



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

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

### AGENDA

TUESDAY, MARCH 17, 2020  
CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA  
6:00 PM (CLOSED SESSION)  
7:00 PM (PUBLIC BUSINESS)

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

**ADJOURN TO CLOSED SESSION** (6:00 – 7:00 PM)

- a) **CONFERENCE WITH LABOR NEGOTIATORS**  
Pursuant to California Government Code §54957.6  
Agency designated representative: Human Resources Director Liz Brown  
Employee Groups: Milpitas Employees Association, Mid Management and Confidential employees, and unrepresented employees
- b) **CONFERENCE WITH LABOR NEGOTIATORS**  
Pursuant to California Government Code §54957.6  
Agency designated representative: Mayor Rich Tran  
Unrepresented Employee: City Manager
- c) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
Pursuant to California Government Code §54956.9(d)(2)  
City as Defendant

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

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**PRESENTATION**

Proclaim March 2020 as *National Women's History Month*

**PUBLIC FORUM** (7:05 – 7:15 PM)

Those in the audience are invited to address City 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 spoken remarks to three minutes or less. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

**ANNOUNCEMENTS AND FUTURE AGENDA ITEMS** (7:15 – 7:25 PM)

Members of the City Council may make brief announcements or suggest future agenda items at this time. For future agenda items, the City Council shall not debate the topic or engage in discussion, but shall simply state a "yes" or "no" as to whether to direct the City Manager to place the item on a future meeting agenda. If a majority of the City Council agrees to place an item on a future meeting agenda, the City Manager shall place the item on a subsequent agenda for City Council discussion.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**APPROVAL OF AGENDA**

**CONSENT CALENDAR** (7:25 – 7:35 PM)

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

**C1.** **Receive City Council Calendars of Meetings for March and April 2020 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Receive City Council calendars of meetings for March and April 2020.

**C2.** **Approve City Council meeting minutes of March 3, 2020 City Council Meeting (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Approve draft meeting minutes of the March 3, 2020 joint meeting of the City Council and Housing Authority.

**C3.** **Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with HydroScience Engineers, Inc. for Consultant Engineering Services for the Sewer Master Plan (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with HydroScience Engineers, Inc. to provide additional consultant engineering services for the Sewer Master Plan, increasing the total not to exceed amount by \$249,028, from \$642,000 to \$891,028.

**C4.** **Approve and Authorize the City Manager to Execute Amendment No. 1 to the Software License and Professional Services Agreement with Lucity, Inc. for Computerized Maintenance Management System in the Amount of \$31,600, for a Total Amount Not to Exceed \$267,742.47 (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the software license and professional services agreement with Lucity, Inc. for computerized maintenance management system, increasing the total not to exceed amount by \$31,600.00 from \$236,142.47 to \$267,742.47.

**C5.** **Receive a Report on Emergency Repair of Water Main at Intersection of Calaveras Boulevard and Park Victoria Drive; and, Ratify Award of Emergency Contract to, and Direct the City Manager to Execute a Contract with, Preston Pipelines (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendations:

- (1) Receive a report from the Public Works Director on the emergency repair work on a water main at the intersection of Calaveras Boulevard and Park Victoria Drive.
- (2) Ratify award of emergency contract to, and direct the City Manager to execute a contract with, Preston Pipelines.

**C6. Receive Preview List of Anticipated Agenda Items for April 7, 2020 Regular City Council meeting (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Receive list of anticipated agenda items for the April 7, 2020 City Council meeting.

**PUBLIC HEARING** (7:35 – 7:40 PM)

**7. Request to Continue Public Hearing to April 7, 2020: Consider Adoption of a Resolution Upholding the Appeal by Adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program in Compliance with the California Environmental Quality Act, and Approving: (1) Environmental Assessment; (2) Site Development Permit; and (3) Conditional Use Permit to Allow the demolition of an existing 22,300 square foot commercial building and development of a new 105-room hotel at 1000 Jacklin Road (Staff Contact: Lillian VanHua, 408-586-3073)**

Recommendation: Move to continue the public hearing to April 7, 2020.

**PUBLIC SAFETY** (7:40 – 7:50 PM)

**8. Adopt a Resolution to Ratify the Emergency Proclamation of the Interim City Manager on March 12, 2020 (Staff Contact: Steve McHarris, 408-586-3051)**

Recommendation: Adopt a resolution to ratify the City of Milpitas Emergency Proclamation signed on March 12, 2020 by the interim City Manager regarding Coronavirus (COVID-19).

**REPORTS OF MAYOR & COUNCILMEMBERS** - from assigned Commissions, Committees and Agencies (7:50 PM – 8:50 PM)

**9. Adopt a Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women (Contacts: Councilmembers Dominguez, 408-586-3031 and Phan, 408-586-3032)**

Recommendation: Consider request from Councilmember Dominguez and adopt a Resolution in support of the principles of the Convention on the Elimination of All Forms of Discrimination Against Women.

**10. Receive and Direct Staff on Scheduling Agenda Items Requested by City Councilmembers (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Review list of items presented (list in agenda packet) that have been requested by City Councilmembers on a form, at a Council meeting, or through the City Manager. Direct items to Rules or other Council Subcommittee, to be placed onto a specific meeting date, or specify alternate direction to staff. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until the item is scheduled as a full agenda item.

**11. Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law” (Contacts: Councilmember Anthony Phan, 408-586-3032 and Mayor Tran, 408-586-3029)**

Recommendation: Hear request of Councilmember Phan and Mayor Tran in support of “Laura’s Law” related to mandatory conservatorship and mental health services, and consider directing staff to send a letter of support to County of Santa Clara.

## **ADJOURNMENT**

### **MILPITAS CITY COUNCIL CODE OF CONDUCT**

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Share information with all Councilmembers in advance of Council meetings.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

### **KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

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

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City’s website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

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

### **APPLY TO SERVE ON A CITY COMMISSION**

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk’s office at 408-586-3003 for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto: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 City Council Chambers for all meetings.*

February 2020							
S	M	T	W	T	F	S	
	2	3	4	5	6	7	1
	9	10	11	12	13	14	8
	16	17	18	19	20	21	15
	23	24	25	26	27	28	22
							29

# Milpitas City Council Calendar

## March 2020

April 2020							
S	M	T	W	T	F	S	
	5	6	7	1	2	3	4
	12	13	14	8	9	10	11
	19	20	21	15	16	17	18
	26	27	28	22	23	24	25
				29	30		

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>1</b>	<b>2</b> <b>7:00 PM</b> -Parks, Recreation & Cultural Resources Commission (AP)	<b>3</b> <b>12:00 PM</b> -Santa Clara VTA - Northeast Group (BN) <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>4</b> <b>7:00 PM</b> -Community Advisory Commission (BN)	<b>5</b> <b>5:30 PM</b> -Santa Clara VTA Board of Directors (BN) <b>5:30 PM</b> -Milpitas Chamber of Commerce Board (CM)	<b>6</b>	<b>7</b>
				<b>Yosemite Policymakers Conference (3/5-3/8) (City Manager and AP)</b>		
<b>8</b>	<b>9</b> <b>4:30 PM</b> -Economic Development and Trade Commission (KD)	<b>10</b> <b>ICSC Conference in Monterey, CA</b> (City Manager)	<b>11</b> <b>6:00 PM</b> -Project Sentinel Drop-In Clinic <b>7:00 PM</b> -Planning Commission <b>7:00 PM</b> -Silicon Valley Clean Energy Board of Directors (CM) (Cupertino)	<b>12</b> <b>4:00 PM</b> -Santa Clara VTA Policy Advisory Committee (KD) <b>4:00 PM</b> -Treatment Plant Advisory Committee (CM) <b>7:00 PM</b> -Cities Association of Santa Clara County (CM) <b>7:00 PM</b> -Youth Advisory Commission (AP)	<b>13</b>	<b>14</b>
<b>15</b>	<b>16</b> <b>4:00 PM</b> -City Council Finance Subcommittee @ Senior Center (RT/CM) <b>4:30 PM</b> -Special Economic Development and Trade Commission (KD) <b>7:00 PM</b> -Science, Technology, and Innovation Commission (BN) <b>7:00 PM</b> -Library and Education Commission (CM)	<b>17</b> <b>6:00 PM</b> -Closed Session <b>7:00 PM</b> -City Council	<b>18</b> <b>6:00 PM</b> -Energy and Environmental Sustainability Commission (BN)  <b>ULI Urban Plan for Communities Workshop</b> (BN/KD/CM & City Manager)	<b>19</b> <b>8:00 AM</b> -Community Development Roundtable <b>6:30 PM</b> -Bay Area Water Supply & Conservation Agency (CM) <b>7:00 PM</b> -Public Safety and Emergency Preparedness Commission (KD)	<b>20</b>	<b>21</b>
<b>22</b>	<b>23</b> <b>7:00 PM</b> -Arts Commission (CM)	<b>24</b> <b>3:00 PM</b> Council Housing Subcommittee (CM/BN) <b>5:30 PM</b> -Special Council: CIP Study Session @Barbara Lee Senior Center	<b>25</b> <b>6:00 PM</b> -Project Sentinel Drop-In Clinic <b>7:00 PM</b> -Project Sentinel Informational Workshop <b>7:00 PM</b> -Planning Commission	<b>26</b>	<b>27</b> <b>12:00 PM</b> -City Council Rules Subcommittee (RT/KD)	<b>28</b>
<b>29</b>	<b>30</b>	<b>31</b>  <b>Cesar Chavez Day</b> <b>City Hall Closed</b>				

\*Finance Subcommittee will meet only as needed

March 2020						
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				

May 2020						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

# Milpitas City Council Calendar

## April 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			<b>1</b> 2:00 PM-Santa Clara VTA Monthly Northeast Group (BN) 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (BN)	<b>2</b> 5:30 PM-Milpitas Chamber of Commerce Board (CM) 5:30 PM-Santa Clara VTA Board of Directors (BN)	<b>3</b>	<b>4</b>
<b>5</b>	<b>6</b> 7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)	<b>7</b> ?:00 PM-Closed Session 7:00 PM-City Council	<b>8</b> 4:30 PM-City Council Transportation Subcommittee (RT/CM) 7:00 PM-Silicon Valley Clean Energy Board of Directors (CM) 7:00 PM-Planning Commission	<b>9</b> 4:00 PM-Treatment Plant Advisory Committee (CM) 4:00 PM-Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM-Youth Advisory Commission (AP) 7:00 PM-Cities Assoc of SCC (CM)	<b>10</b> ?:00 PM-City Council Rules Subcommittee *2:00 PM-City Council Finance Subcommittee (RT/CM)	<b>11</b>
<b>12</b>	<b>13</b> 4:30 PM-Economic Development and Trade Commission (KD)	<b>14</b> 5:30 PM-City Council Study Session - Master Fee Schedule	<b>15</b> 6:00 PM-Energy and Environmental Sustainability Commission (BN)	<b>16</b>	<b>17</b>	<b>18</b>
<b>19</b>	<b>20</b> 7:00 PM-Science, Technology, and Innovation Commission (BN)	<b>21</b> ?:00 PM-Closed Session 7:00 PM-City Council	<b>22</b> 7:00 PM-Planning Commission	<b>23</b>	<b>24</b> ?:00 PM-City Council Rules Subcommittee	<b>25</b>
<b>26</b>	<b>27</b>	<b>28</b> 1:30 PM-Senior Advisory Commission (AP)	<b>29</b>	<b>30</b>		

*\*Finance Subcommittee will only meet as needed*

*Draft* **MEETING MINUTES**  
**CITY OF MILPITAS**

**Minutes of:** Joint Meeting of the Milpitas City Council  
and Milpitas Housing Authority  
**Date:** Tuesday, March 3, 2020  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER**

Mayor Tran called the meeting to order at 6:06 PM. The City Clerk called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Nuñez and Councilmember Phan

**ABSENT:** Councilmembers Dominguez and Montano

Councilmember Montano was absent at roll call. She arrived in Closed Session and departed the meeting at 9:25 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss two items regarding labor negotiations.

At the dais, Mayor Tran called to order the open session/regular meeting at 8:00 PM.

**ANNOUNCEMENT**

City Attorney Chris Diaz reported no action out of Closed Session.

**PLEDGE**

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

**INVOCATION**

Rajesh Shah, as invited by Mayor Tran, gave the invocation prayer.

**PRESENTATION**

Mayor Tran proclaimed March as American Red Cross Month, accepted by Thu Thuy Nguyen from the American Red Cross Silicon Valley.

**PUBLIC FORUM**

The following residents addressed the City Council, opposed to a proposed new hotel:

Badal Choudhary  
Spike Jones  
Allysson McDonald  
Nida Peralta  
Barbara Doll  
John Doll  
Yolie Garcia  
Manu Jain  
Barbara Jo Navarro  
Fauja Bariana

Other speakers were:

Voltaire Montemayor  
Frank DeSmidt

**ANNOUNCEMENTS**

Vice Mayor Nuñez indicated that officials including the Mayor, himself and the Milpitas Unified School Board President and Vice President would meet to discuss steps regarding coronavirus, as the two largest public agencies in the city.

Councilmember Montano attended a meeting on the US census sponsored by Congressman Ro Khanna. She reported that San Mateo County had adopted a resolution on the census and asked the Mayor for the City of Milpitas to do so. Regarding the Code of Ethics, she asked to have her colleagues recite it before each meeting. Referring to a policy in the City of Santa Clara, Ms. Montano wanted a similar policy of no cell phone use at the dais during Milpitas City Council meetings.

Vice Mayor Nuñez noted for his colleagues the sign recently posted of the adopted City Council Code of Conduct, found printed on each agenda.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST  
AND CAMPAIGN  
CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

**APPROVAL OF AGENDA**

Motion: to approve the City Council agenda, as presented, with a change in the order items would be heard: after the Public Hearing no. 15, go to agenda items no. 20, no. 21, no. 23

Items requested to be moved onto consent were: no. 16, no. 17, no. 18, no. 21, no. 23, no. 25, no. 27 and no. 28.

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

**CONSENT CALENDAR**

Motion: to approve the consent calendar including items added to consent, identified by Mayor Tran as numbers 16, 17, 21, 22, 23, 25, 27 and 28

While requested, no. 18 was not added to consent due to public speakers.

Motion/Second: Vice Mayor Nuñez/Councilmember Montano

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

- C1. Council Calendars Received the calendar of upcoming meetings for the month of March 2020.
- C2. Meeting Minutes Approved City Council meeting minutes of January 28 and 31, and February 4, 2020.
- C3. Adopt Ordinance Waived the second reading and adopted Ordinance No. 38.835, amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 6, 13, and 53 to establish regulations for Short Term Rentals.
- C4. Resolution Adopted Resolution No. 8947 to initiate proceedings for the annual levy and collection of assessments and ordering preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch.
- C5. Resolution Adopted Resolution No. 8948 to initiate proceedings for the annual levy and collection of assessments and ordering preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon.
- C6. Resolution Adopted Resolution No. 8949 acknowledging receipt of the report by the Milpitas Fire Department regarding inspection of certain occupancies requiring annual inspections, pursuant to sections §13146.2 and §13146.3 of the California Health and Safety Code.

- C7. Resolution Adopted Resolution No. 8950 granting acceptance of the Transit Area Specific Plan On-Street Parking Program, Project No. 2017, authorizing the City Engineer to file a Notice of Completion, and to authorize the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.
- C8. Bidders for Fire Station No. 2 Replacement Approved list of pre-qualified bidders and authorized advertisement for bids for the Fire Station No. 2 Replacement, Project No. 3447.
- C9. Stormwater Agreement Authorized the Interim City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for Alps Group, Inc. for the Holiday Inn development project at 1100 Cadillac Court.
- C10. Amendment to Agreement with DeltaWRX Approved and authorized the City Manager to execute Amendment No. 1 to the Agreement with DeltaWRX, LLC for Law Enforcement Records Management System consulting services by increasing the not to exceed amount from \$59,340 to \$209,061. Authorized the transfer of \$149,721 from the City Manager's Contingency Fund to the CIP Project No. 3423, Police Records Management System.
- C11. Fee Waiver For the request received by the City Clerk from Milpitas Friends of the Library on February 7, 2020, approved a fee waiver of \$112.86 for Temporary Banner Sign Permit fee to hang a Book Sale Banner on the Library (outdoors) on six dates in 2020.
- C12. Fee Waiver For the request received by the City Clerk from Christ Community Church on February 3, 2020, approved a fee waiver of \$1,500 maximum towards Special Event Permit Fee (\$923.63) and partial Park Rental Fee (\$567.37) for Sinnott Park on April 4, 2020 for an Easter Egg Hunt community event.
- C13. Legislation Received a summary report on California Assembly Bill 291 and Senate Bill 378 and authorized letters of support.
- C14. Appoint New Planning Commissioner Newly appointed Mercedes Albana to a term of three years on the Milpitas Planning Commission into a term that will expire in December 2022.

**PUBLIC HEARING**

15. Weed Abatement Fire Marshal/Deputy Fire Chief Albert Zamora presented the annual weed abatement program and introduced Mr. Moe Kumre from the Santa Clara County Agriculture office.

Mayor Tran opened the public hearing, and resident Voltaire Montemayor spoke.

(1) Motion: to close the public hearing, following one speaker

Motion/Second: Councilmember Phan/Councilmember Montano

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

(2) Motion: to adopt Resolution No. 8951 directing the County of Santa Clara Consumer and Environmental Protection Agency-Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council, in accordance with the Milpitas Municipal Code

Motion/Second: Vice Mayor Nuñez/Councilmember Phan

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

## **COMMUNITY DEVELOPMENT**

- C16. Second hand smoke in multi-unit housing      Item was added to consent. Received agenda report and authorized the City Manager to conduct public outreach, develop policy options to prohibit smoking and exposure to secondhand smoke in multi-unit housing, and to prepare an implementation plan for future consideration and adoption by the City Council.
- C17. Housing Report      Item was added to consent. Received the 2019 Housing Element Annual Progress Report and Housing Successor Agency Annual Report, and authorized submittal of both reports to the California Department of Housing and Community Development (HCD).
18. Pilot Rent Relief Program update      Housing Authority Administrator Robert Musallam updated Council on the pilot rent relief program for low income residents.
- Mayor Tran invited speakers, and residents Yolie Garcia, Allysson McDonald and Voltaire Montemayor addressed the Council.
- Motion: to approve a budget amendment to appropriate an additional \$100,000 from the Affordable Housing Fund to the FY 2019-20 Housing Operating Budget for Silicon Valley Independent Living Center (SVILC) to fund the Pilot Rent Relief Program; and, to authorize the City Manager to prepare and execute an amendment to the one-year Professional Services Agreement with Silicon Valley Independent Living Center to include the additional \$100,000 for the management of the Pilot Rent Relief Program
- Motion/Second:      Vice Mayor Nuñez/Councilmember Phan
- Motion carried by a vote of:      AYES: 3  
NOES: 0  
ABSENT: 2 (Dominguez, Montano)

## **COMMUNITY SERVICES**

19. Agreement with BrightView Landscape      Public Works Director Tony Ndah requested Council approval of an extended contract with the current vendor BrightView for landscape maintenance of ten City parks, in addition to the 26 parks currently maintained by the contacted service.
- Motion: to approve and authorize the City Manager to execute a five-year agreement with BrightView Landscape Services Inc. for Citywide parks maintenance services for an amount of \$1,601,698.93 in the first year and a total amount not to exceed \$8,419,055.76 over five years, subject to annual appropriation of funds
- Motion/Second:      Vice Mayor Nuñez/Mayor Tran
- Motion carried by a vote of:      AYES: 3  
NOES: 0  
ABSENT: 2 (Dominguez, Montano)

## **LEADERSHIP**

20. Resolution      City Manager Steve McHarris explained the request for adjustment to salaries for police and fire management positions to correct for compaction. Assistant City Manager Ashwini Kantak described compaction, staff equity issues, and costs for the proposed action by Resolution.
- (1) Motion: to adopt Resolution No. 8952 amending the Classification Plan adjusting salary ranges for unrepresented Police management and specific unrepresented Fire management classifications by 10.69% and adopt the pay schedule entitled "All Job Classifications / Salary Table"
- Motion/Second:      Councilmember Montano/Vice Mayor Nuñez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

(2) Motion: to approve salary increases for the unrepresented police management by 10.69%, effective the first full pay period following this City Council meeting date

Motion/Second:

Vice Mayor Nuñez/Councilmember Phan

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

At 9:25 PM, Councilmember Montano departed the meeting.

C21. Pension Report

Item was added to consent. Reviewed the pension actuarial report and directed staff to return to City Council with the necessary documents for the establishment of a 115 Pension Trust.

C22. Agreement with Chandler Asset Management

Item was added to consent. Approved and authorized the City Manager to execute the agreement with Chandler Asset Management for a five-year contract amount not to exceed \$790,000, with the first year of the contract in the amount of \$150,000, for investment services to manage the City's pooled portfolio, subject to the annual appropriation of funds.

C23. Community Engagement Survey

Item was added to consent. Received a report on results of the 2020 Citywide Community Engagement Survey.

### **REPORTS**

Vice Mayor Nuñez asked staff to comment about the City's response to the corona virus, and the City Manager responded.

24. Agenda Items requested

Item was not heard.

C25. Council Rules Subcommittee

Item was added to consent. Received meeting minutes of the City Council Rules Subcommittee, of January 31, 2020 meeting, a joint meeting with the City Council.

26. Support for Laura's Law

Item was not heard.

C27. Housing Subcommittee

Item was added to consent. Received meeting minutes of the January 14, 2020 City Council Housing Subcommittee meeting.

C28. Transportation Subcommittee

Item was added to consent. Received meeting minutes of the February 12, 2020 City Council Transportation Subcommittee meeting.

### **NEXT AGENDA**

29. Preview next agenda

Received the preview list of agenda items for the March 17, 2020 City Council meeting.

### **ADJOURNMENT**

Mayor Tran adjourned the regular City Council meeting at 10:24 PM.

*Meeting minutes submitted by  
Mary Lavelle, City Clerk*



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with HydroScience Engineers, Inc. for Consultant Engineering Services for the Sewer Master Plan</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Tony Ndah, 408-586-2602</b>
<b>Recommendation:</b>	Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with HydroScience Engineers, Inc. to provide additional consultant engineering services for the Sewer Master Plan, increasing the total not to exceed amount by \$249,028, from \$642,000 to \$891,028.

### **Background:**

On September 17, 2019, the Milpitas City Council approved and authorized the City Manager to execute a Professional Services Agreement with HydroScience Engineers, Inc. (HydroScience) to develop the City's Sewer Master Plan for the total not-to-exceed amount of \$642,000.00. The scope of work as outlined in the agreement included the assessment of the City's underground sanitary sewer lines to determine the structural condition of the pipelines in the system.

A tried and tested method for accurately determining the structural condition of a sewer system's conditions is through Closed-Circuit Television (CCTV) survey. CCTV survey involves passing a small CCTV camera through the sanitary sewer pipes and recording the information. The video assessment is then reviewed by a certified technician to identify defects and deficiencies in the pipelines, which translates to a score for each segment of the pipe surveyed. The scope of work in the original agreement includes approximately 30,000 linear feet for CCTV survey, which is a snapshot of approximately 3% of the City's sewer system.

Since the information to be obtained from the CCTV survey will be used as a calibration mechanism for establishing the remaining useful life of the entire sewer system in the Sewer Master Plan, an increase in the linear feet of sewer lines for the CCTV survey would provide a more accurate representation of the structural condition of the City's sewer system. The amendment would provide funding for the CCTV survey of 10% of the sewer system as part of the development of the Sewer Master Plan.

### **Analysis:**

The scope of work in the original agreement includes approximately 30,000 linear feet for CCTV survey, which is a snapshot of approximately 3% of the City's 175-mile sewer system. This quantity is sufficient for a broad snapshot of the City's sewer system; however, upon reviewing the City's sewer pipeline data, the consultant recommended that the City increase CCTV survey quantities to 10% of the sewer system for the Master Planning efforts in order to establish a more accurate baseline condition assessment for the City's sewer system.

Approval of this contract amendment would expand the scope of the original contract to include a survey of 10% of the City's sewer lines and provide valuable assessment data on the City's sewer infrastructure for the preparation of the Sewer Master Plan. This work will be done in accordance with the North American Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) Inspection process.

**Policy Alternative:**

**Alternative:** Do not execute the amendment to the agreement with HydroScience Engineers, Inc.

**Pros:** Additional CCTV work will be completed by City staff.

**Cons:** City does not have sufficient staff resources to complete the CCTV work in time to have the information included in the Master Plan. The schedule for the Sewer Master Plan would be adversely impacted and result in a delay of critical planning and implementation work for utility infrastructure projects.

**Reason not recommended:** It is critical that the City have a better understanding of the condition of the sewer lines and to have this information included as part of the Master Plan efforts in a timely manner.

**Fiscal Impact:**

Cost of Amendment No. 1 of \$249,028 is available in CIP No. 6119 – Sanitary Sewer Condition Assessment Program and CIP No. 6132 – Sewer Master Plan.

**California Environmental Quality Act:**

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

**Recommendation:**

Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with HydroScience Engineers, Inc. to provide additional consultant engineering services for the Sewer Master Plan, increasing the total not to exceed amount by \$249,028, from \$642,000 to \$891,028.

**Attachments:**

- 1) Amendment No. 1 to Professional Services Agreement with HydroScience Engineers, Inc.
- 2) HydroScience Attachments to Amendment
- 3) Purchase Order and 2019 Agreement with HydroScience

**AMENDMENT No. 1  
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF MILPITAS  
AND HYDROSCIENCE ENGINEERS, INC.**

This Amendment No. 1 is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (hereafter referred to as "City"), and HydroScience Engineers, Inc., a California corporation with its principal place of business at 1922 The Alameda, Suite 212, San Jose, California 95126 (hereafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment No. 1.

**RECITALS**

WHEREAS, on October 18, 2019, the Parties entered into a Professional Services Agreement for consultant engineering services for the City's Sewer Master Plan ("Agreement") for the total not-to-exceed amount of \$642,000.00; and

WHEREAS, the Parties now desire to amend the Agreement to increase the compensation by \$249,028.00, for a new total not-to-exceed amount of \$891,028.00, to allow Consultant to provide additional services as described in Exhibit A-1, entitled "Scope of Work – Additional CCTV Inspection and Condition Assessment," attached hereto, and to extend the time of performance to March 31, 2022.

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

1. Section 1, entitled "Services," is hereby amended to read as follows:

"1. Services.

Consultant shall provide the City with the services described in Exhibit A to the Agreement and Exhibit A-1, attached hereto and incorporated herein by this reference."

2. Section 2, entitled "Compensation," is hereby amended to read as follows:

"2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for the services contemplated in Exhibit A and in Exhibit A-1 to the Agreement, in accordance with the Schedule of Charges set forth in Exhibit B to the Agreement.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **\$891,028.00 (Eight Hundred Ninety-One Thousand Twenty-Eight Dollars and Zero Cents)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice

which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.”

3. Section 5, entitled “Time of Performance,” is hereby amended to read as follows:

“5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date. Consultant shall complete the services required hereunder by **March 31, 2022**. The Notice to Proceed shall set forth the date of commencement of work.”

4. Exhibit A-1, entitled “Scope of Work – Additional CCTV Inspection and Condition Assessment,” attached hereto and incorporated herein by this reference, is hereby added to the Agreement.

5. Exhibit B is hereby amended to read as follows:

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

A Project Progress Report will be provided with each monthly invoice to show billing status by each major task, including amount budgeted, amount billed, work completed each month, and outstanding issues to be resolved.

6. Exhibit C is hereby amended to read as follows:

The project will commence from the date of the Notice to Proceed and all activities for the project will be completed by December 31, 2022.

7. Consultant agrees to maintain and pay for all insurance policies as stated in Section 11, entitled "Insurance" of the Agreement dated October 18, 2019 between HydroScience Engineers, Inc. and the City of Milpitas. Consultant shall provide City with renewal certificates of the current policies upon the expiration of the current policy.

8. Except as amended by this Amendment No. 1, all other provisions of the Agreement not amended by this Amendment No. 1 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 1, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

9. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

10. If any provision of this Amendment No. 1 shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment

No. 1 unless elimination of such provision materially alters the rights and obligations set forth herein.

This Amendment No. 1 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

HYDROSCIENCE  
ENGINEERS, INC.

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Steven McHarris,  
City Manager

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Name:  
Title:

Approved As To Content:

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Tony Ndah  
Director of Public Works

Approved:

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Walter C. Rossmann  
Director of Finance/Risk Manager

Approved As To Form:

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Christopher J. Diaz,  
City Attorney

**Exhibit A-1**  
**Scope of Work - Additional CCTV Inspection and Condition Assessment**

The City requested that HydroScience Engineers (HydroScience) and Brown and Caldwell (BC) modify the Task 15 Sewer Master Plan scope to include additional CCTV inspection and condition assessment work. Part of the scope will include additional CCTV work performed by a specialty inspection Contractor, National Plant Services (National Plant).

BC developed a preliminary inspection plan, which HydroScience used to obtain pricing from National Plant to inspect portions of the City’s large diameter trunk sewers and other local collector sewers with high-definition CCTV equipment. For the highest priority large diameter trunk sewers, National Plant will provide an option to collect 2D laser and sonar data in addition to CCTV. BC will also perform quality control (QC) reviews on Contractor inspection data and submittals, manage data internally, and perform condition assessment of inspected assets.

Data obtained will support the condition assessment and business risk exposure (BRE) elements of the Sewer Master Plan, specifically Task 3, Condition Assessment, and Task 10, Renewal and Replacement Study Report.

**Pipeline Inspection (National Plant)**

The preliminary inspection plan includes groupings of sewer mains organized by priority. The estimated number of candidate reaches and liner footage (lf) are presented in **Attachment 1**, with location maps presented in **Attachment 2**. The table below presents a summary of the candidate reaches:

Entity	# Reaches	Total Length, lf	Average reach length, lf
Contractor Priority 1	283	79,338	280
Contractor Priority 2	207	47,888	230

National Plant provided a pricing quote, including mobilization and pricing per linear foot, based on the cost for daily inspection crews and assumed production rates. The table below presents details on linear footage pricing by pipeline diameter. National Plant is expected to inspect all of the Priority 1 reaches. Depending on daily production rates and traffic control requirements, it is possible that the Contractor may not be able to inspect all of the Priority 2 candidate reaches within the allocated budget.

Diameter	CCTV, per lf	Daily Production Rate, lf	2D Laser + Sonar, per lf
8-inch to 18-inch	\$1.61	2,100	n/a
21-inch	\$1.61 - \$2.11	2,100 – 2,400	n/a
24-inch to 66-inch	\$2.11 - \$2.40	2,100 – 2,400	\$6.00

The scope of work includes the PACP coded CCTV inspections of large diameter sewer assets within the City of Milpitas selected by HydroScience and BC. The preliminary map of the lines in scope is included in **Attachment 2** but may be revised or expanded at the discretion of HydroScience and the City at the same rates. It is assumed that **up to 70,000 LF** of the Sub\_10-18, Sub\_8, Sub\_21-36 and Sub 12-18\_P2 categories will be CCTV'd as part of this Amendment Scope of Work. It is expected that areas where the Contractor has difficulty accessing, are not cleaned by City crews, or require significant traffic control will be skipped in favor of performing CCTV work at the other reaches.

Where significant corrosion is observed in a trunk sewer, National Plant has the ability to perform 3D Laser Profiling of that trunk sewer segment. To do this, their 3D Laser + Sonar equipment will need to be transported to Milpitas, and the segment profiled as part of a separate service. HydroScience has included an allowance to profile sewer segments in Milpitas based on a review of the CCTV data provided by National Plant and will utilize these services on an as-needed basis up to the level of effort provided.

### **CCTV Inspection Program and Condition Assessment**

HydroScience will provide overall project coordination, and coordination of the work of the City, BC, and National Plant. BC will coordinate inspection plan execution, data submittals, and final reporting with National Plant. During field inspections, the Contractor will transmit data submittals to BC on a regular schedule. BC will track data submittals, provide QC comments, and manage inspection data and videos using InfoAsset Manager, a software platform by Innovyze, Inc. BC will use inspection and other data collected by the Contractor to support Task 3, Condition Assessment, and Task 10, Renewal and Replacement Study Report.

Specific tasks and related assumptions regarding number of inspections, hourly effort, and condition assessment are listed below by task.

#### **Task 15.1 CCTV Inspection Program**

##### *Contractor Coordination*

- One BC engineer will provide up to three 8-hour days of inspection logistics support to the Contractor, including site reconnaissance, GIS support, or other support as needed
- Initial QC of 25 videos from the first week of Contractor inspections (up to 24 hours)
- Ongoing QC of approximately 10% of Contractor inspection data (64 inspections) provided on a biweekly submittal schedule (up to 64 hours)
- Cataloguing of 8 data submittals from the Contractor using InfoAsset Manager (64 hours)
- 14 weeks of coordination with Contractor (1 hour weekly), which overlaps with the timing of inspections by City crews (14 hours)

#### **Task 15.2 Condition Assessment**

- Final data review, management, organization, and analysis.
- Review and documentation of severe defects (PACP grade 4 and 5 structural defects and PACP grade 5 O&M defects), assumed to occur in about 5% of the total number of reaches inspected (48 reaches, 48 hours)
- Updates to asset likelihood of failure (LOF) ratings and risk model BRE based on inspection data and PACP ratings (20 hours)
- Figures (2) and tables (2) for master plan reports that catalogue inspection and condition assessment results for all Contractor-inspected inspected reaches (up to 880 reaches, 40 hours)
- Internal senior QC reviews (4 hours)

#### **Task 15.3 Support to City CCTV Inspection Program**

The City will perform additional CCTV inspection of small diameter sewers. BC will provide support to the City crew for inspection planning and during field inspections, specifically as related to National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) defect coding and technical support and provide quality control (QC) support. BC will track data submittals, provide QC comments, and manage inspection data and videos using InfoAsset Manager, a software platform by Innovyze, Inc.

Specific tasks and related assumptions regarding number of inspections, hourly effort, and condition assessment are listed below by task.

*City Crew Support*

- BC will prepare a fieldwork safety plan (FWSP) that is intended to cover BC staff during all field work. City and Contractor crews are expected to follow their own safety protocols, which BC will also observe when on-site with City or Contractor crews.
- One BC engineer will provide three 8-hour days of inspection coding support to the City crew
- Initial QC of 25 videos from the first week or two of City inspections (up to 24 hours)
- Ongoing QC of approximately 10% of City inspection data (40 inspections) for data transmitted on a weekly schedule (up to 40 hours)
- Cataloguing of 20 data submittals from the City using InfoAsset Manager (80 hours)
- 20 weeks of coordination with City crew (1 hour weekly) and other staff (20 hours)

**Deliverables**

- Final CCTV video, databases, and inspection reports (Contractor)
- Written QC comment logs to Contractor (BC)
- Severe defect documentation (integrated into Master Plan)
- Condition assessment figures and tables (integrated into Master Plan)

**Level of Effort**

The pricing below includes a mobilization to bring either a 2 or 3-person crew plus CCTV truck from Long Beach. If we can perform with local crews, this fee can be waived; the crews to be utilized depends on project timing. These prices are based on a daily rate of \$3,380.00 for a 2-person crew, and \$5,070.00 for a 3-person crew. Each workday includes 8 hours working on-site, plus 2 hours round trip travel. Optional Laser inspection pricing is also included.

For the purpose of this estimate, we have assumed a unit cost based on average production rate of between 2,100 and 2,400 LF/day.

Description	Unit	Unit Cost	Quantity	Total
<b>TASK 15 – Amendment to CCTV Scope</b>				
<b>National Plant</b>				
Mobilization (CCTV plus 3 crew personnel)	LS	\$4,600	1	\$4,600.00
Mobilization (CCTV plus 2 crew personnel)	LS	\$4,100	1	\$4,100.00
PACP Coded CCTV Inspections 24”-39” pipe <ul style="list-style-type: none"> <li>• Production rate of 2,400 LF/Day</li> </ul>	LF	\$2.11	40,842	\$86,176.00
PACP Coded CCTV Inspections 12”-18” pipe <ul style="list-style-type: none"> <li>• Production rate of 2,100 LF/Day</li> </ul>	LF	\$1.61	70,000	\$112,700.00
<b>National Plant Overall Total</b>				<b>\$207,576.00</b>
Amount included in Original Agreement				(\$50,000.00)
Amendment 1 Base Services Subtotal				\$157,576.00
Optional 3D Laser Profiling				\$13,000.00
<b>Amendment 1 Subtotal – National Plant</b>				<b>\$170,176.00</b>
<b>Brown and Caldwell</b>				
CCTV Review (NP) and Condition Assessment				\$31,674.00
CCTV Review & Support (City)				\$20,739.00

Description	Unit	Unit Cost	Quantity	Total
<b>Brown and Caldwell Overall Total</b>				<b>\$52,413.00</b>
Amount included in Original Agreement				(\$12,563.00)
<b>Amendment 1 Subtotal – Brown and Caldwell</b>				<b>\$39,850.00</b>
<b>Subtotal Subconsultant Services</b>				<b>\$210,026.00</b>
Markup on Subconsultant Services				\$21,002.00
HydroScience Project Management and Coordination				\$18,000.00
<b>Overall Amendment 1 Task 15 Total</b>				<b>\$249,028.00</b>

### **CCTV Inspection Scope and Assumptions (City and National Plant)**

Additional inspection scope and assumptions are as follows:

1. HydroScience will manage the subcontract with the National Plant, and BC will not incur any additional project management effort.
2. The expected duration of field work for National Plant inspections is up to four months, and for City inspections up to five months. BC reserves the right to limit inspection support and condition assessment scopes to only include data acquired through May 2020 to assure that the original Sewer Master Plan schedule is maintained.
3. Encroachment permits, if required, will be provided by the City at no cost to the Contractor.
4. Only minor traffic control that is typically performed by the Contractor is included in the inspection plan. Traffic control plans and major traffic control, if required, would require additional budget, which would reduce the budget available for inspections.
5. BC, the City, and National Plant will further refine inspection prioritization during field inspections based on access and traffic control considerations, with the goal of maximizing daily production rates and total footage acquired.
6. National Plant is responsible for notifying the City should cleaning be required to complete an inspection. City crews will be available to clean selected reaches prior to inspection, typically for smaller diameter sewers (8-inch to 12-inch-diameter).
7. There is no plan to perform NASSCO MACP inspections on manholes; however, during CCTV inspection, City and National Plant crews shall capture video footage in each manhole to allow a basic assessment of manhole conditions.
8. CCTV inspections shall be NASSCO PACP compliant. During contracting, HydroScience/BC and the Contractor will finalize the inspection equipment platform specifications.
9. National Plant and City crews will acquire CCTV data digitally using WinCan or other PACP certified inspection software, recorded directly to portable hard drives or DVDs in the inspection vehicles in a PACP compatible database.
10. Defects will be identified, viewed, and documented in the defect log, and photographs will be taken to document defects and general pipeline conditions.
11. Defects that present an eminent danger will be immediately brought to the City's attention.
12. Digital, color CCTV videos and images, CCTV Reports (PDF format and hard copies), and digital inspection data in PACP compatible database format will be delivered to HydroScience/BC on flash drives or portable hard drives.
13. National Plant shall provide to HydroScience/BC a list of manholes that could not be found, accessed, or opened.
14. Physical conditions within manholes or pipe reaches may preclude complete CCTV inspection. The Contractor will notify HydroScience/BC when such conditions are encountered.
15. The City will arrange access to manholes that cannot be accessed from the public right-of-

- way, as required.
16. Access points must be accessible and located by City as needed.
  17. Major traffic control by Others
  18. Pipeline cleaning to be performed in advance of CCTV inspections by City crews
  19. If any inspection work is in close proximity to a railroad crossing, permits must be obtained by others, and railroad training cost for National Plant crews to be reimbursed to the project.
  20. Easement work may be an additional per foot cost (same daily rate) as production rates are typically slower.

**Schedule**

CCTV inspection and related work is expected to last up to five months. A three-month contract extension is requested to accommodate the additional work as part of this amendment.

