, TeleAtlas and ESRI Fees, if applicable, are calculated separately and added to your annual support fee.

Payment

For your convenience, we have enclosed an invoice for the full amount of the TriTech Support Services Renewal Fees covering a 12 month period beginning September 1, 2013-August 31, 2014. If you have any questions, please contact Diana Sliwicki or your Client Account Manager at 858-799-7000.

The Support Renewal Agreement for TriTech Support Services is based upon the following TriTech Software licenses:

9477 Waples Street, Suite 100, San Diego, California 92121
(858) 799-7000 I Fax: (858) 799-7010 I www.tritech.com

Milpitas

Product Name	Notes	# of Licenses	Cost per License	Total LicenseCost	Support Term 9/1/13 - 8/31/14
Interfaces to CLETS/SLETS/NCIC		1	15,000.00	15,000.00	3,391.48
Standard Alpha-Numeric Paging Interface License		1	9,000.00	9,000.00	2,034.89
Standard E-9-1-1 With TDD Interface License		1	20,000.00	20,000.00	4,521.97
VisiCAD Archive License Data Purging & SQL Replication		1	20,000.00	20,000.00	4,521.97
VisiCAD BOLO License		1	5,000.00	5,000.00	1,130.49
VisiCAD Command Public Safety Database Server License		1	30,000.00	30,000.00	6,782.96
VisiCAD Command Public Safety Full-User License***		6	12,000.00	72,000.00	16,279.10
VisiCAD Live Routing License		1	15,000.00	15,000.00	3,391.48
GISLink / VisiCAD MapImport Utility		2	20,000.00	20,000.00	4,521.97
VisiNet Mobile Applications Server License		1	50,000.00	50,000.00	11,304.93
VisiNet mobile Client License***		50	690.00	34,500.00	7,800.40
VisiNet Mobile Mapping Client License		50	300.00	15,000.00	3,391.48
WebView Site License Level 1	[a]	1	20,000.00	20,000.00	0.00
WebView Site License Server License	[a]	1	25,000.00	25,000.00	0.00
Zetron Station Alert/Printer Interface License (Centralized)		1	30,000.00	30,000.00	6,782.96
Added Licenses					
Message Switch Manager		1	5,000.00	5,000.00	1,130.49
VisiCAD MultiAgency		1	5,000.00	5,000.00	1,130.49
VisiCAD Multiassign		1	7,500.00	7,500.00	1,695.74
VisiCAD Playback		1	5,000.00	5,000.00	1,130.49
VisiCAD Protocol	[a]	1	50,000.00	50,000.00	0.00
VisiCAD Query Message Switch		1	5,000.00	5,000.00	1,130.49
VisiCAD R-Check		1	5,000.00	5,000.00	1,130.49
VisiCAD Rotation		1	500.00	500.00	113.05
VisiCAD Training/Test Server		1	10,000.00	10,000.00	2,262.01
			Total License Renewal Fee:		**91,336.74**
				ESRI Fees	128.00
				Escrow Fee	850.00
				Tricon	1,390.00
				TeleAtlas Fee	4,061.20
		Total Adjusted License Renewal Fee:			**97,765.94**

NOTES:

ESRI Fees 6 user licenses @ $16.00 each

ESRI Fees for 2 GIS Link @ $16.00 each

TeleAtlas - 56 users

[a] Removed per client request

ACCEPTED AND AGREED:

Signature

Printed Name

Title

Date

TRITECH SOFTWARE SYSTEMS

Blake Clark
CFO

*9

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CLASSIFICATION PLAN

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, which has been from time to time previously amended, and which is in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792, as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, reductions in staffing, transfer of duties, new job responsibilities, and adjustments in salary ranges.

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

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

2. Resolution No. 1626, as amended, is hereby amended effective August 20, 2013, as follows:

   A. One (1) Office Specialist position within the Planning and Neighborhood Services Department is deleted.

   B. One (1) Secretary position within the Planning and Neighborhood Services Department is added.

PASSED AND ADOPTED this 20th day of August 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN**:**

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Project Name: Odor Consulting Services

*10

AMENDMENT NO. 4 TO AGREEMENT FOR CONSULTING SERVICES BETWEEN THE CITY OF MILPITAS AND CALRECOVERY INC.

This Amendment No. 4 is entered into this 20th day of August, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and CalRecovery Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement entitled "CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND CALRECOVERY, INC." dated April 14, 2009 ("Agreement"); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on May 18, 2010 to increase the total compensation from $15,000 to $25,000 for additional solid waste support services; and

WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 19, 2012 to increase the total compensation from $25,000 to $29,000 for additional solid waste support services; and

WHEREAS, the parties entered into Amendment No. 3 to the Agreement on April 2, 2013 to increase the total compensation from $29,000 to $49,000 for additional solid waste support services; and

WHEREAS, the parties desire to amend the Agreement to increase the compensation to provide for additional CONSULTANT services;

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

1. Section 2, entitled "Compensation" is amended to read as follows:

   "City hereby agrees to pay CONSULTANT a guaranteed maximum price not to exceed sixty-nine thousand dollars ($69,000) for all services to be performed and reimbursable costs incurred under this Agreement."

2. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated August 14, 2009 between CONSULTANT and CITY throughout the term of the Agreement. CONSULTANT shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

3. All other provisions of the amended Agreement shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

_____
Jeff Moneda, City Engineer

CONSULTANT

_____
George Savage, Executive Vice President

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

AMENDMENT NO. 5 TO THE AGREEMENT WITH GACHINA LANDSCAPE MANAGEMENT, INC. FOR CIVIC CENTER AND LIBRARY LANDSCAPE MAINTENANCE SERVICE

This Amendment is entered into this 21ST day of August, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Gachina Landscape Management, Inc.** a California corporation, (hereafter referred to as "CONTRACTOR").

RECITALS

A. WHEREAS, the parties entered into an agreement entitled "Civic Center, Library Landscape Maintenance Service on October 1, 2011" ("Agreement"). This is a two (2) year agreement with three (3) one (1) year options. The total first year contract amount was Thirty One Thousand Seven Hundred and Twenty dollars and Zero Cents ($31,720.00); and

B. WHEREAS, the parties entered into Amendment No. 1 to the Agreement on January 5, 2012 to change the pesticide usage reporting to the standardized requirements and forms supplied by the City of Milpitas at no additional cost to the City; and

C. WHEREAS, the parties entered into Amendment No. 2 to the Agreement on August 22, 2012 to provide "irrigation management, inspection, and adjustment of the system" at the rate of $218 per month for the remaining forty-nine (49) months of the Agreement, for a first year contract amount not-to-exceed of Thirty-One Thousand Nine Hundred and Thirty-Eight Dollars ($31,938.00).

D. WHEREAS, the parties entered into Amendment No. 3 to the Agreement on April, 29, 2013 to change the pesticide usage reporting to the standardized requirements and forms supplied by California Regional Water Quality Control Board at no additional cost to the City; and

E. WHEREAS, the parties entered into Amendment No. 4 to the Agreement on March 23, 2013 to provide a one time increase of One Thousand Four Hundred Seventy-Seven Dollars and Forty-Eight Cents ($1,477.48) for irrigation repairs for a total year two contract value of Thirty-Four Thousand Seven Hundred Thirteen Dollars and Forty-Eight Cents ($34,713.48); and

F. WHEREAS, the parties now desire to further amend the Agreement to include the attached Addendum No. 1 as part of the Scope of Service and to increase the Agreement by Three Thousand Eight Dollars and Five Cents ($3,508.05) for each of the remaining four years as a contingency for

demolition and replanting of various existing annual beds at City Hall and the Senior center; and

*11

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

1. City agrees to pay Contractor for all services performed in accordance to the amended Agreement in the amounts not-to-exceed as follows:

   A. 10/1/2011 to 9/31/2012: $31,938.00

   B. 10/1/2012 to 9/31/2013: $38,221.53

   C. 10/1/2013 to 9/31/2014: $36,744.00

   D. 10/1/2014 to 9/31/3015: $36,744.00

   E. 10/1/2015 to 9/31/2016: $36,744.00

3. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in "Exhibit D – Insurance Requirements General" throughout the term of the Agreement and shall provide the City with renewal certificate and endorsements of the insurance policy.