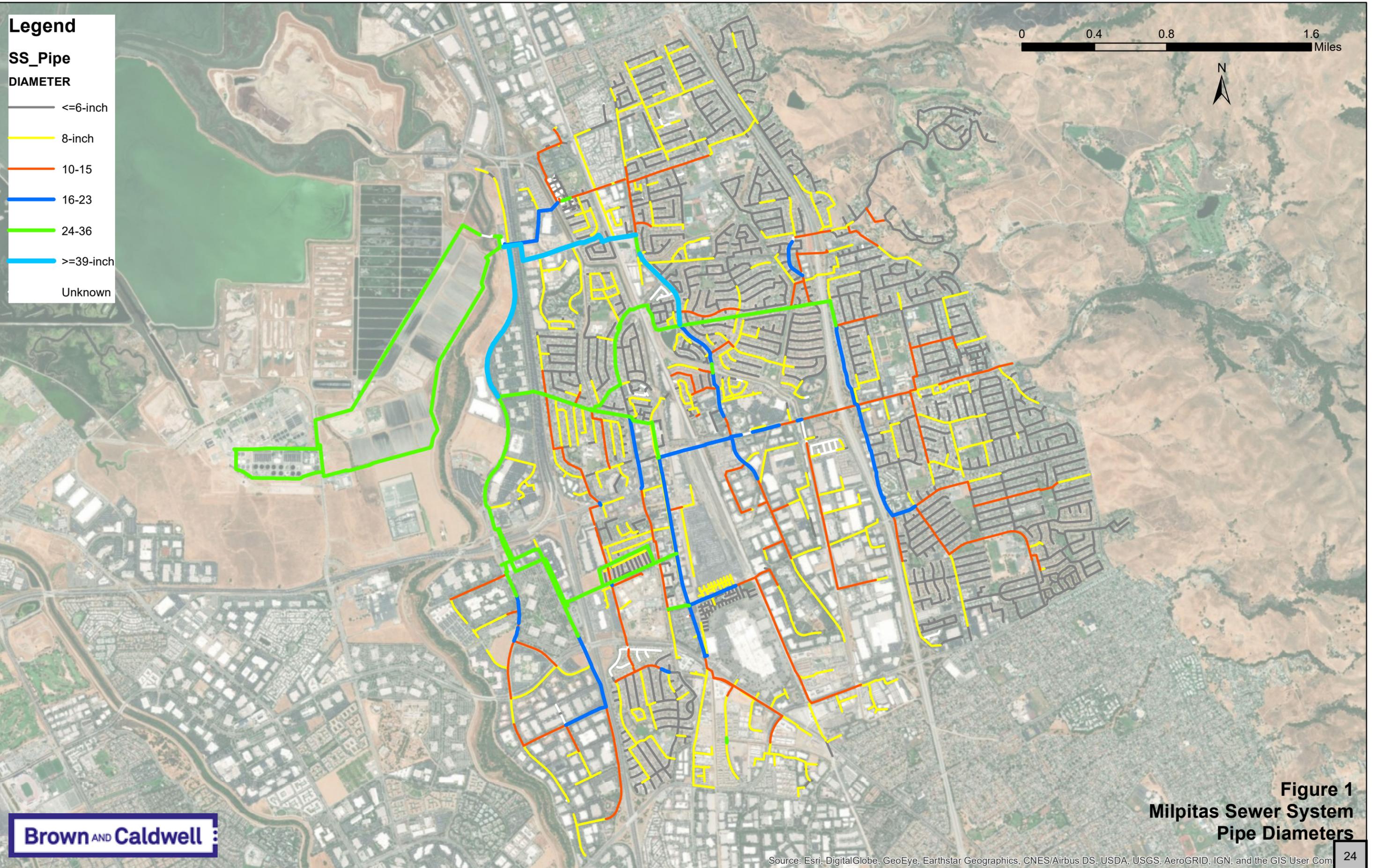
**Attachments:**

1. PIPE REACH SUMMARY TABLES (count and total length by diameter)
2. Inspection Plan Maps

Count of FID *	Column Labels																		
Row Labels	0	6	8	10	12	15	16	18	21	24	27	30	33	36	39	42	54	66	Grand Total
City	10	220	114	22	13	7				2						1			389
Trunk1													5	4	9	12	2	5	37
Trunk2										21	3								24
Trunk3										6	9								15
Sub_21-24									11	8									19
Sub_10-18				28	23	68	1	42											162
Sub_8			26																26
Sub_21-36_P2									35	5	4	13		9					66
Sub_12-18_P2			1		72	43	1	24											141
<b>Grand Total</b>	<b>10</b>	<b>220</b>	<b>141</b>	<b>50</b>	<b>108</b>	<b>118</b>	<b>2</b>	<b>66</b>	<b>46</b>	<b>21</b>	<b>25</b>	<b>25</b>	<b>5</b>	<b>13</b>	<b>9</b>	<b>13</b>	<b>2</b>	<b>5</b>	<b>879</b>

City of Milpitas Inspection Plan  
 Pipe Reach Length

Sum of MEASUREDLE	Column Labels																		
Row Labels	0	6	8	10	12	15	16	18	21	24	27	30	33	36	39	42	54	66	Grand Total
City	1,198	59,521	28,690	5,158	2,785	1,123				250						11			98,736
Trunk1													1,334	729	2,485	2,995	251	1,035	8,829
Trunk2										4,716	1,045								5,761
Trunk3									1,422		3,427								4,849
Sub_21-24									3,205	1,311									4,516
Sub_10-18				8,321	6,673	19,933	126	11,667											46,720
Sub_8			8,663																8,663
Sub_21-36_P2									7,897	1,368	781	4,242		2,599					16,887
Sub_12-18_P2			134		15,803	9,972	68	5,024											31,001
<b>Grand Total</b>	<b>1,198</b>	<b>59,521</b>	<b>37,487</b>	<b>13,479</b>	<b>25,261</b>	<b>31,028</b>	<b>194</b>	<b>16,691</b>	<b>11,102</b>	<b>4,351</b>	<b>5,497</b>	<b>8,714</b>	<b>1,334</b>	<b>3,328</b>	<b>2,485</b>	<b>3,006</b>	<b>251</b>	<b>1,035</b>	<b>225,962</b>



**Legend**

**SS\_Pipe**

**DIAMETER**

- <=6-inch
- 8-inch
- 10-15
- 16-23
- 24-36
- >=39-inch
- Unknown

0 0.4 0.8 1.6 Miles

N



**Figure 1**  
**Milpitas Sewer System**  
**Pipe Diameters**

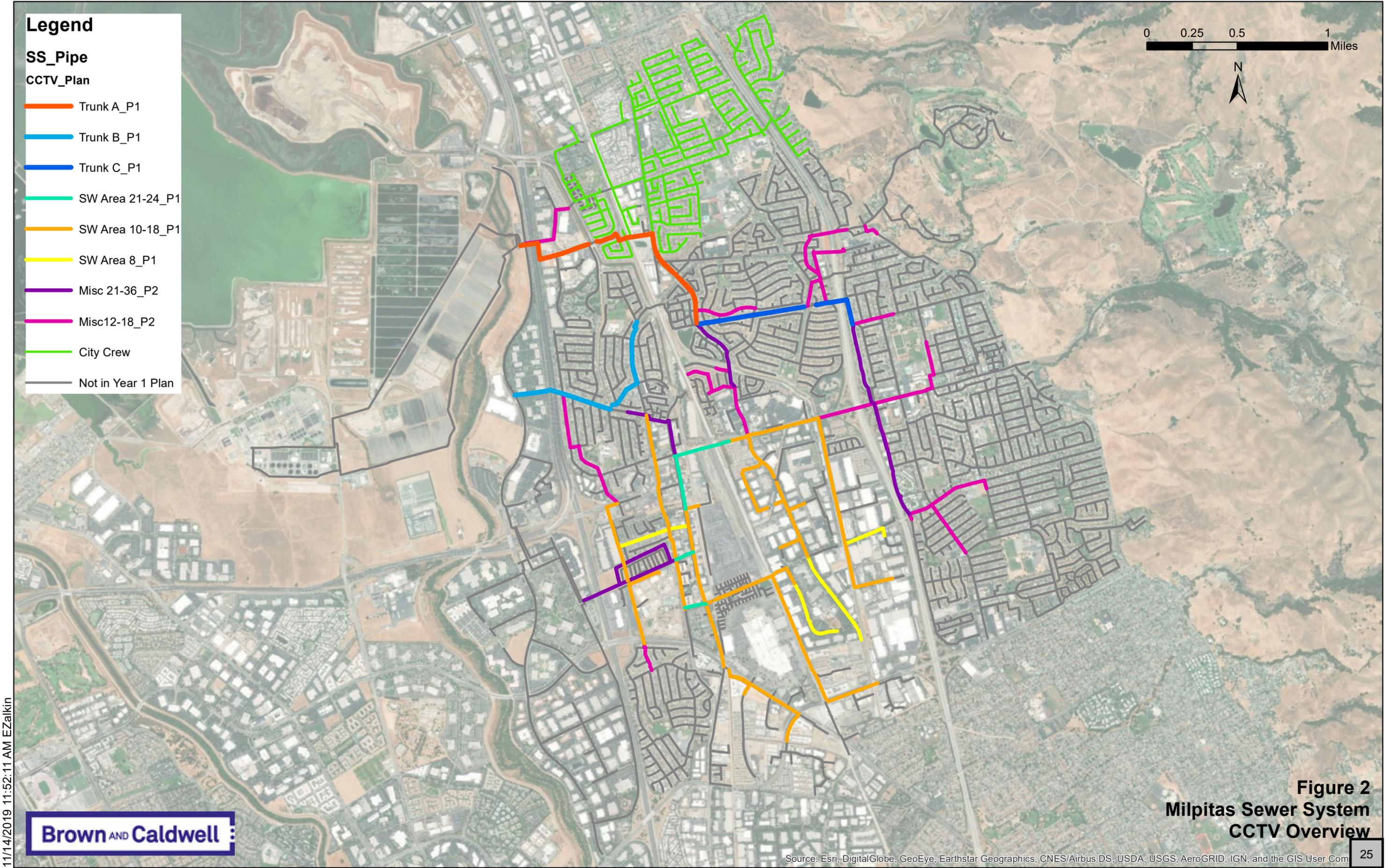
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**Legend**

**SS\_Pipe**

**CCTV\_Plan**

- Trunk A\_P1
- Trunk B\_P1
- Trunk C\_P1
- SW Area 21-24\_P1
- SW Area 10-18\_P1
- SW Area 8\_P1
- Misc 21-36\_P2
- Misc12-18\_P2
- City Crew
- Not in Year 1 Plan



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**Figure 2**  
**Milpitas Sewer System**  
**CCTV Overview**

- Legend**
- SS\_Pipe**
- CCTV\_Plan**
- Trunk A\_P1
  - Trunk B\_P1
  - Trunk C\_P1
  - SW Area 21-24\_P1
  - SW Area 10-18\_P1
  - SW Area 8\_P1
  - Misc 21-36\_P2
  - Misc12-18\_P2
  - City Crew
  - Not in Year 1 Plan



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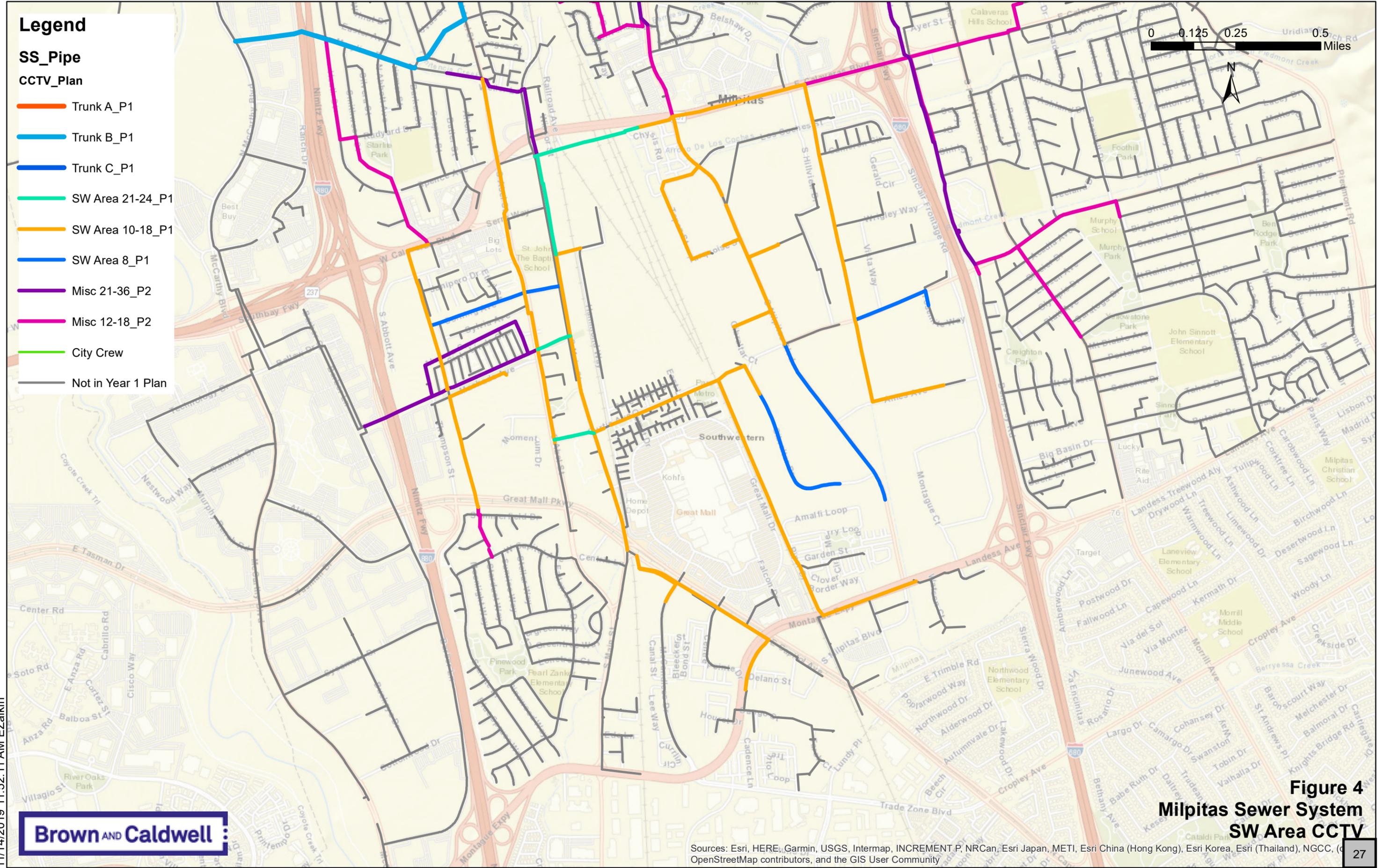


**Figure 3**  
**Milpitas Sewer System**  
**Trunk CCTV**

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

- Legend**
- SS\_Pipe**
- CCTV\_Plan**
- Trunk A\_P1
  - Trunk B\_P1
  - Trunk C\_P1
  - SW Area 21-24\_P1
  - SW Area 10-18\_P1
  - SW Area 8\_P1
  - Misc 21-36\_P2
  - Misc 12-18\_P2
  - City Crew
  - Not in Year 1 Plan

0 0.125 0.25 0.5 Miles



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**Figure 4**  
**Milpitas Sewer System**  
**SW Area CCTV**

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

# Legend

## SS\_Pipe

## CCTV\_Plan

- Trunk A\_P1
- Trunk B\_P1
- Trunk C\_P1
- SW Area 21-24\_P1
- SW Area 10-18\_P1
- SW Area 8\_P1
- Misc 21-36\_P2
- Misc 12-18\_P2
- City Crew
- Not in Year 1 Plan

0 0.125 0.25 0.5 Miles



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**Figure 5**  
**Milpitas Sewer System**  
**City Crew CCTV**

# City of Milpitas

# PURCHASE ORDER

Purchasing Division  
 455 E. Calaveras Blvd.  
 Milpitas, CA 95035-5411  
 Telephone: (408) 586-3160  
 Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS  
 ACCOUNTS PAYABLE  
 455 E. CALAVERAS BLVD.  
 MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127

PO NUMBER: C6 13200  
 PAGE 1 OF 1  
 DATE: 10/31/19

SHIP TO: Tony Ndah  
 City of Milpitas - Corp Yard  
 1265 N Milpitas Blvd  
 Milpitas, CA 95035-3153

VENDOR: HydroScience Engineers  
 10569 Old Placerville Rd  
 17806 Sacramento CA 95827

CONTACT:  
 PHONE#: 510-540-7100  
 FAX#:

FOB: NA                      SHIP VIA:                      PAYMENT TERMS: Net30                      DATE REQUIRED: 10/31/19

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
1			1.00	642,000.00	Agreement entered on October 18, 2019. Sewer Master Plan. Certificate of Insurance to expire on December 18, 2019 and Workers Compensation to expire on March 01, 2020. For questions regarding this purchase order, please contact Tony Ndah@408.586.2602. Approved by City Council on September 17, 2 019.

TOTAL: \$642,000.00

CP6 132-1-4237 \$642,000.00

PURCHASING OFFICER:  
*Elvis Scholdh*

CITY MANAGER:  
*Approved by City Council*

(Required Only On Orders Greater Than \$10,000)

- |   |   |
|---|---|
| 1. FURNISH TWO (2) COPIES OF THE INVOICE.   | 4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.                  |
| 2. INVOICE EACH SHIPMENT SEPARATELY.  | 5. NO EXCEPTIONS UNLESS STATED ABOVE.                                   |
| 3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS. | 6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM. |

Vendor Number <b>17806</b>		<b>New Vendor - Attach W-9</b>	
Recommended Supplier / Contact / Street Address <b>HydroScience Engineers Inc</b>		Reason For Recommendation	Ship To <b>Public Works Dept</b>
1922 The Alameda			
Suite 212			
City, State & Zip Code <b>San Jose CA 95126</b>		Telephone <b>510-540-7100</b>	Fax #
Check box to send or e-mail PO to vendor: <input checked="" type="checkbox"/> <b>clam@hydroscience.com</b>		Date Requested: <b>7 OCT 2019</b>	Requested by: <b>T. Ndah</b>
		Ext. <b>x2602</b>	Date Required: <b>ASAP</b>
		Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	

Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number Fund - Function - Expenditure / CP / PG / GT
1	1	LS	Sewer Master Plan	642,000.00	642,000.00	CP 6132 -1-4237
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
Justification Or Intended Use Of Goods or Services <b>Sewer Master Plan (RFP 2310)</b>				<b>Sub Total</b>	642,000.00	
				<b>Tax</b>		
				<b>Freight</b>		
				<b>Total</b>	642,000.00	

OK to pay: 10/18/19  
Date: 10/18/19  
Ashwini Kantak  
Ashwini Kantak, Assistant City Manager  
CP6132-1-4237  
Account Code Number

<b>Requestor Check-off list:</b> Agreement Start Date: <u>ASAP</u> & End Date: <u>31 DEC 2021</u> Annual Contract Amount: <u>\$642000.00</u> Certificate of Insurance Expiration Date: _____ City Council Approved on (for purchases over \$100,000): <u>17 Sept 19</u> Competitive Bidding - 3 quotes received <input type="checkbox"/> Yes** <input type="checkbox"/> No Sole Source Justification form (attach) _____ Emergency Procurement form (attach) _____ (*attach Agenda & Minutes) (**attach quotes)		<b>Do not include option years</b> <input type="checkbox"/> not applicable <input type="checkbox"/> not applicable <input type="checkbox"/> not applicable <input checked="" type="checkbox"/> not applicable <input checked="" type="checkbox"/> not applicable <input checked="" type="checkbox"/> not applicable		<b>For Accounting Use Only</b> Signature Approval <input checked="" type="checkbox"/> CIP Budget Check <input checked="" type="checkbox"/> Acct. Code Check <input checked="" type="checkbox"/> Agreement Dated <u>10-18-19</u> Insurance Expires <u>12-18-19 / WC 3/01/20</u> City Council <u>09-17-19</u> Depreciable? If yes, use PO# EQ <u>ne</u> Multiple Account, use PO# MA <u>ne</u>		Commodity Code: <u>096501</u> Ship to Code: <u>P200</u> PO Entered on: <u>11-01-19</u> PO # <u>613200</u> Batch # <u>20139</u> Entered by <u>Jessica Waly</u>	
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**CITY OF MILPITAS  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of 18 OCTOBER, 2019 ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **HydroScience Engineers, Inc.**, a California corporation with its principal place of business at **1922 The Alameda, Suite 212, San Jose, CA 95126** (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

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

**City of Milpitas – Sewer Master Plan** (hereinafter referred to as "the Project").

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

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

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

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

2. Compensation.

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

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **\$642,000.00 (Six Hundred Forty-Two Thousand Dollars and Zero Cents)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

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

the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

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

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon the Effective Date. Consultant shall complete the services required hereunder by **December 31, 2021**. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute

grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

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

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

12. Indemnification.

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

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

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll

records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

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

14. Verification of Employment Eligibility.

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

15. City Material Requirements.

*Not Used*

16. Laws and Venue.

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

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be

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

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

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

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

19. Organization

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

20. Limitation of Agreement.

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

21. Notice

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

CITY:  
City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, California 95035  
Attn: Tony Ndah, Public Works Director

CONSULTANT:  
HydroScience Engineers, Inc.  
1922 The Alameda, Suite 212  
San Jose, CA 95126  
Attn. Mary Hoang, Principal

and shall be effective upon receipt thereof.

22. Third Party Rights

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

23. Equal Opportunity Employment.

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

24. Entire Agreement

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

25. Severability

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

26. Successors and Assigns

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

27. Non-Waiver

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

28. Time of Essence

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

29. City's Right to Employ Other Consultants

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

30. Prohibited Interests

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

31. Wage Theft Prevention

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

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

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

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

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

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

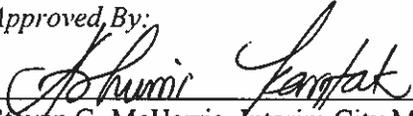
**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MILPITAS  
AND HYDROSCIENCE ENGINEERS, INC.**

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

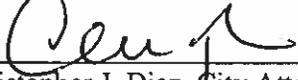
**CITY OF MILPITAS**

Approved By:

  
\_\_\_\_\_  
Steven G. McHarris, Interim City Manager

10/10/19  
\_\_\_\_\_  
Date

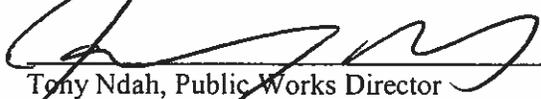
Approved As To Form:

  
\_\_\_\_\_  
Christopher J. Diaz, City Attorney

Approved:

  
\_\_\_\_\_  
Walter C. Rossmann, Director of Finance

Approved As To Content:

  
\_\_\_\_\_  
Tony Ndah, Public Works Director

**HYDROSCIENCE ENGINEERS, INC.**

  
\_\_\_\_\_  
Signature

Curtis Lam  
\_\_\_\_\_  
Name

President  
\_\_\_\_\_  
Title

10/11/2019  
\_\_\_\_\_  
Date

1000035744  
\_\_\_\_\_  
DIR Registration Number (If Applicable)

## EXHIBIT A

### Scope of Services

#### **Task 1. Project Management and Coordination for Sewer Master Plan**

**Project Management Plan (PMP).** To help manage the efforts for development of the Master Plan, Consultant will prepare a comprehensive PMP that will include expectations for quality of work deliverables and define key project management protocols such as communication procedures, project documentation, roles and responsibilities, budget, and schedule control. It will provide a framework to direct, coordinate, and monitor project activities with respect to budget, schedule, and contractual obligations.

To obtain timely review of deliverables, Consultant's work will include conducting workshops to facilitate and coordinate feedback from City staff.

**Monthly Invoices.** Consultant will prepare monthly invoices, which will be accompanied by a description of work accomplished, a summary of task budgets, and an update of the project schedule.

**Kickoff Workshop.** A kickoff workshop will be initiated by Consultant within one week of receiving the notice to proceed. At the kickoff workshop, Consultant will introduce the project team, review scope of work, discuss the initial project goals and priorities, existing operation and maintenance of the system(s) and known deficiencies, identify data needs and collect information/data, and discuss elements to be included in the PMP such as contact information, communication protocol, project objectives, schedule, and invoicing format. During this workshop Consultant will discuss water, sewer, and storm system design and operating criteria and procedures and conditions as well as institutional knowledge of the system performance and other issues identified by the City.

**Coordination and Communication.** Consultant will schedule and facilitate progress meetings either in person or by conference call once a month to review project progress; discuss issues to be resolved; share early study results; and reconfirm projective objectives, study direction, and deliverables as the project evolves. Consultant will prepare and issue agendas and minutes of all meetings. The budget assumes eight (8) progress conference calls and the following workshops:

- Sewer Kickoff Workshop
- Sewer System Hydraulic Analysis and Capacity Evaluation
- Sewer Utility Asset Renewal and Replacement (R/R) Study Reports
- Draft Sewer System Master Plan Report

**Quality Assurance and Quality Control (QA/QC) Review.** Consultant will implement QA/QC to assure accuracy and verify quality. All major deliverables will be internally reviewed and checked by Consultant before submission to the City, including technical memoranda, studies, estimates, calculations, and draft and final Master Plans. Checks will address general correctness and accuracy, completeness, compliance with regulations, fulfillment of objectives, and comparison with industry standards.

#### Deliverables:

- *All meeting agendas/minutes or progress summary with project schedule updates*
- *Monthly invoices – one hard copy via US Mail or electronic PDF.*

## **Task 2. Data Collection/Preliminary Research/System Review/Field Inspection**

**Collect and Review System Information and Data.** Existing reports and information including, but not limited to the following will be provided by the City and reviewed by Consultant as part of this task.

- Sanitary sewer hydraulic model
- Sanitary hydraulic model development documentation
- General, Midtown Specific, and Transit Area Specific Plans
- Sanitary sewer maintenance records and SOPs
- Sanitary sewer pump curves
- Relevant maps and inventory data
- Current CIP Program (completed, planned, designed, and pending)
- Sewer Master Plan
- GIS electronic data files
- Record drawings for water and sewer that have not already been incorporated into GIS
- City Standard Performance/Design Criteria (including velocity and gravity main and pump station capacity standards)
- 2003 Utility Depreciation Study
- Flow Monitoring Report

Consultant will coordinate with City's third party consultant in communicating with the Planning Department to confirm existing and future service areas for land use, population, timing, configuration, demands, and loading. Consultant will incorporate existing, available CCTV and/or inspection information into GIS. Review will be performed and budgeted under **Task 15**.

**Field Investigation and Operations Staff Interview for Sanitary Sewer.** To maximize time and efficiency, Consultant will conduct initial sanitary sewer field investigations and interviews with operations staff following the kickoff meeting. It is anticipated that field visits will take no more than one week to complete. Consultant will prepare an inspection form/questionnaire to ensure information needed to complete the project is documented. Consultant will conduct interviews during the field visits to gain a better understanding of the system and how the City defines failure. Performance of the equipment and/or facility will be based on service records such as pump performance test records and interviews with City staff. Visual investigation will include the following major facilities:

- **Sewer Facilities:** Main Lift Station and Venus Way Lift Station
- **Sewer Lines:** Consultant will evaluate sewer lines using a combination of hydraulic modeling, maintenance history, type of material, age, City documented soil condition for corrosivity or known hazards, video inspection if available, and criticality/ consequence of failure. Inspection of below grade facilities are included in **Task 15** CCTV.

**Data Gap Analysis (Water, Sewer, Storm).** Consultant will identify data gaps in the City's GIS system and resolve discrepancies found between the GIS database, field observations (sanitary sewer only), and record drawings for water and sanitary sewer. Data types, which are expected to be identified and updated for the water and sewer systems may include the following:

- **Water Facilities:** Distribution and transmission pipelines, PRV's, booster stations, reservoirs/tanks, hydrants, turnouts, groundwater wells, and interagency and pressure zone interties.
- **Sewer Facilities:** Collection and trunk sewer pipeline reaches, manholes, junction structures, force main, air release valves, and lift stations.

Consultant will update the GIS database directly and the City's existing MS Excel asset inventory spreadsheet will be updated as well. The level of accuracy for updating the GIS will be for the purpose of hydraulic modeling.

**Land Use and Parcels.** Consultant will use City planning documents (General Plan and Specific Plans) and existing parcel and land use GIS files, to develop existing (2020) and future buildout condition (2040) parcel files that incorporate land use.

***Deliverables:***

- *Field Inspection and Interview forms for sewer*
- *Updated water and sewer GIS database, AutoCAD*
- *Updated water and sewer asset inventory spreadsheet*
- *Parcel GIS with current (2020) and future buildout (2040) land use TM*

**Sewer and Water Financial Plan**

Consultant will work with its subconsultant to participate in a separate kickoff workshop with the City to discuss study objectives, review and validate data and review project approach. Consultant will validate the data to ensure mutual understanding of information. Current financial position, challenges, and potential options for sustaining the City's water and sewer utility financial health will be reviewed. Results will form basis of the financial plan alternatives developed as part of this scope.

**Financial Plan.** Consultant and its subconsultant will evaluate the projections of rate and other revenues and its ability to meet annual expenditures (revenue requirements), while meeting debt service coverage and reserve targets. The City uses the following subfunds for managing wastewater and water cash flow:

- Sewer Operating Fund
- Sewer CIP Fund
- Treatment Plant Construction Fund
- Sewer Infrastructure Fund
- Sewer 2006 COPS Fund
- Water M&O Fund
- Water Line Extension Fund
- Water Bond Fund
- Water Infrastructure Replacement Fund

Consultant will review and project customer billing data, develop rate revenue projections, identify the timing and level of bond issues, and project budgeted operating and capital expenditures over the study period. Costs will be projected in accordance with the anticipated standards and regulations. Consultant will follow the financial planning and rate-setting principles set forth by the American Water Works Association (AWWA) and the Water Environment Federation (WEF). Consultant will incorporate all relevant data from the Sewer and Water Master Plans to develop the rate revenue adjustments required over the 5-year, 10-year, and 20-year period.

The Financial Plan will be developed with the ability to model different financial planning scenarios. The Financial Plan will set all fees and user charges at a level that fully supports the total direct cost and indirect cost of the activity, including depreciation of assets, overhead charges, and reserves for unanticipated expenses and capital project. The development will involve the following steps:

**Projection of accounts, billed volume, and rate revenue:** Consultant will examine the billable flow patterns from historical water billing records as well as the number of customers by class. Using this data and other planning documents, Consultant will project contributed bill wastewater volume, number of customers, and rate revenue for the study period. Consultant will conduct sensitivity analysis on the forecasted rate revenues. This analysis will include customer account growth adjusting for potential reductions in the billable flow per customer from continued active and passive water conservation efforts.

For water, Consultant will examine the billable flow patterns from historical water billing records as well as the number of customers by class. Using this data other planning documents, Consultant will project water sales volume, number of customers, and rate revenue for the study period. Consultant will conduct sensitivity analysis on the forecasted rate revenues. This analysis will include customer account growth adjusting for potential reductions in the use per customer from continued active and passive water conservation efforts.

**Projection of Fees and other miscellaneous sources.** Using the existing fee schedules, sewer connection fees and treatment plant fees based on the growth projections estimated from the water and sewer master plans will be projected. The fee revenue based on the different growth scenarios from the water and sewer master plans will be adjusted. Historical miscellaneous operating and non-operating revenues will be evaluated and reasonable projections for the 20-year study period will be developed in coordination with City staff.

**Existing and Proposed Bonds:** Consultant will project existing payments along with payments on any proposed debt. Any proposed bond issues will be in accordance with the City's debt policies summarized below:

- Limit long-term debt to only those capital improvements or long-term liabilities that cannot be financed from current revenue sources
- Utilize debt financing for projects which have a useful life that can be reasonably be expected to exceed the period of debt service for the project
- Protect and maintain the City's general credit rating of 'AAA'
- Examine efficacy of using inter-fund loans rather than outside debt to meet short-term cash flow needs.

**Debt service coverage and reserve policies:** Consultant will incorporate existing bond covenants and reserve policies into the financial plan. Consultant will develop all financial planning scenarios to meet the current debt service coverage requirement of 115% on parity debt and 115% on maximum annual debt service. The City's reserve policies will be followed when developing the financial planning scenarios. The City's current fiscal reserve policies for sewer include:

- Maintain working capital in the Wastewater and Water System funds to provide for future capital projects and unanticipated emergencies, such as pump station repairs. The City will attempt to maintain a working capital reserve of approximately 25% of the annual operating and maintenance expenses for the Sewer Fund.
- Accumulate at least \$2 million each a year in the Sewer and Water Infrastructure Fund for replacement of infrastructure as the infrastructure reaches the end of its useful life.

**Operating expenses:** Consultant will use historical budget and actuals and the current budget to forecast operating expenses. Line item expenses will be adjusted for inflation and changes in operational costs due to new or replaced facilities or staffing changes. Consultant will incorporate changes to operating expenses based on project alternatives associated with a new and/or upgraded of expanded facilities.

Consultant will determine projected costs for the annual WPCP operating expenses in coordination with City staff.

**Capital expenditures:** Consultant will evaluate various financing scenarios using the 20-year capital plan, such as varying the timing and the level of bond proceeds and adjusting timing of projects if necessary. The financial plan will have the capability to analyse multiple capital plan scenarios to determine the optimal plan.

The results of this task will provide viable scenarios to test the long-term revenue sufficiency of proposed rate revenue adjustments to meet annual revenue requirements. Consultant will analyze up to 10 different financial planning scenarios.

**Study Reports and Meetings.** Consultant will prepare a draft executive summary report detailing the analysis and recommendations in the financial analysis study and facilitate a web meeting to review the results with the City. Consultant will incorporate comments from the City and finalize the Study.

**Deliverables:**

- *Draft and Final Sewer and Water Financial Plan*

**Task 3. Sewer Asset Condition Assessment**

Our inspection team will collect and record field inspections and condition information in compliance with industry-standard procedures such as NASSCO MACP and PACP to standardize data collection and management procedures, including inspection protocols, defect coding systems, standard database formats, and database import/export routines, all of which will be used for this project, where applicable. The results of the inspections need to be evaluated as part of a comprehensive condition and risk assessment to prioritize and schedule the most critical repairs and rehabilitation.

We will help the City optimize asset management processes by using existing technology such as GIS and Computerized Maintenance Management System (CMMS) tools if available for data analysis, risk assessment, and inspections where appropriate. In addition, there are a growing number of technologies available for the inspection and condition assessment of sewer pipelines and associated infrastructure as described in **Task 15**.

**Desktop Condition Assessment.** In this task we will develop guidelines for determining remaining useful life of City's sewer systems, and assign a Likelihood of Failure (LOF) score for use on a desktop condition assessment.

- **Determine LOF Factors:** For the sewer system, probabilities of failure driver categories include pipe age, material, SSO history, or soil conditions. For each of these drivers there are multiple LOF factors that can be established in GIS. In the absence of previous condition assessment data, we will need to rely primarily on operational records (leaks, failures, SSOs) to determine these factors.
- **Conduct Desktop LOF Analysis:** Once LOF criteria is established, we will assign each asset a LOF score and validate the results with the City. Results will be documented in the Asset Condition Assessment Table.

**Assessment of Criticality.** The purpose of this task is to develop guidelines for determining the criticality of the sewer assets and assign Consequence of Failure (COF) scores based on multiple factors.

- **Determine COF Factors:** The consequence of failure rating determines the criticality of a pipeline for use in determining the COF score. COF is a function of pipe repair difficulty, location impact, and

pipe size drivers. We will work within these three driver categories to incorporate COF specific to the City issues, such as flooding or traffic disruption. We will identify factors to quantify potential consequences to system redundancy, outage duration, and cost of repairs.

- **Conduct Desktop COF Analysis:** Once COF criteria is established, we will assign each asset a COF score and validate the results with the City. Results will be documented in the Asset Condition Assessment Table.

**Business Risk Exposure (BRE).** Our team will use information established in the above exercises to identify each asset's risk score (BRE) based on its LOF and COF. This concept is illustrated in the simple risk matrix below.

**Asset Depreciation.** To conclude this task, we will develop a summary of replacement values for sewer utility assets and develop depreciation studies using information from the City's 2003 Depreciation Study along with information collected as part of this task. Replacement values will be developed using recent City and Bay Area bid tabs for pipeline and other asset construction costs.

**Deliverables**

- *Tables (MS Excel and PDF) – LOF, COF, and BRE Scores for Sewer Assets*
- *Tables (MS Excel and PDF) – 2018 Replacement Cost for Sewer Utility Asset*

**Task 4. Develop Hydraulic Model and Calibrate Data.**

The hydraulic model development will begin with the conversion of the existing Hydra model to the Innowyze® software. We will also incorporate new infrastructure per the updated GIS, sewer maps, and record drawings to represent current conditions. Attention will be paid to accurately representing physical components such as flow diversions and wastewater flow components that affect hydraulic performance to provide a well-functioning model and increase confidence in the results of the analysis. Available software tools such as network validation and viewing profiles will be utilized for efficient quality control. It is assumed that the City has current rim and invert elevations for any new facilities and that the elevations contained in the existing model are accurate.

Using the dry weather unit flows by parcel and land use developed in **Task 5**, wastewater loads will be initially allocated to the nearest manhole, then reviewed for accuracy to delineate subbasins and update the previous model sewer sheds. The unit flows for Base Sanitary Flow (BSF) and groundwater infiltration (GWI) will be calibrated using dry weather flow monitoring data (collected by others and provided by the City). Large (point source) dischargers will also be identified by the City utilizing the customer billing data and future use changes will be discussed with the City. The flow monitoring data will also be used to develop diurnal profiles by land use and, where possible, for specific large dischargers within the system. A scenario will be developed for existing dry weather conditions for the purpose of the calibration.

Wet Weather Flow (WWF) is a combination of calibrated BSF, wet weather GWI, and rainfall dependent inflow and infiltration (RDI/I). The RDI/I and wet weather GWI will be calibrated using wet weather flow monitoring and rainfall data. The rainfall and flow data will be reviewed and appropriate storms will be identified for model wet weather flow calibration. These storms need to be large enough to be used to predict a design storm event flow response.

**Deliverables:**

- *Sewer Hydraulic Model Development and Calibration Summary TM*

### **Task 5. Evaluate System Hydraulic Performance**

The trunk system evaluation will be included and summarized as part of **Task 8**, Existing and Future Capacity Analysis.

### **Task 6. Develop Land Use Planning Information and Parcel Loads**

The dry weather flow (DWF) is a combination of BSF and dry weather GWI. The BSF will be developed using wastewater flow factors, or unit flows, which are based on available City land use information received from City Planning Department, similar to development of the unit water demands above. These unit flows, represented as either gpd/acre or gpd/dwelling unit, will be compared with the baseline unit demands developed by others for the water system for consistency and as a measure of accuracy/calibration. Large (point source, average flows greater than 20,000 gpd identified by the City) dischargers will also be identified utilizing the customer billing data.

#### ***Deliverables:***

- *Land Use Summary TM and Parcel GIS with current and future land use.*

### **Task 7. Develop Design Flow**

The design storm will be based on our recommendations per our experience with other local agencies as well as the City's prioritized outcomes of this project. Most local agencies use a 5-year or 10-year recurrence frequency design storm of 6, 12, or 24-hour length as defined by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Data Frequency Server, with the peak hour coinciding with the peak diurnal flow.

The design flow will be developed based on a design storm flow response to identify current and potential future hydraulic deficiencies during a design storm event. This task will also identify deficiency criteria, which will be reviewed and discussed with City staff, for use in the capacity analysis summarized in **Task 8**. Criteria may include depth to diameter ratio (d/D), freeboard, and/or velocity.

**Assumption:** Wet weather flow monitoring will be conducted by others and is not included in this scope of work. The proposed scope of work is based on the assumption that the data will coincide with at least one storm approaching a 2-year recurrence frequency or larger.

#### ***Deliverables:***

- *Design Flow Criteria TM*

### **Task 8. Existing and Future Capacity Analysis**

This task includes analysis of the hydraulic performance of the City's trunk and main collection system to identify capacity-triggered improvements for the existing (2020) and future buildout (2040) flows under design conditions. Once capacity deficiencies are identified, remaining capacity will be identified for future deficiencies and all improvements will be sized based on 2040 estimated design flows and prioritized based on the risk assessment and asset management approach.

The model results and potential improvements will be reviewed with City staff prior to finalizing recommendations. This analysis will be performed utilizing the 2020 and 2040 dry and wet weather flow as identified in **Task 6** and **Task 7**. Recommendations will also take into account projected timing of new development information provided by the City Planning Department. Hydraulic model results and capacity evaluation will be summarized in the **Task 11** deliverable.

#### ***Deliverable:***

- *Sewer System Hydraulic Analysis and Capacity Analysis TM*

### **Task 9. Model Training**

We will provide up to three in-house training sessions. The focus is to provide City staff with the basics for operating the models and understanding the structure of the various scenarios and alternatives. Additionally, operational tools will be covered to provide staff with the knowledge to use the hydraulic models to optimize system operation. If desired by the City, we can evaluate partnering with the selected software company to provide standardized training, while HydroScience provides system specific training.

#### ***Deliverables:***

- *Sewer model training materials for up to 10 people in three 4-hour training classes*

### **Task 10. Sewer Utility Asset Renewal and Replacement Study Report**

Our approach to the City's infrastructure condition assessment and R/R Studies is to collaborate with City staff to develop guidelines and provide support to ultimately rank the risk of failure in the system. Understanding the relative risk of failure for each pipe or system will help the City rationalize and justify the prioritization of replacement of system or its components. This task consists of the staged development of the R/R Study reports for sewer utility asset renewal, including the risk ranking, assessment, and development of actions based on **Task 3**. The guidelines, recommendations, and findings from asset condition assessment profiling will be combined into this task to develop the overall risk analysis. Finally, this task includes the list of prioritized R/R projects, recommendations, and cost estimates that will be used to develop CIP and update the risk analysis in the future. The R/R Study will include the five scope items listed in the RFP and will be developed based on the steps listed below.

- **Pipeline Risk Sensitivity Analysis:** We will perform a risk analysis of each pipe segment using the LOF and COF ranking criteria and results developed in **Task 3**. This risk mapping will identify pipelines and other assets that pose the greatest impending impact to the operation of the water and sewer systems, based on the anticipated timing and effect of failure. Risk is the product of LOF and COF. We will develop an overall risk matrix of the water or system by pressure zone or service area. We will provide an analysis of risk results and illustrate these on a system map.
- **High Risk Pipe Profiling:** This next step in the overall risk analysis provides a "short-list" of high risk pipes for further evaluation and analysis. The high risk pipelines will be evaluated and profiled for further assessment, based on the combined LOF and COF and developing action items such as immediate R/R or the need to gather further condition data. The high risk pipes are grouped into action levels. Three possible action levels include:
  - R/R. Based on current data and knowledge, the pipe is at high risk of failure. Determine appropriate rehabilitation or replacement project and initiate design.
  - Inspect. Based on current data and knowledge, the pipe is at high risk of failure. Determine appropriate inspection technique and execute inspection.
  - Watch List. Continue monitoring performance, collect failure data, and maintain systems, such as cathodic protection.
- **Prioritized R/R Projects List:** Based on the pipeline projects tagged with an "Inspect," we will evaluate inspection technologies, develop preliminary inspection areas that will optimize inspection activities and maximize benefits to each inspection. We will work with the City to evaluate the timing of capacity-related CIP projects with the recommended R/R project, so that multiple benefits can be achieved.

- **Develop Project Cost Estimates and Tools/ Technology Recommendations:** We will provide input on costs related to pipeline R/R unit costs and typical costs for tools/technology for different types of inspection activities and technologies. This unit cost information will be included in the report. The City will use this unit cost information to develop project planning level costs.

We will provide guidelines and documentation for analyzing the LOF, COF, and overall risk results in a draft and final report. Guidelines will include graphical analyses of results, assumptions, and observations used to interpret the risk results and risk management guidelines and recommendations to reduce the risk scores in the high risk pipelines. Additionally, we will provide a user’s guide for step-by-step instructions for the GIS update process and how to use the risk tools so that the City can update this prioritization analysis in the future.

**Deliverable:**

- *Draft and Final Sewer Utility Asset Renewal and Replacement Study Report*

**Task 11. Develop Capacity Relief Projects**

We will identify capacity deficiencies in the existing sewer system under 2020 and 2040 design flows based on the deficiency criteria developed in consultation with the City. The updated hydraulic model runs from the scenarios in **Task 8** will identify potential wet weather conveyance capacity deficiencies for each scenario. Following identification of capacity deficiencies, we will review potential measures to address deficiencies including increasing facility size, collection system storage, or relief sewers. We will model these revised pipe segments and sizing to confirm that the resulting system performance will meet design criteria.

**Deliverable:**

- *Recommended Capacity Relief and Rehabilitation Projects (to be included in Draft Master Plan Report)*

**Task 12. Evaluate Sewer Rehabilitation Program**

**Assess Sewer Rehabilitation Needs.** We will use the results from the dry and wet weather flow calibration based on the flow monitoring data to help identify areas with higher inflow and infiltration (I/I). It is assumed that flow monitoring will present useful I/I data and will capture at least one storm approaching a 2-year recurrence frequency or larger. The hydraulic model will identify capacity deficiencies and target areas, which may be suitable for rehabilitation that could substantially reduce I/I. We will also review maintenance history, records, data, and results of the condition assessment from **Task 3** to understand problem areas and types of deficiencies

**Develop Rehabilitation Plan.** The results from the rehabilitation assessment will yield tributary areas, which would benefit from rehabilitation to reduce and/or correct I/I related to the collection system. Lateral-related I/I is not included in this analysis and will be considered on a case-by-case basis in coordination with the City. Sewer pipeline rehabilitation techniques to be considered will include spot repairs, slip-lining, cured-in-place-pipe (CIPP), pipe bursting (dependent upon host pipe material and size), and replacement. Manhole rehabilitation techniques include sealants, liners, coatings, brick and mortar repairs, and manhole covers and rings adjustments and seals. In some cases, sub-basin studies may be recommended to further isolate sources of I/I.

**Deliverable:**

- *Sewer Rehabilitation Plan (to be included in Draft Master Plan Report)*

**Task 13. Wastewater Capital Improvement Plan Development**

We will develop a recommended CIP that describes a logical and carefully considered set of prioritized CIP projects for facilities that are required to meet future wet weather and dry weather flows and other system needs, including projects that may be needed to rehabilitate or replace existing wastewater infrastructure. This CIP will be based upon the conditions of the existing system and outcomes of the previous tasks, to develop a priority array of anticipated projects. Capital improvement projects will be recommended based on asset management principles that incorporate the City's level of service definition and the evaluated risk assessment for the assets. Rehabilitation and replacement will be based on the useful remaining life of existing facilities based on time of installation and condition of the asset. The HydroScience Team will work collaboratively to identify, verify, and prioritize the identified projects to create a comprehensive CIP and triggers for each project. The CIP will include a time schedule for implementation over a 5, 10, 15, and 20-year planning horizon. Due to the timing of available wet weather flow monitoring data and report, we are proposing to eliminate the CIP submittal as a separate TM and instead present the draft CIP within the draft Master Plan Report.

**CIP Review.** HydroScience will collaborate with City staff in a workshop setting to discuss the CIP projects and priority timeline to incorporate additional considerations and to discuss the results with respect to the following categories of improvement:

- Improve reliability for emergency preparedness,
- Correct an existing system deficiency,
- Accommodate future development, and
- Facilities that provide multiple benefits.

Incorporating information from this review an updated CIP will be drafted. HydroScience will work with the City to provide a well-informed CIP.

**Develop Cost Criteria and Estimates for CIP:** HydroScience will use information from recent City construction projects and similar local projects to generate unit cost criteria. Construction cost information from these projects will be incorporated in the development of the City's cost estimates. These criteria will be used to develop planning level cost estimates for the recommended projects. Projects will be described in sufficient detail to support reliable planning level capital and operations and maintenance cost estimates (AAE Class 5, -30% to +50% order of magnitude), with underlying assumptions and project dependencies clearly described.

***Deliverable:***

- *Sewer System Capital Improvement Plan (to be included in Draft Master Plan Report)*

**Task 14. Prepare Sewer Master Plan Report**

This task involves preparing the SMP Plan draft document. It is expected that the SMP will be organized as follows:

- **Executive Summary:** Summary of the SMP
- **Section 1 – Introduction:** Purpose of the update, the methodology used and the SMP organization
- **Section 2 – Existing Land Use and Sewer System Description:** Describes City and sewer system
- **Section 3 – Condition Assessment:** Results of Task 3 and a summary of the R/R Study Report.

- **Section 4 – Dry Weather and Wet Weather Sewage Flows:** Methodology for developing wet weather and dry weather existing and future sewage flows, conditions, and projections for hydraulic analysis.
- **Section 5 – Hydraulic Modeling Analysis:** Results of scenarios, assumptions, and criteria used
- **Section 6 – Implementation Strategy:** Justification for the recommended improvements necessary for future land use and development plans to buildout. Maps identifying deficiencies and proposed improvements
- **Section 7 – Capital Improvement Program:** Recommended improvements to address system deficiencies. Descriptions and budgetary costs will be provided for implementation into the City’s CIP for the 5, 10, 15, and 20-year planning horizons.

***Deliverables:***

- *Draft and Final SMP, five (5) hard copies and MS Word and PDF electronic files*

**Task 15. CCTV Sanitary Sewer Survey**

All CCTV inspection work, defect coding and QC review will be performed by a NASSCO certified subconsultant in accordance with PACP. Our subconsultant’s CCTV equipment includes inclinometers that indicate slope direction. Additional higher accuracy equipment is available to use should the City want exact slope measurements from the CCTV. However, the cost for using the more accurate equipment is approximately double and in most cases does not provide much benefit.

The HydroScience Team will evaluate whether CCTV alone will provide condition assessment data, and recommend whether additional inspections technologies such as 2D laser profiling or 3D laser (LiDAR) imaging might be required to definitively measure pipe deterioration and wall loss. We will review the inspection report and prepare a sewer collection system condition summary.

***Deliverables:***

- *Sewer Collection System Condition Summary*

## EXHIBIT B

### Schedule of Charges/Payments

The total not-to-exceed cost for this work is \$642,000. Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement. Consultant billing rates will be adjusted annually.

A Project Progress Report will be provided with each monthly invoice to show billing status by each major task, including amount budgeted, amount billed, work completed each month, and outstanding issues to be resolved.

**Standard Schedule of Billing Rates**  
Effective January 1, 2019 through December 31, 2019

<b>Labor Classification</b>	<b>2019 Hourly Rate</b>
Principal	\$240
Engineer IX	\$230
Engineer VIII	\$220
Engineer VII	\$210
Engineer VI	\$200
Engineer V	\$190
Engineer IV	\$180
Engineer III	\$170
Engineer II	\$160
Engineer I	\$145
Engineering Aide	\$80
Construction Professional VI	\$160
Construction Professional V	\$150
Construction Professional IV	\$140
Construction Professional III	\$130
Construction Professional II	\$120
Construction Professional I	\$110
CAD Manager	\$120
CAD Designer I	\$100
Marketing Professional	\$90
Administrative II	\$80
Administrative	\$65

Hourly billing rates include postage and telephone charges that are normal to the work authorized. Other direct costs for travel, reproduction, mail service, outside services, etc. will be invoiced at 110 percent of the actual cost.

## EXHIBIT C

### Activity Schedule

The project will commence from the date of the Notice to Proceed and all activities for the project will be completed by December 31, 2021.

## EXHIBIT D

### Insurance Requirements

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

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

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

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

#### **Commercial General Liability (CGL):**

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

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

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

**Automobile Liability:**

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

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

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

**Professional Liability (Errors and Omissions):**

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

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

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

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

**Workers' Compensation Insurance:**

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

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

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

  
\_\_\_\_\_  
Contractor/Consultant Signature

**Builder's Risk (Course of Construction):**

\_\_\_ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

**Surety Bonds:**

\_\_\_ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

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

**Contractor's or Consultant's Pollution Legal Liability:**

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

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

**Other Insurance Provisions:**

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

**X\_\_ Additional Insured Status:**

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

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

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

**X Primary Coverage:**

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

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

**\_\_\_ Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)**

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

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

**X Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

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

**X Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that

may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

### Completed Operations

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

### THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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

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

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

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

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

#### **Acceptability of Insurers:**

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

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.

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

**Subcontractors:**

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

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

**Verification of Coverage:**

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

**Special Risks or Circumstances**

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

**Failure to Comply:**

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

**Applicability of Coverage:**

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

**5. Other Insurance**

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:
  - (1) Excess while it is connected to a motor vehicle you do not own.
  - (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

**7. Policy Period, Coverage Territory**

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.  
The coverage territory is:
  - a. The United States of America;
  - b. The territories and possessions of the United States of America;
  - c. Puerto Rico;
  - d. Canada; and
  - e. Anywhere in the world if:

- (1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
- (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

**8. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.



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of 52

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## BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### SECTION I - COVERED AUTOS

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own.) This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.



Insurer with information on the time, place and nature of the claim;

3. immediately forward to the Insurer all documents that the Insured receives in connection with the claim;
4. fully cooperate with the Insurer or the Insurer's designee in the defense of a claim, including but not limited to assisting the Insurer in: the conduct of suits or other proceedings, settlement negotiations, and the enforcement of any right of contribution or indemnity against another who may be liable to the Insured. The Insured shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at the Insured's own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense, without the Insurer's prior written approval; and
6. pay the Deductible amount when due.

After the Insured reports a circumstance or a claim is made and the Insured has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the Insured shall only do so with the Insurer's prior written consent.

C. The Insured's Rights and Duties in the Event of a Circumstance

If the Insured reports a circumstance for which there may be coverage under this Policy, and the Insured gives the Insurer written notice containing as much detail as the Insurer can reasonably provide regarding:

1. what happened and the professional services or activities the Insured performed;
2. the nature of any possible injury or damages; and
3. how and when the Insured first became aware of such circumstance;

then any claim or related claims that subsequently may be made against the Insured arising out of such circumstance shall be deemed to have been made on the date the Insurer received written notice of the circumstance.

The Insured will cooperate with the Insurer in addressing the circumstance, and refuse, except solely at the Insured's own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

\* D. Subrogation

If any Insured has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The Insured must do everything necessary to secure these rights and must do nothing after a claim is made to jeopardize them. The Insurer hereby waives subrogation rights against the Insured's client to the extent that the Insured had a written agreement to waive such rights prior to a claim or circumstance.

E. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current policy term.

F. Examination and Audit

The Insured agrees to allow the Insurer to examine and audit the Insured's financial books and records that relate to this insurance. The Insurer may do this at any time during the policy term or any extensions, and up to three years after the end of the policy term.

G. Legal Action Limitation

1. The Insured agrees not to bring any legal action against the Insurer concerning this Policy unless the Insured has fully complied with all the provisions of this Policy.

# Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**HydroScience Engineers, Inc.**

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ \_\_\_\_\_

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ▶ \_\_\_\_\_

4 Exemptions (codes apply only to certain entities, not individuals, see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

*(Applies to accounts maintained outside the U.S.)*

5 Address (number, street, and apt. or suite no.) See instructions.  
**10569 Old Placerville Road**

6 City, state, and ZIP code  
**Sacramento, CA 95827**

7 List account number(s) here (optional)

Requester's name and address (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			-					
--	--	--	---	--	--	--	--	--

or

Employer Identification number

9	4	-	3	2	8	8	9	9	1
---	---	---	---	---	---	---	---	---	---

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶

*William J. Harris*

Date ▶

9-30-2019

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Company Name: Hydro Science Inc.

**INSURANCE REQUIREMENTS GRID**

All of the standard insurance requirements for the City of Milpitas are contained in the BBK contract documents. Those items that are required are marked with an "X" but vary per contract. All items so marked must be met unless specifically exempted in writing by the Risk Manager. Insurance coverage required by the City varies depending on the contract; carefully read the contract to be sure all the necessary endorsements are included below.

	Endorsement Required	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied
		General Liability		Auto Liability		Workers Comp		Pro Liability		Other	
1	Additional Insured*	X	✓	X	✓				✓		
2	Contractors Insurance shall be:										
	Primary	X	✓	X	✓						
	Non-Contrib.	X	✓	X	MS						
3	Waiver of Subrogation	X	✓	X	✓	X	✓				
4	30-Day Notice of Cancellation	X	✓	X	✓						

Exceptions: In regards to #4, GL and AL, after several attempts, not yet received. Okay to proceed.

**Note:**

Most insurance companies will provide certificates and endorsement for the requirements listed above, but frequently not until specifically asked. The City always prefers stand alone endorsements. However, depending on the insurance company, it may be their practice to issue a standardized blanket endorsement form/document(s). Alternatively, they may submit excerpts from a policy document, this is also acceptable to the City. However, be sure to ask the company to put the specific policy number on the document and clearly mark the specific clause(s) that reflect each endorsement and to send you those pages only, or you will likely wind up with a 50 page policy and no easy way to determine which clauses apply to the certificate.

Prepared By: Z. Dehne

Date: 2 Oct 2019

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

X = Most commonly required.

\* AI language must be stated as follows: "The City, its elected and appointed officials, officers, attorneys, agents, and employees."



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>KRAFT INSURANCE BROKERAGE</b> 2095 Hilltop Drive, Suite A Redding, CA 96002 License#: 0F42592	<b>CONTACT NAME:</b> Seth Riddell <b>PHONE (A/C No. Ext.):</b> (530)605-4780 <b>E-MAIL ADDRESS:</b> seth@kraftib.com <b>FAX (A/C No.):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b> Hydrosience Engineers, Inc. 10569 Old Placerville Road Sacramento CA 95827	<b>INSURER A:</b> Travelers Property Casualty Company of America <b>NAIC #</b> 25674
	<b>INSURER B:</b> American Fire & Casualty Company <b>24066</b>
	<b>INSURER C:</b> Continental Casualty Company <b>20443</b>
	<b>INSURER D:</b> The Hartford Casualty Insurance Company <b>14397</b>
	<b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

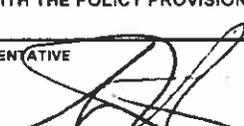
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	Y Y	680-5H558974-18-47	12/18/2018	12/18/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP OP AGG \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y Y	BAA(20)56353680	2/9/2019	2/9/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTIONS		QUP-4536T31A-18-47	12/18/2018	12/18/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A Y	57WECAC8RVL	3/1/2019	3/1/2020	<input checked="" type="checkbox"/> PER STATUTE OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	<b>Professional Liability</b>		AEH288365407	12/18/2018	12/18/2019	<b>Per Claim:</b> \$5,000,000 <b>Annual Aggregate:</b> \$5,000,000 <b>Deductible:</b> \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101. Additional Remarks Schedule, may be attached if more space is required)

Project: City of Milpitas - Sewer Master Plan. The City and its officers, employees, agents, contractors and consultants shall be covered as insureds with respect to each of the following as required by written contract: liability arising out of activities performed by or on behalf of Consultant, including the insureds general supervision of Consultant, products and completed operations of Consultant, premises owned, occupied, or used by Consultant, and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors or consultants. Certificate Holder will be provided with 30 day notice of cancellation and 10 day notice for non-payment of premium.

**CERTIFICATE HOLDER****CANCELLATION**

City of Milpitas Public Works Director / City Engineer 455 E. Calaveras Boulevard Milpitas, CA 95035	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:  
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following is added to WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

**INSURANCE (Section III)** for this Coverage Part.

**B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

~~However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:~~

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

~~after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.~~

**C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

**D. The following definition is added to DEFINITIONS (Section V):**

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

Insured: Hydrosience Engineers, Inc.

Policy Number: 680-5H558974-18-47

Insurance Company: Travelers Property Casualty  
Company of America

Expiration Date: 12/19/2019

or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contrib-



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF OUR RIGHT TO RECOVER FROM  
OTHERS ENDORSEMENT - CALIFORNIA**

**Policy Number:** 57 WEC AC8RVL

**Endorsement Number:**

**Effective Date:** 03/01/19

Effective hour is the same as stated on the Information Page of the policy.

**Named Insured and Address:** Hydrosience Engineers, Inc.  
10569 OLD PLACERVILLE RD  
SACRAMENTO CA 95827

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE**

**Person or Organization**

**Job Description**

Any person or organization from whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by \_\_\_\_\_

Authorized Representative

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

**COVERAGE INDEX**

**SUBJECT**

**PROVISION NUMBER**

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**SECTION II - LIABILITY COVERAGE** is amended as follows:

**1. BROAD FORM INSURED**

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an Insured:

d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:

- (1) Is a partnership or joint venture; or
- (2) Is an insured under any other automobile policy; or
- (3) Has exhausted its Limit of Insurance under any other automobile policy.

Paragraph d. (2) of this provision does not apply to a policy written to apply specifically in excess of this policy.

e. Any organization you newly acquire or form, other than a partnership or joint venture, of which you own more than 50 percent of the voting stock. This automatic coverage is afforded only for 180 days from the date of acquisition or formation. However, coverage under this provision does not apply:

- (1) If there is similar insurance or a self-insured retention plan available to that organization;

**5. Other Insurance**

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:
  - (1) Excess while it is connected to a motor vehicle you do not own.
  - (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

**7. Policy Period, Coverage Territory**

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory. The coverage territory is:
  - a. The United States of America;
  - b. The territories and possessions of the United States of America;
  - c. Puerto Rico;
  - d. Canada; and
  - e. Anywhere in the world if:
    - (1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
    - (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

**8. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.



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- (2) If the Limits of Insurance of any other insurance policy have been exhausted; or
- (3) To "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

**2. EMPLOYEES AS INSURED**

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- f. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow, but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".
- g. An "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

**3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT**

SECTION II - LIABILITY COVERAGE, paragraph A.1. - WHO IS AN INSURED is amended to include the following as an insured:

- h. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

- (1) Only with respect to the operation, maintenance or use of a covered "auto";
- (2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement, or the permit has been issued to you; and
- (3) Only for the duration of that contract, agreement or permit

**4. SUPPLEMENTARY PAYMENTS**

SECTION II - LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, paragraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic violations ) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**5. AMENDED FELLOW EMPLOYEE EXCLUSION**

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, exclusion B.5. FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

**SECTION III - PHYSICAL DAMAGE COVERAGE** is amended as follows:

**6. HIRED AUTO PHYSICAL DAMAGE**

Paragraph A.4. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

- a. You hire, rent or borrow; or

To the extent possible, notice to us should include:

- (1) How, when and where the "accident" or "loss" took place;
- (2) The "insureds" name and address; and
- (3) The names and addresses of any injured persons and witnesses.

**20. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph A.5., Transfer of Rights of Recovery Against Others to Us, is amended by the addition of the following:

If the person or organization has waived those rights before an "accident" or "loss", our rights are waived also.

**21. HIRED AUTO COVERAGE TERRITORY**

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph B.7., Policy Period, Coverage Territory, is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the insured's responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

**SECTION V - DEFINITIONS is amended as follows:**

**22. BODILY INJURY REDEFINED**

Under SECTION V - DEFINITIONS, definition C. is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

**COMMON POLICY CONDITIONS**

**23. EXTENDED CANCELLATION CONDITION**

COMMON POLICY CONDITIONS, paragraph A. - CANCELLATION condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days prior notice of cancellation.



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Symbol	Description Of Covered Auto Designation Symbols	
9	Non-Owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.
19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

**B. Owned Autos You Acquire After The Policy Begins**

1. If symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in ITEM TWO of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if symbol 7 is entered next to a coverage in ITEM TWO of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto."
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;

- d. "Loss"; or
- e. Destruction

**SECTION II - LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto."

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos." However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident."

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto."
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:



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- (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership), or a member (if you are a limited liability company), for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments.

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out of State Coverage Extensions.

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

CITY COUNCIL MEETING

09/17/2019

SUMMARY OF ACTIONS

<u>Item</u>		<u>Staff</u>
C5.	<p><b><u>ADOPT A RESOLUTION APPROVING PROJECT PLANS &amp; SPECIFICATIONS, AWARDED CONSTRUCTION CONTRACT FOR TRANSIT AREA SPECIFIC PLAN (TASP) ON-STREET PARKING PROGRAM PROJECT 2017, AND AUTHORIZE CITY MANAGER TO EXECUTE CONTRACT WITH CHRISP CO</u></b></p> <p>Adopted Resolution No. 8907 approving project Plans &amp; Specifications, awarding a construction contract to Chrisp Co. and authorizing Interim City Manager to execute the contract in the amount of \$116,130 for TASP On-Street Parking Program Project No. 2017, and authorizing the Engineering Director/City Engineer to negotiate and execute contract change orders in an aggregate amount not to exceed \$17,420 for the project.</p> <p>VOTE: 5-0</p>	Steve Chan
C6.	<p><b><u>APPROVE A MAINTENANCE SERVICE AGREEMENT WITH TECHNOLOGY, ENGINEERING &amp; CONSTRUCTION, INC. DOING BUSINESS AS TEC ACCUTITE FOR ABOVEGROUND AND UNDERGROUND STORAGE TANK MAINTENANCE AND CERTIFICATION SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED \$245,250</u></b></p> <p>Approved 5-year agreement with TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for an amount of \$49,050 in the first year and a total amount not to exceed \$245,250 over 5-year period, subject to annual appropriation of funds.</p> <p>VOTE: 5-0</p>	Tony Ndah
C7.	<p><b><u>APPROVE AND AUTHORIZE THE INTERIM CITY MANAGER TO EXECUTE AN IMPROVEMENT AGREEMENT FOR A COMMERCIAL DEVELOPMENT AT 521 ALDER DRIVE</u></b></p> <p>Approved and authorized Interim City Manager to execute the Improvement Agreement between the City of Milpitas and LD Milpitas Property, LLC, subject to any revisions deemed legally necessary by the City Attorney.</p> <p>VOTE: 5-0</p>	Steve Erickson
C8.	<p><b><u>APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE 3 PROFESSIONAL SERVICE AGREEMENTS WITH WEST YOST ASSOC, HYDROSCIENCE ENGINEERS, INC. AND SCHAAF &amp; WHEELER, CONSULTING CIVIL ENGINEERS FOR CONSULTANT ENGINEERING SERVICES FOR PREPARATION OF WATER, SEWER, AND STORMWATER MASTER PLANS</u></b></p> <p>Approved and authorized the City Manager to execute 3 Professional Service Agreements with the following:</p> <ol style="list-style-type: none"><li>1) West Yost Associates for the preparation of the City's Water Master Plan in an amount not to exceed \$600,000.</li><li>2) Hydroscience Engineers, Inc. for the preparation of the City's Sewer Master Plan in an amount not to exceed \$642,000.</li><li>3) Schaaf &amp; Wheeler, Consulting Civil Engineers for the preparation of the City's Stormwater Master Plan in an amount not to exceed \$134,629.</li></ol> <p>VOTE: 5-0</p>	Tony Ndah

Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$160,000 for the project.

- C5. Adopt a Resolution Approving Project Plans and Specifications, Awarding Construction Contract for Transit Area Specific Plan (TASP) On-Street Parking Program Project 2017, and Authorizing the Interim City Manager to Execute the Contract with Chrisp Company (Staff Contact: Steve Chan, 408-586-3324)**

Recommendation: Adopt a resolution approving project Plans & Specifications, awarding a construction contract, and authorizing the Interim City Manager to execute the contract with the lowest responsible bidder submitting a responsive bid, Chrisp Company, in the amount of \$116,130 for TASP On-Street Parking Program Project No. 2017, and authorizing the Engineering Director/City Engineer to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$17,420 for the project.

- C6. Approve a Maintenance Service Agreement with Technology, Engineering & Construction, Inc. doing business as TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services for a Total Amount Not to Exceed \$245,250 (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve a five-year agreement with TEC Accutite for Aboveground and Underground Storage Tank Maintenance and Certification Services, for an amount of \$49,050 in the first year and a total amount not to exceed \$245,250 over the five-year period, subject to annual appropriation of funds.

- C7. Approve and Authorize the Interim City Manager to Execute an Improvement Agreement for a Commercial Development at 521 Alder Drive (Staff Contact: Steve Erickson, 408-586-3301)**

Recommendation: Approve and authorize the Interim City Manager to execute the Improvement Agreement between the City of Milpitas and LD Milpitas Property, LLC, subject to any revisions deemed legally necessary by the City Attorney.

- C8. Approve and authorize the City Manager to execute three Professional Service Agreements with West Yost Associates, Hydrosience Engineers, Inc. and Schaaf & Wheeler, Consulting Civil Engineers for Consultant Engineering Services for the Preparation of the City's Water, Sewer, and Stormwater Master Plans (Staff Contact: Tony Ndah, 408-586-2602)**

Recommendation: Approve and authorize the City Manager to execute three Professional Service Agreements with the following consultants for engineering services:

- 1) West Yost Associates for the preparation of the City's Water Master Plan in an amount not to exceed \$600,000.
- 2) Hydrosience Engineers, Inc. for the preparation of the City's Sewer Master Plan in an amount not to exceed \$642,000.
- 3) Schaaf & Wheeler, Consulting Civil Engineers for the preparation of the City's Stormwater Master Plan in an amount not to exceed \$134,629.

- C9. Consider Mayor's Recommendations for Removal of One Commissioner and Appointment of Milpitas Chamber of Commerce Representative to the City of Milpitas Economic Development and Trade Commission (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Receive Mayor Tran's recommendations, and move to remove Commissioner Dhaval Brahmbhatt from his current term as the Commissioner representing Technology on the Economic Development and Trade Commission; and, newly appoint Inderjit Mundra as voting



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Approve and Authorize the City Manager to Execute Amendment No. 1 to the Software License and Professional Services Agreement with Lucity, Inc. for Computerized Maintenance Management System in the Amount of \$31,600, for a Total Amount Not to Exceed \$267,742.47</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contacts:</b>	Tony Ndah, Public Works Director, 408-586-2602 Chris Schroeder, Purchasing Agent, 408-586-3161
<b>Recommendation:</b>	Approve and authorize the City Manager to execute Amendment No. 1 to the software license and professional services agreement with Lucity, Inc. for computerized maintenance management system, increasing the total not to exceed amount by \$31,600.00 from \$236,142.47 to \$267,742.47.

**Background:**

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

The current software license agreement limits the City to 15 concurrent mobile licenses for Public Works staff to share in the field on mobile devices, for access to work orders and asset data. In addition, the current license agreement includes a module for management of Fats, Oils and Grease (FOG) programs which has not been configured for the City’s food service establishments. The proposed amendment would change the license structure of the agreement to an enterprise license and allow for all Public Works staff to have access to the CMMS in the field from any mobile device. The proposed amendment would also include additional tasks to set up and train staff on the use of the FOG module of the CMMS for inspections to maintain compliance with local, state, and federal regulations.

**Analysis:**

Concurrent Licensing is a model that enables a pool of licenses to be shared across a group of potential users, with the licensing mechanism ensuring that at no point in time is the maximum concurrent number of licenses exceeded. For example, in a five-user concurrent use license, after five users are logged on to the program, the sixth user is prohibited to use the system. When any one of the first five users log out, the next person can log in. On the other hand, Enterprise Licensing allows for unlimited use of the software throughout the organization. The City’s current CMMS is licensed based on 15 concurrent licenses, which limits the ability for all field staff to have access to the CMMS in the field. Expanding access to the CMMS in the field would greatly improve staff’s ability to access work order and document progress made on work items.

The City has implemented a FOG Control Program for food service establishments to reduce the discharge of FOG to the sanitary sewer. Food service establishments can be a significant source of FOG because of the amount of grease and oil produced when cooking or preparing food. Without proper cleanup practices and maintenance of a grease removal device, such as a grease interceptor, food particles and FOG will flow to

sanitary sewer system and can result in backups. FOG can be significantly reduced with proper maintenance and inspection of grease removal devices and having proper access to asset information on food service establishments during inspections is critical to the success of the City's FOG Control Program. The addition of the FOG module to the CMMS and concurrent licensing would ensure that field inspectors have access to the asset data needed for inspections and allow for the proper scheduling of inspections to ensure compliance with local, state, and federal regulations.

**Policy Alternative:**

**Alternative:** Not approve and authorize the City Manager to execute Amendment No. 1 to the agreement.

Pros: The City would not spend \$31,600.00 for additional software license and professional services.

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

Reason not recommended: The proposed amendment would increase productivity for the staff and lead to better management of the City's assets and facilitate compliance with applicable FOG regulations.

**Fiscal Impact:**

The funding for the Amendment No. 1 of \$31,600.00 is available in the Public Works Department FY 2019-20 Operating Budget.

**California Environmental Quality Act:**

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

**Recommendation:**

Approve and authorize the City Manager to execute Amendment No. 1 to the software license and professional services agreement with Lucity, Inc. for computerized maintenance management system, increasing the total not to exceed amount by \$31,600.00 from \$236,142.47 to \$267,742.47.

**Attachments:**

- a) Amendment No. 1 to Agreement with Lucity, Inc.
- b) Software and Services Quotation from Lucity
- c) Purchase Order and Agreement

**AMENDMENT No. 1  
TO THE  
SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT  
WITH  
LUCITY, INC.  
FOR  
COMPUTERIZED MAINTENANCE MANAGEMNT SYSTEM**

This Amendment is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and **LUCITY, INC.**, a corporation with its principle place of business at **10561 Barkley, Suite 100, Overland Park, KS 66212** (hereafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment.

**RECITALS**

WHEREAS, on May 18, 2018, the Parties entered into a Software License and Professional Services Agreement for Computerized Maintenance Management System Services for the not-to-exceed amount of \$236,142.47, with a term period of May 18, 2018 to May 17, 2023 (the "Agreement"); and

WHEREAS, the Parties now desire to amend the Agreement to include additional software and services for additional compensation of \$31,600.00.

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

1. Section II – Scope of Services, and Section V – Fees and Payment, are hereby amended to include additional software and services for the additional compensation of \$31,600.00, as outlined in Exhibit E-1 – Additional Services (March 2020) attached hereto and incorporated herein by this reference, for a new total not-to-exceed amount of \$267,742.47.
2. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

This Amendment No. 1 is executed as of the date first written above.

APPROVED BY:

CITY OF MILPITAS

LUCITY, INC

-----  
Steven McHarris,  
Interim City Manager

-----  
Name:  
Title:

Approved As To Content:

-----  
Tony Ndah  
Director of Public Works

Approved:

-----  
Walter C. Rossmann  
Director of Finance/Risk Manager

Approved As To Form:

-----  
Christopher J. Diaz,  
City Attorney

December 19, 2019

City of Milpitas  
Tony Ndah  
1265 N. Milpitas. Blvd.  
Milpitas, CA 95035



Software and Services Quotation

Quote #

Software	Unit Cost	Units	Cost
Lucity Mobile Enterprise License	\$12,500	1	\$12,500.00
Subtotal			\$12,500.00

Services	Unit Cost	Units	Cost
On-Site Functional Group Meetings	\$225/hour	16	\$3,600.00
On-Site Training	\$225/hour	16	\$3,600.00
Remote Training	\$150/hour	8	\$1,200.00
Data Conversion	\$150/hour	8	\$1,200.00
Remote Configuration	\$150/hour	8	\$1,200.00
Custom Reports	\$150/hour	6	\$900.00
Project Management	\$150/hour	16	\$2,400.00
Subtotal			\$14,100.00

Direct Expenses	Unit Cost	Units	Cost
Air Travel	\$550/trip	2	\$1,100.00
On-Site Expenses	\$350/day	4	\$1,400.00
Subtotal			\$2,500.00

Software Licensing Fee	\$12,500.00
Additional Annual Maintenance	\$2,500.00
FOG Services - One time fee	\$14,100.00
Direct Expenses	\$2,500.00
<b>Total Initial Cost</b>	<b>\$31,600.00</b>

Purchase Terms (as applicable)

- Above quoted prices are good for sixty (60) days from date of quote.
- Above prices are standard license fees for Microsoft SQL Server or Oracle database platform.
- Above prices are in U.S. dollars. Taxes not included.
- License fees for any "Lucity GIS" products do not include ArcGIS by ESRI.
- Invoice terms are net due upon receipt. Finance charges at the maximum allowable rate will be incurred 30 days from invoice date.
- Shipping and Handling is included.
- Products that are priced "per device" do not include the cost of the device or any further software that may be required to run the Lucity program.

Please address questions and concerns to:

Lucity, Inc.

c/o Phil McGrath  
10561 Barkley, Suite 100  
Overland Park, KS 66212

(800)492-2468

Fax: (913) 341-3128

# City of Milpitas

# PURCHASE ORDER

Purchasing Division  
 455 E. Calaveras Blvd.  
 Milpitas, CA 95035-5411  
 Telephone: (408) 586-3160  
 Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS  
 ACCOUNTS PAYABLE  
 455 E. CALAVERAS BLVD.  
 MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127 <sup>PO NUMBER: C7 13400</sup>  
 PAGE 1 OF 2  
 DATE: 06/01/18

SHIP TO: Tony Ndah  
 City of Milpitas - Corp Yard  
 1265 N Milpitas Blvd  
 Milpitas, CA 95035-3153

VENDOR: Lucity, Inc.  
 10561 Barkley Ste.100  
 18618 Overland Park KS 66212

CONTACT:  
 PHONE#:  
 FAX#:

FOB: NA                                      SHIP VIA:                                      PAYMENT TERMS: Net30                                      DATE REQUIRED: 06/01/18

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
1			1.00	69,500.00	Software Agreement entered on May 18, 2018. Computerized maintenance Management System. Certificate of Insurance to expire on October 01, 2018. For question regarding this purchase order, please contact Tony Ndah @ 408.586.2602. Approved by City Council on May 01, 2018.
2			1.00	30,500.00	Service and Maintenance
3			1.00	55,150.00	Service and Maintenance
TOTAL:				\$155,150.00	

CP7 134-2-4875

\$100,000.00

CONTINUED

PURCHASING OFFICER:

Chris Schroeder

CITY MANAGER:

Approved by City Council

(Required Only On Orders Greater Than \$10,000)

- |   |   |
|---|---|
| 1. FURNISH TWO (2) COPIES OF THE INVOICE.   | 4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.                  |
| 2. INVOICE EACH SHIPMENT SEPARATELY.  | 5. NO EXCEPTIONS UNLESS STATED ABOVE.                                   |
| 3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS. | 6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM. |

# City of Milpitas

# PURCHASE ORDER

Purchasing Division  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411  
Telephone: (408) 586-3160  
Fax: (408) 586-3170

MAIL INVOICE TO: CITY OF MILPITAS  
ACCOUNTS PAYABLE  
455 E. CALAVERAS BLVD.  
MILPITAS, CA 95035-5411

INVOICE QUESTIONS : (408) 586-3127

PO NUMBER: C7 13400  
PAGE 2 OF 2  
DATE: 06/01/18

SHIP TO: Tony Ndah  
City of Milpitas - Corp Yard  
1265 N Milpitas Blvd  
Milpitas, CA 95035-3153

VENDOR: Lucity, Inc.  
10561 Barkley Ste.100  
18618 Overland Park KS 66212

CONTACT:  
PHONE#:  
FAX#:

FOB: NA                      SHIP VIA:                      PAYMENT                      DATE  
TERMS: Net30                      REQUIRED: 06/01/18

LINE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	DESCRIPTION OF ITEM AND/OR SERVICES ORDERED
			100	4274875	\$55,150.00

PURCHASING OFFICER:

CITY MANAGER:

(Required Only On Orders Greater Than \$10,000)

- |   |   |
|---|---|
| 1. FURNISH TWO (2) COPIES OF THE INVOICE.   | 4. ALL MATERIAL IS TO BE DELIVERED AS SPECIFIED ABOVE.                  |
| 2. INVOICE EACH SHIPMENT SEPARATELY.  | 5. NO EXCEPTIONS UNLESS STATED ABOVE.                                   |
| 3. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, CORRESPONDENCE, CONTAINERS AND PACKING LISTS. | 6. ADDITIONAL TERMS AND CONDITIONS ARE STATED ON THE BACK OF THIS FORM. |

RECEIVED  
 MAY 14 2018  
 PURCHASING

Vendor Number: <u>18618</u>		Reason For Recommendation		Ship To	Special Instructions	Department/Head Approvals	Approval Date
Recommended Supplier / Contact / Street Address Lucity, Inc.				Tony Ndah		<i>[Signature]</i>	5/14/18
10561 Barkley, Ste. 100				1265 N. Milpitas Blvd.			
City, State & Zip Code		Telephone		Milpitas, CA 95035		<i>[Signature]</i>	5/14/18
Overland Park, KS 66212		913-341-3105				JULIE EDMONDS-MARLES	
Check box to send or e-mail PO to vendor: <input type="checkbox"/>		Date Requested:		Requested by:	Date Required:	Signature signifies certification that funds are available and need of services or materials are valid in this function unit or project	
E-mail Address:				Tony Ndah	2602		
Item	Quantity	Unit of Measure	Description	Unit Price	Extended Price	Account Number	
						Fund - Function - Expenditure / CP / PG / GT	
1	1	EA	Software license fees	\$ 69,500.00	\$ 69,500.00	CP7134-2-4237	4875
2a	1	EA	Service Costs	\$ 30,500.00	\$ 30,500.00	CP7134-2-4237	4875
2b	1	EA	Service Costs	\$ 55,150.00	\$ 55,150.00	100-426-4223	2772
Justification Or Intended Use Of Goods or Services				Sub Total	\$ 155,150.00		
				Tax			
				Freight			
				Total	\$ 155,150.00		
<b>Requestor Check-off list:</b>							
Agreement Start Date: _____ & End Date: _____		Do not include option years		Signature Approval <input checked="" type="checkbox"/>			
Annual Contract Amount: _____		<input type="checkbox"/> not applicable		CIP Budget Check <input type="checkbox"/>			
Certificate of Insurance Expiration Date: _____		<input type="checkbox"/> not applicable		Acct. Code Check <input type="checkbox"/>			
City Council Approved on (for purchases over \$20,000): _____		<input type="checkbox"/> not applicable		Agreement Dated <u>05.10.18</u>			
Competitive Bidding - 3 quotes received <input type="checkbox"/> Yes** <input type="checkbox"/> No		<input type="checkbox"/> not applicable		Insurance Expires <u>10.01.18</u>			
Sole Source Justification form (attach)		<input type="checkbox"/> not applicable		City Council <u>05.01.18</u>			
Emergency Procurement form (attach)		<input type="checkbox"/> not applicable		Depreciable? If yes, use PO# EQ <u>NA</u>			
(*attach Agenda & Minutes) (**attach quotes)				Multiple Account, use PO# MA _____			

Commodity Code: 096802  
 Ship to Code: 1200  
 PO Entered on: 05.01.18  
 PO #: 0713400  
 Batch #: 10223  
 Entered by: [Signature]

Clear All Fields

# SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

## ARTICLES OF AGREEMENT

This Agreement between **CITY OF Milpitas, CA**, as "CLIENT", and **LUCITY, INC.**, as "CONTRACTOR".

WITNESSETH:

Whereas, the CONTRACTOR (a Kansas Corporation with offices located at 10561 Barkley, Suite 100, Overland Park, KS 66212) owns certain software programs that are licensed under individual program titles which are known collectively as "*Lucity*<sup>TM</sup> Software"; and

Whereas, the CLIENT (located at 455 E. Calaveras Blvd. Milpitas, CA 95035) would like to use, and the CONTRACTOR would like to grant the CLIENT the right to use, those software programs accessing databases residing at the CLIENT's site, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain; and

Whereas, the CLIENT is authorized and empowered to contract with the CONTRACTOR to provide professional services as hereinafter described; and

Whereas, the CONTRACTOR is registered in accordance with the laws of the State of Kansas, and is qualified to provide the professional services desired by the CLIENT; now, therefore,

IT IS AGREED THAT:

### SECTION I – SOFTWARE LICENSE

The CONTRACTOR agrees to furnish various *Lucity* software programs and grant the CLIENT a license to use these programs, in consideration of the mutual covenants and obligations expressed in the *Lucity*<sup>TM</sup> Software License Agreement attached as Exhibit "A". These programs shall consist of the items listed in the Schedule of Software attached as Exhibit "B".

Final Acceptance. For thirty (30) days from the "Go-Live" date (which date shall be mutually agreed by the parties in writing as provided under Exhibit D, Section D.1.F), CLIENT shall test the system for defects and anomalies (the "Test Period"). During the Test Period, CONTRACTOR shall address and attempt to resolve issues with the Software identified by CLIENT. At the end of the Test Period, City shall accept or reject the Software as follows:

- A. If CLIENT determines that the Software is performing to its satisfaction it shall immediately provide written notice to CONTRACTOR of final acceptance of the Software ("Final Acceptance Notice"), and upon receipt of a valid invoice from CONTRACTOR, shall process and pay the final milestone of the software license fee set forth on Exhibit E. Any further issues with the Software shall be addressed under the Software Support and Maintenance Provisions (Exhibit C).
- B. If CLIENT decides to not accept the Software, then it must so notify CONTRACTOR in writing within five (5) calendar days after the end of the Test Period (a "Rejection Notice"). If a Rejection Notice is given, this Agreement shall be automatically terminated and all payments already made by CLIENT to CONTRACTOR, less the cost of project management, installation, data conversion, and training services provided up to the date

## **SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT**

of termination shall be returned to CLIENT by CONTRACTOR within thirty (30) days after receipt of the notice. All provisions of this Agreement that expressly survive such termination shall apply.

- C. If CLIENT fails to provide a Final Acceptance Notice or a Rejection Notice within five (5) calendar days after the end of the Test Period, then CLIENT'S final acceptance of the Software shall be considered to have occurred and CLIENT and CONTRACTOR shall proceed as described in subsection A above.

### **SECTION II – SCOPE OF SERVICES**

The basic Scope of Services for the supply, implementation, support and maintenance of a **COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM**, herein referred to as "PROJECT", is as follows:

1. The CONTRACTOR agrees to furnish and perform various professional services related to on-going software technical support and maintenance items outlined in the Software Support and Maintenance Provisions attached as Exhibit "C".
2. The CONTRACTOR agrees to furnish and perform various professional services related to the items outlined the Schedule of Services attached as Exhibit "D".

Any items beyond the basic Scope of Services shall be considered as Additional Services. If authorized in writing by CLIENT, CONTRACTOR shall furnish, or obtain from others, services resulting from significant changes in the basic Scope of Services.

The cost to perform Additional Services shall be based on the rates outlined in the Schedule of Costs and Payments attached as Exhibit "E".

### **SECTION III – RESPONSIBILITIES OF THE CLIENT**

The CLIENT shall provide information and assistance as follows:

1. Assist CONTRACTOR by placing at their disposal all available information pertinent to the PROJECT including data, standards, specifications, processes, workflows, and reports relative to the CONTRACTOR'S services.
2. Give prompt written notice to CONTRACTOR whenever CLIENT observes or otherwise becomes aware of any development that affects the Scope or timing of CONTRACTOR'S Services.
3. Bear all costs incident to compliance with the requirements of this Section III.

### **SECTION IV – SCHEDULE OF SERVICES**

It is anticipated that the PROJECT as described in Section II will be completed and submitted to the CLIENT in accordance with the estimated schedule for major work items as shown on Exhibit "D".

## SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

The work items described shall be carried out as expeditiously as possible. The CONTRACTOR shall not be liable to the CLIENT, if delayed in, or prevented from performing the work as specified herein through any cause beyond the control of the CONTRACTOR, and not caused by his own fault or negligence including acts of nature or the public enemy, inclement weather conditions, acts, regulations, or decisions of the Government or regulatory authorities after the effective date of this Agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

### SECTION V – FEES AND PAYMENTS

The CLIENT shall compensate the CONTRACTOR for the Scope of Services as described in Section II of this Agreement an amount not exceeding the total cost as shown on Exhibit "E" and as further detailed on Exhibit "D.3". The maximum compensation set forth in Exhibit "E" shall not be exceeded without further authorization of Additional Services.

The total contract "not to exceed" amount shall be TWO HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED FORTY-TWO AND 47/100 DOLLARS (\$236,142.47).

Labor costs, costs associated with subcontract work, bonding costs, and direct expenses such as shipping, printing, telephone and commercial computer software are included in the maximum compensation.

Payment to the CONTRACTOR shall be made in accordance with the estimated schedule of billings for work items as shown on Exhibit "E". Invoices shall be due and payable to the CONTRACTOR within thirty (30) days of each billing.

Once this Agreement expires, or final payment has been requested and made, the CONTRACTOR shall have no more than thirty (30) days to present or file claims against the CLIENT concerning this Agreement. After that period, the CLIENT shall consider the CONTRACTOR to have waived any right to claims against the CLIENT concerning this Agreement.

The Fees and Payment provisions for the PROJECT, applicable to the *Lucity* software program licenses, provided in this Section V supersede the License Fee payment provisions provided in Section 6(a) of Exhibit "A".

### SECTION VI – OTHER GOVERNMENT/PUBLICLY FUNDED AGENCIES

If mutually agreeable to all parties, the issuance of any resulting contract/purchase order referencing these specifications and modified by mutual agreement between all parties may be extended to other government or publicly funded agencies. It shall be understood that all terms and conditions as specified herein shall apply.

### SECTION VII – TERMINATION

## SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- A. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- B. In the event of termination by the CLIENT, the CONTRACTOR shall be paid for all services rendered up to and including the date of termination. CONTRACTOR shall be entitled to compensation at CONTRACTOR'S then-current rates for the cost of project management, installation, data conversion and training services provided or performed up to the effective date of termination, which demand shall include reasonable supporting documentation reflecting the amounts claimed to be due.
- C. CLIENT may also terminate this Agreement at any time prior to the "Go-Live" date, as mutually agreed in Exhibit D, Section D.1.F, for its convenience (i.e., for any reason or no reason) upon ten (10) days' prior written notice of termination to CONTRACTOR. In the event that the CLIENT, for any reason, decides not to proceed with the PROJECT, the CONTRACTOR shall be entitled to payment as described herein for all services provided under this Agreement and CLIENT shall be entitled to a full refund of all software license fees paid. In such event, the CLIENT shall promptly notify the CONTRACTOR in writing of its decision not to proceed with the PROJECT so that the CONTRACTOR can reassign his personnel and revise work schedules as may be required.

The Termination provisions for the PROJECT provided in this Section VII are applicable to the Scope of Services as described in Section II of this Agreement. The Term and Termination provisions provided in Section 12 of Exhibit "A" are applicable to the *Lucity*™ software program licenses, subject to the refund of software license fees for terminations occurring prior to "Go-Live" as stated in Section VII.C or due to a Rejection Notice as stated in Section I.B above.

### SECTION VIII – INDEMNIFICATION & INSURANCE

To the fullest extent permitted by law, Contractor shall indemnify, defend with counsel reasonably acceptable to the CLIENT, and hold harmless the CLIENT and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of or relating to any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under the contract awarded from this solicitation does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause is a material element of the contract and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. This Section VIII shall survive termination or expiration of this Agreement.

## SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

The Indemnification provisions for the PROJECT provided in this Section VIII are applicable to the Scope of Services referenced in Section II. The Limitations of Liability provisions provided in Section 11 of Exhibit "A" are applicable to the *Lucity*<sup>TM</sup> software program licenses.

For the duration of the Scope of Services set forth in Section II, CONTRACTOR shall obtain and maintain insurance as required by Exhibit "F".

### SECTION IX – GENERAL CONSIDERATIONS

And, finally it is agreed that:

- A. All services shall be under the direction of qualified personnel.
- B. This Agreement shall be subject to the City of Milpitas Terms and Conditions attached hereto as Exhibit "G." Further, all software licenses and professional services provided under this Agreement shall adhere to, and CONTRACTOR shall abide by, the specifications set forth in that certain City of Milpitas Request for Proposals No. 2228 for Computerized Maintenance Management System, including all attachments and addenda thereto, and set forth in CONTRACTOR'S proposal offered thereto, all of which is incorporated herein by this reference, which shall include:
  - 1. Request for Proposals No. 2228 for Computerized Maintenance Management System
  - 2. Narrative Proposal – Part 1 (Parts 1 through 7)
  - 3. Proposal Offer Form – Part 2
  - 4. Non-Collusion Affidavit
  - 5. Proposer's Statement Regarding Insurance Coverage
  - 6. Worker's Compensation Insurance Certificate
  - 7. Nondiscriminatory Employment Certificate
  - 8. References
  - 9. Attachment A - Technical Specifications and Functional Requirements Matrix
  - 10. Public Purchase Addenda and Questions

In the event of a direct conflict making it impossible to comply with both a term of Exhibit "G" and any other provision of this Agreement, Exhibit "G" shall take precedence.