4. All other provisions of the amended Agreement not amended by this Amendment No. 5 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

GACHINA LANDSCAPE MANAGEMENT, INC

_____
Name and Title of Authorized Representative

Approved As To Content:

_____
Steve Erickson, Project Manager

Approved As To Form:

_____
Michael J. Ogaz, City Attorney

CITY of MILPITAS

Purchasing Division
455 E. Calaveras Blvd
Milpitas, CA 95035

Phone: 408-586-3160 Fax: 408-586-3170

***11**

August 8, 2013

ADDENDUM NO. 1
To
Amendment No. Five (5)
To
Civic Center, Library Landscape Maintenance Services Agreement
RFP 2007

Please note the following revision to, Civic Center, Library Landscape Maintenance Services Agreement - RFP 2007

The Agreement value for contract years two through five shall be increased by $3,508.00 per the attached proposal from Heriberto Cortes dated June 7, 2013.

All other provisions of the documents and specifications remain in full force and effect.

Respectfully,

Chris Schroeder
Purchasing Agent

gachina
landscape management

#3 *11

June 07, 2013

PROPOSAL

STEVE ERICKSON
CITY OF MILPITAS
MILPITAS CIVIC CENTER
455 & 457 EAST CALAVERAS BLVD.
MILPITAS, CA 95035

DESCRIPTION OF WORK TO BE PERFORMED

Annual Color Rotation

By Fountain Bed of Annual Color
-5 mf, of jp Annual color (TBD)
-1 ea, Check and Adjust Irrigation

Right Side Bed of Annual Color
-7 mf, of jp Annual color (TBD)
-1 ea, Check and Adjust Irrigation

Left Side Bed of Annual Color by lawn
-4 mf, of jp Annual color (TBD)
- 1ea, Check and Adjust Irrigation

Sign with annual color in the Parking area
-2 mf, of jp Annual color (TBD)
-1 ea, Check and Adjust Irrigation

Labor $341.56
Material $827.79

Note: the color is less than other rotations if the plant we proposed get approved

COST:	$1,169.35
TOTAL:	**$1,169.35** X 3 per yr.

By _____ Heriberto Cortes

Date June 07, 2013

GACHINA LANDSCAPE MANAGEMENT

By _____

Date _____

CITY OF MILPITAS

Do not remit payment. Invoice will be issued upon completion of work.

06/07/2013 11:32

*

*11

AMENDMENT NO. 8 TO THE AGREEMENT
WITH
JENSEN LANDSCAPE SERVICES, INC.
FOR
MCCARTHY RANCH LANDSCAPE MAINTENANCE SERVICE

This Amendment is entered into this 21st day of August, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Jensen Landscape Services, Inc.** a California corporation (hereafter referred to as "CONTRACTOR").

RECITALS

A. WHEREAS, the parties entered into an agreement entitled "McCarthy Ranch Landscape Maintenance Services" on August 30, 2010 ("Agreement") for an initial contract amount of Sixty-Two Thousand Eight Hundred and Seventy Nine dollars ($62,879.00). This is a three year contract with two one year renewal options; and

B. WHEREAS, the parties entered into Amendment No. 1 to the Agreement on November 3, 2010 to increase the total contract amount by Twenty-Six Thousand Nine Hundred Thirty-Two Dollars ($26,932.00), a one time increase for tree pruning on the west side of North McCarthy Blvd.; and

C. WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 8, 2011 to increase the total contract amount by Twenty-One Thousand Twenty-Six Dollars ($21,026.00), a one time increase for tree pruning on the east side of North McCarthy Blvd.; and

D. WHEREAS, the parties entered into Amendment No. 3 to the Agreement on January 5, 2012 to adjust the pesticide usage reporting to a standardized format supplied by the City of Milpitas at no additional cost to the City; and

E. WHEREAS, the parties entered into Amendment No. 4 to the Agreement on July 16, 2012 to increase the total contract amount by One Thousand Three Hundred Dollars ($1,300.00), a one time increase for irrigation repairs and plant replacement; and

F. WHEREAS, the parties entered into Amendment No. 5 to the Agreement on July 16, 2012 to increase the total contract amount by Five Thousand Dollars ($5,000.00), a one time increase for irrigation repairs and plant replacement; and

G. WHEREAS, the parties entered into Amendment No. 6 to the Agreement on March 22, 2013 to increase the total contract amount by Five Thousand Dollars ($5,000.00), a one time increase for irrigation repairs and plant replacement; and

H. WHEREAS, the parties entered into Amendment No. 7 to the Agreement on April 30, 2013 to adjust the pesticide usage reporting to the standardized format provided by the California Regional Water Quality Control Board at no additional cost to the City; and

I. WHEREAS, the Agreement including Amendments Nos. 1 through 7 outlined above authorized payment from City to Contractor totaling Two Hundred Forty-Seven Thousand Eight Hundred Ninety-Five Dollars ($247,895.00), however, Contractor has so far provided services totaling Two Hundred Forty-Eight Thousand Seven Hundred Thirty-Seven Dollars and Twenty-Five Cents ($248,737.25); and

J. WHEREAS, the parties desire to further amend the Agreement to authorize the additional payment for services provided by Contractor to City exceeding the previous amendments, increase the total amount of the Agreement by Three Thousand Five Hundred Fifty Dollars ($3,550.00) for irrigation repairs along McCarthy Blvd. in accordance with Addendum No. 1 attached to this Amendment, and increase the total contract amount for the remaining two years of the Agreement; and

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

1. City agrees to pay Contractor for all services under the amended Agreement as follows:

   A. 8/30/2010 to 8/29/2013: $261,923.00

   B. 8/30/2013 to 8/29/2014: $72,879.00

   C. 8/30/2014 to 8/29/2015: $72,879.00

2. Part 1 Section 3.4 “IRRIGATION SYSTEM MAINTENANCE of the amended Agreement is hereby amended to include irrigation repairs on McCarthy Ranch Blvd/N&S Ranch Road, pursuant to Addendum No. 1, attached and incorporated herein.

3. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in “Exhibit A – Insurance Requirements General” throughout the term of the Agreement and shall provide the City with renewal certificates and endorsements of the insurance policy.

4. All other provisions of the amended Agreement not amended by this Amendment No. 8 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

Approved As To Content:

_____
Steve Erickson, Project Manager

Approved As To Form:

_____
Michael J. Ogaz, City Attorney

JENSEN LANDSCAPE SERVICES, INC.

_____
Name Authorized Representative

_____
Title of Authorized Representative

CITY of MILPITAS

Purchasing Division
455 E. Calaveras Blvd
Milpitas, CA 95035

Phone: 408-586-3160 Fax: 408-586-3170

July 15, 2013

ADDENDUM NO. 1
To
Amendment No. Eight (8)
To
McCarthy Ranch Landscape Maintenance Services Agreement
RFP 1189

Please note the following revision to, McCarthy Ranch Landscape Maintenance Services Agreement - RFP 1189

The Total Agreement value for contract year number three (3) shall be increased by $3,550.00 per the attached proposal from James Van Slyke dated July 8, 2013.

All other provisions of the documents and specifications remain in full force and effect.

Respectfully,

Chris Schroeder
Purchasing Agent

JENSEN
LANDSCAPE

July 8, 2013

Steve Erickson
City of Milpitas
1265 North Milpitas Blvd.
Milpitas, CA 95035
(408) 586-3301
(408) 586-2610

Re: McCarthy Blvd/N&S Ranch Rd. *Irrigation Repairs (revised)*
Job#: 070050

Dear Steve,

Jensen Landscape Services, Inc. (JLS) appreciates this opportunity to bid your irrigation landscape needs. JLS proposes to supply all labor, material, and equipment to complete the following scope of work. The irrigation system conditions are in detail below.

Scope of Work:

Controller 7-1:
Repair 1 broken lateral pipe on station #5

Controller 2:
Repair 2 broken lateral pipes on stations #6,8
Repair 1 broken mainline pipe on station #7

Controller 3:
Repair 1 broken lateral pipe on station #1

Controller 4:
Replace 1 valve not opening automatically on station #6

Controller 5:
Repair 1 broken lateral pipe on station #19

Controller 7:

Controller 8:
Repair 8 broken lateral pipes on stations #3,4,12,16,21,24,29

Controller 9:
Repair 1 broken lateral pipe on station #9

Cost $3,550

Qualifications:
Assumes no underground utilities or other underground obstructions are in conflict with the work to be performed by Jensen Landscape Services or its subcontractors. If there are, or the client suspects that there may be, they are to be located by others prior to start of work.

Exclusions:
JLS is not responsible for damage to underground utilities, plants, hardscape and other unknown items not shown on the client-submitted, as-built drawings.