- C. The Scope of Services covered by this Agreement shall be subject to modification and supplementation upon the written agreement of the duly authorized representatives of the contracting parties. Modification of the terms of this Agreement may be made that would modify the maximum fees stated in the Agreement when mutually agreed by and between the CONTRACTOR and the CLIENT and shall be incorporated in written amendments to this Agreement. The CONTRACTOR shall have no obligation to perform services in connection with a change in the Scope of Services unless the cost thereof shall be agreed to under this paragraph.
- D. The CONTRACTOR reserves the right to renegotiate this Agreement if this agreement is not signed by the CLIENT within ninety (90) days after submittal.
- E. The following Exhibits are attached to and made a part of this Agreement:
  - Exhibit "A" - *Lucity*<sup>TM</sup> Software License Agreement
  - Exhibit "B" - Schedule of Software
  - Exhibit "C" - Software Support and Maintenance Provisions

**SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT**

- Exhibit "D" - Schedule of Services
- Exhibit "E" - Schedule of Costs and Invoicing
- Exhibit "F" - Insurance
- Exhibit "G" - City of Milpitas Terms and Conditions

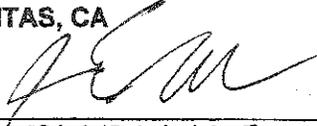
IN WITNESS WHEREOF, the CLIENT and CONTRACTOR, by their authorized representatives, have hereunto subscribed their names this 18<sup>th</sup> day of May, 2018.

Executed in duplicate with copies to the CLIENT and CONTRACTOR.

**LUCITY, INC.**

**CITY OF MILPITAS, CA**

By: 

By: 

Title: VP - Client Services

Title: JULIE EDMONDS-MARES  
CITY MANAGER

Attest: 

Attest: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Controller

Title: \_\_\_\_\_

City of Milpitas Business Tax  
Compliance: Certificate No. Applied for

Approved As To Form:

  
Christopher J. Diaz, City Attorney

Approved as To Content:

  
Will Fuentes, Director of Financial Services

Approved As To Scope:

  
Tony Ndah, Project Manager

**EXHIBIT "A"**  
**Lucity™ Software License Agreement**

**IMPORTANT – READ CAREFULLY BEFORE INSTALLATION**

This software is subject to acceptance of the *Lucity™* Software License Agreement. Lucity, Inc. (Lucity) is willing to license this software to you only upon the condition that you accept all of the terms and conditions contained in the *Lucity™* Software License Agreement and any stated Special Provisions.

THIS AGREEMENT ("Agreement") is between Lucity, Inc., a Kansas corporation with its principal place of business at 10561 Barkley, Suite 100, Overland Park, KS 66212 ("Lucity"), and Licensee with its software programs accessing databases residing at Licensed Site.

**RECITALS**

WHEREAS, Lucity owns certain software programs that are licensed under individual product titles which are known collectively as "Lucity™ software";

WHEREAS, Licensee would like to use, and Lucity would like to grant Licensee the right to use, those software products, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain.

NOW, THEREFORE, Lucity and Licensee agree as follows:

**1. DEFINITIONS.**

"Program(s)" means the object code versions of the computer software products, databases, and related documentation.

"Users" means (i) the specified number of persons permitted to access all Programs (i.e. Named Users), (ii) the specified maximum number of persons permitted to access a Program (i.e. Seats), or (iii) the specified number of computer hardware devices permitted to provide access to a Program (i.e. Installs).

"Clients" means the number of individual database setups that can be accessed by a Program.

"Licensed Site" means the location at which the Licensee will be permitted to store the databases used by the Program(s).

"Effective Date" means the date of receipt of Licensee's purchase order citing this Agreement.

**2. LICENSE GRANT.**

(a) License. Subject to the terms and conditions of this Agreement, Lucity grants Licensee a fee-bearing nonexclusive license to use the object code versions of the Program(s) for its internal purposes during the term of this Agreement; provided, however, that (i) the number of Users of each Program shall not exceed the permitted number of persons or devices for each such Program, (ii) the number of individual database setups that can be accessed by each Program shall not exceed the number of Clients for each such Program, and (iii) the location at which the databases accessed by the Program(s) reside shall be the Licensed Site designated herein.

(b) Copying. Licensee may make only as many copies of each Program as are necessary for Licensee to utilize the total Users for each such Program.

(c) Future Licenses. Lucity and Licensee may, by mutual agreement, include future licenses of the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from Lucity) referencing this Agreement and the Program(s) to be licensed. Such future Program(s) shall be included as Program(s) under this Agreement. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed.

(d) Limited Grant. Except as expressly provided in this Section 2, Lucity grants and Licensee receives no right, title or interest in or to the Programs or any other deliverables provided by Lucity in connection with this Agreement and Lucity reserves and retains all such right, title, and interest.

(e) Disaster Recovery and Testing. The Licensee is permitted to install the Programs at its internal disaster recovery site and to store copies of the databases used by the Programs for the purposes of testing its disaster recovery plan. The Licensee is also permitted to install the Programs in a testing environment at its Licensed Site and to store copies of the databases used by the Programs for the purposes of testing future releases and training users.

**3. LICENSE RESTRICTIONS.**

(a) No Reverse Engineering. Licensee agrees not to disassemble, decompile, reverse analyze, or reverse engineer the Program(s).

(b) No Modification. Licensee agrees not to modify the Program(s) without the written consent of Lucity.

(c) No Copying. Licensee agrees not to copy the Program(s), in whole or in part, except for a reasonable number of back-up copies and copies for disaster recovery and testing purposes, and as may be necessary to utilize the total Users for a given Program.

(d) No Third Party Use. Licensee will not use the Program(s) in any manner to provide computer services to third parties.

(e) Training. Licensee will not use the Program(s) until its personnel have received sufficient training in the configuration and use of the Program(s) to generate accurate data from the operation of the Program(s).

**4. PROPRIETARY RIGHTS.**

(a) Lucity's Property. The Program(s), in whole and in part and all copies thereof, are and will remain the sole and exclusive property of Lucity.

(b) Licensee's Property. Any and all information provided by Licensee, as well as any and all information generated by Licensee's use of the Programs (specifically excluding Program code), shall remain the sole and exclusive property of Licensee.

(c) Proprietary Notices. Licensee will not delete or alter any copyright, trademark, and other proprietary rights notices of Lucity and its licensors appearing on the Program(s). Licensee agrees to reproduce such notices on all copies it makes of the Program(s).

**5. DELIVERY.**

Lucity will deliver license codes for the Program(s), which provide for downloading of installation components by Licensee, to Licensee within a reasonable time of execution of this Agreement by both parties.

**6. FEES AND TAXES.**

(a) License Fee – Named Products Licensing. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to Lucity the License Fee within thirty (30) days of the delivery of license codes for the Program(s). Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. Lucity may publish revised fee schedules from time to time, and any fees for future licenses for the Program(s) included under this Agreement shall be determined by Lucity's then-current fee schedule.

(b) Annual Fee – Named Users Licensing. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to Lucity (i) the appropriate Annual Fee within thirty (30) days of the Effective Date, and (ii) the appropriate Annual Fee within thirty (30) days of anniversary of the Effective Date for each renewal period. Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. Lucity may publish revised fee schedules from time to time, and any fees for renewal periods for the Program(s) included under this Agreement shall be determined by Lucity's then-current fee schedule.

(c) Taxes. Fees due under this Agreement do not include any taxes. Licensee will be responsible for, and will promptly pay, all taxes of whatever nature (including but not limited to sales and use taxes) resulting from or otherwise associated with Licensee's receipt or use of the Program(s), except income taxes based on Lucity's income. In lieu of payment of such taxes, Licensee shall provide Lucity with proof of Licensee's tax exempt status.

**7. WARRANTIES.**

(a) Warranty. Lucity warrants that during twelve (12) months following the delivery of the license codes for the Program(s):

- (i) the Program(s) will be capable of performing in the manner described in all the documentation in all material respects; and
- (ii) the installation components of the Program(s) will be free from defects in materials and workmanship.

(b) Exclusive Remedy. In the event that the Program(s) or installation components fail to conform to such warranty, as Licensee's sole and exclusive remedy for such failure Lucity will, at its option and without charge to Licensee, repair or replace the Program(s) or installation components or refund to Licensee the License Fee paid, provided that the nonconforming item is returned to Lucity within the 12-month warranty period.

(c) Disclaimer. The Warranties provided in this Section are in lieu of all other warranties, express and implied, including but not limited to any implied warranties of Merchantability, and Fitness for a Particular Purpose.

**8. INDEMNITY.**

(a) Duty to Indemnify and Defend.

- (i) Lucity will defend or settle at Lucity's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Program(s) as licensed in this Agreement infringes any U.S. copyright or that the Program(s) incorporates any misappropriated trade secrets or otherwise violates the intellectual property rights of third parties.
- (ii) Lucity will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) Licensee becomes obligated to pay in any such action or proceeding attributable to any such claim.
- (iii) Lucity will have no obligation under this Section as to any action, proceeding, or claim unless: (A) Lucity is notified of it promptly; (B)

**EXHIBIT "A"**  
**Lucity™ Software License Agreement**

Lucity has sole control of its defense and settlement, and (C) Licensee provides Lucity with reasonable assistance in its defense and settlement.

(b) Injunctions. If Licensee's use of any Program(s) under the terms of this Agreement is, or in Lucity's opinion is likely to be, enjoined due to the type of infringement or misappropriation specified in Section 8(a)(i), then Lucity may, at its sole option and expense, either:

(i) procure for Licensee the right to continue using such Program(s) under the terms of this Agreement;

(ii) replace or modify such Program(s) so that it is noninfringing and substantially equivalent in function to the enjoined Program(s); or

(iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Lucity, then Lucity may both:

(A) terminate Licensee's rights and Lucity's obligations under this Agreement with respect to such Program(s); and

(B) refund to Licensee the unamortized portion of the License Fee paid based upon a 5 year straight-line depreciation, such depreciation to be deemed to have commenced on the effective date of this Agreement.

(c) Exclusive Remedy. The foregoing are Lucity's sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights. Lucity makes no separate warranty of noninfringement under or in connection with this agreement.

(d) Exceptions. Lucity will have no obligations under this Section 8 with respect to infringement or misappropriation arising from: (i) modifications to the Program(s) that were not made by Lucity (whether or not authorized by Lucity); (ii) Program(s) specifications or modifications requested by Licensee; or (iii) the use of Program(s) with products (including but not limited to software) not provided by Lucity.

#### 9. CONFIDENTIAL INFORMATION.

(a) Definition. "Confidential Information" refers to: (i) the Program(s), including but not limited to their software source code, and any related documentation or technical or design information related to the Program(s); (ii) the business or technical information of Lucity, including but not limited to any information relating to Lucity's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) any information reasonably and appropriately designated by Lucity as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law.

(b) "Confidential Information" will not include information that:

(i) is in or enters the public domain without Licensee's breach of this Agreement;

(ii) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or

(iii) Licensee party develops independently, which it can prove with clear and convincing written evidence.

(c) Confidentiality Obligations. Licensee agrees to take all measures reasonably required in order to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures Licensee uses to maintain the confidentiality of its own information of equal importance.

(d) Employee Confidentiality Procedures. Licensee agrees to inform its employees of their confidentiality obligations regarding the Program(s) and other Lucity Confidential Information. Licensee further agrees to ensure that contract employees (including temporary employees) of Licensee agree to confidentiality obligations similar to those of this Agreement.

#### 10. MAINTENANCE AND SUPPORT.

(a) Named Products Licensing. Lucity and Licensee may, by mutual agreement, include the maintenance and support services described in the software's online help for the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from Lucity) referencing this Agreement and the Program(s) to be included under such services. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed. Maintenance and support services are provided at a rate and for a term as mutually determined by Lucity and Licensee for the scope of services to be provided by Lucity for the Program(s) to be included under such services.

(b) Named Users Licensing. The Annual Fee for the Program(s) included under this Agreement includes the maintenance and support services described in the software's online help.

#### 11. LIMITATIONS OF LIABILITY.

Except for Lucity's indemnity obligations provided in Section 8, Lucity's total liability under this Agreement will be limited to the License Fee. Licensee agrees that, as part of the material consideration for Lucity licensing

the Programs to Licensee hereunder, in no event will Lucity be liable to Licensee under this Agreement for any Special, Incidental, or Consequential Damages, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not Lucity has been advised of the possibility of such damage. Input and/or edits of data by means other than the Lucity standard Program(s) interface may result in loss of data, and/or improper operation of the Program(s), and Licensee agrees that in no event will Lucity be liable to Licensee under this Agreement for costs necessary to diagnose, recover data and/or restore proper operation of the Program(s) resulting from said actions.

#### 12. TERM AND TERMINATION.

(a) Term - Named Products Licensing. Except as expressly provided in this Section 12, this Agreement will continue in full force and effect perpetually.

(b) Term - Named Users Licensing. Except as expressly provided in this Section 12, this Agreement will continue in full force and effect for one (year) from the Effective Date of this Agreement, with automatic renewal for subsequent one (1) year periods.

(c) Termination. Either party will have the right to terminate this Agreement if other breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice.

(d) Effect of Termination - Named Products Licensing. If this Agreement is terminated, Licensee will immediately return to Lucity, or Lucity's designated representative, or (at Lucity's request) destroy all copies of the Program(s) in its possession or control, and an officer of Licensee will certify to Lucity in writing that it has done so.

(e) Effect of Termination - Named Users Licensing. If this Agreement is terminated, license codes for the Program(s) included under this Agreement will expire and the Program(s) included under this Agreement will be effectively disabled.

(f) Survival. The provisions of Sections 4 (Proprietary Rights), 6(b) (Taxes), 7(b) and (c) (Warranties Exclusive Remedy and Disclaimer), 8(c) and (d) (Infringement Exclusive Remedy and Exceptions), 9 (Confidential Information), and 11 (Limitations of Liability) will survive termination of this Agreement for any reason.

(g) Nonexclusive Remedy. The exercise by Lucity of any remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

#### 13. GENERAL PROVISIONS.

(a) Audit Rights. Licensee agrees to allow Lucity, at Lucity's sole expense, upon reasonable written notice, and during Licensee's ordinary business hours, to visit the facilities in which Licensee uses the Program(s) and review Licensee's practices with regard to the Program(s).

(b) Assignment. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that either party may not assign this Agreement, in whole or in part, without written consent of both parties.

(c) Modifications. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(d) Conflicting Terms. Purchase orders or similar documents relating to the Program(s) issued by Licensee will have no effect on the terms of this Agreement.

(e) Notices. All notices under this Agreement will be deemed given when delivered personally or upon receipt of by U.S. certified mail, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this Section.

(f) Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

(g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

(h) Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. No purchase orders, acknowledgments, invoices, or other documents exchanged in the ordinary course of business shall modify or add to the terms and conditions of this Agreement.

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the state in which Licensee is located.

**EXHIBIT "B"**  
**Schedule of Software**

For the Project Lucy agrees to furnish licenses of the various *Lucy*<sup>TM</sup> software programs listed in the table below, and grant the CLIENT such licenses to use these programs for the fees as indicated, in consideration of the mutual covenants and obligations expressed in the *Lucy*<sup>TM</sup> Software License Agreement provided as Exhibit "A".

Software

LucyAM Product	Licensing		Fees	
	Quantity	Unit	Unit	Extended
Work	10	Seat	\$ 2,000.00	\$ 20,000.00
Assets	5	Seat	\$ 2,000.00	\$ 10,000.00
GIS Desktop	1	Seat	\$ 2,000.00	\$ 2,000.00
GIS Web	1	Site	\$ 10,000.00	\$ 10,000.00
Mobile	15	Install	\$ 1,500.00	\$ 22,500.00
REST APIs	1	Site	\$ 5,000.00	\$ 5,000.00
<b>TOTAL</b>				<b>\$ 69,500.00</b>

Notes

- The applicable licensing model is "Named Products".
- The total amount of license fees is a one-time cost for a perpetual licensing term.
- Cost for the Constant Connection Program for technical support and software maintenance is additional.
- A "Site" license provides for unlimited number of total users.
- A "Seat" license provides for a concurrent user.
- An "Install" license is per device.

**EXHIBIT "C"**  
**Software Support and Maintenance Provisions**

For the various *Lucity*<sup>™</sup> software programs listed in Exhibit "B", Lucity agrees to furnish to the Licensee resources and perform various professional services related to on-going software technical support and maintenance as outlined in this Exhibit "C".

**Constant Connection Program Resources and Services**

On-going software technical support and maintenance resources and services provided through the Lucity Constant Connection Program are summarized in the following attachment titled "LucityAM Technical Support and Software Maintenance".

**Constant Connection Program Fees and Renewal**

Named Products Licensing. The fee basis for "Year 1" of the Lucity Constant Connection Program is twenty percent (20%) of the total non-discounted software license fees for covered products. For the software programs listed in Exhibit "B", Year 1 will be for the period of twelve (12) months following software delivery.

Access to Lucity Constant Connection Program resources and services in subsequent years is renewable annually for the software programs by mutual agreement and is subject to an inflationary increase not to exceed two and one-half percent (2.5%) each year.

**Constant Connection Program Levels of Services**

Our goals are to provide customers immediate response during regular Help Desk hours (Monday – Friday, 7:00 am-7:00 pm CST), and resolve issues as soon as possible. An outline of our categorization/prioritization of support issues and formal response/resolution commitments follows.

- Critical Issues
  - Customer is unable to use a LucityAM application, or system component has a failure such that normal work operation is significantly impacted (e.g., users cannot open Work Orders)
  - Response time to acknowledge issue and begin working on corrective action within two (2) business hours
  - Commitment to continue working on problem until resolution, or an acceptable temporary fix (i.e., patch) is deployed
- Standard Issues
  - Issue exists with an application, but majority of functions are still usable and some reasonable circumvention or work-around is possible to provide service, or failing function or work-around does not significantly impact normal work operation
  - Response time to acknowledge issue no more than four (4) business hours
  - Provide resolution with next upgrade release (new versions, service packs or patches), and not more than ninety (90) business days (unless otherwise agreed between customer and Lucity)
- Minor Issues
  - Issue does not affect an application's function (e.g., text of message or report is poorly worded or misspelled)
  - Response time to acknowledge issue no more than eight (8) business hours
  - Provide resolution with next two upgrades, and not more than one-hundred and eighty (180) business days (unless otherwise agreed between customer and Lucity)

**EXHIBIT "D"**  
**Scope of Services**

**IMPLEMENTATION WORK PLAN**

The "Functional Groups" that will be users of the System are identified in the following table, aligned with their applicable LucityAM Assets solutions.

Functional Group	LucityAM Assets Solutions	
<b>Water</b>	Water	Equipment
<b>Sewer</b>	Sewer	Equipment
<b>Storm</b>	Storm	Equipment
<b>Streets, Traffic &amp; Rights-of-Way</b>	Streets Rights-of-Way Signs	Signals Street Lights Equipment
<b>Parks, Trails, Trees &amp; Landscaping</b>	Parks Facilities	Trees Equipment
<b>Facilities</b>	Facilities	Equipment
<b>Fleet</b>	Fleet	Equipment

**Implementation**

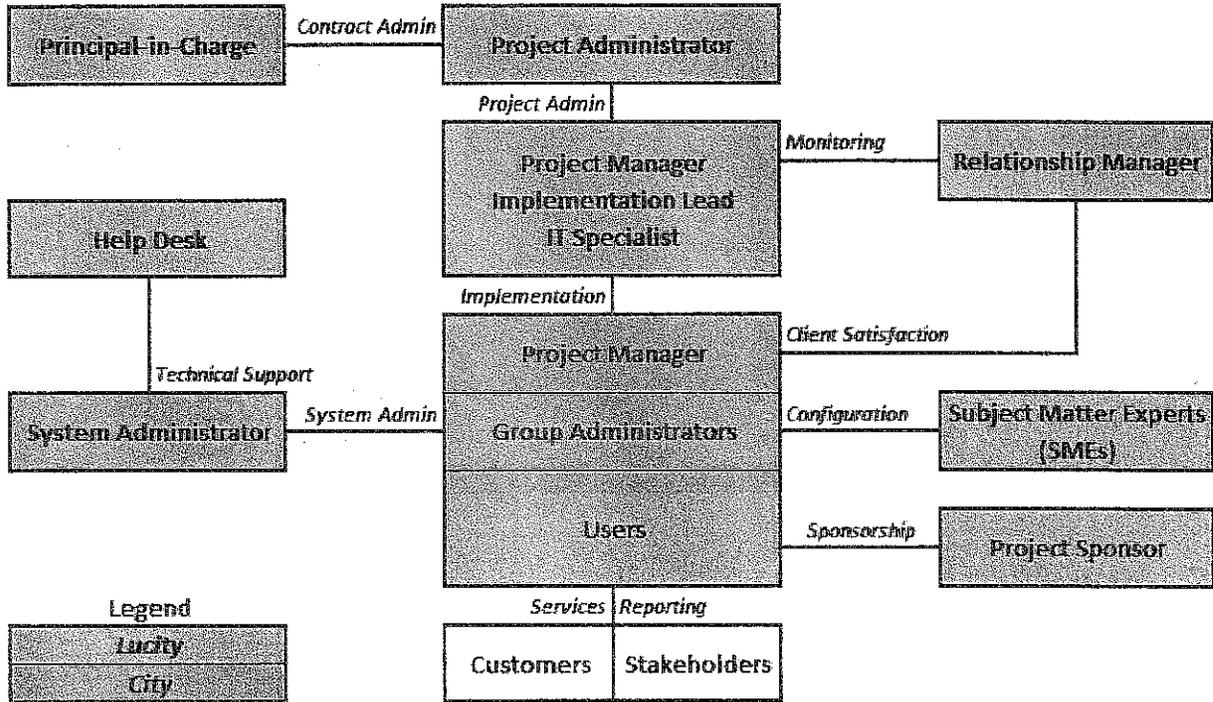
Lucity will provide all implementation services (in close collaboration with City staff) utilizing on-staff personnel. Following are tasks that comprise our proposed Implementation Work Plan.

- Project Management – Initiation; Progress
- Installation & Kickoff – IT Audit; Installation; Kickoff Meeting
- Configuration – Discovery; Functional Groups; GIS
- Data Loading
- Interfaces
- Testing
- Training – Administration; Production

**D.1 IMPLEMENTATION METHODOLOGY**

Our proposed Project Team is comprised of both Lucity on-staff personnel and City staff – the Project Team organization chart is provided as Exhibit D.1. An outline of our proposed Implementation Work Plan follows. Participation and responsibilities of the Project Team are included in the task descriptions.

EXHIBIT D.1 – Project Team



D.1.A PROJECT MANAGEMENT

D.1.A.1 Initiation

A meeting will take place as soon as possible after issuance of the Notice to Proceed to introduce key Project Team members and initiate project activities. An outline of the expected topics for the Initiation Meeting follows.

- Project Team
  - Review roles, responsibilities, and personnel assignments
  - Identify primary contacts and exchange contact information
- Software
  - Verify licensing details (products and users)
- Project Plan
  - Set dates for IT Audit, Installation, and Kickoff tasks – our recommendation is for the IT Audit to be completed as soon as possible, and Installation to be completed prior to Kickoff

Participants in the Initiation Meeting should include the following Project Team members:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Lucity                     <ul style="list-style-type: none"> <li>– Project Manager</li> <li>– Relationship Manager</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• City                     <ul style="list-style-type: none"> <li>– Project Manager</li> <li>– System Administrator</li> <li>– Project Sponsor</li> </ul> </li> </ul> |
|---|--|

D.1.A.2 Progress

An outline of the project management activities expected throughout the project follows.

- Meetings & Workshops
  - Convene bi-weekly Project Progress meetings to review Project Plan completion status
  - Provide agendas, “Follow-up Memorandum”, and “Trip Report” documents
- Project Plan
  - Provide updates as needed based on approved revisions to scope and/or schedule
- Invoicing
  - Prepare billing summaries, and submit invoices to the City for approval and payment processing

Participants in the project management activities should include the following Project Team members:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Lucy           <ul style="list-style-type: none"> <li>– Project Manager</li> <li>– Project Administrator</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• City           <ul style="list-style-type: none"> <li>– Project Manager</li> </ul> </li> </ul> |
|--|---|

## **D.1.B INSTALLATION & KICKOFF**

### **D.1.B.1 IT Audit**

A meeting will take place as soon as possible after Initiation for us to provide guidance to the City’s IT SME (Subject Matter Expert) pertaining to LucyAM enterprise architecture and security designs. An outline of the expected IT Audit Meeting topics follows.

- Software
  - Review “Hardware and Software Recommendations”, “System Design and Tuning”, and “IT Questionnaire” documents – Questionnaire to be completed by the City
    - Our assumption is the City will provide needed hardware and supporting software, and confirm basic operation of hardware prior to installation of LucyAM
    - System Design and Tuning document is intended to provide understanding of LucyAM as it pertains to the City’s enterprise infrastructure and security policies, and the expected maximum number of concurrent users
    - IT Questionnaire serves to gather information regarding the City’s resources, preparedness, and capabilities for installing and managing LucyAM and leveraging GIS integration
  - Discuss the Installation task and related activities, and identify needed actions prior to LucyAM installation
- Access
  - Discuss providing Implementation Lead remote access (VPN) into installed LucyAM to facilitate completion of implementation tasks
- Project Plan
  - Confirm dates for Installation and Kickoff tasks
- Action Items
  - Complete IT Questionnaire
  - Provide LucyAM install design and system architecture diagram, and executed VPN access forms (if required)

Participants in the IT Audit Meeting should include the following Project Team members:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Lucy</li> </ul> | <ul style="list-style-type: none"> <li>• City</li> </ul> |
|--|--|

- IT Specialist
- Project Manager
- System Administrator
- SME – IT

### **D.1.B.2 Installation**

#### Install

The IT Specialist will assist the System Administrator with downloading the LucityAM Installation Components (current version with latest service pack) from the Lucity Support Center web site, and following instructions provided in the Install Manual.

Our assumption is the System Administrator will complete related installation activities, including:

- Establishing multiple environments for testing/training and production
- Performing system-level testing (to ensure satisfactory performance) and performance tuning actions (if necessary)

### **D.1.B.3 Kickoff Meeting**

A Kickoff Meeting will be held to transfer knowledge between Project Team members, gather information, and set the stage for subsequent implementation tasks. An outline of the expected Kickoff Meeting activities follows.

- LucityAM Software Demonstration
  - Present functional overview – typical user workflows for inspections, work orders, etc. and “out of the box” capabilities including reporting (standard templates and ad hoc), GIS integration, and data interfaces
  - Review default “Work Flow Setup” data, UI templates (dashboards and data forms/views), and default user groups/roles
- Functional Groups
  - Identify each Group’s place (Department, Division, etc.) within the organizational structure of the City
  - Confirm with each Group Administrator those persons assigned to serve as Group SMEs for Configuration task
  - Examine current basic business processes of each Group with associated data, reporting, and integration requirements
  - Review with each Group their Work Flow Setup spreadsheet with default data – spreadsheet to be completed by the City
- GIS and IT
  - Discuss completed Installation task and related activities, and identify needed actions prior to initiation of Configuration – GIS task
- Access
  - Verify Implementation Lead has remote access into installed LucityAM
- Project Plan
  - Confirm Project Team and Functional Groups
  - Discuss what is expected of Project Team members throughout project
  - Review schedule, and discuss how LucityAM will “go-live”
  - Identify any needed revisions to Project Plan based on knowledge gained from the Kickoff Meeting sessions

- Set date for Configuration – Discovery task
- Action Items
  - Complete Work Flow Setup spreadsheets – these spreadsheets are used to record data required to define Categories, Problems, Causes, Tasks, and Resources (Employees, Crews, Equipment, Materials, Fluids, Contractors) for Functional Groups with LucityAM Work – Work Administrator

Participants in the Kickoff Meeting sessions should include the following Project Team members:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Lucity           <ul style="list-style-type: none"> <li>– Project Manager</li> <li>– Relationship Manager</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• City           <ul style="list-style-type: none"> <li>– Project Manager</li> <li>– System Administrator</li> <li>– Functional Group Administrators</li> <li>– SMEs – GIS and IT</li> <li>– Project Sponsor</li> </ul> </li> </ul> |
|---|--|

## D.1.C CONFIGURATION

### D.1.C.1 Discovery

A Discovery Workshop will be completed – this workshop will consist of a series of sessions that focus on refining the default LucityAM configuration to support the specific operational needs of the distinct Functional Groups (and City departments). An outline of the expected Discovery Workshop activities follows.

- Functional Groups
  - Examine details (what, who, how, and why) of business processes of each Group, and identify potential revisions to improve results and best leverage capabilities of LucityAM
  - Review with each Group their completed Work Flow Setup spreadsheet, and identify any additional data revisions for initial LucityAM configuration
  - Identify revisions to dashboards, data forms/views, and default user groups/roles for each Group
  - Discuss available data from sources other than GIS to be incorporated (i.e. “loaded) into LucityAM – data to be gathered by the City
  - Identify any supplemental reporting and/or integration needs to be addressed with LucityAM implementation
- GIS
  - Outline overall GIS strategy for LucityAM deployment
- Project Plan
  - Identify any needed revisions to Project Plan based on knowledge gained from Discovery activities
  - Set date for Configuration – Functional Groups task
- Action Items
  - Apply initial configuration to installed LucityAM based on revised Work Flow Setup data and revised user dashboards, data forms/views, maps, and groups/roles
  - Deliver data from sources other than GIS to Implementation Lead for evaluation
  - Evaluate options for supplemental reporting and/or integration, and identify next steps
  - Install and test Mobile Server, and download and install LucityAM Mobile

Participants in the Configuration – Discovery Workshop activities should include:

- Lucy
  - Project Manager
  - Implementation Lead
- City
  - Project Manager
  - System Administrator
  - Functional Group Administrators
  - SMEs – GIS

#### D.1.C.2 Functional Groups

Finalizing the LucyAM configuration will be an iterative process. The Implementation Lead will first meet with each Functional Group to review the initial configuration and identify needed refinements. With subsequent refinements, additional meetings will be convened to review the latest LucyAM configuration – which will include GIS integration, loaded data, custom reporting, and custom integration (if required) as these become available. The process will continue until the LucyAM operational needs of the Groups are met.

The Implementation Lead will also use Lucy Security to define security setup for the Functional Groups. This effort will:

- Import users into LucyAM using the Import tool, and associate users to Windows Login accounts
- Set controls for user access and assign group/role permissions for various LucyAM functions

Participants in the Configuration – Functional Group Meetings task should include:

- Lucy
  - Implementation Lead
- City
  - System Administrator
  - Functional Group Administrators
  - SMEs – Groups

#### Custom Reports

Although we expect the LucyAM reporting capabilities (standard templates and ad hoc) will meet most of the City's needs, some supplemental custom reports will likely be desired/required. The number and nature of such custom reports will be defined from the Configuration activities.

Custom reports can be designed, developed, and incorporated into LucyAM by the City or a third-party. Alternatively, we can deliver custom report templates (using Crystal Reports) *through negotiated additional services*.

#### D.1.C.3 GIS

The Implementation Lead will work with the System Administrator and GIS SME to configure and test the bi-directional LucyAM/Esri ArcGIS integration. Configuration of this integration involves the following activities:

- **LucyAM and GIS Integration** – Use Administration tool to link ArcGIS Server, Portal, or ArcGIS Online feature services, layers, and fields to LucyAM.
- **Lucy GIS Web to LucyAM Integration** (also applicable to integration of Collector for ArcGIS (and any other third-party mapping application) to LucyAM) – Use Administration tool to set

up “GIS Task” to check feature services at scheduled time interval and push any updates to LucityAM.

- **Lucity Spatial Generator Configuration** – Use Administration tool to enable the Lucity Spatial Indexer process, and set maximum number of days to process spatial history of information related to work order and service request locations (addresses, coordinates) and related assets; use Administration tool to set up URL for Geocoding Service for processing locations; and use Administration tool to set up Edit Map Service URL for processing assets.
- **GIS Map Setup** – Use Administration tool to create maps (by layering map services) for LucityAM GIS Web and LucityAM Mobile; and use Map Setup in Administration tool to assign maps to user groups/roles.

GIS data available at the time of the Configuration – GIS task efforts will be loaded into LucityAM, and necessary training will be provided to the City to load additional GIS data that may become available later.

#### **D.1.D DATA LOADING**

Data loading will include Work Flow Setup and GIS data as previously described, and data from the City’s existing CMMS (Maintenance Connection).

Lucity has included an estimated lump sum cost for the existing CMMS data migration effort, and this estimate reflects a level of effort we consider appropriate based on our relevant experience. During Configuration we will evaluate delivered existing CMMS data for suitability for loading and requirements for conversion. If we mutually determine the source data conversion requirements are beyond this estimate, we will work with the City to determine the necessary additional effort that would be provided *through negotiated additional services*.

The Lucity “Import & Update” tool inherent with the LucityAM software is used for loading data into LucityAM from ODBC, OLE, ASCII-delimited text, and XML sources. Data from the legacy system gathered by the City and delivered to the Implementation Lead for loading should (if possible) be in compatible formats.

The System Implementer will train the System Administrator on the use of this tool to establish appropriate data mapping between source tables and individual LucityAM tables, complete the import processes, and schedule automated data updates. With this training, the City may determine that loading of data from other sources is an effort that can be completed by the System Administrator.

#### **D.1.E INTERFACES**

For this proposal we have provided time allowance for the following:

- Utilize the Lucity “Import & Update” tool to configure an “out of the box” interface with WinCan to allow for CCTV inspection data to be loaded into LucityAM.
- Develop an Interface Design Document that specifically defines how the LucityAM system and the MyMilpitas app should communicate and share information.
  - Use this Interface Design Document to prepare a detailed scope and associated cost estimate to develop, test and implement the designed interface based on the City’s defined requirements *through negotiated additional services*.
  - Implement the MyMilpitas app interface sometime after successful go-live of the new CMMS.

The Lucy REST APIs product used for custom interface development is included in this proposal.

#### **D.1.F TESTING**

The Implementation Lead will work with the System Administrator to develop an Acceptance Test Plan to verify the configured LucyAM meets the stated functional requirements. This Plan will include user test scripts covering the various LucyAM functions.

Our assumption is the Implementation Lead will be responsible for functional and integration testing, and the System Administrator will perform acceptance testing. During the testing phase, we will:

- Collaborate with the System Administrator to maintain a log of issues, configuration problems, and software malfunctions identified during testing
- Resolve all such issues, problems and malfunctions to the City's satisfaction
- Prove through test procedures installed and configured LucyAM is functionally viable with all loaded data, reporting, and integration in place
- Demonstrate acceptance criteria items have been addressed, and certify LucyAM is ready for "go-live" transition from testing/development environment to production environment

The parties will mutually agree in writing as to the "go-live" date.

#### **D.1.G TRAINING**

We will provide a Training Plan detailing session descriptions and durations, methods and materials for each Functional Group, and the overall schedule. An outline of the expected Training activities follows.

##### **D.1.G.1 Administration**

###### *Installation and Maintenance*

- Complete procedures as outlined in Install Manual for initial LucyAM installation and future software upgrades
- Review available software documentation
- Review technical support and software maintenance services and resources provided through Lucy Constant Connection Program
- Discuss current backup and recovery practices for the City's data, and reviewing suggested practices specific to LucyAM

###### *Security*

- Complete procedures as outlined in Lucy Security for adding new users, and defining user group and individual permissions for LucyAM access and use

###### *Configuration*

- Use tools, parameters and settings available with LucyAM products to refine configuration

###### *Documents*

- Complete procedures for establishing links between LucyAM records and externally managed electronic documents

###### *Integration*

- Use LucyAM products for completing processes for configuring and refining the GIS integration

###### *Reporting*

- Add custom reports

###### *Data Import/Export*

- Import data using Import & Update tool, and export data using LucyAM reporting capabilities

The goal of the Training – Administration task is for the System Administrator to be reasonably self-sufficient in refining, expanding and sustaining the implemented LucityAM.

#### **D.1.G.2 Production**

Following is a limited list of items that will be addressed during Production Training sessions.

##### *General*

- *Dashboard*: Using assigned “Home” pages with personalized real-time LucityAM content
- *Filter*: Creating queries to produce specific record sets
- *Locate*: Quickly finding a specific record within the current “Filter”
- *Show in Map*: Opening assigned GIS maps and zooming to assets and locations (customer addresses, work sites, etc.)
- *Document Control*: Linking electronic documents (images, videos, as-built drawings, O&M manuals, Web site links, etc.) to records
- *Subset Manager*: Loading filtered data from one application into other applications
- *Browse*: Creating and exporting ad-hoc reports
- *Reports*: Using assigned report templates
- *Help*: Using the on-line, context-sensitive Help

##### *Work Management*

- Receiving/creating, routing and completing service requests, and work orders in response to service requests
- Establishing work order templates for recurring activities and PM schedules
- Creating, assigning, routing and completing work orders from templates and PM schedules
- Performing in-house and external billing of work order costs
- Viewing linked electronic documents
- Using GIS to locate customers and work locations
- Producing operational, management and regulatory reports

##### *Asset Management*

- Collecting and maintaining asset attributes
- Establishing appropriate relationships between assets
- Assessing the condition, and tracking the operating status, of assets
- Interpreting asset lifecycle costs
- Viewing linked electronic documents
- Using GIS to locate assets and display condition assessment data
- Validating and transferring data from external systems (SCADA, fueling, CCTV)
- Producing operational, management and regulatory reports

The goal of the Training – Production task is for users being enabled with the knowledge, skills and confidence to follow proper business processes and successfully complete their specific operational workflows with LucityAM.

Participants in the Production Training should include:

- Lucity
  - Solutions Trainer
- City
  - Functional Group Administrators
  - Group Users

**D.1.H SCHEDULE**

A schedule we consider reasonable for completion of the proposed Implementation Work Plan is provided as Exhibit D.2. It is expected that the final schedule will be determined by the City’s Project Manager and the Lucity Project Manager.

**EXHIBIT D.2 – Implementation Work Plan Schedule**

TASK	MONTH							
	1	2	3	4	5	6	7	8
<b>PROJECT MANAGEMENT</b>								
<b>INITIATION</b>	█							
<b>PROGRESS</b>	█	█	█	█	█	█	█	█
<b>INSTALLATION</b>								
<b>IT AUDIT &amp; INSTALL</b>	█	█						
<b>KICKOFF</b>			█					
<b>CONFIGURATION</b>								
<b>DISCOVERY</b>				█				
<b>FUNCTIONAL GROUPS</b>				█	█	█		
<b>GIS INTEGRATION</b>				█	█	█		
<b>DATA MIGRATION</b>				█	█	█		
<b>INTEGRATION</b>				█	█	█		
<b>TESTING</b>							█	
<b>TRAINING</b>								
<b>ADMINISTRATION</b>								█
<b>PRODUCTION</b>								█

**D.1.I EFFORT AND COSTS**

The levels of effort and associated costs for the Work Plan costs are summarized in Exhibit D.3. The costs are based on the following standard rates.

- Labor (per person) – same for all Lucity personnel/task, except IT Specialist
  - \$225.00 per hour for on-site work (travel time is not charged)
  - \$150.00 per hour for remote work
- Labor (per person) – IT Specialist
  - \$180.00 per hour for remote work
- Expense estimates (per person) – expenses are billed at actual cost
  - \$550.00 per on-site trip
  - \$350.00 per on-site day

**EXHIBIT D.3 – Implementation Work Plan Effort and Costs**

Work Plan Task	Effort				Cost		
	On-site		Remote	Total	Labor	Expenses	Total
	Trips	Hours	Hours	Hours			
<b>D.1.A. PROJECT MANAGEMENT</b>	0	0	82	82	\$ 12,300.00	\$ -	\$ 12,300.00
D.1.A.1 INITIATION	0	0	2	2	\$ 300.00	\$ -	\$ 300.00
D.1.A.2 PROGRESS	0	0	80	80	\$ 12,000.00	\$ -	\$ 12,000.00
<b>D.1.B. INSTALLATION &amp; KICKOFF</b>	1	16	8	24	\$ 5,040.00	\$ 1,250.00	\$ 6,290.00
D.1.B.1 IT AUDIT	0	0	4	4	\$ 720.00	\$ -	\$ 720.00
D.1.B.2 INSTALLATION	0	0	4	4	\$ 720.00	\$ -	\$ 720.00
D.1.B.3 KICKOFF MEETING	1	16	0	16	\$ 3,600.00	\$ 1,250.00	\$ 4,850.00
<b>D.1.C. CONFIGURATION</b>	4	72	132	204	\$ 36,000.00	\$ 5,350.00	\$ 41,350.00
D.1.C.1 DISCOVERY WORKSHOP	1	24	8	32	\$ 6,600.00	\$ 1,600.00	\$ 8,200.00
D.1.C.2 GROUP MEETINGS	3	48	64	112	\$ 20,400.00	\$ 3,750.00	\$ 24,150.00
D.1.C.3 GIS		0	60	60	\$ 9,000.00	\$ -	\$ 9,000.00
<b>D.1.D. DATA LOADING</b>	0	0	40	40	\$ 6,000.00	\$ -	\$ 6,000.00
<b>D.1.E. INTERFACES</b>	0	0	12	12	\$ 1,800.00	\$ -	\$ 1,800.00
<b>D.1.F. TESTING</b>	0	0	16	16	\$ 2,400.00	\$ -	\$ 2,400.00
<b>D.1.G TRAINING</b>	3	48	16	64	\$ 11,760.00	\$ 3,750.00	\$ 15,510.00
<b>TOTALS</b>	<b>8</b>	<b>136</b>	<b>306</b>	<b>442</b>	<b>\$ 75,300.00</b>	<b>\$ 10,350.00</b>	<b>\$ 85,650.00</b>

**EXHIBIT "E"**  
**Schedule of Costs and Invoicing**

The following table summarizes costs and invoicing for the software licenses and services to be provided by Lucity to the CLIENT for the Project.

Item	Total	Invoicing
Software License Fees (reference Exhibit "B")	\$34,750.00	Fifty percent (50%) invoiced upon contract execution
	\$27,800.00	Forty percent (40%) invoiced upon the mutually agreed upon "go-live" date and completion of Task D.1.F – Testing
	\$6,950.00	Ten percent (10%) invoiced upon City's written Final Acceptance of the software
Services Costs (reference Exhibit "D")	\$85,650.00	Invoiced monthly based on project progress (i.e. hours completed for each task, up to the maximums listed in Exhibit D.3)
Constant Connection Program Fees (reference Exhibit "C")	\$0.00	No fees invoiced for Year 1 (twelve (12) month software warranty period, following software delivery)
<b>TOTAL – PROJECT COSTS</b>	<b>\$155,150.00</b>	
Constant Connection Program Fee – Renewals Optional	\$13,900.00	Year 2 fee invoiced sixty (60) days prior to Year 1 expiration date
Constant Connection Program Fee – Renewals Optional	\$14,247.50	Year 3 fee invoiced sixty (60) days prior to Year 2 expiration date
Constant Connection Program Fee – Renewals Optional	\$14,603.69	Year 4 fee invoiced sixty (60) days prior to Year 3 expiration date
Constant Connection Program Fee – Renewals Optional	\$14,968.78	Year 5 fee invoiced sixty (60) days prior to Year 4 expiration date



## EXHIBIT "F" - INSURANCE REQUIREMENTS – GENERAL

### Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

### Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on their subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by Contractor or by any subcontractor under them who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of their employees and the employees of any subcontractor under them not protected by such compensation laws.

### 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 consultant's profession.
- ( ) Architects' and Engineers' coverage is to be endorsed to include contractual liability.

### Minimum Limits of Insurance:

Contractor must maintain limits no less than:

1. **General Liability:** **\$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.  
(Including operations, products and completed operations, as applicable.)
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** Statutory  
**Employer's Liability:** **\$1,000,000** each accident  
**\$1,000,000** disease-policy limit  
**\$1,000,000** disease-each employee
4. **Professional Liability or** **\$1,000,000** each occurrence  
**Errors & Omissions** **\$1,000,000** policy aggregate  
**Liability:**

### 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.

### Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **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, leased, 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 Contractor 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.
2. For any claims related to this project, the **Contractor'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 **Contractor's insurance and shall not contribute with it.**
3. 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 Contractor's Workers' Compensation policy.
4. 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 Contractor's insurer refuses to provide this endorsement, Contractor 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.

### 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.

### Verification of Coverage:

Contractor 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 e-mailed to the City Purchasing Agent, Chris Schroeder at [cschroeder@ci.milpitas.ca.gov](mailto:cschroeder@ci.milpitas.ca.gov).

**Subcontractors:**

Contractors must include all subcontractors as insureds under its policies or furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors are subject to all of the requirements included in these specifications.