Thank you again for the opportunity to present our proposal to you. If you have any questions or wish to proceed with the above scope of work, please contact us at your earliest convenience,

Sincerely,

James Van Slyke

James Van Slyke
Account Manager
Cell: (408) 210-8504
Email: jvanslyke@jensencorp.com

Approval Signature *Date*

City of Milpitas, California

***13**

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	450-2970	$ 40,000	450-423-4241	$ 40,000

Explain the reason for the budget change:

Background: At about 11:00 a.m. on July 19th, a twenty-seven inch diameter reinforced concrete sewer main on Marylinn Drive collapsed at the intersection of Heath Street. The sewer main serves approximately 25% of the customers within the City and is one of only four crossings under Interstate 880. The Public Works crews responded and identified the segment of collapsed pipe and closed the intersection to traffic. Due to the size of the repair and the necessity to maintain sewer flow, the Director of Public Works authorized Preston Pipeline to make the repairs immediately rather than soliciting competitive bids from various contractors. In addition to the repairs, the sewer main needed to be cleaned and flushed to remove debris that had fallen into the line. The Director of Public Works authorized Presidio Systems on July 25th to perform the cleaning, flushing and video inspection of the line to determine if there were any other segments of the line that were damaged. The City's 2013 Street Resurfacing contractor, who was working within the neighborhood, was directed by contract change order to complete the necessary street repairs associated with this work, which have been completed. Preston Pipelines and Presidio Systems have not submitted invoices for this work, but based on its known deployment of workers and equipment, the cost is not expected to exceed $40,000. Please note that this repair is temporary and subsequent sewer work is necessary.

The Marylinn Drive reinforced concrete sewer main was installed in 1953 and is reaching the end of its design life. Engineering is adding the segment of sewer main from Abbott Avenue to the west side of Interstate 880 for replacement within the Sewer Replacement Projects in the current Capital Improvement Program, and the design will start this fall. This project is categorically exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines for restoration or rehabilitation of deteriorated or damaged structures.

Fiscal Impact: $40,000. An appropriation from the Sewer Fund is needed due to insufficient funds in Public Works operating budget for this emergency work.

Recommendations:

1. Receive this report from the Public Works Director pursuant to Resolution No. 7779 and Public Contracts Code Section 22050 for emergency public works repair to sewer main on Marylinn Drive.
2. Approve a budget appropriation of $40,000 from the Sewer Fund to Public Works operating budget.
3. Authorize staff to pay emergency repair work invoices to Preston Pipelines and Presidio Systems in an amount not to exceed $40,000.

☒ **Check if City Council Approval required.** **Meeting Date**: August 20, 2013

Requested by:	**Department Head:** Jeff Moneda, PW Director	**Date:** August 9, 2013
Reviewed by:	**Finance Director:**	**Date:** 8/12/13
Approved by:	**City Manager:**	**Date:**
Date approved by City Council, if required:		**Confirmed by:**

*14

Software / Hardware Maintenance Agreement RENEWAL

Peelle TECHNOLOGIES

Document and Data Management Solutions

197 East Hamilton Avenue
Campbell, CA 95008
Phone: 800.233.5006 Fax: 408.866.4803

Send Invoices To:

Client: City of Milpitas
Attn: David Bialczak
Address: 1265 N. Milpitas Blvd.
City, State, Zip: Milpitas, CA 95035
Phone: (408) 586-2707

Software / Hardware Location:

Client: City of Milpitas
Attn: David Bialczak
Address: 1265 N. Milpitas Blvd.
City, State, Zip: Milpitas, CA 95035
Phone: (408) 586-2707

Client ID	Account Manager	Client P.O. #	Peelle Invoice #
CM6288	Jim Detrick		

Qty.	Product Description	Service Level	Start Date	End Date	Unit Cost	Ext. Cost
35	EMC Documentum AX/WX Concurrent Connection (Live System Licenses)	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$289.00	$10,115.00
1	EMC Documentum AX/WX Concurrent Connection (PAWS System License)	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$571.00	$571.00
1	EMC Documentum Web Access – Public Access License (50 – 74 License Tier)	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$5,700.00	$5,700.00
1	EMC Documentum OCR Server	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$381.00	$381.00
1	EMC Documentum ProIndex Full Text Server	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$571.00	$571.00
2	EMC Documentum ProIndex Full Text Client	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$38.00	$76.00
1	EMC Documentum Media Distribution Perpetual License	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$571.00	$571.00
3	Kofax Image Products Ascent Capture (25K image/month volume license)	Monday – Friday 8:00am to 5:00pm PST	6/29/2013	6/28/2014	$1,142.00	$3,426.00

Continued

Software / Hardware Maintenance Agreement **RENEWAL**

Peelle TECHNOLOGIES

Document and Data Management Solutions

197 East Hamilton Avenue
Campbell, CA 95008
Phone: 800.233.5006 Fax: 408.866.4803

Send Invoices To:

Client: City of Milpitas
Attn: David Bialczak
Address: 1265 N. Milpitas Blvd.
City, State, Zip: Milpitas, CA 95035
Phone: (408) 586-2707

Software / Hardware Location:

Client: City of Milpitas
Attn: David Bialczak
Address: 1265 N. Milpitas Blvd.
City, State, Zip: Milpitas, CA 95035
Phone: (408) 586-2707

Client ID	Account Manager	Client PO #	Peelle Invoice #
CM6288	Jim Detrick		

Qty.	Product Description	Service Level	Start Date	End Date	Unit Cost	Ext. Cost
2	Fujitsu fi-5750C VRS Document Scanner S/N: 010447, 010441	Monday – Friday 8:00am 5:00pm PST	6/29/2013	6/28/2014	$1,195.00	$2,390.00
Notes: The annual maintenance/support costs for the EMC Documentum and Kofax software products include all software updates. On-site software support will be billed at the rate of $175.00 per hour, portal to portal, with a two-hour minimum charge.					**Total:**	$23,801.00

Please acknowledge your acceptance with a signed copy of the Maintenance Agreement and your purchase order. Faxed copies are acceptable and may be faxed directly to the Contract Administration Department at 408.866.4803.

Donna Braxton/Contract Administrator 04/23/13

Authorized Peelle Representative / Title Date

Authorized Client Representative / Title Date

AGREEMENT TERMS AND CONDITIONS

Included are the Terms and Conditions under which Peelle Technologies, Inc. (hereafter referred to as Peelle) will provide software and/or hardware maintenance/support services for the products listed within this Software/Hardware Maintenance Agreement (hereafter referred to as Agreement).

1) Software Maintenance/Support Services: Peelle will supply the following software maintenance/support services:

(a) Peelle shall provide all necessary telephone support for reporting and resolving problems with the software products covered by this Agreement, and shall be available to receive notification by the Client of any software problem. The Client must provide adequate information and documentation to enable Peelle to recreate the reported problem. If it is determined that there is no problem with the software products, Peelle will so inform the Client and, in such case, Peelle reserves the right to charge the Client for the services provided at Peelle's then current standard rates plus reasonable associated expenses. Notwithstanding the provisions of this section, Peelle makes no warranties that the maintenance/support provided hereunder will be successful in resolving any problems or in diagnosing faults.
(b) All software releases/updates made available by the software manufacturer during the term of this Agreement.

Service is available by calling 800-233-5006 or via the Internet at support@peelletech.com. Unless otherwise specified on page two (2) of this Agreement, Peelle agrees to use reasonable efforts to respond to the Client's service request within four (4) hours of receipt of notification. In the first instance, Peelle shall attempt to diagnose the reported problem via telephone, e-mail and/or remote access and, if considered appropriate, shall attempt to resolve the reported problem by requesting that the Client perform any required/standard operational maintenance or simple adjustments which the Client can reasonably be expected to conduct. If the reported problem is not resolved via telephone, e-mail and/or remote access, Peelle shall arrange for a system engineer to visit the Client's site during Peelle's normal business hours, which are defined as the hours between 8:00 a.m. and 5:00 p.m. PST, Monday through Friday (excluding Peelle company holidays).

2) Hardware Maintenance/Support Services: Peelle will supply the following hardware maintenance/support services:

(a) All parts, labor and materials necessary to maintain products covered by this Agreement.

Service is available by calling 800-233-5006 or via the Internet at support@peelletech.com. Unless otherwise specified on page two (2) of this Agreement, Peelle agrees to use reasonable efforts to respond to the Client's service request within twenty-four (24) hours of receipt of notification and services will be performed during Peelle's normal business hours. Normal business hours are defined as the hours between 8:00 a.m. and 5:00 p.m. PST, Monday through Friday (excluding Peelle company holidays).