**Absence of Insurance:**

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

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

**EXHIBIT "G"**  
**CITY OF MILPITAS**  
**TERMS AND CONDITIONS**

ACCEPTANCE PERIOD. Unless otherwise specified herein, proposals remain open and are firm for a period of not less than ninety (90) calendar days from the proposal submission deadline.

ANTI-DISCRIMINATION. It is the policy of the City of Milpitas that in connection with all work performed under contract; there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1735. In addition, the CONTRACTOR agrees to require like compliance by any subcontractor employed on the work.

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Except as noted hereunder, Contractor may not assign, transfer or sell any rights or obligations resulting from this Agreement without first obtaining the specific written consent of the City of Milpitas.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials, and supplies for which payment is to be made under this contract. The City of Milpitas shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

BUSINESS LICENSE. If the scope of work under this bid includes performing services or installation on City of Milpitas property, the Successful Proposer must have a current City of Milpitas Business License. Inquiries regarding Business License may be directed to the Finance Department at 408-586-3100. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

CANCELLATION OF THE CONTRACT. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The Contractor may not cancel this contract without prior written consent of the City of Milpitas Purchasing Agent.

If the agreement is terminated, for any reason, the Contractor shall turn over all records related to the project to the City within fifteen (15) working days after completion of duties contained in the agreement.

In the event of cancellation, The City shall only be liable for payment of services performed or goods delivered and accepted or approved by the City prior to the effective date of the termination.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the Contractor for any extra work as so ordered shall be determined in accordance with the item prices of contractor's proposal.

CONFIDENTIAL OR PROPRIETARY INFORMATION OF THE CITY OF MILPITAS. Contractor understands and agrees that, in the performance of the contracted work or services or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City of Milpitas and that such information may contain proprietary or confidential details, the disclosure of

third parties may be damaging to the City of Milpitas. Contractor agrees that all information disclosed by the City of Milpitas to Contractor shall be held in confidence and used only in the performance of contracted work or services. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

CONTRACT INCORPORATION. The contract embodies the entire contract between the City of Milpitas and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties. The complete contract shall include the Terms and Conditions of the RFP solicitation, all Exhibits, all addenda, all of Proposer's successful submittal, supplemental agreements, change orders, applicable bond(s), and any and all written agreements which alter, amend or extend the contract.

CONTRACTOR RESPONSIBILITY. Any work completed by the contractor that does not meet the quality standards as determined by the City of Milpitas' project manager, shall be re-done by the contractor at no cost to the City. In the event contractor's work repeatedly does not meet the quality standards, the City reserves the right to terminate contract without any cost to the City.

DAMAGE. The contractor shall be held responsible for any breakage, loss of the City of Milpitas' equipment or supplies through negligence of the contractor or its employee while working on the City of Milpitas's premises. The contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The contractor shall immediately report to the City of Milpitas project manager any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property will be a breach of this contract.

FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, and acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

INDEPENDENT CONTRACTOR. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City of Milpitas under contract. Contractor or any agent or employee of Contractor shall not have employee status with the City of Milpitas, nor be entitled to participate in any plans, arrangements, or distributions by the City of Milpitas pertaining to or in connection with any retirement, health or other benefits that the City of Milpitas City of Milpitas may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to: FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor provided same. Nothing in this solicitation nor the contract awarded thereof shall be construed as creating an employment or agency relationship between the City of Milpitas and Contractor or any agent or employee of Contractor. Any terms in the contract awarded from this solicitation referring to direction from the City of Milpitas shall be construed as providing direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. The City of Milpitas does not retain the right to control the means or the method by which Contractor performs work under the contract. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at all times be considered independent contractors and not agents of the City of Milpitas.

INSURANCE REQUIREMENTS. Within ten (10) consecutive calendar days of award of contract, Contractor must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified in **Exhibit F – Insurance Requirements**. Failure to furnish the required certificates within the time allowed will result in forfeiture of the contract.

LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in Santa Clara County, in the State of California. The parties further stipulate that Santa Clara County, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

PROPRIETARY INFORMATION. The master copy of each proposal shall be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label part of a proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the City of Milpitas for honoring such a designation. The failure to so label any information that is released by the City of Milpitas shall constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the City of Milpitas, the City of Milpitas will notify the Proposer of the request and delay access to the material until seven working days after notification to the Proposer. Within that time delay, it will be the duty of the Proposer to act in protection of its labeled information. Failure to so act shall constitute a complete waiver.

RIGHTS RESERVED. (a) Rejection of Work. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed. (b) Completion of Work. If Contractor fails to comply with the conditions of the contract, or fails to complete the required work or furnish the required materials within the time stipulated, the City of Milpitas reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor.

RECORDS CREATED AS PART OF CONTRACTOR'S PERFORMANCE. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Contractor to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement.

SEVERABILITY. If any provisions or portion of any provision, of this contract are held invalid, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SPECIFICATIONS, CHANGES TO. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION. The term "specification" as used in this solicitation shall be interpreted to mean all the pages that make up this specification, including all Appendices, Exhibits, or Attachments.



City of Milpitas

REQUEST FOR PROPOSALS

No. 2228

For

Computerized Maintenance Management System (CMMS)

Date Issued: March 1, 2018

Bid Deadline: March 23, 2018 at 2:00 p.m. Local Time

Issued By: City of Milpitas  
Purchasing Division  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411

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Schedule of Activities. The City reserves the right to amend the schedule below as necessary. All times referenced are in Pacific Time.

<u>Activity</u>	<u>Tentative Dates</u>
RFP released	March 1, 2018
Deadline for Submitting Questions (2:00 p.m.)	March 20, 2018
Proposal Submission Deadline (2:00 p.m.)	March 23, 2018
Evaluation Committee Review	Week of March 26, 2018
Interview/Presentations	Week of April 2, 2018
Contract Award (Tentative City Council Date)	May 1, 2018

## PROJECT DESCRIPTION

The City of Milpitas (City) is requesting proposals to provide the Public Works Department with software and professional services for the implementation of a Computerized Maintenance Management System (CMMS). The CMMS will be used to plan, organize, record, track, and report, all work performed in the Public Works Department, including: water, waste water and storm water collection assets, facilities, fleet, parks, trees, and administration. The City is seeking to benefit from advancements in technology that have greatly improved how these systems function and reduce the overall cost. The ideal proposer shall have experience with implementing CMMS for a Public Works Department providing full services to its community, preferably within the State of California.

## INSTRUCTIONS TO PROPOSERS

ADDENDA. Addenda issued pursuant to this RFP, if any, will be posted on the Public Purchase website. However, it is the sole responsibility of the proposer to check the website and/or contact the Purchasing Agent directly to determine that they have included all addenda in their proposal before submitting it to the City.

**Any proposal submitted that does not acknowledge each and every addenda issued will be considered non-responsive. Addenda, if any, must be acknowledged on the RFP Proposal Form in the space provided on page 21 of this Solicitation.**

AUTHORIZED SIGNATURES. Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. Upon request of the City of Milpitas, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, their signature, and post office address must be shown. If a firm or partnership makes the proposal, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City of Milpitas, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

AWARD OF CONTRACT. Award will be made to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria set forth below. An Evaluation Committee will be established by the City of Milpitas. **Proposers not meeting the Minimum Qualifications and not submitting the required documents will be deemed non-responsive to the RFP and thus will not be considered by the Evaluation Committee.** The Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The City of Milpitas shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Milpitas after all factors have been evaluated.

EVALUATION CRITERIA	Weighted %
Cover Letter	5%
Company Profile	10%
Project Implementation Plan	25%
Personnel Assigned	10%
References	5%
Product Information	35%
Proposed Compensation	10%

The evaluation committee may also contact and evaluate the Proposer's and subcontractor's references; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process.

Discussions may, at the City of Milpitas' sole option, be conducted with a short-list of responsive and responsible Proposers. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions, the City of Milpitas will not disclose information derived from proposals submitted by competing Proposers. A Notification of Intent to Award may be sent to any Proposer selected. Award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully, the City of Milpitas may negotiate a contract with the next highest scoring Proposer or withdraw the RFP.

AWARD SELECTION PROCESS. Selection of qualified Proposers will be based on the following: quality and completeness of submitted proposal; understanding of project objectives; project approach; experience and expertise with public agencies and similar types of efforts; and references. Additional questions may be asked of Proposers and interviews may be conducted. Proposers will be notified of any additional required information or interviews after the written proposals have been evaluated. See EVALUATION CRITERIA for description of the RFP Item Proposed and Weighted Rankings. Interviews may be held with the most qualified proposers based upon score rankings. The most qualified proposer will be recommended to the Milpitas City Council for contract approval. The Successful Proposer selected will enter into a contract with the City of Milpitas.

BID PROTEST. Should any interested party question or protest the award to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria, such question or protest must be made in writing to the Purchasing Agent. All questions or protests must be filed and will be adjudicated in compliance with the City of Milpitas Municipal Code Section "I-2-3.19 --Bid Protest".

CANCELLATION OF SOLICITATION. The City of Milpitas may cancel this solicitation at any time.

COMMUNICATION. All respondents to this RFP must comply with the specified communication requirements. Any respondent/proposer who conducts or otherwise participates in communication concerning this RFP with parties or methods not provided for in this RFP, shall be subject to disqualification. Such communication includes contact with City of Milpitas elected officials, staff, or any member of the evaluation committee regarding this RFP.

The City of Milpitas is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by written addendum.

COMPENSATION/FEES. All Proposals shall include the compensation proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Proposer's authorized representative. Fee proposals shall include everything necessary for the completion of work or otherwise fulfillment of the contract including but not limited to furnishing all labor, materials, equipment, tools, facilities and all management, overhead expenses and profit required to complete the work in accordance with the contract documents, except as may be provided otherwise in the contract documents. Fee proposals must contain the information as outlined in the RFP Proposal Offer Form.

COMPLIANCE WITH OR DEVIATION FROM SPECIFICATIONS. Proposer hereby agrees that the material, equipment or service offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Proposer's response. Proposer may submit an attachment entitled "Exceptions to Specifications", which must be signed by Proposer's authorized representative. An explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception, the reason for which it is taken, and the suggested change. Proposals failing to comply with this

requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but may not be a substitution for this requirement.

CONFLICT OF INTEREST. Pursuant to Government Code 1090 and any other laws, rules and regulations that may apply, the Proposer covenants that neither it, its subcontractors nor employees presently have an interest, and shall not acquire any interest, direct or indirect, financial or otherwise that would conflict in any manner or degree with contract awarded from this solicitation. Proposer certifies that to the best of their knowledge, no one who has or will have any financial interest in the contract awarded from this solicitation is an officer or employee of the City of Milpitas. Through its submittal of a bid Contractor acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and will immediately notify the City if it becomes aware of any facts concerning the contract to be awarded that constitute a violation of said provisions.

CONTRACT DOCUMENTS. EXAMINATION OF. It is the responsibility of the Proposer to carefully thoroughly examine and be familiar with legal and procedural documents, general conditions, all forms, specifications, drawings, plans, responses to questions, and addenda (if any), hereinafter referred to as Contract Documents. Proposer shall satisfy themselves as to the character, quantity, and quality of work to be performed and materials, labor, supervision, equipment, and appurtenances necessary to perform the work as specified by the Contract Documents. The failure or neglect of the Proposer to examine the Contract Documents shall in no way relieve them from any obligations with respect to the solicitation or contract. The submission of a proposal shall constitute an acknowledgment upon which the City of Milpitas may rely that the Proposer has thoroughly examined and is familiar with the contract documents. The failure or neglect of a Proposer to receive or examine any of the contract documents shall in no way relieve them from any obligations with respect to the Proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

DEFINITION OF TERMS. For the purposes of this RFP, the following definitions will be used:

- a. **Contract.** A legally binding document executed by two or more parties or by the issuance of a purchase order (accepting a bid/quote) for the provision of agreed goods and/or services.
- b. **Contractor.** The term "Contractor" refers to the party entering into a contract with the City of Milpitas as a result of this solicitation. Same as Successful Proposer.
- c. **Evaluation Committee.** An independent committee established by the City of Milpitas to review, evaluate, and score the proposals, and to recommend award to the Proposer that submitted the proposal determined by the committee to be in the best interest of the City of Milpitas.
- d. **May.** Indicates something that is not mandatory but permissible.
- e. **Must/Shall.** Indicates a mandatory requirement. A bid that fails to meet a mandatory requirement will be deemed non-responsive and not be considered for award.
- f. **Proposer.** The person or firm making a legally binding offer.
- g. **Proposal.** The offer submitted by the Proposer.
- h. **RFP.** Acronym for Request for Proposal; same as Solicitation and Contract Documents.
- i. **Should.** Indicates something that is recommended but not mandatory. Failure to do what "should" be done will not result in rejection of your proposal.
- j. **Submittal Deadline.** The date and time on or before all proposals must be submitted.
- k. **Successful Proposer.** The person, contractor, or firm to whom the award is made.

DISQUALIFICATION OF PROPOSER. If there is reason to believe that collusion exists among the Proposers, the City of Milpitas may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-Proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-Proposal or quoting prices to other Proposers. Reasonable ground for believing that any Proposer is interested in

more than one Proposal for the same work will cause the rejection of all Proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the City of Milpitas may refuse to consider Proposals from participants in such collusion. Proposers shall submit as part of their Proposal documents the completed Non-Collusion Affidavit provided herein.

DOCUMENTS TO BE RETURNED WITH PROPOSAL. Failure to completely execute and submit the required documents before the Submittal Deadline may render a proposal nonresponsive. **The documents that must be returned by the Submittal Deadline are listed on the form entitled "List of Documents to be Returned with Proposal" on page 16.**

EXECUTION OF CONTRACT. Time is of the essence of this contract. The Successful Proposer/Contractor shall execute the contract (in substantially the form provided in this RFP as **Exhibit A - "Sample Contract"**), including but not limited to signing all necessary documents and submitting all required bonds (if applicable) and evidences of insurance, within ten (10) days after personal delivery of the notice or within fifteen (15) days after such notice has been deposited in the United States mail. One copy of the contract will be returned to the Contractor after the City of Milpitas executes the contract. In case of failure of the Contractor to execute and return the contract and all required documents within the time allowed, the City of Milpitas may, at its option, consider that the Proposer has abandoned the contract. After the contract has been executed, including the insurance documents, certificates, and bonds, if applicable, Proposer agrees to commence work within ten (10) working days after the date of the Notice to Proceed.

EXPERIENCE AND COMPETENCE. The Successful Proposer shall be skilled and regularly engaged in the general class or type of work called for under the contract and shall also have no less than five (5) years of experience in the magnitude and character of the work proposed. It is the intention of the City of Milpitas to award a contract to a Proposer who furnishes satisfactory evidence that he or she has the requisite experience, ability, sufficient capital, and facilities to enable them to prosecute the work successfully and properly and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the Proposer, the City of Milpitas will weigh any evidence that the Proposer has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty. In selecting the proposal most advantageous to the City, consideration will be given not only to the general competency of the Proposer for the performance of the work specified in the contract documents. To this end, each Proposal shall be supported by a statement of the Proposer's experience on the form entitled "References," which is a part of the contract documents.

FORMATION OF CONTRACT. Proposer's signed proposal and City of Milpitas's written acceptance shall constitute a binding contract.

INFORMED PROPOSER. Proposers are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals. Failure to do so will be at Proposers' own risk, and they cannot secure relief on the plea of error.

INTERPRETATION OF CONTRACT DOCUMENTS. If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, they may submit a written request for an interpretation or correction through the Public Purchase website no later than seventy-two (72) hours before the proposal deadline.

When the City of Milpitas considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be posted on the Public Purchase website. All such addenda shall become a part of the contract. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each Proposer, including any Prospective Proposer who obtained a set of contract documents from anyone other than the Public Purchase, to check the website for addenda prior to submitting any bid.

To submit questions: 1) Log into the Public Purchase website; 2) click on the title of the solicitation and the solicitation page will open up; 3) find on the right-hand side of the page under "Questions", then click on [View/Ask questions] and 4) type in your question or request for clarification. Responses to questions/requests for clarification will be sent via e-mail notification to all registered proposers.

The deadline for asking questions related to this RFP is:  
2:00 P.M. PDT, March 20, 2018

Questions answered on Public Purchase are considered to be a part of or clarification to the Request for Proposal and are considered to be addenda to be acknowledged by Proposers on the Proposal Form. The City may also issue a separate addendum document in response to questions/requests for clarification or initiate an addendum. It is the responsibility of each Proposer to ensure that they have registered on Public Purchase to receive all notifications. To register, contact the Purchasing Agent at 408-586-3161.

Any Proposer obtaining a set of contract documents from any source other than the City of Milpitas is responsible for contacting the City of Milpitas Purchasing Agent at the above reference telephone number and registering on Public Purchase.

INVOICES. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- The Contractor's signature.

MONTHLY PAYMENT. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

NOMENCLATURES. The terms Successful Proposer, Successful Contractor, and Contractor may be used interchangeably in these specifications and shall refer exclusively to the firm with whom the City of Milpitas enters into a contract because of this solicitation.

NON-COLLUSION AFFIDAVIT. All interested Proposers are required to submit a signed copy of the Non-Collusion Affidavit with their proposal.

OFFERS OF MORE THAN ONE PRICE. Proposers are NOT allowed to submit more than one proposal.

PRICE DISCREPANCIES. In the event that there are unit price items in a proposal schedule and the "amount" indicated for a unit price of an item does not equal the product of the unit price and quantity listed, the unit price shall govern, and the amount will be corrected accordingly. If there is more than one item in a proposal schedule, and the total indicated for the schedule does not agree with the sum of prices of the individual items, the prices given

for the individual items shall govern, and the total for the schedule will be corrected accordingly. The Proposer will be bound by said corrections.

**PROPOSAL CONTENT.** (See Narrative Proposal and Proposal Offer Forms) Proposer must describe in detail how they will meet the requirements of this RFP, and may provide additional related information with their proposal. **The proposal shall be presented in a format that numerically corresponds to the numbered sections outlined in the Narrative Proposal –Part 1. Responses to each section should be labeled to indicate which item is being addressed.** Proposals shall be straightforward and concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. If a complete response cannot be provided without referencing supporting documentation, you must provide such documentation with the proposal indicating where the supplemental information can be found.

The City of Milpitas is not liable for any costs incurred by Proposers before entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City of Milpitas.

**PROPOSAL MODIFICATIONS.** Any Proposer who wishes to make modifications to a proposal already received by the City of Milpitas must withdraw their proposal in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this solicitation (see Withdrawal of Proposal). All modifications must be made in ink, properly initialed by Proposer's authorized representative, executed, and submitted in accordance with the terms and conditions of this solicitation. It is the responsibility of the Proposer to ensure that modified or withdrawn proposals are resubmitted before the Submittal Deadline.

**PROPOSAL PRICES AND NOTATIONS.** All prices and notations must be in ink or typewritten. Prices shall be stated in units and offers made separately on each item. In case of conflict between unit prices and extended prices, unit prices will govern. Where there is a conflict between words and figures, words will govern.

**PROPOSAL RESULTS.** Proposal responses are downloaded from the Public Purchase website. A bid results tabulation with the names of Proposers will be posted on the Purchasing page of the City website. The City of Milpitas reserves the right to postpone the Submittal Deadline and opening of proposals any time before the date and time announced in the Request for Proposals or subsequent addenda.

**PROPOSER IS SOLE POINT OF CONTACT.** The Successful Proposer will be the sole point of contact. The City of Milpitas will look solely to the Successful Proposer for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Proposer shall not be relieved for the non-performance of any or all subcontractors.

**PUBLIC AGENCY ("Piggyback Clause").** It is intended that any other public agency is permitted to purchase under the terms submitted in response to this procurement. Any participating public agency shall accept sole responsibility for the placing of orders, arranging for delivery and/or services, and making payments to the Contractor. The City of Milpitas will not be liable or responsible for any obligations, including but not limited to financial responsibility, in connection with participation by other public agencies.

**RECYCLED PRODUCT PROCUREMENT.** The City of Milpitas is committed to the conservation and protection of state and local resources, therefore:

- a. For all paper materials of any kind delivered to the City, by a contractor, supplier, or consultant, whether in the form of a product such as a cup or a deliverable such as a report, shall use recycled paper that bears an imprint identifying the recycled content of the paper as not less than the 30% post-consumer fiber as specified in Section 12209 of the Public Contract Code. A product such as a cup may have the identifying

logo and/or language on the packaging, while a deliverable such as a report shall have the identifying logo on the first page. This shall apply to all paper materials delivered to the city whenever practicable.

- b. Contractors and consultants shall use both sides of paper sheets whenever practicable.

REJECTION OF PROPOSALS AND WAIVER OF INFORMALITIES. The City of Milpitas reserves the right to reject any proposals, all proposals, or any part of any proposal presented and re-advertise for bids. The City reserves the right to cancel the solicitation and make no award. The City of Milpitas reserves the right to reject the proposal of any Proposer who previously failed to perform adequately for the City of Milpitas or any other governmental agency. The City of Milpitas expressly reserves the right to reject the proposal of any Proposer who is in default on the payment of taxes, licenses, or other monies due to the City of Milpitas.

RULES FOR SUBMITTING PROPOSALS.

- a. **Submittal Deadline.** Proposals must be uploaded to the Public Purchase website by the Submittal Deadline shown in this solicitation and any subsequent addenda to this RFP.
- b. **Responsibility.** Proposers are solely responsible for ensuring their proposal is successfully uploaded onto the Public Purchase website in accordance with the solicitation requirements, before the Submittal Deadline. The City of Milpitas shall not be responsible for any delays in transmission errors or delays. Proposals must be uploaded in Microsoft Word, Excel or Adobe PDF format as specified in the RFP, using as few files as possible. Do not wait until the last minute to upload files as delays can occur. In the event that there is a problem uploading documents, contact Public Purchase at 1-800-591-5546.
- c. **Extension of Submittal Deadline.** The City of Milpitas reserves the right to extend the Submittal Deadline when it is in the best interest of the City of Milpitas.
- d. **Forms.** To be considered for award, each proposal shall be made on forms furnished by the City of Milpitas in this RFP.
- e. **Late Proposals.** The Submittal Deadline is firm. Proposals will not be accepted after the Submittal Deadline.
- f. **Signature.** To be considered for award, each proposal shall be signed by an authorized representative of the Proposer.

SUBMITTAL METHOD. Proposals must be submitted electronically through the Public Purchase website at [www.publicpurchase.com](http://www.publicpurchase.com).

TAXES. Successful Proposer shall pay all federal, state and local taxes, levies, duties and assessments of every nature due in connection with any work under the contract and shall indemnify and hold harmless the City of Milpitas from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Proposal prices shall include said taxes.

TERMS OF THE OFFER. The City of Milpitas reserves the right to negotiate final contract terms with any Proposer selected. Specific exceptions to this general rule may be noted in the final executed contract. Proposer understands and acknowledges that the representations above are material and important, and will be relied on by the City of Milpitas in the evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the City of Milpitas of the facts relating to the proposal.

WITHDRAWAL OF PROPOSAL. Following the Proposal Submittal Deadline, Proposers may not withdraw their Proposals for a period of ninety (90) days from the date of opening. At no time may the Successful Proposer(s) withdraw their Proposal. Proposers' authorized representative may withdraw proposals through the Public Purchase website prior to the Submittal Deadline.

## TERMS AND CONDITIONS

ACCEPTANCE PERIOD. Unless otherwise specified herein, proposals remain open and are firm for a period of not less than ninety (90) calendar days from the proposal submission deadline.

ANTI-DISCRIMINATION. It is the policy of the City of Milpitas that in connection with all work performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1735. In addition, the contractor agrees to require like compliance by any subcontractor employed on the work.

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Except as noted hereunder, Successful Proposer may not assign, transfer or sell any rights or obligations resulting from this solicitation without first obtaining the specific written consent of the City of Milpitas.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials, and supplies for which payment is to be made under this contract. The City of Milpitas shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

BUSINESS LICENSE. If the scope of work under this bid includes performing services or installation on City of Milpitas property, the Successful Proposer must have a current City of Milpitas Business License. Inquiries regarding Business License may be directed to the Finance Department at 408-586-3100. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

CANCELLATION OF THE CONTRACT. *Without* CAUSE, the City of Milpitas may cancel this contract at any time with thirty (30) days written notice to the supplier/contractor. *With cause*, the City of Milpitas may cancel this contract at any time with ten (10) days written notice to the Proposer. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Proposer may not cancel this contract without prior written consent of the City of Milpitas Purchasing Agent.

If the agreement is terminated, for any reason, the Contractor shall turn over all records related to the project to the City within fifteen (15) working days after completion of duties contained in the agreement.

In the event of cancellation, The City shall only be liable for payment of services performed or goods delivered and accepted or approved by the City prior to the effective date of the termination.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the Contractor for any extra work as so ordered shall be determined in accordance with the item prices of contractor's proposal.

CONFIDENTIAL OR PROPRIETARY INFORMATION OF THE CITY OF MILPITAS. Contractor understands and agrees that, in the performance of the contracted work or services or in contemplation thereof,

Contractor may have access to private or confidential information which may be owned or controlled by the City of Milpitas and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City of Milpitas. Contractor agrees that all information disclosed by the City of Milpitas to Contractor shall be held in confidence and used only in the performance of contracted work or services. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

CONTRACT INCORPORATION. The contract embodies the entire contract between the City of Milpitas and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties. The complete contract shall include the Terms and Conditions of the RFP solicitation, all Exhibits, all addenda, all of Proposer's successful submittal, supplemental agreements, change orders, applicable bond(s), and any and all written agreements which alter, amend or extend the contract.

CONTRACT SUBJECT TO APPROPRIATION OF FUNDS. The successful Proposer understands and accepts that at all times, the contract awarded from this solicitation is subject to appropriation of funds by the Milpitas City Council. The contract awarded from this solicitation may terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the contract in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the contract. This section controls against any and all other provisions of the contract.

CONTRACT TERM. The initial term will be for one (1) year from May 1, 2018, through April 30, 2019. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the contract.

CONTRACTOR RESPONSIBILITY. Any work completed by the contractor that does not meet the quality standards as determined by the City of Milpitas' project manager, shall be re-done by the contractor at no cost to the City. In the event contractor's work repeatedly does not meet the quality standards, the City reserves the right to terminate contract without any cost to the City.

DAMAGE. The contractor shall be held responsible for any breakage, loss of the City of Milpitas' equipment or supplies through negligence of the contractor or their employee while working on the City of Milpitas's premises. The contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The contractor shall immediately report to the City of Milpitas project manager any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property will be a breach of this contract.

FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, and acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT. Proposer's signed Proposal and City of Milpitas' fully executed contract shall constitute a binding contract.

INDEPENDENT CONTRACTOR. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City of Milpitas under contract. Contractor or any agent or employee of Contractor shall not have employee status with the City of Milpitas, nor be entitled to participate in any plans, arrangements, or distributions by the City of Milpitas pertaining to or in connection with any retirement, health or other benefits that the City of Milpitas City of Milpitas may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to: FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor provided same. Nothing in this solicitation nor the contract awarded thereof shall be construed as creating an employment or agency relationship between the City of Milpitas and Contractor or any agent or employee of Contractor. Any terms in the contract awarded from this solicitation referring to direction from the City of Milpitas shall be construed as providing direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. The City of Milpitas does not retain the right to control the means or the method by which Contractor performs work under the contract. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at all times be considered independent contractors and not agents of the City of Milpitas.

INSURANCE REQUIREMENTS. Within ten (10) consecutive calendar days of award of contract, Successful Proposer must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified in Exhibit B - Insurance Requirements. Failure to furnish the required certificates within the time allowed will result in forfeiture of the contract.

LAW GOVERNING CONTRACT. This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in Santa Clara County, in the State of California. The parties further stipulate that Santa Clara County, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

PROPRIETARY INFORMATION. The master copy of each proposal shall be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label part of a proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the City of Milpitas for honoring such a designation. The failure to so label any information that is released by the City of Milpitas shall constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the City of Milpitas, the City of Milpitas will notify the Proposer of the request and delay access to the material until seven working days after notification to the Proposer. Within that time delay, it will be the duty of the Proposer to act in protection of its labeled information. Failure to so act shall constitute a complete waiver.

RIGHTS RESERVED. (a) Rejection of Work. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed. (b) Completion of Work. If Contractor fails to comply with the conditions of the contract, or fails to complete the required work or furnish the required materials within the time stipulated, the City of Milpitas reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor.

RECORDS CREATED AS PART OF CONTRACTOR'S PERFORMANCE. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to

this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Contractor to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement.

SEVERABILITY. If any provisions or portion of any provision, of this contract are held invalid, illegal or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

SPECIFICATIONS, CHANGES TO. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION. The term "specification" as used in this solicitation shall be interpreted to mean all the pages that make up this specification, including all Appendices, Exhibits, or Attachments.

THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO THE  
PUBLIC PURCHASE SYSTEM

LIST OF DOCUMENTS TO BE RETURNED WITH PROPOSAL

REQUIRED PROPOSAL DOCUMENTS TO BE RETURNED	RFP page #s (or reference)	INCLUDED  (Indicate Yes or No for items I thru II)	IF NOT, EXPLAIN
1. This form	16	Yes	
2. Narrative Proposal – Part 1 (Parts 1 through 7)	17	Yes	
3. Maintenance and Support Agreement	18	Yes	
4. Software License Agreement	18	Yes	
5. Proposal Offer Form – Part 2	19	Yes	
6. Non-Collusion Affidavit	22	Yes	
7. Proposer's Statement Regarding Insurance Coverage	23	Yes	
8. Worker's Compensation Insurance Certificate	24	Yes	
9. Nondiscriminatory Employment Certificate	25	Yes	
10. References	28	Yes	
11. Attachment A – Technical Specifications and Functional Requirements Matrix	Pages 3 thru 7	Yes	

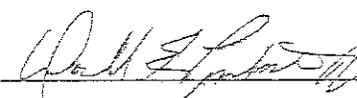
Failure to complete, sign (where required), and return the above documents with your proposal will render it non-responsive and thus be rejected by the City of Milpitas.

ACKNOWLEDGEMENT

PROPOSER NAME (Company Name): Lucity, Inc.

PRINT NAME AND TITLE OF AUTHORIZED OFFICIAL OFFERING THE PROPOSAL:

Donald E. Pinkston, Jr. – President & CEO

AUTHORIZED SIGNATURE:  Date: 3/13/18

PART 1 - NARRATIVE PROPOSAL – DO NOT RETURN THIS PAGE

MAXIMUM LENGTH SHALL NOT EXCEED 40 PAGES

NARRATIVE PROPOSAL FORMAT – Use this as a guide to write your proposal.

In order to be fully compliant with the requirements of the RFP please follow this format exactly citing each heading (Cover Letter, Company Profile, etc.). You may include any information you feel is relevant to your proposal, but at a minimum include each and every numbered item below in your written narrative proposal.

1. Cover Letter – The cover letter shall: (Answer questions A through H and be presented on company letterhead)
  - a. The cover letter is to introduce the Proposer and should contain the names, title, address and telephone numbers of the individual(s) with the authority to bind the Proposer during the period that the proposals are being evaluated.
  - b. The cover letter shall identify the legal form of the firm, and if a corporation, shall identify in which state the firm was incorporated.
  - c. The cover letter shall be signed by a principal of the firm or other person authorized to act on behalf of the firm.
  - d. The proposal shall identify the location of the firm's home office, and whether or not the firm has management staff in the San Jose/Oakland/San Francisco area.
  - e. Number of employees.
  - f. Name, address, and telephone number of the Proposer's point of contact for a contract resulting from this RFP.
  - g. Length of time Proposer has been providing services described in this RFP. (Minimum of three 5 years) Please provide a brief description.

h.) Proposer must include in their cover letter a complete disclosure of any alleged significant *prior or ongoing* contract failures, any civil or criminal litigation or investigation *pending* which involves the Proposer or in which the Proposer has been judged guilty or liable. If "None" proposer shall state as follows:

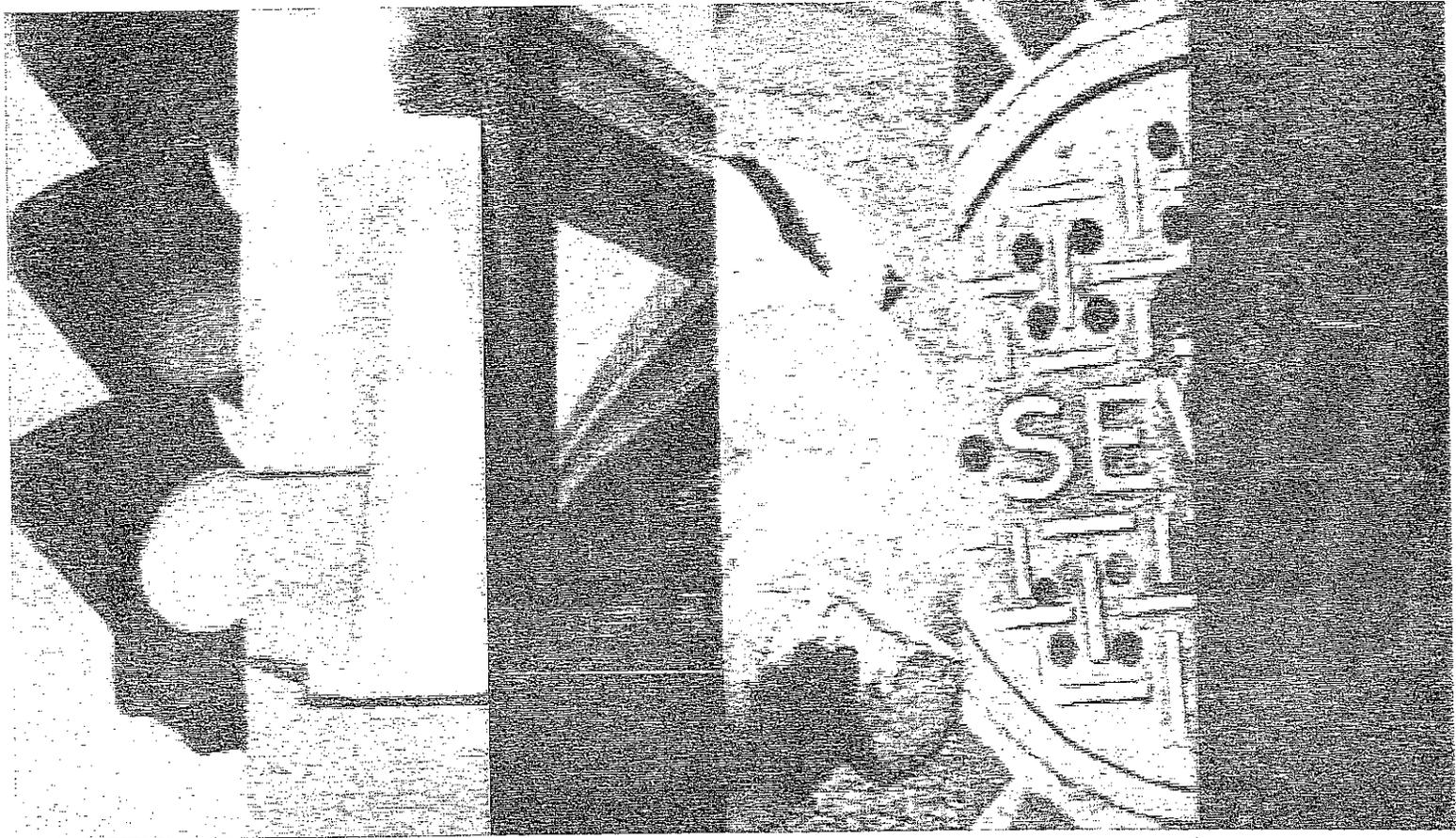
*"Proposer has no prior or ongoing contract failures, civil or criminal litigation or pending investigation."*

**Failure to comply with this provision will disqualify any proposal.**

2. Company Profile – The Proposer shall provide a general description of the firm, including a brief history and its experience in providing similar services as those requested in this RFP.
3. Project Implementation Plan – Provide a project implementation schedule including milestones, meetings,

tasks (at a minimum include startup timeframes, software installation, configuration, data conversion, acceptance testing/training, cut-over and post implementation support) responsibilities and duration in working days. Be sure to include tasks that the proposer would expect the City to perform, staff classification and number of hours or percent of time estimated for City staff.

4. **Personnel Assigned** – Include all of the following: (A through E)
  - a. A Project Manager authorized to act on behalf of the firm **must be designated** and must be the principal contact for the CITY. If, and when the CITY interviews prospective firms, the Project Manager shall be in attendance and materially contribute to the discussion.
  - b. Identify any individuals expected to have backup responsibilities.
  - c. Provide a brief resume/background of the **specific individuals assigned to this project**. resumes should not exceed one paragraph per person.
  - d. The proposal shall state that no changes in key personnel are to be made without written consent of the CITY.
  - e. If more than two (2) people will be assigned to the City, include a simple organization chart that clearly delineates communication and reporting relationships among the project staff.
5. **References** – This section shall consist of a list of three references for work of a similar nature as that required by the City, performed within the last three years. See “References” page 28.
6. **Product Information** – Taking into consideration Attachment A - Technical Specifications and Functional Requirements Matrix; Proposer shall provide at a minimum the following product information:
  - a. Name and version number of the product being proposed
  - b. Product modules including any add-on or optional modules.
  - c. History of product versions and releases in the past five (5) years.
  - d. CMMS interfaces established with other site applications and method of interface.
  - e. Describe product support options offered by your firm. Include days and hours of service, and problem escalation resolution procedures, response time guarantees and costs for different levels of support.
  - f. Describe other support or information services offered by your company, including onsite support, internet support, web information page, user groups, email notifications and newsletters.
7. **Proposed Compensation** – (See: Proposal Offer Form, page 19)
8. **Maintenance and Support Agreement** – As part of your submission, please include a copy of your Maintenance and Support Agreement.
9. **Software License Agreement** – As part of your submission, please include a copy of your Software License Agreement.



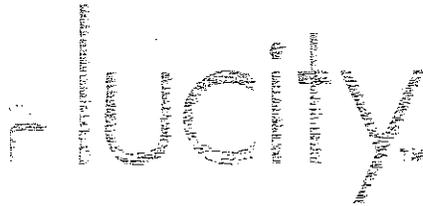
City of Millers  
28 March 2018

City of Millers  
Water Treatment Plant  
Water Treatment Plant

REF No 2228

City of Millers  
Water Treatment Plant  
Water Treatment Plant

10561 Barkley, Ste 100  
Overland Park, KS 66212  
Tel: 913.241.1000



10501 Barker, Suite 100 Overland Park, KS 66212 [www.lucity.com](http://www.lucity.com)

March 28, 2018

City of Milpitas  
 Purchasing Division  
 455 E. Calaveras Blvd.  
 Milpitas, CA 95035-5411

Re: Computerized Maintenance Management System (CMMS), RFP No. 2228

To the members of the Evaluation Committee:

I am pleased to submit this proposal on behalf of Lucity, Inc. We believe the LucityAM™ software products and Lucity services proposed herein will enable the City of Milpitas to effectively track, manage, and forecast the assets in your system. Our module-focused solution is designed for – and by – cities just like you, and we are looking forward to helping you effectively manage your physical assets.

**BINDING AUTHORITY**

The following individuals are authorized to bind Lucity, Inc. during the proposal evaluation period:

Name	Title	Contact Information
Donald E. Pinkston, Jr.	President & CEO	<a href="mailto:dpinkston@lucity.com">dpinkston@lucity.com</a> 913-732-5828
Jim Graham	Executive Vice President & COO	<a href="mailto:jgraham@lucity.com">jgraham@lucity.com</a> 913-732-5808
Joel Knight	Vice President – Business Development	<a href="mailto:jknight@lucity.com">jknight@lucity.com</a> 913-732-5800
Nicole Schmidt	Vice President – Product Development	<a href="mailto:nschmidt@lucity.com">nschmidt@lucity.com</a> 703-670-3943
Allison Tuttle	Vice President – Client Services	<a href="mailto:atuttle@lucity.com">atuttle@lucity.com</a> 913-732-5824

**LEGAL IDENTIFICATION & DISCLOSURE**

Lucity, Inc. is a privately held corporation, incorporated in Kansas. Our home office is located in Overland Park, Kansas, and we have account management staff in the San Francisco Bay area. We currently employ 65 staff, the breakdown of which follows:

LUCITY, INC. PERSONNEL					
SEGMENT	Qty	BREAKDOWN			
Technology	23	Development	17	Quality Assurance	6
Operations	37	Client Services	27	Business Development	10
Corporate	5	Executive	2	Administration	3

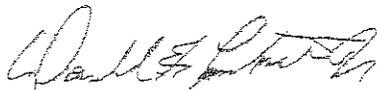
Proposer (Lucity, Inc.) has no prior or ongoing contract failures, civil or criminal litigation or pending investigation.

#### COMPANY HISTORY

Our software development experience dates to the mid-1980s, during which time we were a division within a consulting engineering firm. At the time the software solutions were used by the firm's engineers to aid the delivery of the infrastructure asset management services they provided to their public-sector clients. By the mid-1990s, we had developed an extensive suite of software products and began operating as an autonomous software vendor for agencies nationwide. We currently serve over 300 clients in the United States and Canada, with over 50 of those clients located in California (more than any other state or territory in the US or Canada.)

Jarrod Gerbaud will be Lucity's primary point of contact with the City of Milpitas for this proposal -- he can be reached by phone at 913-481-0210 (office) or via email at [jgerbaud@lucity.com](mailto:jgerbaud@lucity.com).

Sincerely,  
LUCITY, INC.



Donald E. Finkston, Jr.  
President & Chief Executive Officer

cc: Jim Graham, Executive Vice President & Chief Operating Officer  
Chris Crupi, Director - Sales & Accounts  
Jarrod Gerbaud, Account Executive



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## APPENDICES

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## 1.0 COMPANY PROFILE

### 1.1 BACKGROUND & COMPANY HISTORY

Lucity, Inc. was established as an independent corporation in July 2000, then doing business as "GBA Master Series, Inc." Lucity, Inc. began after a corporate rebranding effort completed in 2011. Our sole line of business is providing commercial, off-the-shelf CMMS software (LucityAM™ products) to US public sector agencies.

Our software development experience dates to the mid-1980s, during which time we were a division within a consulting engineering firm. At the time the software solutions were used by the firm's engineers to aid the delivery of the infrastructure asset management services they provided to their public-sector clients. By the mid-1990s, we had developed an extensive suite of software products and began operating as an autonomous software vendor for agencies nationwide.

We are an Esri® Gold-tier Business Partner, with ArcGIS Online Specialty designation. Through this partnership, we closely collaborate with Esri to ensure our mutual clients realize maximum benefit through the tight integration of LucityAM and ArcGIS products.

Lucity is a member of the American Public Works Association (APWA), American Water Works Association (AWWA), and Water Environment Federation. Through participation in these organizations, we maintain knowledge of industry best practices and regulatory requirements that affect our target market.

### 1.2 EXISTING CLIENT BASE

The LucityAM client community is comprised of approximately 300 public sector agencies (municipalities, counties, and service districts) located throughout the United States (42 states and 2 territories; *50+ clients in California, more than any other US state*) and Canada (3 provinces).

## 2.0 PROJECT IMPLEMENTATION PLAN

We acknowledge that the City of Milpitas has a significant capital investment in its physical assets, including the City's infrastructure, public facilities, and support services. We acknowledge and understand the following about the City's current CMMS:

- The current CMMS is operated on desktop computers and is not integrated with the GIS.
- Since most of the City's assets do not have associated Preventive Maintenance work schedules (PMs), the current CMMS is mostly used to log and track Work Orders (WOs) generated from complaints received via phone calls, the Public Works Department's main email address, and the City's MyMilpitas app.
- Other WO's are triggered through the PMs – these are then assigned to Public Works Managers and Senior Leads, who sort through and assign the WO's to field crews. Currently, there is no method to:
  - Tie WO's to GIS
  - Track the completion and age of WO's
  - Close out work orders
  - Prioritize or locate assigned work in the field

We acknowledge and understand the following regarding the City's requirements and expectations regarding the new CMMS:

- The new CMMS will be used to plan, organize, track, record, and report all work performed in the Public Works Department, including the following:
  - Water, wastewater, and storm water collection assets
  - Facilities
  - Fleet
  - Parks and trees
  - Streets
  - Administration
- The new CMMS and GIS will be directly linked so staff generating WO's, crews, and management are aware – in real-time – of assigned workloads and maintenance backlogs.
- The new CMMS will allow staff and the community to check on the status of WO's.
- The new CMMS will have the ability to interface with third-party systems, specifically the City's MyMilpitas app (citizen complaints/service requests), and WinCan (CCTV pipe inspections).

Finally, we acknowledge and understand the city's requirements and expectations for services associated with implementation of the new CMMS, which includes efforts for:

- Startup and project management
- Software installation and configuration
- Data conversion/migration/import/loading
- ArcGIS integration
- Acceptance testing
- Training
- Cut-over
- Post-implementation support

2.7 IMPLEMENTATION SCHEDULE

We anticipate the implementation schedule to be as follows:

TASK	MONTH							
	1	2	3	4	5	6	7	8
PROJECT MANAGEMENT								
INITIATION								
PROGRESS								
INSTALLATION								
INSTALL								
KICKOFF								
CONFIGURATION								
DISCOVERY								
FUNCTIONAL GROUPS								
GIS INTEGRATION								
DATA MIGRATION								
INTEGRATION								
TESTING								
TRAINING								
ADMINISTRATION								
PRODUCTION								

2.8 IMPLEMENTATION APPROACH

Following is an outline of our proposed Implementation Work Plan. This approach and methodology has proven successful over many years for Lucity clients similar to the City of Milpitas with regard to size, organization, needs and CMMS scope. This Work Plan assumes an on-premises deployment of LucityAM.

## 2.2.1 PROJECT MANAGEMENT

### 2.2.1.1 INITIATION

A meeting will take place as soon as possible after issuance of the Notice to Proceed to introduce key Project Team members and initiate project activities. An outline of the expected agenda for the Initiation Meeting follows.

- *Project Team* – Review roles, responsibilities, and personnel assignments; and identify primary contacts and exchange contact information.
- *Software* – Verify LucityAM licensing details.
- *Project Plan* – Set dates for IT Audit, Installation, and Kickoff tasks – our recommendation is for the IT Audit to be completed as soon as possible, and Installation to be completed prior to Kickoff.

Participation in the Initiation Meeting should include the following Project Team members:

#### Lucity

- Project Manager
- Account Manager

#### City

- Project Manager
- System Administrator
- Project Sponsor

### 2.2.1.2 PROGRESS

An outline of the project management activities expected throughout the project follows:

- *Meetings & Workshops* – convene bi-weekly (i.e., twice monthly) Project Progress meetings to review Project Plan completion status and provide agendas and “Trip Report” documents.
- *Project Plan* – provide updates as needed based on approved revisions to scope and/or schedule.
- *Invoicing* – Prepare billing summaries and submit invoices to the City for approval and payment processing.

Participation in project management activities should include the following Project Team members:

#### Lucity

- Project Manager
- Project Administrator

#### City

- Project Manager

Mavenlink is a web-based collaborative project management system we utilize, and which key Project Team members (including the City’s Project Manager) can access.

### 2.2.2 INSTALLATION

Our assumption is the City will provide needed hardware and supporting software and confirm basic operation of hardware prior to installation of LucityAM.

#### 2.2.2.1 IT AUDIT

A meeting will take place as soon as possible after Initiation for us to provide guidance to the City's IT Subject Matter Expert (SME) regarding LucityAM enterprise architecture and security designs. An outline of the expected agenda for the IT Audit Meeting follows.

- *Software* – Review “Hardware and Software Recommendations,” “System Design and Tuning,” and “IT Questionnaire” documents and discuss the Installation task and related activities and identify needed actions prior to LucityAM installation.
  - The IT Questionnaire (to be completed by the City) serves to gather information regarding the City's resources, preparedness, and capabilities for installing and managing LucityAM and leveraging GIS integration.
  - The system Design and Tuning document is intended to provide an understanding of LucityAM as it pertains to the City's enterprise infrastructure and security policies, and the expected maximum number of concurrent users.
- *Access* – Discuss providing the System Implementer remote access (VPN) into installed LucityAM to facilitate completion of implementation tasks.
- *Project Plan* – Confirm dates for Installation and Kickoff tasks.
- *Action Items* – Complete IT Questionnaire; provide LucityAM install design and system architecture diagram (PDF and Visio formats) and execute VPN access forms (if required).

Following the review of the completed IT Questionnaire and discussions with the City's IT SME, it may be determined that the City needs system planning assistance to identify and document network requirements for hardware, security, power, climate control, redundancy, and throughput. We can provide this assistance through negotiated additional services, or the City can utilize a third party. For the purposes of this proposal, we assume the City does not require system planning assistance.

#### 2.2.2.2 INSTALLATION

The IT Specialist will assist the System Administrator with downloading the LucityAM Installation Components (current version with latest service pack) from the Lucity Support Center web site, and following instructions provided in the Install Manual.

Our assumption is the System Administrator will complete related Installation activities, including:

- Establishing multiple environments for testing/training, production, and backup/recovery.
- Perform system-level testing (to ensure satisfactory performance) and performance tuning actions (if necessary).

#### 2.2.2.3 KICKOFF

A Kickoff Meeting will be held to transfer knowledge between Project Team members, gather information, and set the stage for subsequent Implementation Work Plan tasks. An outline of the expected agenda for the Kickoff Meeting follows.

- *LucityAM Software Demonstration* – Present functional overview including typical user workflows for inspections, work orders, etc. and “out of the box” capabilities including reporting (standard templates and ad hoc), GIS integration, and data interfaces; and review default “Work Flow Setup” data, UI templates (dashboards and data forms/views), and default user groups/roles.
- *Functional Groups* – Identify each Group’s place (Department, Division, etc.) within the organizational structure of the City; confirm with each Group Administrator those persons assigned to serve as Group SMEs for the Configuration task; examine current basic business processes of each Group with associated data, reporting, and integration requirements; and review with each Group their Work Flow Setup spreadsheets with default data – spreadsheets to be completed by the City.
- *GIS and IT* – Discuss the completed installation task and related activities and identify needed actions prior to initiation of Configuration – GIS task.
- *Access* – Verify the System Implementer has remote access into installed LucityAM.
- *Project Plan* – Confirm Project Team and Functional Groups; discuss what is expected of Project Team members throughout the project; review schedule and discuss how LucityAM will “go-live”; identify any needed revisions to the Project Plan based on knowledge gained from the Kickoff Meeting sessions; and set date for Configuration – Discovery task.
- *Action Items* – Complete Work Flow Setup spreadsheets – these spreadsheets are used to record data required to define Categories, Problems, Causes, Tasks, and Resources (Employees, Crews, Equipment, Materials, Fluids, Contractors) for Functional Groups.

Participants in the Kickoff Meeting sessions should include the following Project Team members:

#### Lucity

- Project Manager
- Account Manager

#### City

- Project Manager
- System Administrator
- Functional Group Administrators
- GIS and IT SMEs
- Project Sponsor

### 2.2.3 CONFIGURATION

#### 2.2.3.1 DISCOVERY

A Discovery Workshop will be completed – this workshop will consist of a series of sessions that focus on refining the default LucityAM configuration to support the specific operational needs of the distinct Functional Groups. An outline of the expected Discovery Workshop activities follows.

- *Functional Groups* – Examine details (what, who, how, and why) of business processes of each Group, and identify potential revisions to improve results and best leverage the

capabilities of LucityAM; review with each Group their completed Work Flow Setup spreadsheets, and identify any additional data revisions for initial LucityAM configuration; identify revisions to dashboards, data forms/views, and default user groups/roles for each Group; discuss available data from sources other than GIS to be incorporated (i.e. “loaded) into LucityAM – data to be gathered by the City; and identify any supplemental reporting and/or integration needs to be addressed with LucityAM implementation.

- *GIS* – Discuss use of the LucityAM Administration tool – Map Setup to define maps and assign to user groups/roles.
- *IT* – Discuss installation and testing of Lucity Mobile Server and downloading and installation of LucityAM Mobile – to be completed by the City.
- *Project Plan* – Identify any needed revisions to the Project Plan based on knowledge gained from Discovery activities; and set date for Configuration – Functional Groups task.
- *Action Items* – Apply initial configuration to LucityAM based on revised Work Flow Setup data and revised user dashboards, data forms/views, maps, and groups/roles; deliver data from sources other than GIS to the System Implementer for evaluation; evaluate options for supplemental reporting and/or integration and identify next steps; and install and test Mobile Server, and download and install LucityAM Mobile.

Participants in the Configuration – Discovery workshop activities should include:

Lucity	City
<ul style="list-style-type: none"> <li>• Project Manager</li> <li>• System Implementer</li> </ul>	<ul style="list-style-type: none"> <li>• Project Manager</li> <li>• System Administrator</li> <li>• Functional Group Administrators</li> <li>• GIS SMEs</li> </ul>

#### 2.2.3.2 FUNCTIONAL GROUPS

Finalizing the LucityAM configuration will be an iterative process. The System Implementer will first meet with each Functional Group to review the initial configuration and identify needed refinements. With subsequent refinements, additional meetings will be convened to review the latest LucityAM configuration – which will include GIS integration, loaded data, custom reporting (if required), and custom integration (if required) as these become available. The process will continue until the LucityAM operational needs of the Groups are met.

The System Implementer will also use LucityAM Security to define security setup for System users. This effort will:

- Import users into LucityAM using the Import tool, and associate users to Windows Login accounts.
- Set controls for user access and assign group/role permissions for various LucityAM functions (to be expanded and refined during Configuration.)

Participants in the Configuration – Functional Group Meetings task should include:

Lucity	City
<ul style="list-style-type: none"> <li>• System Implementer</li> </ul>	<ul style="list-style-type: none"> <li>• System Administrator</li> <li>• Functional Group Administrator</li> <li>• SMEs – Groups</li> </ul>

### 2.2.3.3 GIS INTEGRATION & DATA LOADING

The System Implementer will work with the System Administrator and GIS SME to configure and test the bi-directional LucityAM/GIS integration. Configuration of this integration involves the following activities:

- *LucityAM and GIS Integration* – Use Administration tool to link ArcGIS Server, Portal, or ArcGIS Online feature services, layers, and fields to LucityAM.
- *Lucity GIS Web to LucityAM Integration* (also applicable to integration of Collector for ArcGIS (and any other third-party mapping application) to LucityAM) – Use Administration tool to set up “GIS Task” to check feature services at scheduled time interval, and push any updates to LucityAM.
- *Lucity Spatial Generator Configuration* – Use Administration tool to enable the Lucity Spatial Indexer process, and set maximum number of days to process spatial history of information related to work order and service request locations (addresses, coordinates) and related assets; use Administration tool to set up URL for Geocoding Service for processing locations; and use Administration tool to set up Edit Map Service URL for processing assets.
- *GIS Map Setup* – Use Administration tool to create maps (by layering map services) for LucityAM GIS Web and LucityAM Mobile; and use Map Setup in Administration tool to assign maps to user groups/roles.

### 2.2.4 DATA MIGRATION

Data loading will include Work Flow Setup and GIS data as previously described, and data from the City’s existing CMMS.

We understand the City expects with this proposal our “best estimate” lump sum cost for the existing CMMS data migration effort, and this estimate reflects a level of effort we consider appropriate based on our relevant experience. During Configuration we will evaluate delivered existing CMMS data for suitability for loading and requirements for conversion. If we mutually determine the source data conversion requirements are beyond this best estimate, we will work with the City to determine the necessary additional effort that would be provided through negotiated additional services.

The “Import & Update” tool inherent with the LucityAM software is used for loading data into LucityAM from ODBC, OLE, ASCII-delimited text, and XML sources. The System Implementer will train the System Administrator on use of this tool to establish appropriate data mapping between source tables and individual LucityAM tables, complete the import processes, and schedule automated data updates.

## 2.2.5 INTERFACES

We have a long history of successfully providing pre-configured and customized LucityAM interfaces/integration for our clients and partners. Such “interfaces” involve a number of different approaches, methods and technologies. As such, we will develop a standard approach based on your individual needs.

### 2.2.5.1 WINCAN

The Import & Update tool has also been pre-configured to serve as an “out of the box” interface with WinCan to allow automated processes to incorporate CCTV inspection data into LucityAM Assets – Sewer and LucityAM Assets – Storm.

### 2.2.5.2 MYMILPITAS

With the exception of “out of the box” Esri ArcGIS integration which we deliver through standard LucityAM products, we address customized LucityAM interfaces on a case-by-case basis and typically do not propose specific scopes of work for turn-key delivery of custom interfaces as part of an initial LucityAM implementation.

For the LucityAM and MyMilpitas app custom interface, our recommended approach would be to:

- Develop an Interface Design Document that specifically defines how the systems should communicate and share information.
- Use this Interface Design Document to prepare a detailed scope and associated cost estimate to develop, test, and implement the designed interface based on the City’s defined requirements.
- Implement the MyMilpitas app interface sometime after successful go-live of the new CMMS. ←

The Lucity REST APIs product used for custom interface development is included in this proposal.

## 2.2.6 TESTING

The System Implementer will work with the System Administrator to develop an Acceptance Test Plan to verify the configured LucityAM meets the stated functional requirements. This Plan will include user test scripts covering the various LucityAM functions.

Our assumption is the System Implementer will be responsible for functional and integration testing, and the System Administrator will perform acceptance testing, per the Test Plan. During the testing phase, we will:

- Collaborate with the System Administrator to maintain a log of issues, configuration problems, and software malfunctions identified during testing.
- Resolve all such issues, problems and malfunctions to the City’s satisfaction.
- Prove through test procedures installed and configured LucityAM is functionally viable with all loaded data, reporting, and integration in place.

- Demonstrate acceptance criteria items have been addressed and certify LucityAM is ready for go-live transition from testing/development environment to production environment.

## 2.2.8 TRAINING

We will provide a Training Plan detailing session descriptions and durations, methods and materials for each Functional Group, and the overall schedule. An outline of the expected Training activities follows.

### 2.2.8.1 ADMINISTRATION

- *Installation and Maintenance* – Complete procedures as outlined in the Install Manual for initial LucityAM installation and future software upgrades; review available software documentation; review technical support and software maintenance services and resources provided through the Lucity Constant Connection Program; and discuss current backup and recovery practices for the City’s data and reviewing suggested practices specific to LucityAM.
- *Security* – Complete procedures as outlined in Lucity Security for adding new users and defining user group and individual permissions for LucityAM access and use.
- *Configuration* – Use tools, parameters and settings available with LucityAM products to refine CMMS configuration.
- *Documents* – Complete procedures for establishing links between LucityAM records and externally managed electronic documents; and add custom content to on-line Help via hyperlinks to externally managed information.
- *Integration* – Use LucityAM products for completing processes for configuring and refining the GIS integration.
- *Reporting* – Add custom reports.
- *Data Import/Export* – Import data using Import & Update tool, and export data using LucityAM reporting capabilities.

The goal of the Training – Administration task is for the System Administrator to be reasonably self-sufficient in refining, expanding and sustaining the implemented LucityAM software.

### 2.2.8.2 PRODUCTION

Following is a list of topics that will be addressed during Production Training sessions.

GENERAL TOPICS	
Dashboard	Using assigned “home” pages with personalized real-time LucityAM content.
Filter	Creating queries to produce specific record sets
Locate	Quickly finding a specific record within the current “filter”
Show in Map	Opening assigned GIS maps and zooming to assets and locations (customer addresses, work sites, etc.)
Document Control	Linking electronic documents (images videos, as-built drawings, O&M manuals, website links, etc.) to records

Subset Manager	Loading filtered data from one application into other applications
Browse	Creating and exporting ad-hoc reports
Reports	Using assigned report templates
Help	Using the online, context-sensitive Help

WORK MANAGEMENT TOPICS	
Service Requests	Receiving/creating, routing, and completing service requests and reconciling work orders in response to service requests
Templates	Establishing work order templates from templates and PM schedules
Work Orders	Creating, assigning, routing, and completing work orders from templates and PM schedules
Billing	Performing in-house and external billing of work order costs
Linked Documents	Viewing linked electronic documents
GIS Location	Using GIS to locate customers and work locations
Reporting	Producing operational, management, and regulatory reports

ASSET MANAGEMENT TOPICS	
Attributes	Collecting and maintaining asset attributes
Asset Relationships	Establishing appropriate relationships between assets
Assessment	Assessing the condition and tracking the operating status of assets
Lifecycle	Interpreting asset lifecycle costs
Linked Documents	Viewing linked electronic documents
GIS Location	Using GIS to locate assets and display condition assessment data
Data Integration	Validating and transferring data from external systems (CCTV, SCADA, etc.)
Reporting	Producing operational, management, and regulatory reports

The goal of the Training – Production task is for users being enabled with the knowledge, skills and confidence to follow proper business processes and successfully complete their specific operational workflows with LucityAM.

Participants in the Production Training should include:

Lucity

- Solutions Trainer

City

- Functional Group Administrators
- Group Users

### 3.0 ASSIGNED PERSONNEL

#### 3.0.1 PROJECT MANAGEMENT

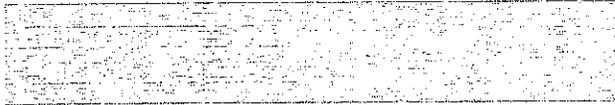
Project management will be overseen by one of our experienced System Implementers, who will be assigned for the duration of the project. If selected to provide a presentation to the City, one of the following listed System Implementers will be in attendance and will be assigned to the City if Lucity is the successful bidder. Once implementation has begun, no Lucity project personnel will change without written consent from the City of Milpitas.

Name & Title	Location	Relevant Experience (yr)
Allison Tuttle, P.E.   Vice President – Client Services	Overland Park, KS	24
Luke Savage, GISP   Technology Team Lead	Overland Park, KS	17
Michael Adams   System Implementer	Littleton, CO	8
Kevin Brown   System Implementer	Alpine, CA	8
Clint Martineau   System Implementer	Chandler, AZ	11
Connie Pokożny   System Implementer	Blue Diamond, NV	16
Aaron Pollock   System Implementer	Centennial, CO	17

The responsibilities of Lucity’s System Implementers include:

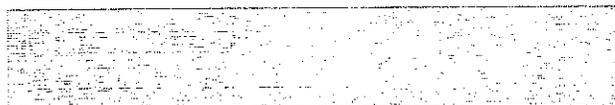
- Serving as Project Manager, System Implementer, and/or Solutions Trainer for LucityAM implementation projects, and coordinating efforts of Project Team Members.
- Facilitating project discovery and planning efforts including:
  - Needs assessment and gap-fit analysis
  - Business process review and workflow optimization
  - Data analysis
- Ensuring the successful delivery of implementation project services as Implementation Specialist, including:
  - Software installation, configuration, and testing
  - Data conversion and migration
  - Systems integration (configuration, testing, and deployment)
  - Training (system administration and end-user)
  - System deployment and go-live support

## 3.2 PROJECT LEADERS



Civil Engineering (BS)  
Business Administration (MBA)

Allison began her career as a Structural Engineer before joining the Lucity team in 2000. As the VP of Client Services, she ensures that clients are being delivered implementation software to Lucity's strict standards, along with software technical support and maintenance post-implementation.



Geography, City and Regional Planning (BS)  
GIS Professional Certification

Since 2011, Luke has supported the Implementation team by providing system design and capacity planning for Lucity and client systems. He has deep experience in GIS system planning as well as server-side system analysis and programming.



Physical Geography (AS)  
Environmental Spatial Analysis, Environmental Science, GIS, and Geography (BS)

Prior to joining Lucity in 2015, Michael was the SME for Lucity in Gwinnett County, GA. His experience encompasses GIS data integrity, reporting, ArcMap updates, and work order management. He is uniquely experienced in the challenges of water and storm water maintenance and reporting.



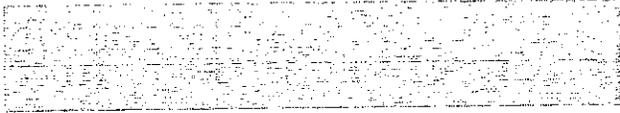
Geography (BS)

Kevin has provided mapping services to multiple California counties, and has provided GIS mapping and location services for clients in the San Francisco Bay area. He has been with Lucity since 2017.



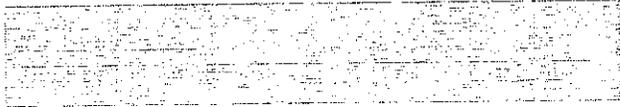
Liberal Arts (BS)  
Aircraft/Electronics System Technology (AAS)  
Drinking Water Operator/Distribution Licensed

Clint has been with Lucity since 2014 and provides technical and project management services to our clients. His previous experience includes nearly eight years of experience on the client side as an IT Business Applications Specialist with the City of Chandler, AZ.



Geography & Urban Studies (BS)  
GIS/Resource Analysis (MS)  
GIS Professional Certification

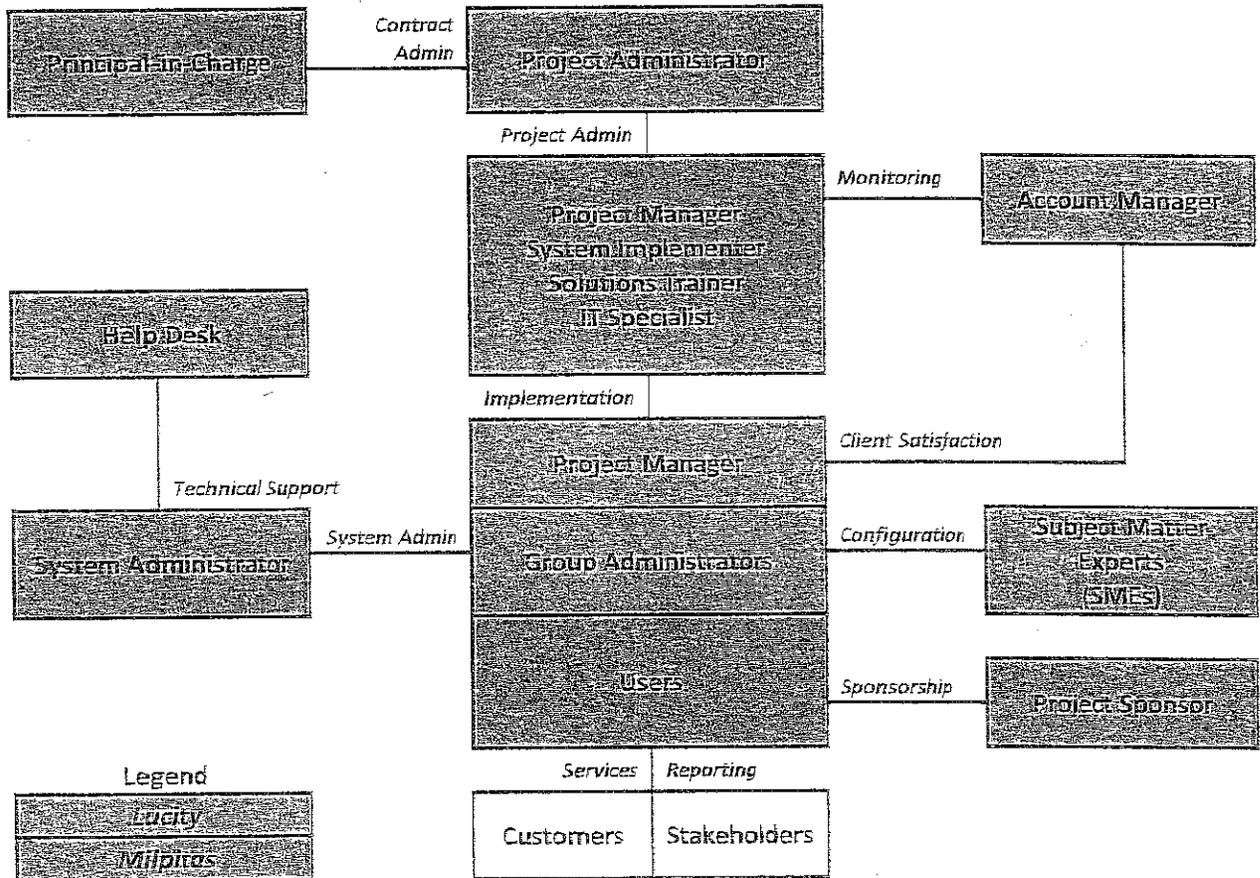
Before joining Lucity in 2016, Connie specialized in GIS data development, analysis, and mapping for municipalities as well as air force bases. She has worked with GIS systems (Esri in particular) since 2002, and deeply experienced in the implementation and deployment of GIS systems.



Geography, Urban Planning & Development (BS)

Aaron has wide experience across GIS analysis, sales, city planning, spatial data management, and GIS administration. His experience serving as the Vice Chairman of Planning Commission for the Town of Parker, Colorado from 2008-2013 lends him unique insight into the challenges of city planning. Aaron has been with Lucity since 2017.

### 3.3 ORGANIZATION CHART



#### 4.0 REFERENCES

Client Name	City of Santa Clara, CA
Reference Name	Franz Mortensen
Client Address	1705 Martin Ave. Santa Clara, CA 95050
Reference Contact	<a href="mailto:fmortensen@santaciaraca.gov">fmortensen@santaciaraca.gov</a> (408) 615-2062
Description of Work	Software: LucityAM for GIS, Water, Sewer, Street, Parks, Mobile. Services: Installation, GIS Configuration, LucityAM Configuration, Data Conversion and Training
Contract Period	Jan 2013-May 2014
Contract Value	\$98,000.00* <i>*Original software and services for Water &amp; Sewer. Additional departments have been added since original contract.</i>

Client Name	City of Daly City, CA
Reference Name	Sibley Calles
Client Address	333 90 <sup>th</sup> St. Daly City, CA 94015
Reference Contact	<a href="mailto:scalles@dalycity.org">scalles@dalycity.org</a> (650) 991-8054
Description of Work	Software: LucityAM for Water, Sewer, Storm, Street, Plant, Facilities, Parks, GIS, Mobile Services: Installation, GIS Configuration, LucityAM Configuration, Data Conversion and Training
Contract Period	July 2016-July 2017
Contract Value	\$250,000.00

Client Name	City of Napa, CA
Reference Name	Doug DeMaster
Client Address	1340 Clay Street Napa, CA 94559
Reference Contact	<a href="mailto:ddemaster@cityofnapa.org">ddemaster@cityofnapa.org</a> (707) 257-9341
Description of Work	Software: LucityAM for Water, Storm, Street, Facilities, Parks Services: Hosting Services, GIS Configuration, LucityAM Configuration, Training and Data Conversion
Contract Period	Aug 2016-April 2017
Contract Value	\$325,000.00

## 5.0 PRODUCT INFORMATION

### 5.1 SOFTWARE

The commercial off-the-shelf LucityAM software products are recommended for implementation as the City's CMMS:

LucityAM Version 2018 (released 02/15/2018)	
LucityAM Product	CMMS Function
Work	Service requests
	Work orders
	Preventive maintenance
	Work scheduling
	Inventory management
Employee management	
Assets	Assets and inspections
Mobile	Mobile
GIS Desktop	GIS capability
GIS Web	
REST APIs	Third party interfaces with APIs

Optional LucityAM products include:

- Citizen Portal (public-facing Web page for customer service requests)
- Citizen Engagement (public mobile application for customer service requests; powered by CitySourced)
- Analytics (advanced asset management analytics; powered by Assetic)

### 5.2 RELEASES

Currently we release two (2) LucityAM version upgrades each year (February and August), with 1-2 service pack updates per version. LucityAM Mobile upgrades and updates are released frequently, on an independent schedule.

Recent LucityAM Release History					
Release Date		LucityAM		LucityAM Mobile	
Year	Month	Version	Service Pack	Android	iOS
2018	March			2.50	
	February	2018			
2017	December		2017r2 SP1	2.40	
	September				2.80
	August	2017r2			
	June			2.30	2.70

Recent LucityAM Release History					
Release Date		LucityAM		LucityAM Mobile	
Year	Month	Version	Service Pack	Android	iOS
2017	May				2.60
	February	2017		2.20	
	January		2016r2 SP1		2.50
2016	December				2.40
	November				2.30
	September				2.20
	August	2016r2			
	July			2.10	2.10
	March	2016			2.00
2015	December		2015r2 SP1 2015 SP2		
	November			1.80	
	August	2015r2			1.60
	July		2014r2 SP2		
	May			1.70	
	April		2015 SP1		
	March				1.50
	January	2015			1.60
2014	December		2014r2 SP1	1.50	
	October		2014 SP2 7.50 SP2		1.40
	September			1.40	
	August	2014r2			1.30
	May				1.20
	April		2014 SP1	1.30	1.10
	February	2014			1.00
	January		7.60 SP1	1.20	

We provide LucityAM technical support services and software maintenance through the Lucity Constant Connection Program. Details of this Program follow:

5.3.1 TROUBLESHOOTING

*Help Desk* - staffed by Lucity Support Specialists from 7:00 am – 7:00 pm Central Standard Time, Monday – Friday.

- Accessible via toll-free telephone (800-492-2468), email (support@lucity.com), and live “chat”

- Support Specialists remotely connect with clients, troubleshoot issues, and assist with system maintenance (Webex is the web-based conferencing and remote access/control system we utilize)
- Response goals are Immediate during regular hours, and as soon as possible next business day for requests received after hours.

**Support Center** - can be reached 24/7, and is supported by Zendesk, a web-based customer service software and support ticket system.

- Lucity Support Center is a portal for 24/7 submittal of support issues and tracking of resolution status.
- Support is also offered via Lucity Blog posts and the Lucity Community user forum.

### 5.3.2 SUPPORT SERVICE LEVELS

We have three support levels, and the details regarding response and resolution are as follows:

Support Level	Issue Characteristics	Response Time (business hours)	Resolution Timeline
Critical	Client is unable to use a LucityAM application, or System component has a failure such that normal work operation is significantly impacted (e.g. users cannot open work orders)	Two (2)	Continue working until resolution, or temporary fix/patch deployed
Standard	Issue exists with an application, but majority of functions are still usable; some circumvention or work-around is possible to provide service; or failing function does not significantly impact normal work operation.	Four (4)	Provide resolution with next upgrade release (new versions, service packs, or patches); no more than 90 business days*
Minor	Issue does not affect an application's function (e.g. text of message/report is poorly worded or misspelled)	Eight (8)	Resolution within two (2) updates/upgrades; no more than 180 business days*

\*unless otherwise agreed upon between client and Lucity.

### 5.3.3 DOCUMENTATION

Documentation provided through the software itself (via LucityAM Install Media and on-line Help) and the Lucity Support Center includes the following:

- **Policies** - Data Recovery, Data Collection, FAQs on Lucity Support Center Use, Levels of Service for Lucity Support, Support & Maintenance Services, Version Support Details, ArcGIS Version Support Details
- **Downloads** - Release Notes, Data Dictionary, Technical Specifications
- **Release Documents** - Install Media, Checklists (pre- and post-upgrade), Install Manual

- *Knowledge Base* - Guides (various administration, general user, and training)
- *Help Guides* - System, Products, Tools, Security, Services
- *Videos* - Product Functions and Features

#### 5.3.4 OUTREACH & EVENTS

##### *Annual Conference & Training (ACT)*

- Held each fall at locations across the US (ACT 2018 is scheduled for September 9-12 in Palm Springs, CA)
- Includes pre-conference training workshops, conference breakout training sessions, customer success stories, group discussions, Lucity presentations, and more.
- New Lucity clients are provided with two (2) complimentary registrations for attending their first ACT.

##### *Regional User Group (RUG) Meetings*

- RUG meetings are single-day gatherings that typically consist of customer success stories and Lucity presentations (including in-depth reviews of most recent LucityAM releases).

##### *Lucity "Univer-city" Training Workshops*

- Univer-city workshops are held in conjunction with RUG meetings at locations across the US, and on additional dates at Lucity headquarters.

# Constant Connection Program

ENHANCING SUPPORT AND MAINTENANCE SERVICES

Our support and maintenance program is unlike others from many others. Upgrades are included, so we won't need adding to your bill. We offer accountability, a 24/7 help desk, quick reply times and a staff that are invested in finding the right answer for your issues. The Constant Connection Program is simple, affordable and effective.

## SOFTWARE UPGRADES

- Semiannual Version Releases
- Service Packs provided between versions, typically one or two per version
- Patches as-needed between Service Packs

## DATA CONNECTION AND BACKUP SERVICES

- Services provided as necessary with any database revisions with upgrades

## ELECTRONIC DOCUMENTATION

- Available online at [help.lucity.com](http://help.lucity.com).
- Administration Manuals, User Manuals and Training Guides
- Installation and Security Help Guides
- Version Release Notes, Installation Quick Guides and Upgrade Checklists
- Data dictionaries with descriptions of table/field attributes and relationship diagrams

## HELP DESK WITH 24/7 SUPPORT

- Online help desk ([support.lucity.com/helpdesk](http://support.lucity.com/helpdesk)) offers 24/7 submission and tracking of technical support inquiries
- Call center (toll free 800-492-2468) is staffed by Support Specialists located at our Overland Park, KS corporate headquarters
- Call center is open Monday through Friday from 7 am to 7 pm Central to provide immediate response to inquiries
- E-mail support at [support@lucity.com](mailto:support@lucity.com)
- Fax support at 913-341-3128

## LUCITY SUPPORT CENTER

- [help.lucity.com](http://help.lucity.com)
- Access to remote services (including software installs, troubleshooting, and demos) provided via WebEx Remote Support
- Downloads including Install Media, Release News, technical specifications, data dictionaries and field forms
- Discussion forums
- Requests for upgrades, enhancements, reports and more

## USER INTERFACE PROVIDED WITH EACH VERSION

- Context-sensitive Help Guide with video tutorials
- Field Definitions providing captions, table/field names, explanations of purpose, definitions and calculations

## EVENTS AND SOCIAL MEDIA OPPORTUNITIES

- Annual Conference & Training (ACT) event ([act.lucity.com](http://act.lucity.com); 2015 event to be held in September in Kansas City)
- Regional User Group meetings hosted semiannually by Lucity clients
- Occasional Special Interest Group meetings

# Constant Connector PLUS

PROGRAM ENHANCEMENTS FOR SUPPORT AND IMPLEMENTATION

We believe the most critical factor to maintaining successful client relationships is unsurpassed technical support and software maintenance services. With the Constant Connector Program as a base, we offer an additional level of customer support. The Constant Connector PLUS program offers the following opportunities to help your agency maximize the software's benefits:

## ACT REGISTRATION

- Pre-paid, discounted fees to our Annual Conference & Training (ACT).
- Event includes valuable time to network with co-users, offer enhancement suggestions to our development staff, work with implementers one-on-one, receive additional training, and explore additional resources.
- Registration fees are included in annual support and maintenance contract.
- Cost per registration: \$650
- Registration fees do not include direct expenses such as airfare and lodging.

## WEB TRAINING

- Customized agency-specific training offered via the web
- Provides additional training opportunities for new users, refresher courses, etc.
- Cost: \$460 for a two-hour session

## ON-SITE TUNE-UPS

- Lucity Tune-Ups consist of an on-site visit from a Lucity Implementation Specialist.
- Evaluate current procedures and offer suggestions for improvement.
- We can also provide follow-up training and work with you to determine future needs and goals.
- Cost: Call for a Quote

Contact us to request any additions to your Program!

## PART 2 - PROPOSAL OFFER FORM

THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO THE  
PUBLIC PURCHASE SYSTEM

RFP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

To: City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA, 95035-5411

From: Lucity, Inc.  
10561 Barkley, Suite 100  
Overland Park, KS 66212

### CONTRACTOR'S PROPOSAL

The undersigned Proposer agrees that they will contract with the City of Milpitas to provide all necessary labor, supervision, machinery, tools, apparatus and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and that Proposer will take in full payment the amount set forth hereon.

RFP No. 2228 – Computerized Maintenance Management System, in its entirety, all Addenda, and the following documents by this reference are hereby offered as a part of the contract to be awarded:

1. Terms and Conditions
2. Narrative Proposal – Part 1 (Parts 1 through 7)
3. Proposal Offer Form – Part 2
4. Non-Collusion Affidavit
5. Proposer's Statement Regarding Insurance Coverage
6. Worker's Compensation Insurance Certificate
7. Nondiscriminatory Employment Certificate
8. References
9. Exhibit A - Sample Contract
10. Exhibit B - Insurance Requirements
11. Attachment A - Technical Specifications and Functional Requirements Matrix
12. Public Purchase Addenda and Questions

The cost of all labor and materials necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit price for the various items shown hereon. The contract requires printing and related services on an as-needed basis.

### PRICING FORMAT:

All labor, materials, equipment, licenses and insurance necessary to perform the services shall be included in the proposed pricing.

- A. Monthly Software as a Service application pricing for hosted CMMS for the City (Population – approx. 77,000).

B. The system shall have up to 50 users and 15 mobile devices.

C. The total implementation cost shall include all data migration, data import, system configuration, form creation, report creation, ArcGIS server connection configuration, and training.

Unless otherwise stated, the proposer agrees that, in the event of a price decline, the benefit of such lower pricing shall be extended to the City.

Proposer agrees to provide the City of Milpitas all proposed products and services for the prices listed below.

Description	Quantity	Unit	Unit Price	Extended Price
Computerized Maintenance Management System (CMMS) – Lucity Cloud - up to 50 concurrent users. Annual fee, single environment	1	System	\$ 14,500.00 /Sys	\$ 14,500.00
Concurrent License (users) – Lucity AM Licensing includes: 10 Work, 5 Assets, 1 GIS Desktop, unlimited GIS Web, 15 Mobile devices, unlimited API	10	Each	\$ 69,500.00 /Ea	\$ 69,500.00
Implementation cost – This cost shall include project initiation, IT audit, installation, kickoff meeting, discovery workshop, progress meeting (remote and in person), all data migration, data import, system configuration, form creation, report creation, ArcGIS server connection configuration, and testing.	1	Job	\$ 28,590.00 /Job	\$ 28,590.00
Configuration cost. This cost shall include cost to configure functional groups and cost for remote configuration.	1	Job	\$ 26,550.00 /Job	\$ 26,550.00
Interface cost. This cost shall include interface cost to existing City GIS feature classes.	1	Job	\$ 9,000.00 /Job	\$ 9,000.00
Data Conversion/Loading from City's existing CMMS. – ESTIMATE ONLY	1	Job	\$ 6,000.00 /Job	\$ 6,000.00
On-site User Training (up to 48 hours). Training expense to include all travel, lodging, and per-diem.	1	Lot	\$ 13,350.00 /Lot	\$ 13,350.00
Remote Training (up to 16 hours)	1	Lot	\$ 2,160.00 /Lot	\$ 2,160.00
1st Year maintenance cost	1	Year	\$ INCLUDED /Yr	\$ INCLUDED
Sales Tax at 9%	1	Lot	\$ 13,963.50 /Lot	\$ 15,268.50
Total Cost:				\$ 184,918.50

Additional Cost Information	Unit	Unit Price
Cost of additional Per Seat Licenses (users)	Each	\$ N/A /Ea
Cost of additional concurrent Licenses (users) - LucityAM Work, Assets or GIS Desktop.	Each	\$ 2,000.00 /Ea
Maintenance Cost		
2 <sup>nd</sup> Year (starts 12 months after software installation)	Per Year	\$ 13,900.00 /Yr
3 <sup>rd</sup> Year	Per Year	\$ 14,247.50 /Yr
4 <sup>th</sup> Year	Per Year	\$ 14,603.69 /Yr
5 <sup>th</sup> Year	Per Year	\$ 14,968.78 /Yr

*Years 3 through 5 include an annual increase of 2.5%/year.*

#### CERTIFICATION OF PROPOSER

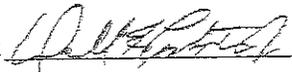
By listing the Addenda Numbers below and checking the box next to "ADDENDA" below, Proposer acknowledges receipt of Addenda Number (s) 1, 2 from the Public Purchase website pertaining to this Solicitation (if any). ADDENDA:

By checking the box next to "QUESTIONS" below, Proposer acknowledges receipt of Questions and Answers from the Public Purchase website pertaining to this Solicitation (if any): QUESTIONS:

I/We (Lucity, Inc.) agree to provide any/all Computer Maintenance Management System per the specification as stipulated in this Request for Proposal (RFP) and pricing as indicated on the Proposal Offer Form. I/We further agree that the below, undersigned is authorized by the (Lucity, Inc.) to bind the company in contract for the specified contract term. All exceptions (if applicable) are attached as an addendum to this pricing proposal. I understand that the City of Milpitas may not accept exceptions to the RFP. I further agree that if awarded the contract, to abide the terms and conditions of the contract and not to materially modify such terms without expressed written consent of the City of Milpitas Purchasing Agent.

Company Name: Lucity, Inc. Legal Entity Type: Corporation

Authorized Contact Title: President & CEO Print Contact Name: Donald E. Pinkston, Jr.

Contact Signature:  Contact Email Address: dpinkston@lucity.com

Contact Telephone: 913-732-5816 Contact Fax: 913-341-3105

Proposer's Address: 10561 Barklev Ste. 100 City, State and ZIP Code: Overland Park, KS 66212

Taxpayer I.D. No.: 48-1234072 Business License No.: \_\_\_\_\_

THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO THE  
PUBLIC PURCHASE SYSTEM

NON-COLLUSION AFFIDAVIT

RFP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

State of (Kansas)  
County of (Johnson)

(Proposer's Authorized Representative Name) Donald E. Pinkston, Jr., being first duly sworn, deposes and says that he or she is Owner or Authorized Representative of (Proposer's Company Name) Lucity, Inc. the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the bid price, or that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the Proposer has not, directly or indirectly, submitted their bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

Lucity, Inc.

President & CBO

Proposer Name (Person, Firm, Corp.)

Title of Authorized Representative

10561 Barkley, Ste. 100

Donald E. Pinkston, Jr.

Address

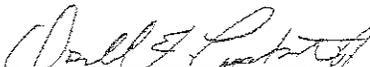
Name of Authorized Representative

Overland Park, KS 66212

City, State, Zip

3/13/18

(Date)



Signed at (Lucity, Inc.)

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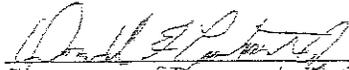
PROPOSER'S STATEMENT REGARDING INSURANCE COVERAGE

RFP No. 2228 - COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMMS)

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request for Proposals No. 2228, for Computerized Maintenance Management System. Should the Proposer be awarded the contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City of Milpitas as Additional Insured for the work specified.

Lucity, Inc.

\_\_\_\_\_  
Name of Proposer (Person, Firm, or Corporation)



\_\_\_\_\_  
Signature of Proposer's Authorized Representative

Donald E. Pinkston, Jr. - President & CBO

\_\_\_\_\_  
Name & Title of Authorized Representative

\_\_\_\_\_  
Date of Signing

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WORKER'S COMPENSATION INSURANCE CERTIFICATE

RFP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

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

Lucity, Inc.

\_\_\_\_\_  
Name of Proposer (Person, Firm, or Corporation)

*Donald E. Pinkston, Jr.*

\_\_\_\_\_  
Signature of Proposer's Authorized Representative

Donald E. Pinkston, Jr. – President & CEO

\_\_\_\_\_  
Name and Title of Authorized Representative

*3/13/18*

\_\_\_\_\_  
Date of Signing

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NONDISCRIMINATORY EMPLOYMENT CERTIFICATE

RFP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City of Milpitas and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all RFQ specifications and contracts of the City of Milpitas for the construction, repair, or improvement of public works.

Contents of Certificate

The Contractor's obligation for nondiscriminatory employment is as follows:

In performing the work of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act – Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

2. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City of Milpitas setting forth the provisions of this nondiscrimination clause.

3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

4. The Contractor will send to each labor union or representative of workers, with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City of Milpitas advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Contractor will permit access to the Contractor's records of employment, employment advertisements, application forms, and other pertinent data and records by the City of Milpitas, the Fair

Employment Practices Commission, or any other appropriate Agency of the State designated by the City of Milpitas for the purposes of investigation to ascertain compliance with the Contractor's Obligation for Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.

6. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City of Milpitas as a basis for determining that as to future contracts for which the Contractor may submit quotes, the Contractor is a "disqualified bidder" for being "non-responsible".

7. The City of Milpitas shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

8. Upon receipt of any such written notice, the City of Milpitas shall notify the Contractor that unless he or she demonstrates to the satisfaction of the City of Milpitas within a stated period that the violation has been corrected, he or she shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he or she has implemented remedial measures, satisfactory to the City of Milpitas, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

9. Upon receipt from any person of a complaint of alleged discrimination under any City of Milpitas contract, the City of Milpitas Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

10. In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City of Milpitas may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City of Milpitas, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such monies shall be recovered from the Contractor. The City of Milpitas may deduct any such penalties from any monies due the Contractor from the City of Milpitas.