3) Charges: Peelle will invoice Client for the total software/hardware maintenance/support services cost, including any applicable taxes. Client agrees to remit complete payment for the invoice in advance of the stated Agreement Start Date. An interest payment of 1.5% compounded monthly and any applicable software maintenance reinstatement fees imposed by the software manufacturer shall be added to those invoices not paid by the stated software maintenance Start Date.

4) Client Responsibility: Client is responsible for:

(a) Notifying Peelle in advance of any material changes to the supported system's components, including, but not limited to, the system's network, server/workstation hardware, operating system or security configuration.
(b) Having a valid backup of data at all times to maintain original operating system, data and application software.
(c) Promptly notifying Peelle of any need for service and making product(s) available to Peelle engineers.
(d) Running diagnostic tests on all non-supported system components (network, server/workstation hardware, operating system or security configuration) before having a product serviced under this Agreement.

5) Limitations of Service: Maintenance/support services provided under this Agreement do not include:

(a) Cost of bringing product(s) to operational status prior to placing them under maintenance.
(b) Costs related to the off or on-site implementation (including, but not limited to installation, configuration and training services) of software updates made available by the software manufacturer during the term of this Agreement.
(c) Costs related to the resolution of software problems caused by unapproved changes to the supported system's network, server/workstation hardware, operating system or security configuration.
(d) Repair of damage caused by; accidents, natural disaster, improper use, damage during transportation/relocation by Client, work performed on software/hardware by personnel other than Peelle employees/subcontractors, causes beyond Peelle's control.
(e) Furnishing consumable supplies or accessories as specified by the manufacturer.
(f) Hardware with missing or altered serial numbers.
(g) Repair of damage or increase in service time caused by the use of the product for purpose other than for which it was designed or beyond the manufacturer's specifications.

If services are required due to the above causes, Peelle will provide services at Peelle's then current standard service rates.

6) Renewal: This Agreement shall be in effect beginning on the Start Date as noted on pages one (1) and two (2) of this Agreement and continue through the End Date as noted on pages one (1) and two (2), unless sooner terminated as provided in Section 7 of this Agreement.

7) Termination: Client may terminate this Agreement for any reason with sixty (60) days written notice prior to the renewal anniversary date. Client may also terminate this Agreement if any material agreement or obligation contained or referred to in the Agreement has been breached by Peelle, provided that Client has given Peelle notice of such breach and there has been a failure to cure such breach, if curable, within thirty (30) days after receipt of such notice. Unless such breach has been cured, termination shall be effective thirty (30) days after receipt of such notice, and shall be without prejudice to any other right or remedy to which Client may be entitled either at law, in equity, or otherwise, including, without limitation, under this Agreement. Peelle may terminate this Agreement at any time for any reason with sixty (60) days written notice. Upon terminating the Agreement, Peelle will issue a prorated refund of any remaining prepaid Agreement coverage. The refund amount will be for the Peelle technical support component only and will not include prepaid, non-refundable maintenance/support fees paid to the software manufacturer(s) or third-party hardware service provider(s).

8) Rate Changes: The maintenance/support rates stated within this Agreement will not change during the effective dates specified for this Agreement. All rates are adjustable for maintenance/support coverage periods after the contract expiration date.

9) Limitation of Liability: Client must provide Peelle with notice of claims of damage, improper service, or lawsuit within thirty (30) days of service. Peelle shall not be liable for performance delays or for nonperformance due to causes beyond its reasonable control. For any material breach of this Agreement by Peelle, Client's remedy and Peelle's liability shall be limited to a refund of related maintenance/support fees paid during the period of breach, up to a maximum of twelve (12) months. The remedies provided herein are Client's sole and exclusive remedies. In no event will Peelle be liable for special, punitive, incidental, or consequential damages, whether based in contract, tort, or otherwise, including, without limitation, claims for loss or corruption of data or lost profit.

10) Entire Agreement: Client acknowledges that he/she has read this Agreement, understands it and agrees to be bound by Peelle's terms and conditions. Further, Client acknowledges that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written. This Agreement may not be modified or amended except by written instrument duly executed by the parties.

11) Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors.

12) Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.