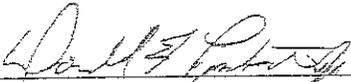
11. The Contractor certifies to the City of Milpitas that he or she has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City of Milpitas:

- a. The Contractor shall notify all supervisors and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.
- b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.
- c. The Contractor shall file a basic compliance report as required by the City of Milpitas. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.
- d. The Contractor shall notify the City of Milpitas of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.

12 Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City of Milpitas from pursuing any other remedies that may be available at law.

13 The Contractor certifies to the City of Milpitas that the Contractor will comply with the following requirements with regard to all subcontractors and suppliers:

- a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.
- b. The Contractor will take such action with respect to any subcontract or purchase order as the City of Milpitas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction by the City of Milpitas, the Contractor may request the City of Milpitas to enter into such litigation to protect the interests of the City of Milpitas.



\_\_\_\_\_  
Signature of Proposer's Authorized Representative

Donald E. Pinkston, Jr. - President & CEO

\_\_\_\_\_  
Name and Title of Authorized Representative

3/13/18

\_\_\_\_\_  
Date of Signing

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REFERENCES

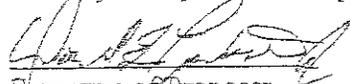
RFP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

Proposer: Lucity, Inc.

List three references for work of a similar nature performed within the last three years.

- |    |   |  |
|----|---|--|
| 1. | City of Santa Clara, CA   | 1705 Martin Ave. Santa Clara, CA 95050 |
|    | Name of Agency  | Agency Address                         |
|    | Franz Mortensen   | Business Systems Manager               |
|    | Contact Name  | Contact Title                          |
|    | 408-615-2062  | fmortensen@santacalara.gov             |
|    | Contact Telephone #   | Contact E-mail Address                 |
|    | January 2013 - May 2014   | \$98,000.00                            |
|    | Contract Period   | Contract \$ Amount                     |
|    | Installation, GIS Configuration, LucityAM Configuration, Data Conversion, Training. |  |
|    | Description of Work Performed   |  |
|    |   |  |
| 2. | Daly City, CA   | 333 90th St. Daly City, CA 94015       |
|    | Name of Agency  | Agency Address                         |
|    | Sibley Calles   | Management Analyst                     |
|    | Contact Name  | Contact Title                          |
|    | 650-991-8054  | scalles@dalycity.org                   |
|    | Contact Telephone #   | Contact E-mail Address                 |
|    | July 2016 - July 2017   | \$250,000.00                           |
|    | Contract Period   | Contract \$ Amount                     |
|    | Installation, GIS Configuration, LucityAM Configuration, Data Conversion, Training. |  |
|    | Description of Work Performed   |  |
|    |   |  |
| 3. | City of Napa, CA  | 1340 Clay St. Napa, CA 94559           |
|    | Name of Agency  | Agency Address                         |
|    | Doug DeMaster   | Systems Engineer                       |
|    | Contact Name  | Contact Title                          |
|    | 707-257-9341  | ddemaster@cityofnapa.org               |
|    | Contact Telephone #   | Contact E-mail Address                 |
|    | August 2016 - April 2017  | \$325,000.00                           |
|    | Contract Period   | Contract \$ Amount                     |
|    | Hosting, GIS Configuration, LucityAM Configuration, Training, Data Conversion.      |  |
|    | Description of Work Performed   |  |

I hereby certify that the Proposer performed the work listed above.

  
Signature of Proposer

Donald E. Pinkston, Jr.  
Name

March 23, 2018  
Date

## 8.0 COMPLETED ATTACHMENT A

Lucity has completed Attachment A and it is included in this section.

# ATTACHMENT A - TECHNICAL SPECIFICATIONS AND FUNCTIONAL REQUIREMENTS MATRIX

## REP No. 2228 – COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS)

### TECHNICAL SPECIFICATIONS

#### 1.1 BACKGROUND

The City's current Computerized Maintenance Management System (CMMS) is operated on desktop computers and is not integrated into the GIS. A majority of the City's assets do not have an associated Preventive Maintenance (PM) work schedule; hence, the current CMMS system is mostly used to log and track work orders generated from complaints. Currently, staff create work orders from complaints received from phone calls, the Public Works Department main email address, and from the City's MyMilpitas app. Other work orders for staff are triggered through the PMs. These work orders and PMs are then assigned to the Public Works Managers and Senior Leads, who then sort through these and assign the Work Orders (WOs) to field crews.

Due to the method in which these WO's are generated and assigned, there is no method to tie WO's to GIS, track completion, and close out WO's, and track the age of WO's. Additionally, field crews cannot easily prioritize or locate assigned work. It is the City's goal to directly link GIS and the CMMS so that staff generating WO's, crews, and management are aware, in real-time, of assigned workloads and maintenance backlogs. The City also desires to have a system that allows for staff and the community to check on the status of their WO's.

#### 1.2 GENERAL INFORMATION:

It is the intent of the following specifications to describe a CMMS that shall meet the requirements of the City's Public Works Department. As a result, it is possible that the City has listed as a desirable specification something that is unique to one manufacturer. It is not the City's intent to specify software unique to a single manufacturer.

The CMMS shall be comprised of new, commercial off the shelf current production software. Used product shall not be accepted. In addition, software shall be fully proven, installed and successfully operating at a minimum of three (3) agencies having similar or greater volume and requirements to those outlined in these specifications, terms and conditions.

The successful proposer shall furnish, install, and implement the CMMS software. The proposed solution shall include all implementation and all conversion costs.

#### 1.3 ADDITIONAL SPECIFICATIONS

- A. Hardware is not included as part of this RFP. The City owns Ipad and Android tablets, which the City intends its field staff to use with this new system. Any necessary hardware will be purchased separately.

B. Connection -- Connectivity is not included as part of this RFP. The City intends to use mobile hotspots to provide a live internet connection to the tablets. Mobile connectivity will be purchased separately and be configured by the City's IT Department.

# FUNCTIONAL REQUIREMENTS MATRIX

## RESPONSE INSTRUCTIONS TO FUNCTIONAL REQUIREMENTS MATRIX

This section of the RFP contains detailed functional requirements for the systems desired by the City. In responding to the requirements located in the Functional Requirements Matrix, the codes below must be used. Proposers should indicate how the proposed system meets each requirement by placing the appropriate "Code Letter" in the Code column for each of the requirements in the table below.

Response to Requirement	Code	Definition and Criteria
Yes	Y	In Current Version Off the Shelf or with Configuration using vendor tools.
No	N	Not Available
Customization	C	Requirement will be met through changes to the existing reports or programs. This would include custom code developed to perform specific functions or validations outside the standard code. Include the creation of a new report, query of workflow that does not exist within the current solution.  Note: In the Comments column next to this response, you must indicate estimated level of complexity (High, Medium or Low).
Supplied by Third Party	3P	Requirement will be met by third-party software package and is included in this proposal.  Note: In the Comments column, indicate the name of the proposed third-party software package and indicate the interface/integration services being proposed. If the solution requires customization, indicate estimated level of complexity (High, Medium or Low).
<b>Note:</b>		
1. An omitted response will be assumed to be the same as a response code of "N".		
2. Any deviation from the response codes will be re-coded at the discretion of the City.		

This section of the RFP contains detailed functional requirements for the system desired by the City. All Functional Requirements Matrix items should be addressed by the proposer to give the City an idea as to how the proposed CMMS shall fit the business needs.

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**City of Milpitas Computerized Maintenance Management System (CMMS) Requirements**

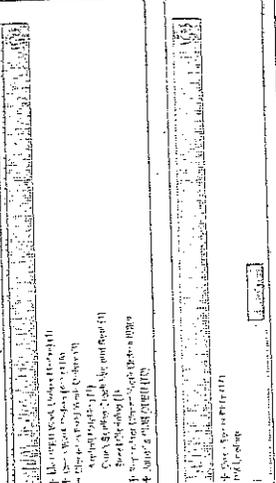
**COMMENTS:** This is an active table. To facilitate your response Proposers may type comments into the "Comments" section for each numbered line item. **Comments MUST be brief and to the point and not more than 140 characters.** If you need more space, attach a typed list, by line item number with your response.

**USE ONLY Times New Roman 12**

**Code Legend**

- Y = In Current Version Off the Shelf or with Configuration using vendor tools
- N = Not Available
- C = Can be met with customization of software code
- 3P = Requirement will be met by third-party software package and is included in this proposal

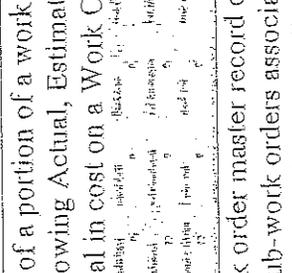
Category	Feature	Subfeature	Code	Comments
<b>Technical</b>				
<b>Interface</b>				
	1.	Web based (IE, Firefox, Safari, Chrome)	Y	LucityAM's HTML 5 platform allows for a variety of browsers as options.
	2.	All modules have same look and feel	Y	Dashboards, grids, tools and screens all look similar and operate similar across modules and departments.
	3.	All modules fully integrated	Y	Dashboards are the unique command and control center for each user and division. Data Drills, data workflow, data presentation and sorting are controlled by the agency for an easy to use system based on daily work needs for the end user.
	4.	Dashboard Driven user based interface		

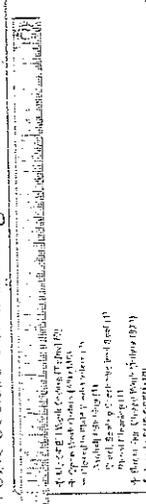
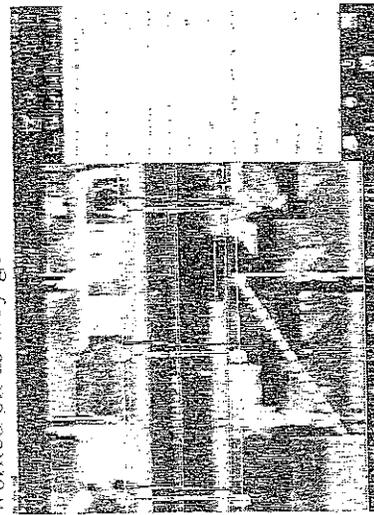
		<p>Each dashboard, screen and grid in the system can be configured to include exactly what each department needs to see for assets, requests, inspections and work orders.</p>
<p>5. Ability to customize asset and work order forms for the City</p>	Y	<p>Multiple tabs (screens) may be opened and can be recalled through a work process as needed.</p>
<p>6. Multiple user screen/sessions/windows</p>	Y	<p>Notifications can be set up for user communication of assignment, overdue status etc.</p>
<p>Notification</p>	Y	
<p>7. Text and email notification of work orders, requests, completion</p>		
<p>Server</p>		
<p>8. Windows-based</p>	Y	<p>Windows Server 2016, 2012r2, 2012, 2008r2 SPI Windows 10, 8.1, 7 SP1+</p>
<p>9. SQL Server 2008 R2 database</p>	Y	<p>SQL Server 2017, 2016, 2014, 2012, 2008r2, 2008</p>
<p>Asset management</p>		
<p>General</p>	Y	<p>Example of Facility Hierarchy:</p>
<p>10. Asset hierarchy to accommodate facility assets</p>		

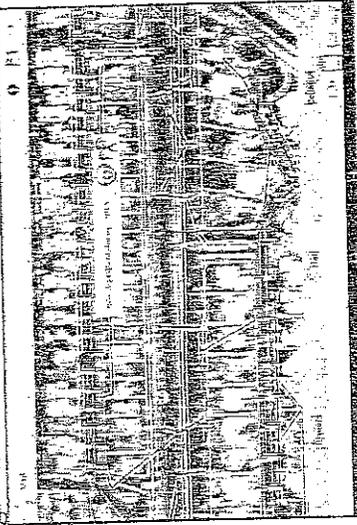
	<ul style="list-style-type: none"> <li>+ PART 3 - Hartford Community Center</li> <li>- HERP - Heritage Annex</li> <li>+ Facility Rools (1)</li> <li>- Facility Floors (2)</li> <li>- HERP-1 2 - Heritage Annex Lower Floor</li> <li>- HERP-201 - Heritage Annex 2nd Floor</li> <li>- Facility Rooms (9)</li> <li>Conf-01 - Conference Room</li> <li>L1 - Lobby</li> <li>- Facility Furnishings (3)</li> <li>Chalk-01</li> <li>Church-001</li> <li>HerDank-Regeneration Deck</li> <li>Equipment (1)</li> <li>WV-002 - Drinking Water Fountain</li> <li>Mans-01 - Mens Bathroom</li> <li>Office01 - Office</li> <li>Office2 - Office</li> <li>Office3 - Office</li> <li>Office4 - Office</li> <li>Office5 - Office</li> <li>Women - Womens Bathroom</li> <li>Equipment (3)</li> </ul>	<p>Each asset form has Useful Life fields.</p> <p>Cost Analysis (Maintenance Cost vs Asset Value), Time Analysis (How Many Years in Service), Risk Analysis (High Priority/Risk), Purchase Price and Depreciation.</p> <p>Combinations of age, costs, performance, value and other information can be used to track replacement needs and to prioritize maintenance.</p> <p>Every asset type (Pipes, Equipment, Hydrants, Vehicles, etc.) all have specific inspection and condition rating forms ready to use.</p> <p>LucidityAM can track spatial and non-spatial assets. LucidityAM does not rely on GIS as the backbone to CMMS, however</p>
11. Useful Life Tracking	Y	
12. Valuation and maintenance cost comparison		
13. Calculate depreciation schedule	Y	
14. Asset condition tracking for all asset types	Y	
15. Asset condition input for all Asset types	Y	
16. Ability to manage GIS based and non GIS assets	Y	

			leverages the power of GIS where needed, Images, Videos, PDF, Word, XLS, URL's and more may be linked to asset and work order records.
17.	Ability to attach documents and link to third party document management software	Y	
<b>Dedicated Asset &amp; Inspection Modules For:</b>			
18.	Support management of both horizontal and dimensional assets for Public Works	Y	LucityAM uses both a parent/child hierarchy (Facilities, Pump Stations) and network node to node (Streets, Sewer, Water) relationships for linear and underground asset models.
19.	Streets, Signals, Signs and Right Of Way Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
20.	Storm Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
21.	Sewer Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
22.	Water Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
23.	Pavement Markings	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
24.	Parks and Landscape Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
25.	Fleet Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
26.	Water Distribution and Equipment Assets	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
27.	Facilities	Y	LucityAM provides asset specific inventory and inspection forms for each specific asset module and asset type.

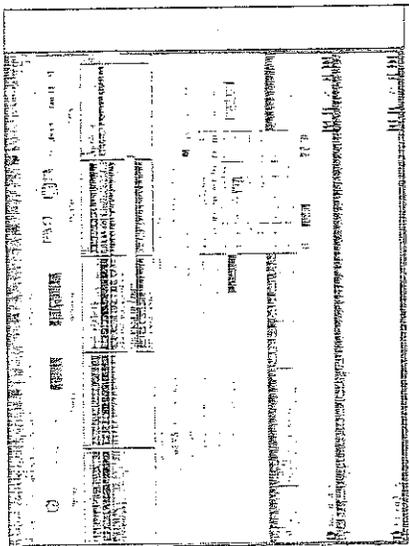
28.	Trails	Y	LucyAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
29.	Trees	Y	LucyAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
30.	Sidewalks	Y	LucyAM provides asset specific inventory and inspection forms for each specific asset module and asset type.
<b>Work order configuration</b>			
31.	Configuration of required and optional fields in all forms	Y	Any field can be made "Required" or "Optional" as needed for standard data collection.
32.	Custom field names	Y	All fields can be customized to match your nomenclature.
33.	Configure vendors and outside contractors	Y	Contractor assignments and contractor costing.
<b>Customized workflow routing</b>			
34.	Workflow rules based on triggers, user defined rules, financial rules	Y	LucyAM dashboards display workflow, delivering reviews, approvals and notifications of work and requests to the individual user and/or department.
35.	Hierarchical approval process customization	Y	
36.	Track and report electronic approvals	Y	
37.	Flexible approval routing based on work type, dollar amount	Y	Filters based on a specific amount can trigger a workflow routing.
38.	Escalation process for overdue work, idle requests	Y	
<b>Work requests (Service requests)</b>			
39.	Public interface	Y	LucyAM Requests can integrate to MyMilpitas app for this requirement. Requires API development.
40.	Requesters can view their request, status, and resolution	Y	MyMilpitas App via API development. Lucy will update MyMilpitas when work is completed that is linked and originated in MyMilpitas.
41.	Approval routing	Y	

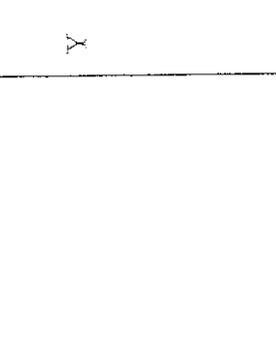
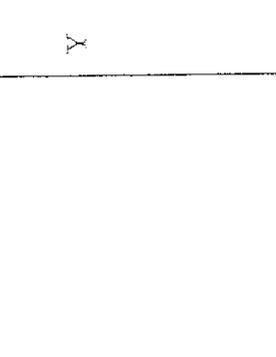
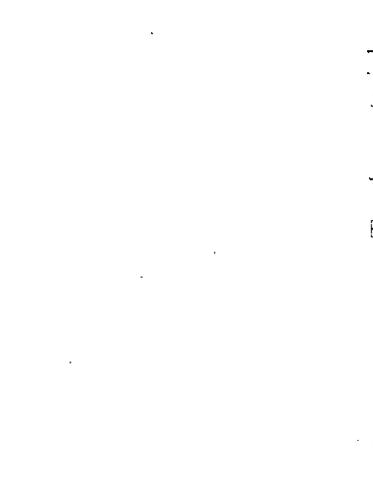
42.	In field work order request based on PM Work order creation	Y	
43.	Enter time, labor, material, equipment estimates & actuals	Y	<p>One work order master record can have several sub-work orders associated to it for managing projects as well as any resulting work orders from the original.</p>
44.	Ability to create sub work orders	Y	<p>Work Order Type codes are created to match any of the tracking needs you want. Users pick from the list of codes. This enables reporting and tracking of corrective work, installs, PMs, etc.</p> 
45.	Assign work order type (PM, Corrective etc.)	Y	<p>Priority codes are created to match your Priority category needs for Emergency, High, Low, Medium, etc.</p> 
46.	Assign work priority	Y	
47.	Work order routing Assignment	Y	When a Work Order is assigned, each user

<p>can easily see the work assigned to them without the need to look them up.</p> 	<p>Any workflow can be designed to follow your process. Here, a managerial dashboard shows assignments, completed field work <b>for review</b> and then closed work orders after managerial review.</p> 	<p>Y</p>	<p>48. Managerial Reviews</p>
<p>49. Link work orders to assets</p>	<p>Y</p>	<p>Example below in LucyAM Mobile iOS shows a "Hard Hat" icon that a user can click to create a work order from a map asset. Users can also add GIS assets to existing work orders, essentially "building" the list of multiple assets they worked on as they go.</p> 	<p>Users can also open the asset record, create inspections and update condition</p>
<p>50. Map based linking</p>	<p>Y</p>	<p>Y</p>	<p>Y</p>

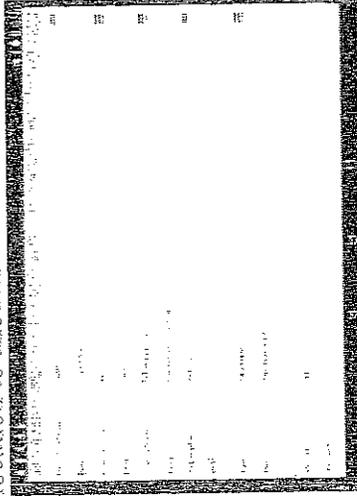
		data. Multiple assets can be used in a work order and displayed in GIS. LucityAM Mobile has user friendly color codes to show Completed (GREEN), Selected (BLUE), and Incomplete (RED) assets within a work order. These are also routed to create an easy path geographically for the user to follow and a green "Check" to click when completed.	
			
		Example above is LucityAM Mobile Android.	
51.	Multiple asset per work order or task		
<b>Work scheduling</b>			
52.	Contractor scheduling and tracking		
53.	Calendar and From level scheduling		

Below: Calendar scheduled work example. Work can be assigned, re-assigned and viewed in a calendar.

			
54.	Maintain employee availability	Y	
<b>Work order classification</b>			
55.	Work order hierarchy (Project, Work Order, Task)	Y	
56.	Configurable work order type (e.g., Preventative, Capital Improvement)	Y	
57.	Problem code assignment automatically populates cost estimates and assignment, and default work coding	Y	Problems and Tasks can have default assignments such as resources, priority, department responsible, etc.
58.	Ability to classify work by type, location, project, department, fund	Y	Every asset, employee and task can have budget numbers defaulted or assigned as needed.
59.	Ability to enter budget code and chargeable ID	Y	
<b>Work order completion</b>			
60.	Track planned labor, material, and equipment costs	Y	
61.	Track cost centers	Y	
62.	Actual time recording	Y	Several tasks can be added to one work order. Each task can be costed separately per the time spent on each individual task.
63.	Ability to add multiple tasks to single work order	Y	Security settings dictate the levels of users to reopen a work order.
64.	Ability to reopen a closed work order (supervisor or above only)	Y	
<b>Preventative Maintenance</b>			
65.	Multilevel PM maintenance (resets lower level time clocks)	Y	
66.	Ability to document complex maintenance procedures	Y	

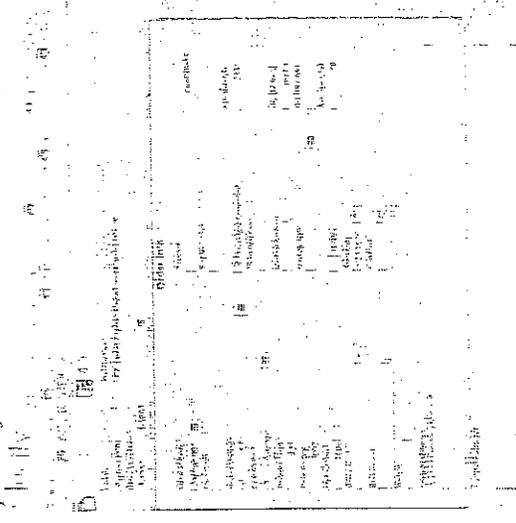
67.	Warranty tracking	Y	Sequencing and tightly linked PMs (Annual/Quarterly) can be combined so that at the fourth Quarterly, it rolls up into an Annual PM.
68.	PM sequencing	Y	LucityAM PM schedules can be time based with a fixed or floating schedule including usage calculations as an option. Whichever threshold (Time/Usage) come first will generate the PM automatically.
69.	Allow multiple work orders to be created from a PM	Y	
70.	Variable PM thresholds (time, mileage, operating hours)	Y	
<b>Inventory management</b>			
<b>Materials</b>			
71.	Tracks material usage.	Y	Example to Material usage on a work order in iOS Mobile: 
72.	Warehouses	Y	Example of a Transfer function in
73.	Tracks inventory location and bins	Y	

LucyAM Mobile Warehouse showing the transfer of Copper Pipe from one location to another:



Vehicles can be set up as rolling warehouses with locations.

Each Part record at each location has a Quantity on hand, Reorder point, Reorder quantity and Max on hand tracking:



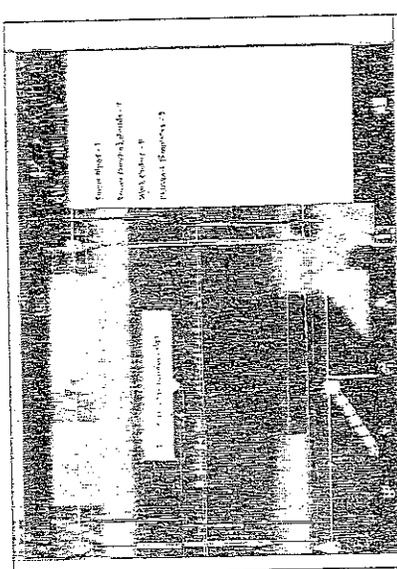
74.	Barcode capable	Y	
75.	Mobile inventory locations (vehicles)	Y	
76.	Order point/quantity configuration	Y	

**Employee Management**

77. Employee Certification tracking (Operator 1, 2 etc.)

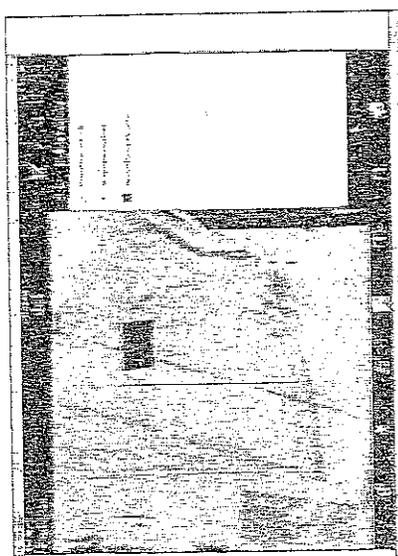
LucyAM Dashboard example of

	<p>Certification tracking where certifications, classes and employee certification reports showing upcoming renewals and expirations of certifications can be managed at one location:</p>  
78.	Y
79.	Y
<p>80.</p>	<p>Interface to 3rd party GIS viewing tools</p>
81.	<p>Map-based asset identification</p>
<p>GIS Capability</p> <p>LucifyAM has many viewing tools and tight integration to GIS. Example showing an upstream trace in GIS with affected services and assets:</p>  <p>LucifyAM Mobile iOS showing an asset selected in GIS and related asset information including associated assets and work history in the right column:</p>	

		
82.	Map-based work-order retrieval	Y
83.	Location management of asset by address (e.g. lateral), intersection (e.g. street sign), and GPS coordinates (e.g. Right-of-way) tied to GIS.	Y
84.	Ability to link selected GIS database attributes to CMMS database	Y
85.	Automatic GIS edit sessions added to CMMS (New Asset Creation)	Y
86.	Ability for CMMS to operate without GIS platform	Y
87.	Redline management for asset changes from field	Y

LucyAM does not require GIS, however we leverage GIS heavily in all workflow areas when needed to the user for any spatial asset.

Redline example in Mobile. The additions of unidentified assets and locations can be sent to update the maps per notes associated and relines drawn.



**Third party Interfaces with API**

			Lucity has a fully developed and published API to support advanced and open system Web based XML/REST API interface development.	Y
88.	Fully enabled Vendor API for interface development		The LucityAM APIs can be used to develop a custom service request interface to LucityAM service requests.	Y
89.	Interface with MyMilpitas app		LucityAM has an out of the box interface to Wincan and included in this proposal.	Y
90.	Interface with WinCan			

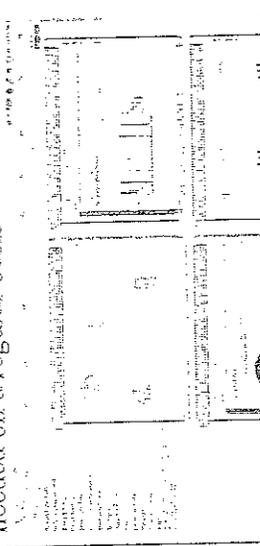
**Mobile**

			Standard barcode readers can be used to scan assets and part in a mobile environment.	Y
91.	Inventory bar code printing and reading			Y
92.	Android and iOS Platforms			Y
93.	Smartphone and tablet based field work response			Y
94.	Map-based field work response			Y

**Security**

95.	Access rights to application by user			Y
96.	Automated system access request			Y
97.	Automated lost password recovery			Y
98.	Native integration to LDAP/Active Directory			Y
99.	Automated logoff of idle account after administrator-set time period			Y

**porting**

			Dashboard reports complete with graphs and key performance metrics can be embedded for quick retrieval of all reports needed on a regular basis.
		Y	
100.	Dash board reporting	Y	
101.	Work Order and asset cost reporting	Y	
102.	Self-created reports	Y	
103.	Asset condition reporting	Y	
104.	Report export to PDF, XLS, DOC	Y	
		Y	Any asset can be analyzed for rehab and replacement based on several metrics like age, usage, condition, maintenance costs etc.
		Y	
105.	Forecast asset replacement		
	<b>Support</b>		
106.	Knowledge base and FAQ	Y	
107.	Live technical support	Y	
108.	On Screen help for end users	Y	
109.	Web based training	Y	

109.	Web based training	Y	
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## APPENDIX A

The following informational documents are included for Milpitas' reference:

- Hardware & Software Recommendations
- LucityAM Asset Map

# Lucity AM Hardware & Software Recommendations

## Version 2018

### database support

SQL Server 2017, 2016, 2014, 2012, 2008r2, 2008  
Disk Space from 1 GB to 20 GB

### operating system support

Windows Server 2016, 2012r2, 2012, 2008r2 SP1  
Windows 10, 8.1, 7 SP1+

### browser support

Chrome, Firefox, Edge<sup>1</sup>  
Internet Explorer 11<sup>4</sup>  
Safari<sup>1,2</sup>

### gis requirements

Lucity Web Map requires ArcGIS Online, ArcGIS Enterprise 10.5/10.6, or ArcGIS Server 10.2.2+<sup>3</sup>  
Lucity ArcGIS Desktop extensions require ArcGIS Desktop 10.2.2+  
Lucity ArcGIS Pro Add-In requires ArcGIS Pro 2.0+

### video requirements

Optimized for 1024 x 768+ on desktop computers

### considerations

Lucity highly recommends the use of SSL across your enterprise  
Lucity Mobile Server requires SSL (TLS 1.2) when used with an Apple iPad or iPhone

Installing Lucity Desktop on the same host as any other Lucity software is not recommended  
Avoid the same host for Services Server and Web Server (for performance)

## hardware requirements

	Minimum	Recommended	Hardware	Configuration	
			CPU Cores	RAM <sup>5</sup>	Storage <sup>6</sup>
Lucity Services	2	4	2	4GB	10GB
Lucity Web Server	2	4	2	4GB	10GB
Lucity Mobile Server	2	4	2	4GB	10GB
Other Lucity Server Applications <sup>4</sup>	2	4	2	4GB	10GB
Lucity Database Server <sup>9</sup>	2	4	2	4GB	10GB

1. Current testing is focused on desktop versions of these browsers
2. We expect most features to work but limited testing is done in this browser and there may be rendering issues in some cases.
3. Portal for ArcGIS Enterprise or ArcGIS Online are recommended. Some features are unavailable if not utilizing one of these portals. Some features are not available on versions < 10.4.1.
4. Compatibility view not supported.
5. Storage space for Lucity components only; does not include storage space for OS or any supporting software
6. Includes Lucity REST API, Lucity Citizen Portal REST API, Lucity Citizen Portal, Lucity Document Server
7. Lucity Mobile Server requires 2GB for core installation plus up to 20 GB for offline cache storage
8. Min and recommended are provided. Minimum is appropriate for 5 or fewer users.
9. Recommended value supports 25 concurrent users on a server dedicated to the Lucity Database Server hosting.

### Lucity mobile for Android

#### mobile 2.x

Minimum required disk space for online use: 250MB

Minimum operating system: Android 4.1

Supported screen sizes:  
Small (426dp x 320dp) to  
XLarge (960dp x 720dp)

3G/4G or WiFi-only devices are all acceptable

GPS

Camera

#### mobile offline 2.x

Minimum required disk space:  
2 to 3 times the offline cache size (this does not include GIS offline or tile cache requirements)

2 GB minimum RAM

1.5 GHz minimum processor

- > Resolutions of 720 and greater are recommended. Lucity form designs are shared between the tablet and the web. Tablets smaller than 720 will require frequent scrolling right to left on the screen to see the full width of the form in landscape mode. A display of 960dp by 720dp will effectively show most Lucity forms in both landscape and portrait mode with minimal side to side scrolling.
- > The quality of the end user's experience will be directly proportional to the quality of the tablet purchased.

### Lucity mobile for iOS/iPhone

#### mobile 2.x

Online supports iPhone 5+, iPod Touch (5th generation+), iPad Mini+, iPad (3rd generation+), iPad Air+

Offline supports iPod Mini 2+, iPad Air+

Offline required disk space: 2 to 3 times the offline cache size

This does not include GIS offline or tile cache requirements

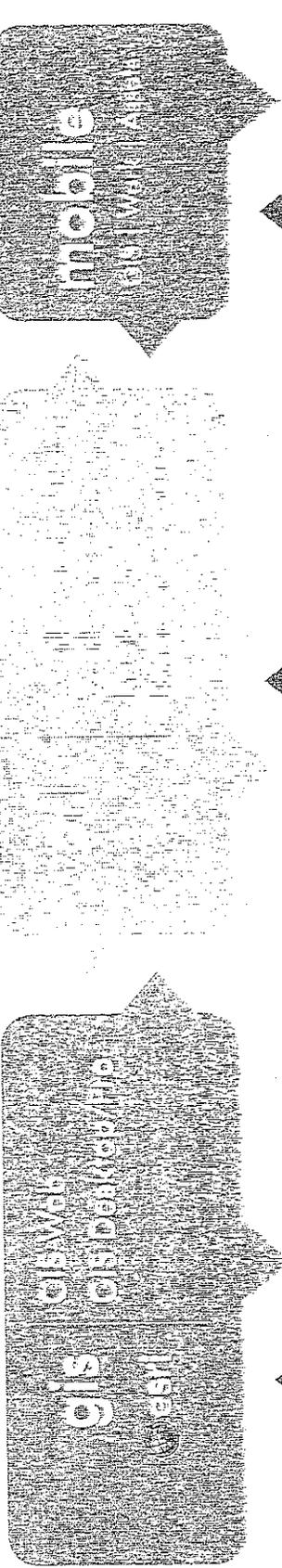
Minimum iOS version: 8.0

3G/4G or WiFi-only devices are all acceptable

GPS

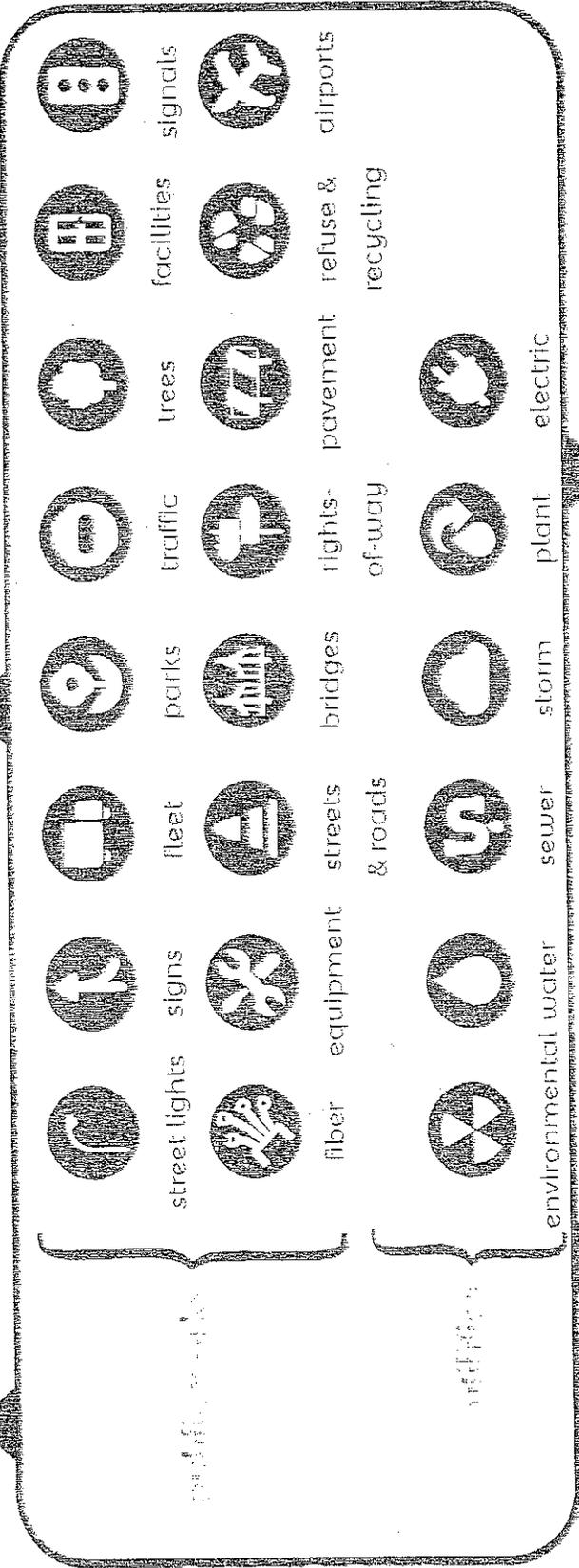
Camera

# HowAM Products & Solutions



REST API  
Integration Framework

mobile



infrastructure

utilities

REST API  
Integration Framework

mobile



# CITY OF MILPITAS

## PURCHASING DIVISION

4455 East Calaveras Boulevard, Milpitas, California 95035-5411 [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)  
Phone: 408-586-3161 Fax: 408-586-3170

March 16, 2018

### RFP No. 2228 Computerized Maintenance Management System

#### Addendum No. 1

#### TO ALL PROSPECTIVE PROPOSERS:

The purpose of this Addendum No. 1 is to make changes to the Request For Proposal No. 2228 Computerized Maintenance Management System as follows:

#### DATE CHANGES

Schedule of Activities. The City reserves the right to amend the schedule below as necessary. All times referenced are in Pacific Time.

Activity	Tentative Dates
RFP released	March 1, 2018
Deadline for Submitting Questions (2:00 p.m.)	March 20, 2018
Proposal Submission Deadline (2:00 p.m.)	March 28, 2018
Evaluation Committee Review	Week of April 1, 2018
Interview/Presentations	Week of April 9, 2018
Contract Award (Tentative City Council Date)	May 8, 2018

Please note that the Proposal Submission Deadline, and all following dates, have been pushed back one week.

Sincerely

Chris Schroeder C.P.M., A.P.P.  
City of Milpitas  
Purchasing Agent

## Questions for Bid RFP #2228 - Computerized Maintenance Management System

### Question #1

1. Whether companies from Outside USA can apply for this?  
(like,from India or Canada)
2. Whether we need to come over there for meetings?
3. Can we perform the tasks (related to RFP) outside USA?  
(like, from India or Canada)
4. Can we submit the proposals via email?

Feb 28, 2018 10:52:39 PM PST  
By: Sevenoutsources - rfpalerts

#### Answers

1. You need to be in the US, the closer to California the better. 2. You would have to attend local meetings and trainings. 3. See Nnumber 1. 4. No, proposals must be submitted directly through Public Purchase.

Mar 1, 2018 7:35:57 AM PST  
By: chrisschroeder

Archive

### Question #2

1. In the system User counts the City states 50 Users with 15-20 Field users. In the pricing table example section the City asks for 2 seats as well as 8 Concurrent users. What is the difference between the Per Seat and Concurrent User Pricing ask for Licenses? Can we assume that the City is looking for 8 Concurrent Office Users for the system; consisting of a total user population of 50 with 15-20 Mobile users?

Mar 9, 2018 4:25:58 PM PST  
By: Lucity, Inc. - JCGraham

#### Answers

On the Proposal Offer Form, Item Pricing Format B. The item shall read "The system shall have up to 50 users and 15 mobile devices. On the TABLE; "Per Seat Licenses (users)" Quantity (2); this item is deleted. The "Concurrent License (users)" Quantity (8) is deleted and replaced with Quantity (10).

Mar 12, 2018 1:42:43 PM PDT  
By: chrisschroeder

Archive

### Question #3

1. On the pricing form you are asking for costs per job. For instance the extent of configuration and data loading is not known. How do we price that? What do you consider "job"?

Mar 12, 2018 5:23:19 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

#### Answers

Use your best estimate to provide a lump sum cost for each service (job) requested. Each "job" listed in the RFP per the description in the table on the Proposal Offer Form, page 20.

Mar 13, 2018 12:36:50 PM PDT  
By: chrisschroeder

Archive

**Question #4**

Which system are you currently using for CMMS? Mar 14, 2018 10:03:25 AM PDT  
By: Technology Evaluation Centers - casualc

**Answers**

Maintenance Connection Mar 14, 2018 4:51:17 PM PDT  
By: chrisschroeder

Archive

**Question #5**

Does the system need to integrate into any other system(s)? Like an ERP? Mar 14, 2018 10:03:55 AM PDT  
By: Technology Evaluation Centers - casualc

**Answers**

Ideally the system should have the ability to integrate with other third party software. Right now the only requirement is GIS. Mar 14, 2018 4:52:39 PM PDT  
By: chrisschroeder

Archive

**Question #6**

Is there a Consultant working with you currently? Mar 14, 2018 12:25:36 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

No. Mar 14, 2018 4:52:50 PM PDT  
By: chrisschroeder

Archive

**Question #7**

Did a CMMS vendor help you put together the CMMS requirements table? If so, who? Mar 14, 2018 12:26:55 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

No. Mar 14, 2018 4:53:04 PM PDT  
By: chrisschroeder

Archive

**Question #8**

The turnaround time between Q&A deadline and the proposal due date is very short. Can you kindly extend the due date, so there is time for any minor revisions to the proposal and allow us to evaluate all the answers given? Mar 14, 2018 12:28:45 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

The City will revise the RFP deadline to Thursday, March 29, 2018 at 2:00 p.m. local time. An addendum will also be issued shortly to reflect this change. Mar 19, 2018 11:42:29 AM PDT  
By: zdevine

Archive

CORRECTION: As stated in Addendum #1 published on March 16, 2018 the bid submission deadline is March 28, 2018 at 2:00 p.m. local time. Mar 19, 2018 2:17:40 PM PDT  
By: zdevine

[Archive](#)**Question #9**

Which mpdules are you using in your current CMMS? And, what do you not use? Mar 14, 2018 4:35:29 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

The City currently uses facilities, streets, utilities, and trees. We do not use fleet. Mar 19, 2018 11:44:21 AM PDT  
By: zdevine

[Archive](#)**Question #10**

How many assets, and parts are in the current CMMS? Mar 14, 2018 4:36:11 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

Unknown. The City does not have a fully developed asset registry at this time. Mar 19, 2018 11:45:29 AM PDT  
By: zdevine

[Archive](#)**Question #11**

How many work orders are on average processed annually? Are all work orders in the system? Mar 14, 2018 4:37:14 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

The City estimates 3,000 work orders per year. However, not all work orders are in the system. Mar 19, 2018 11:47:09 AM PDT  
By: zdevine

[Archive](#)**Question #12**

Is there a possibility of licenses being acquired by City on their own, and 3rd party vendors not having to get into the software licensing agreement portion of the RFP? Mar 15, 2018 10:51:41 AM PDT  
By: Birlasoft Inc - sandeepgnanakan

**Answers**

The goal of this RFP is to secure both the software and its installation for the City. The successful proposer must be capable of providing both. Mar 20, 2018 8:37:22 AM PDT  
By: zdevine

[Archive](#)**Question #13**

Can proposers not fill any pricing information related to license cost(Provided the city can acquire software licenses on their own) on the RFP and still be compliant to the asks of the proposal? Mar 15, 2018 10:55:03 AM PDT  
By: Birlasoft Inc - sandeepgnanakan

**Answers**

All pricing information must be completed. Mar 19, 2018 11:49:33 AM PDT  
By: zdevine

[Archive](#)

**Question #14**

Please provide the staff count in each department such as water, sewer, streets, parks, etc? Mar 15, 2018 3:39:03 PM PDT  
By: Raintek Enterprises inc - usa@rainteksol.com

**Answers**

Please see Page 20, letter B. Mar 19, 2018 11:51:01 AM PDT  
By: zdevine

Archive

**Question #15**

Are you accepting on-premise hosting solutions (or client self-hosted in Amazon cloud) or ONLY Software as a Service (SAAS) where the vendor does the hosting? The pricing format only indicates SAAS. Mar 16, 2018 8:42:41 AM PDT  
By: Novotx - mboyd@novotx.com

**Answers**

Yes, Software as a Service (SaaS) only. Please see Page 19, letter A. Mar 19, 2018 11:54:26 AM PDT  
By: zdevine

Archive

**Question #16**

What version/type of iPad does the City currently own? Mar 20, 2018 5:03:00 AM PDT  
By: AssetWorks Inc - AW1215

**Answers**

We have the latest version of iPads deployed. Mar 21, 2018 3:09:48 PM PDT  
By: zdevine

Archive

**Question #17**

What version/type of Android tablets does the City currently own? Mar 20, 2018 5:03:11 AM PDT  
By: AssetWorks Inc - AW1215

**Answers**

The City has very few Android tablets, but all run the current Android OS. Mar 23, 2018 9:21:48 AM PDT  
By: zdevine

Archive

**Question #18**

How many assets of each high level asset class does the City currently manage? Mar 20, 2018 5:03:23 AM PDT  
By: AssetWorks Inc - AW1215

**Answers**

Unknown. The City does not have a fully developed asset registry at this time. Mar 21, 2018 3:05:57 PM PDT  
By: zdevine

Archive

**Question #19**

Please provide the titles of the evaluation committee. Mar 20, 2018 7:28:55 AM PDT  
By: NEXGEN Asset Management - cwelsh@nexgenam.com

**Answers**

The City has not identified the full evaluation committee at this time. Mar 21, 2018 3:05:23 PM PDT  
By: zdevine

Archive

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**Question #20**

What is the current CMMS and what is the database for the current data that requires conversion.

Mar 20, 2018 1:49:51 PM PDT  
By: PSD Software - hiperweb

**Answers**

An older version of Maintenance Connection is the current CMMS. It utilizes a Microsoft MS SQL Server.

Mar 23, 2018 9:18:28 AM PDT  
By: zdevine

[Archive](#)

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**Question #21**

Is the deadline for questions March 20, 2018 at 2pm?

Mar 20, 2018 2:00:19 PM PDT  
By: City of Milpitas - zdevine

**Answers**

Confirmed.

Mar 20, 2018 2:00:56 PM PDT  
By: chrisschroeder

[Archive](#)

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**Question #22 (Rejected)**

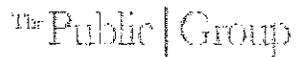
can you please provide a list of existing City GIS feature classes.

Mar 20, 2018 2:00:58 PM PDT  
By: PSD Software - hiperweb

[View Bid](#)

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Customer Support: [agency-support@publicpurchase.com](mailto:agency-support@publicpurchase.com) | Copyright 1999-2018 © | The Public Group, LLC. All rights reserved.

The Public Group



Company Name: Lucity, Inc.

**INSURANCE REQUIREMENTS GRID**

All of the "standard" insurance requirements for the City of Milpitas are contained in the documents entitled "Exhibit A Insurance Requirements - General", and "Exhibit A Insurance Requirements - Consultants" all of which must be met unless specifically exempted in writing by the Risk Manager. In addition, here are the basic requirements regarding the four (4) endorsements required by the City. Insurance coverage required by the City varies depending on the contract; you have to read the insurance requirements of the contract to be sure you are getting all of the necessary endorsements.

	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied
Endorsement Required	<input checked="" type="checkbox"/> <b>General Liability</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <b>Auto Liability</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <b>Workers Comp.</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/> <b>Pro. Liability</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>Other</b>	<input type="checkbox"/>
1.) Additional Insured*	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
2.) Contractors Insurance shall be:										
Primary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Non-Contrib.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
3.) Waiver of Subrogation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
4.) 30 Day Notice of Cancellation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
Exceptions:	<p><i>Waiver regard to #4 GL and AL, after several tries, not received yet. Okay to proceed.</i></p>									
Note:	<p>Most insurance companies will provide certificates and endorsement for the requirements listed above, but frequently not until specifically asked. The City always prefers "stand alone" endorsements. However, depending on the insurance company, it may be their practice to issue a standardized "blanket" endorsement form/document(s). Alternatively, they may submit excerpts from the policy document, this is also acceptable to the City. However, be sure to ask the company to put the specific Policy # on the document and clearly mark the specific clause(s) that reflect each endorsement and to send you those pages <b>only</b>, or you will likely wind up with a 50 page policy and no easy way to determine which clauses apply to the certificate.</p>									
Prepared BY:										
Approved By:	<p><i>Chris Schoedel</i> Date: <i>5.30.18</i></p>									
X = Most commonly required.										
* All language must be stated as follows: "The City, its officers, officials, employees, and volunteers"										



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

\* **OTHER INSURANCE - ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

**PROVISIONS**

COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Paragraph 4. (Other Insurance), is amended as follows:

1. The following is added to Paragraph a. Primary Insurance:

However, if you specifically agree in a written contract or written agreement that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs; and

- b. The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense committed

subsequent to the signing and execution of that contract or agreement by you.

2. The first Subparagraph (2) of Paragraph b. Excess Insurance regarding any other primary insurance available to you is deleted.

3. The following is added to Paragraph b. Excess Insurance, as an additional subparagraph under Subparagraph (1):

That is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TECHNOLOGY XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <b>A.</b> Reasonable Force Property Damage - Exception To Expected Or Intended Injury Exclusion | <b>J.</b> Blanket Additional Insured - Lessors Of Leased Equipment   |
| <b>B.</b> Non-Owned Watercraft Less Than 75 Feet  | <b>K.</b> Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement |
| <b>C.</b> Aircraft Chartered With Pilot   | <b>L.</b> Blanket Additional Insured - Broad Form Vendors  |
| <b>D.</b> Damage To Premises Rented To You  | <b>M.</b> Who Is An Insured - Unnamed Subsidiaries   |
| <b>E.</b> Increased Supplementary Payments  | <b>N.</b> Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures  |
| <b>F.</b> Who Is An Insured - Employees And Volunteer Workers - First Aid                       | <b>O.</b> Medical Payments - Increased limits  |
| <b>G.</b> Who Is An Insured - Employees - Supervisory Positions                                 | <b>P.</b> Contractual Liability - Railroads  |
| <b>H.</b> Who Is An Insured - Newly Acquired Or Formed Organizations                            | <b>Q.</b> Knowledge And Notice Of Occurrence Or Offense  |
| <b>I.</b> Blanket Additional Insured - Owners, Managers Or Lessors Of Premises                  | <b>R.</b> Unintentional Omission   |
|   | <b>S.</b> Blanket Waiver Of Subrogation  |

### **PROVISIONS**

**A. REASONABLE FORCE PROPERTY DAMAGE - EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION**

The following replaces Exclusion a, Expected Or Intended Injury, in Paragraph 2, of SECTION 1 - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- a. Expected Or Intended Injury Or Damage  
"Bodily injury" or "property dam-

age" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

**B. NON-OWNED WATERCRAFT LESS THAN 75 FEET**

The following replaces Paragraph (2) of Exclusion g, Aircraft, Auto Or Watercraft, in Paragraph 2, of SECTION 1 - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- (2) A watercraft you do not own that is:
- (a) Less than 75 feet long; and
  - (b) Not being used to carry any person or property for a charge.

**C. AIRCRAFT CHARTERED WITH PILOT**

The following is added to Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

**D. DAMAGE TO PREMISES RENTED TO YOU**

1. The first paragraph of the exceptions in Exclusion j., Damage To Property, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is deleted.

2. The following replaces the last paragraph of Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Exclusions e., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III - Limits Of Insurance.

3. The following replaces Paragraph 6. of SECTION III - LIMITS OF INSURANCE:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the DEFINITIONS Section:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the DEFINITIONS Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

(b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted.

**E. INCREASED SUPPLEMENTARY PAYMENTS**

1. The following replaces Paragraph 1.b. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense

of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

**F. WHO IS AN INSURED - EMPLOYEES AND VOLUNTEER WORKERS - FIRST AID**

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II - WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III - LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED - EMPLOYEES - SUPERVISORY POSITIONS**

The following is added to Paragraph 2.a.(1) of **SECTION II - WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED - NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II - WHO IS AN INSURED** of the Commercial General Liability Coverage Form, and Paragraph 3. of **SECTION II - WHO IS AN INSURED** of the Global Companion Commercial General Liability Coverage Form, to the extent such coverage forms are part of your policy:

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**I. BLANKET ADDITIONAL INSURED - OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

**J. BLANKET ADDITIONAL INSURED - LESSORS OF LEASED EQUIPMENT**

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

**K. BLANKET ADDITIONAL INSURED - PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed

and executed that contract or agreement; and

- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

**L. BLANKET ADDITIONAL INSURED - BROAD FORM VENDORS**

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you;
  - (2) Any change in "your products" made by such vendor;
  - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";

(5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or

(6) "Your products" which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED - UNNAMED SUBSIDIARIES**

The following is added to SECTION II - WHO IS AN INSURED:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**N. WHO IS AN INSURED - LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of SECTION II - WHO IS AN INSURED:

No person or organization is an insured with respect to the conduct of any cur-

rent or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II - Who Is An Insured.

**O. MEDICAL PAYMENTS - INCREASED LIMITS**

The following replaces Paragraph 7. of SECTION III - LIMITS OF INSURANCE:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- (a) \$10,000; or
- (b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

**P. CONTRACTUAL LIABILITY - RAILROADS**

1. The following replaces Paragraph c. of the definition of "insured contract" in the DEFINITIONS Section:

c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the DEFINITIONS Section is deleted.

**Q. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., Duties In The Event of Occurrence, Offense, Claim or Suit, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II - Who Is An Insured:

- (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" author-

ized by you to give notice of an "occurrence" or offense.

- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

- (i) A partner or member of any partnership or joint venture;
- (ii) A manager of any limited liability company;
- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

**R. UNINTENTIONAL OMISSION**

The following is added to Paragraph 6., **Representations**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**S. BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### A. PERSONAL EFFECTS COVERAGE

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by adding the following:

##### Personal Effects Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal effects which are:

- (1) owned by an "insured"; and
- (2) in or on your covered "auto";

in the event of a total theft "loss" of your covered "auto".

No deductibles apply to Personal Effects Coverage.

#### B. AUTO LOAN LEASE GAP COVERAGE

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by adding the following:

##### Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and
- (2) Any:
  - (a) Overdue lease/loan payments at the time of the "loss";
  - (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases.

#### C. COVERAGE EXTENSION - AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT NOT DESIGNED SOLELY FOR THE PRODUCTION OF SOUND

**SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions**, exception paragraph a. to exclusions 4.c & 4.d is deleted and replaced with the following:

- a. Equipment and accessories used with such equipment, except tapes, records or discs, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or

#### D. WAIVER OF DEDUCTIBLE - GLASS

**SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

#### E. HIRED AUTO PHYSICAL DAMAGE COVERAGE

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by adding the following:

##### Hired Auto Physical Damage Coverage Extension

If hired "autos" are covered "autos" for Liability Coverage and this policy also provides Physical Damage Coverage for an owned "auto", then the

COMMERCIAL AUTO

Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:
  - (a) \$50,000;
  - (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
- (2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".
- (5) This Coverage Extension does not apply to:
  - (a) Any "auto" that is hired, rented or borrowed with a driver; or
  - (b) Any "auto" that is hired, rented or borrowed from your "employee".

F. BLANKET WAIVER OF SUBROGATION

SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us is deleted and replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the ex-

tent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

G. BLANKET ADDITIONAL INSURED

SECTION II - LIABILITY COVERAGE, part A. 1. Who Is An Insured, paragraph c. is amended by adding the following:

Any person or organization that you are required to include as an additional insured on this Coverage Form in a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

H. EMPLOYEE HIRED AUTOS

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured is amended by adding the following:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

I. COVERAGE EXTENSION - TRAILERS

SECTION I - COVERED AUTOS, C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos, paragraph 1. is deleted and replaced by the following:

- 1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED – PRIMARY AND  
NON-CONTRIBUTORY WITH OTHER INSURANCE ✓**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**PROVISIONS**

1. The following is added to Paragraph A.1.c., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., **Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

POLICY NUMBER: **UB-5J262279-17-I5-G**

**KANSAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Kansas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us, and

1. Such written contract is not a construction contract subject to the Kansas Fairness in Private Construction Contract Act (Kan. Stat. Sections 16-1801 through 16-1807) or the Kansas Fairness in Public Construction Contract Act (Kan. Stat. Sections 16-1901 through 16-1908), or any amendments to those laws; or
2. This policy is part of a consolidated or wrap-up insurance program.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.**

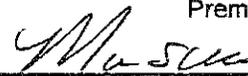
This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to issuance of the policy.)**

Endorsement Effective                      Policy No.                      Endorsement No.  
Insured    Premium \$

Insurance Company

Countersigned by



DATE OF ISSUE 10-11-17      ST ASSIGN

Page 1 of 1

## Christopher Schroeder

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**From:** Monica Wilks <MWilks@holmesmurphy.com>  
**Sent:** Wednesday, May 30, 2018 6:17 AM  
**To:** Christopher Schroeder  
**Cc:** Melissa Eckstein  
**Subject:** FW: Milpitas Insurance Requirements  
**Attachments:** Lucity Cert.pdf; Lucity WC Waiver.pdf; Lucity Xtend Endorsement.pdf; Travelers Auto AI and Waiver Form.pdf

**Importance:** High

Chris-

Per your request, attached is the updated certificate and endorsements. I have requested the 30 Day Notice of Cancellation endorsements from Travelers, and will forward once they are received.

Thanks.



**Monica Wilks, CISR**  
**Client Service Consultant**  
1828 Walnut St. Suite 701  
Kansas City, MO 64108  
**816-857-7820** | 866-574-6282  
Fax: 866-501-3940  
**MWilks@holmesmurphy.com**  
**www.holmesmurphy.com**

==== Private Statement =====

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=====  
Please be advised: Coverage cannot be placed without the acknowledgment of a licensed staff member.  
Corporate Address: 2727 Grand Prairie Parkway, Waukegan, IL 60087

**From:** Melissa Eckstein [mailto:meckstein@lucity.com]  
**Sent:** Wednesday, May 30, 2018 8:02 AM  
**To:** Monica Wilks <MWilks@holmesmurphy.com>  
**Subject:** FW: Milpitas Insurance Requirements  
**Importance:** High

Hi Monica,

You sent a COI for the City of Milpitas earlier this month. The wording in Chris's email below is a little different for the "Additional Insured naming." Do we need a different COI or does the one you already sent work?

Thanks,  
Melissa

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**From:** Jarrod Gerbaud  
**Sent:** Tuesday, May 29, 2018 5:10 PM

CITY COUNCIL MEETING

05/01/2018

SUMMARY OF ACTIONS

**Item**

**Staff**

- \*7. **ADOPT A RESOLUTION SPECIFYING THE CAPITAL IMPROVEMENT PROGRAM 2018-19 BUDGET FOR THE STREET RESURFACING PROJECT 2019 TO INCORPORATE A LIST OF PROJECTS FUNDED BY SB1: THE ROAD REPAIR AND ACCOUNTABILITY ACT**  
Adopted Resolution No. 8767 specifying the Capital Improvement Program 2018-19 budget for the Street Resurfacing Project 2019 to incorporate funding from SB1: The Road Repair and Accountability Act.  
VOTE: 5-0  
Steve Erickson, Steve Chan
- \*8. **ADOPT A RESOLUTION IMPLEMENTING A WAGE THEFT PROCUREMENT POLICY**  
Adopted Resolution No. 8768 implementing a Wage Theft Procurement Policy for City.  
VOTE: 5-0  
Edesa Bitbadal
- \*9. **AWARD A BID TO NOR-CAL BATTERY COMPANY AND AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT WITH NORCAL TO PROVIDE UPS AND BATTERY MAINTENANCE AND REPLACEMENT SERVICES**  
Awarded bid to NorCal Battery Company and authorized City Manager to execute a contract with Nor-Cal to provide UPS and Battery Maintenance and Replacement services throughout the City.  
VOTE: 5-0  
James Levers
- 10. AWARD A BID TO LUCITY INC. AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PURCHASE AND INSTALLATION OF A COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM FOR PUBLIC WORKS FOR THE INITIAL PURCHASE PRICE OF \$155,150 AND TOTAL FIVE YEAR AMOUNT NOT-TO-EXCEED \$236,142.47**  
1. Awarded bid to Lucity Inc. and authorized City Manager to execute a contract with Lucity for purchase and installation of a computerized maintenance management system for Public Works for initial purchase price of \$155,150 and 5-year total not-to-exceed \$236,142.47.  
2. Authorized Purchasing Agent extending contract term annually for each of 4 option years with price increases per agreement terms & without further Council action, except for appropriation of funds.  
3. Allowed the City Attorney to negotiate, as necessary, final terms and conditions of the agreement.  
VOTE: 5-0  
Tony Ndah
11. **APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MOORE, IACOFANO & GOLTSMAN ("MIG") FOR THE MILPITAS MIDTOWN SPECIFIC PLAN UPDATE, CAPITAL IMPROVEMENT PROJECT NO. 3437**  
Approved and authorized City Manager to execute an agreement with Moore, Iacofano & Goltsman (MIG) for \$250,000 for the MidTown Specific Plan Update, Project No. 3437, subject to approval as to form by the City Attorney and Director of Finance.  
VOTE: 5-0  
Brad Misner and Jessica Garner

portion of the contract would be \$34,322.27. Additionally, replacement of all the batteries is expected to occur in year three of the agreement and is currently estimated to cost \$30,758.28. A 10% contingency amount of \$7,304.56 is also included to cover unforeseen repairs and unscheduled battery replacement. The total five-year cost of the contract is estimated to be \$80,350.10.

**Fiscal Impact:** Up to \$80,350.10 for the five-year agreement. Funding for the services is available in the Public Works operating budget for FY 2017-18.

**Recommendation:** Award the bid to NorCal Battery Company and authorize the City Manager to execute a contract with Nor-Cal to provide UPS and Battery Maintenance and Replacement services at various locations throughout the City.

**Attachment:** Contract with NorCal Battery Co.

10.

**Award a Bid to Lucity Inc. and Authorize the City Manager to Execute a Contract for Purchase and Installation of a Computerized Maintenance Management System for Public Works for the Initial Purchase Price of \$155,150 and Total Five Year Amount Not to Exceed \$236,142.47 (Staff Contacts: Chris Schroeder, 408-586- 3161 and Tony Ndah, 408-712-7812)**

**Background:** The City's current Computerized Maintenance Management System with Maintenance Connection is outdated and not capable of meeting the current needs of the Public Works Department. On February 28, 2018, the City's Purchasing Agent issued Request for Proposal (RFP) #2228 – Computerized Maintenance Management System and solicited proposals from prospective vendors on Public Purchase, the City's electronic procurement website. 415 vendors were notified of the the RFP, 64 vendors downloaded the RFP documents and six vendors submitted proposals of which one was rejected for failure to meet the minimum RFP requirements.

Five remaining proposals were evaluated by a team comprised of the Public Works Director, two Public Works Managers and one Information Services System Administrator. Of those five proposals, Lucity, Inc. submitted the highest scoring proposal and offered the most advantageous proposal after consideration of all evaluation criteria. The initial purchase and installation price of the Lucity, Inc. system is \$155,150 and Maintenance and Support costs for years two through five are as follows: Year 2: \$13,900. Year 3: \$14,247.50, Year 4: \$14,603.69, and Year 5: \$14,968.78. A 15% contingency for any unforeseen issues that may arise during installation has been added of \$23,272.50 for a total five year not-to-exceed amount of \$236,142.47. The agreement is for one year with four 1-year options to renew at the preset prices listed.

The new maintenance management system will handle all aspects of Public Works Maintenance Management including, but not limited to: Fleet, Parks, Water, Sewer, Facilities, Storm Water, Streets, Pavement and Traffic assets.

**Fiscal Impact:** None. Funds for this contract are available from the Public Works CIP No. 7134 (Water O&M Database Management) and the Public Works operating budget beginning in Fiscal Year 2017-18.

**Recommendations:**

1. Award the bid to Lucity Inc. and authorize the City Manager to execute an contract with Lucity for purchase and installation of a computerized maintenance management system for Public Works for the initial purchase price of \$155,150 and a total five year amount not-to-exceed \$236,142.47.

	<p>2. Authorize the Purchasing Agent to extend the term of the contract annually for each of the four option years with price increases per the terms of the contract and without further City Council action, except for appropriation of funds.</p> <p>3. Allow the City Attorney to negotiate, as necessary, final terms and conditions of the agreement.</p> <p><b>Attachment:</b> Contract with Lucity, Inc.</p>
<p>11.</p>	<p><b>Approve and Authorize the City Manager to Execute an Agreement with Moore, Iacofano &amp; Goltsman (“MIG”) for the Milpitas Midtown Specific Plan Update, Capital Improvement Project No. 3437 (Staff Contacts: Brad Misner, 408-586-3273 and Jessica Garner, 408-586-3284)</b></p> <p><b>Background:</b> The project to update the Midtown Specific Plan, Project No. 3437 is in the approved 2018-2023 Capital Improvement Program. Located in the center of the City, Midtown is approximately 589 acres with commercial, residential, institutional uses and parks and open spaces. The original Specific Plan was adopted in 2002 with a subsequent update in 2010. The update of the Plan will re-engage the public in the discussion as to the goals and values of the area to the overall development of the City, provide clearer and more modern planning rules to assist in the development of private property, and provide a tool for economic development in the City. The plan development for this project is currently funded at \$260,000 as shown in the 2018-2023 Capital Improvement Program.</p> <p>Through the City’s consultant selection process, Moore, Iacofano &amp; Goltsman (MIG) is recommended to provide the Plan design and development support services for completion of this project. Staff negotiated a scope and fee for these services not to exceed \$250,000 which is considered reasonable for the work.</p> <p><b>Fiscal Impact:</b> Funding for the Midtown Specific Plan update has been approved in the FY 2018-2023 Capital Improvement Program.</p> <p><b>Recommendation:</b> Approve and authorize the City Manager to execute an agreement with Moore, Iacofano &amp; Goltsman known as MIG in the amount of \$250,000 for the MidTown Specific Plan Update, Project No. 3437, subject to approval as to form by the City Attorney and Director of Finance.</p> <p><b>Attachment:</b> Agreement with MIG</p>
<p>12.</p>	<p><b>Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. to Increase Compensation in the Additional Amount of \$38,008 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301)</b></p> <p><b>Background:</b> The Lower Penitencia Creek Pedestrian Bridge, Project No. 2005, is included in the FY 2017-2022 Capital Improvement Program. This project provides for design and construction of a pedestrian bridge over the Penitencia Creek East Channel near McCandless Drive. The new pedestrian bridge will connect the Harmony residential housing project and a multi-use levee trail along Penitencia Creek. The bridge will also provide access to McCandless Park and Mabel Mattos School which is under construction.</p> <p>On June 20, 2017, the City entered into a design services agreement with Biggs Cardosa and Associates in the amount of \$249,650 to prepare design plans and specifications for the project and to assist City staff during the project bid and construction phases. The scope of the original project has now expanded due to complexity with adjacent projects and to provide coordination between the McCandless Park, Well Project, PG&amp;E and the Santa</p>



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Receive a Report on Emergency Repair of Water Main at Intersection of Calaveras Boulevard and Park Victoria Drive; and, Ratify award of emergency contract to and direct the City Manager to execute a contract with Preston Pipelines</b>
<b>Category:</b>	Consent Calendar-Community Services and Sustainable Infrastructure
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Tony Ndah, Public Works Director, 408-586-2602</b>
<b>Recommendations:</b>	<ol style="list-style-type: none"> <li>1. Receive a report from the Public Works Director on the emergency repair work on a water main at the intersection of Calaveras Boulevard and Park Victoria Drive.</li> <li>2. Ratify award of emergency contract to and direct the City Manager to execute a contract with Preston Pipelines.</li> </ol>

### **Background:**

Pursuant to Public Contract Code section 22050 and Council Resolution No. 7779, the Director of Public Works may authorize emergency work, but must provide the City Council with a report of all such activities. Per these requirements, the Public Works Director authorized contracting with Preston Pipelines to complete the emergency repair of a 12-inch water main at the intersection of Calaveras Boulevard and Park Victoria Drive.

On Thursday, February 13, 2020, the City experienced a break on a 12-inch water main, at the corner of eastbound Calaveras Boulevard and South Park Victoria Drive. The break resulted from a four (4) inch hole that blew out of the top of the asbestos cement water main near a valve at the intersection. Repair work was completed on Friday, February 14, 2020.

### **Analysis:**

Due to the size of the repair and the urgent need to restore the water main to provide and maintain water service to numerous residents and businesses in the City, it was determined the repair project constituted an emergency that would not permit a delay resulting from a competitive solicitation of bids. In accordance with Public Contract Code section 22050 and pursuant to authority delegated by the City Council under Council Resolution No. 7779, the Public Works Director authorized Preston Pipelines to complete the repair on the 12-inch water main.

The failure on 12-inch water main was approximately six feet deep and affected a large number of residents and businesses in the area. The water flow from the failed water main caused ponding on the roadway and repair activities required the closure of some lanes of traffic. Public Works Crews worked alongside Preston Pipeline staff to locate the leak, repair the water main, and pave the area around the repair location. Repair work was completed on Friday, February 14, 2020.

The total cost for the repair is estimated to not exceed \$60,000 and the work is now completed. Staff seeks City Council ratification of the decision to engage in an emergency contract with Preston Pipeline and direction for the City Manager to execute a standard public works construction contract in order to pay invoices associated with the emergency repair of the water main.

### **Fiscal Impact:**

Total cost for the repair is estimated to not exceed \$60,000. There are sufficient funds available within the FY 2019-20 Public Works Operating Budget for this emergency work.

**California Environmental Quality Act:**

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

**Recommendations:**

1. Receive a report from the Public Works Director on the emergency repair work on a water main at the intersection of Calaveras Boulevard and Park Victoria Drive.
2. Ratify award of emergency contract to, and direct the City Manager to execute a contract with, Preston Pipelines.

**Attachment:**

Draft Construction Contract with Preston Pipelines for emergency repair work.

**CITY OF MILPITAS**  
**CONSTRUCTION CONTRACT**

**EMERGENCY WATER PIPELINE REPAIRS AT PARK VICTORIA DRIVE**

**1. PARTIES AND DATE.**

This Contract is made and entered into this 13th day of February 2020 by and between the City of Milpitas, a public agency and public corporation of the State of California ("City") and **Preston Pipelines, Inc.**, a California corporation, with its principal place of business at 133 **Bothelo Avenue Milpitas, CA 95035** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

**2. RECITALS.**

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing Emergency Water Pipeline Repairs at Park Victoria Drive related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: A - GENERAL ENGINEERING CONTRACTOR

2.3 Project. City desires to engage Contractor to render such services for the Emergency Water Pipeline Repairs at Park Victoria Drive ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

**3. TERMS**

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Insurance Requirements (Exhibit "G")
- Federal Requirements (Exhibit "H")
- Addenda
- Change Orders executed by the City

- Current Edition of the Caltrans Standard Specifications, Excluding Division I (Sections 1-9)
- Current Edition of the Caltrans Standard Plans
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an “or equal” material, process or article that may be substituted. Data required to substantiate requests for substitutions of an “or equal” material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted “or equal” material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted “or equal” material, process or article, and substantiates that it is an “or equal” to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or equal” material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City’s costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted “or equal” material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract **within thirty (30) calendar days**, beginning the effective date of the Notice to Proceed (“Contract Time”). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits “A” or “B” attached hereto or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of One Hundred Dollars and Zero Cents (\$100.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor’s failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of [REDACTED] Dollars (\$ [REDACTED].00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1)

liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the

Department of Industrial Relations. No bid will be accepted, nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

### 3.8 Performance of Work; Jobsite Obligations.

#### 3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies.

Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other

waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the

Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. City reserves the right to

defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance

requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid

injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least

two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating

and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

### 3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed

no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16-point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.4 City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000.00, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

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

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

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

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section

3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

### 3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "G" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required therein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

### 3.14 Bond Requirements.

3.14.1 Payment Bond. If required by Civil Code section 9550, as it may be amended from time to time, or otherwise specifically requested by City as set forth in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit “C” attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City’s sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor’s obligation hereunder to correct defective Work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any

defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### 3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

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

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

### 3.17 General Provisions.

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

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with out without cause, by giving Contractor three (3) days advance written notice. In the event

of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONTRACTOR:**

Preston Pipelines Inc.  
133 Bothelo Avenue  
Milpitas CA 95035  
Attn: TJ Copple, Project Manager

**CITY:**

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

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

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

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

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

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

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

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

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Wage Theft Prevention.

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

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

3.17.21.3 If at any time during the term of this Contract, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Contract has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment,

decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

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

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

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

3.17.22 Federal Provisions. [RESERVED]

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT  
BETWEEN THE CITY OF MILPITAS  
AND PRESTON PIPELINES INC.**

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

**CITY OF MILPITAS**

*Approved By:*

\_\_\_\_\_  
Steve McHarris, City Manager

\_\_\_\_\_  
Date

*Approved:*

\_\_\_\_\_  
Walter C. Rossmann, Director of  
Finance/Risk Manager

*Approved As To Form:*

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

*Approved As To Content:*

\_\_\_\_\_  
Tony Ndah, Director of Public Works

**PRESTON PIPELINES INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

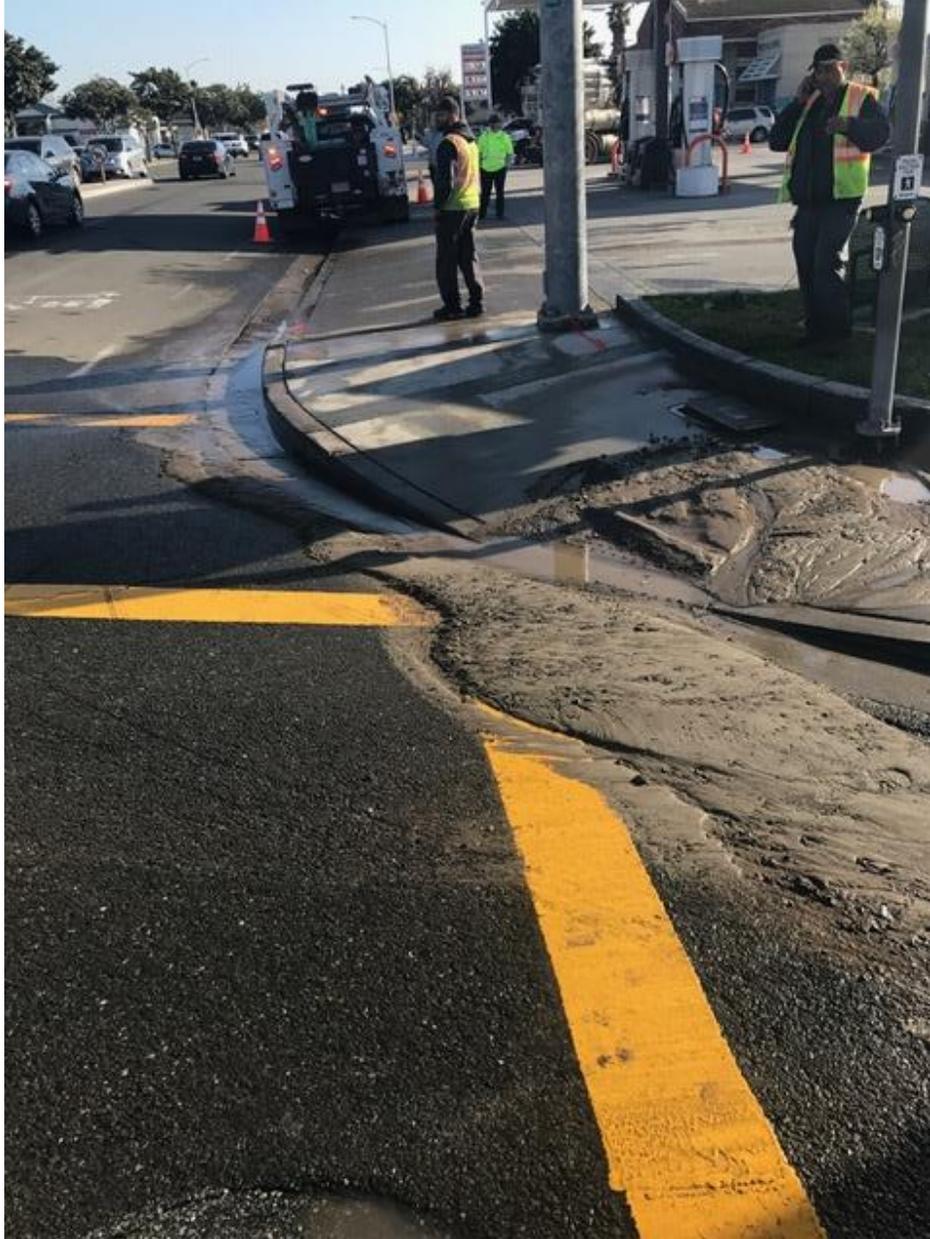
\_\_\_\_\_  
Date

## **EXHIBIT "A"**

### **SERVICES / SCHEDULE**

- A. Perform emergency repair of a broken water main at East Calaveras Boulevard and South Park Victoria Drive.
  - 1. Mobilize a crew and equipment to the site, performed setup, layout, and saw-cutting of the trench in preparation of the repair.
  - 2. Remove the existing AC on top of the broken water main after the main was shutoff.
  - 3. Pump out the accumulated water.
  - 4. Excavate down to the water main to locate the broken section of the main. Locate the leak, cut out the broken section, repair the main by installing new piping and couplings, then backfilled and plated the area so traffic could resume prior to repaving the road.
  - 5. Set up traffic control, remove trench plates, raise valve boxes to grade, prepare top soil layer for paving, and then paving the area around the repair location.
  - 6. Demobilize equipment and cleaned area around East Calaveras Boulevard and South Park Victoria Drive.

**EXHIBIT "B"**  
**PLANS AND SPECIFICATIONS**









**EXHIBIT "C"**

**SPECIAL CONDITIONS**

**ARTICLE 1. BONDS**

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

**EXHIBIT "D"**

**CERTIFICATION  
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

**Preston Pipelines Inc.**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

**EXHIBIT “E”**

**PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Contractor: Preston Pipelines Inc.

DIR Registration Number: 100000292

DIR Registration Expiration: 30 June 2021

Small Project Exemption:        Yes or XX No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

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

**EXHIBIT "F"**  
**PAYMENT AND PERFORMANCE BONDS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

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

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

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

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

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

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$ \_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

# Notary Acknowledgment

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

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

- Partner(s)                       Limited
- General

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

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

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS That

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

\_\_\_\_\_ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

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

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

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

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions

precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

# Notary Acknowledgment

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

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

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

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

\_\_\_\_\_  
 \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
 Title or Type of Document

\_\_\_\_\_  
 Number of Pages

\_\_\_\_\_  
 Date of Document

\_\_\_\_\_  
 Signer(s) Other Than Named Above

## EXHIBIT "G"

### INSURANCE REQUIREMENTS

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

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

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

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

#### **Commercial General Liability (CGL):**

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

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

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

#### **Automobile Liability:**

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

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

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

**Professional Liability (Errors and Omissions):**

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

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

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

**Workers' Compensation Insurance:**

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

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

**Builder's Risk (Course of Construction):**

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

**Contractor's or Consultant's Pollution Legal Liability:**

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

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or

Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Cyber Liability Insurance**

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

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

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

**Surety Bonds:**

Contractor shall provide the following Surety Bonds:

- Bid Bond
- Performance Bond
- Payment Bond

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

**Other Insurance Provisions:**

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

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

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

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

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

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

**X\_\_ Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

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

**X\_ Waiver of Subrogation:**

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

**X\_ Completed Operations**

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

**THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS**

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

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

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

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

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

**Acceptability of Insurers:**

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

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

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

**Subcontractors:**

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

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

**Verification of Coverage:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before

work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances**

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

**Failure to Comply:**

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

**Applicability of Coverage:**

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

**EXHIBIT “H”**  
**FEDERAL REQUIREMENTS**

**[RESERVED]**

# MEETING OF THE MILPITAS CITY COUNCIL

## PREVIEW LIST OF AGENDA ITEMS

TUESDAY, APRIL 7, 2020

### **PRESENTATION**

- Proclaim April as Vietnamese-American Heritage month

### **CONSENT CALENDAR**

- 1) Accept City Council calendar for April 2020 (Mary Lavelle)
- 2) Approve City Council meeting minutes of March 17, 2020 (Mary Lavelle)
- 3) Adopt a Resolution Approving Purchase of GameTime Playground Equipment through a Coop. Procurement Contract by Charlotte, NC and authorize the interim City Manager to Execute a Purchase Agreement for \$711,003.89 (Renee Lorentzen, Chris Schroeder)
- 4) Approve Agreement for Utility Electronic Bill Presentment and Payment (Jane Corpus)
- 5) Approve Memorandum of Understanding with Santa Clara County for Crime Lab Major Case Work for Milpitas Police Dept. (Capt. Raj Maharaj)
- 6) Consider and Approve Fee Waiver for Christian Worship Center's Easter Egg Hunt at Augustine Park - park rental fee of \$1170 (Mary Lavelle)
- 7) Preview list of items for April 21, 2020 (Mary Lavelle)

### **PUBLIC HEARING**

- 8) Continued from March 17: Appeal of Planning Commission decision on La Quinta Hotel project (Ned Thomas)

### **COMMUNITY DEVELOPMENT**

- 9) Adopt Final Economic Development Strategy (Alex Andrade)
- 10) Report on Community Identification and Brand Study Initiative (Ashwini Kantak)

### **REPORT**

- 11) Report of Councilmember Phan on request to implement a responsible construction ordinance (Anthony Phan)



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Request to Continue Public Hearing to April 7, 2020: Consider Adoption of a Resolution Upholding the Appeal by Adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program in Compliance with the California Environmental Quality Act, and Approving: (1) Environmental Assessment; (2) Site Development Permit; and (3) Conditional Use Permit to Allow the demolition of an existing 22,300 square foot commercial building and development of a new 105-room hotel at 1000 Jacklin Road</b>
<b>Category:</b>	Public Hearings-Community Development
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Lillian VanHua, 408-586-3073</b>
<b><u>Recommendation:</u></b>	Move to continue the public hearing to April 7, 2020.

### **Background:**

The appellant (regarding appeal of Planning Commission decision to deny La Quinta Hotel development project) has mutually agreed with the City and is asking the City Council to move the appeal hearing date currently set for March 17, 2020 to the first regular City Council meeting, which is April 7, 2020. The appellant has agreed to April 7, 2020 date notwithstanding Milpitas Municipal Code Section I-20-5.06, which states that the appeal hearing date should be set within 60 days of the filing of the appeal. The appeal was filed on January 27, 2020.

The City Council is requested to agree to hold the appeal hearing on April 7, and no further changes are contemplated unless future health risks or orders/declarations are issued, or the parties mutually agree to any change in the date.

### **Fiscal Impact:**

None

### **Recommendation:**

Staff recommends that the City Council continue the public hearing to a date certain, namely Tuesday, April 7, 2020 at the regular scheduled City Council meeting.

### **Attachment:**

e-mail between City Attorney and Appellant's attorney

## Lillian Hua

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**From:** Norm Matteoni <Norm@matteoni.com>  
**Sent:** Wednesday, March 11, 2020 2:01 PM  
**To:** Christopher Diaz-Contact  
**Cc:** mstcs2000; Ned Thomas; Lillian Hua; Joe Gigantino; Ann-Margaret; Jessica Garner  
**Subject:** Re: 1:00 pm meeting today

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Confirmed

Sent from my iPhone

On Mar 11, 2020, at 1:17 PM, Christopher Diaz <Christopher.Diaz@bbklaw.com> wrote:

Thanks, Norm. I also received your voicemail message.

Please let me know if you disagree, but both parties would be agreeing to push the date notwithstanding the fact that the Municipal Code suggests that the hearing be set within 60 days of filing the appeal. Although the City did set the date within 60 days of the filing of the appeal, based on health risk factors outside of both parties' control, we are both agreeing to push the date to April 7<sup>th</sup>. Of course, if there are future health risks or orders/declarations issued, we will re-evaluate that date and let you know as soon as possible about any movement from that date and coordinate with you.

Please confirm that your understanding is the same.

Thank you.



**Christopher Diaz**  
Partner  
christopher.diaz@bbklaw.com  
T: (925) 977-3309 C: (310) 422-3523  
www.BBKlaw.com  



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution to Ratify the Emergency Proclamation of the Interim City Manager of March 12, 2020 (Staff Contact: Steve McHarris, 408-586-3051)</b>
<b>Category:</b>	Public Safety
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Interim City Manager Steve McHarris, 408-586-3051</b>
<b>Recommendation:</b>	Adopt a resolution to ratify the City of Milpitas Emergency Proclamation signed on March 12, 2020 by the interim City Manager regarding Coronavirus (COVID-19).

**Background:** The World Health Organization (WHO) has declared COVID-19 a global pandemic. As the virus spreads through California, the Governor’s Office Emergency Services and the County Office of Emergency Management have declared emergency proclamations. Additionally, all cities in Santa Clara County are issuing emergency proclamations. The City of Milpitas’ Emergency Services Director, Interim City Manager Steve McHarris, signed the Milpitas Emergency Proclamation on Thursday, March 12, 2020.

**Analysis:** The declaration on behalf of the City of Milpitas will allow for the assistance in a coordinate public health response to reduce transmission and illness severity, provide assistance to health care providers, coordinate and mitigate public services that may be disrupted from this emergency and mitigate any other effects of this emergency on the residents of Milpitas.

**Policy Alternative:**

**Alternative:** Do not adopt the ratifying resolution proclaiming a local emergency, thereby allowing the Emergency Proclamation to expire seven (7) days post signature.

Pros: None.

Cons: Requires the City to continue to operate as normal without altering purchasing guidelines and requirements and limiting the ability to implement working condition modifications for employees. Could impact the ability of the City to access State and/or Federal reimbursement and recovery funding.

Reason not recommended: Could limit the ability to respond to emergency needs and recover expenses related to response to the pandemic.

**Fiscal Impact:** Possible short term increased spending of an unknown amount to cover costs related to responding to the pandemic. Without a proclamation, the City could have difficulty recovering costs associated with the response to the pandemic.

**California Environmental Quality Act:**

Not applicable

**Recommendation:**

City Council is requested to adopt a resolution to ratify the City of Milpitas Emergency Proclamation signed on March 12, 2020 by the interim City Manager regarding Coronavirus (COVID-19).

**Attachments:**

Draft Resolution

Proclamation declaring a local emergency

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS PROCLAIMING A LOCAL EMERGENCY REGARDING NOVEL CORONAVIRUS (COVID-19) AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY BY THE CITY MANAGER**

**WHEREAS**, the federal Centers for Disease Control and Prevention (“CDC”) has confirmed multiple cases of individuals who have severe respiratory illness caused by a novel coronavirus, called COVID-19, as well as deaths caused by this illness; and

**WHEREAS**, the World Health Organization declared COVID-19 a public health emergency of international concern, and the CDC announced that community spread of COVID-19 is likely to occur in the United States; and

**WHEREAS**, on March 4, 2020, California Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple State agencies and departments, and help the State prepare for broader spread of COVID-19; and

**WHEREAS**, the increase of reported cases and deaths associated with COVID-19 has also prompted the County of Santa Clara and the Department of Public Health to proclaim a local and public health emergency; and

**WHEREAS**, the imminent and proximate threat of introduction of COVID-19 in the City of Milpitas threatens the safety and health of City residents; and

**WHEREAS**, California Government Code Section 8630 and Milpitas Municipal Code V-1-4.02 empowers the City Council to proclaim the existence of a local emergency to protect and preserve public welfare when the City is affected or likely to be affected by a public calamity; and

**WHEREAS**, a declaration of a local emergency will assist in a coordinated public health response to reduce transmission and illness severity, provide assistance to health care providers, coordinate and mitigate public services that may be disrupted from this emergency, and mitigate any other effects of this emergency on the citizens of the City; and

**WHEREAS**, under Government Code section 8630(b), a proclamation of local emergency must be ratified by the City Council within seven (7) days to remain in effect; and

**WHEREAS**, Government Code section 8630 generally requires the City Council to review the need for continuing the local emergency at least every sixty (60) days, but as part of Governor Gavin Newsom’s March 4, 2020 Declaration of a State of Emergency in California due to COVID-19, this provision has been waived for the duration of the statewide emergency, allowing the City to maintain its emergency in place until terminated by the City Council; and

**WHEREAS**, the City Council desires to declare a local emergency and ratify the proclamation of local emergency by the City Manager.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Milpitas as follows:

**Section 1.** Pursuant to California Government Code section 8630 and Milpitas Municipal Code V-1-4.02, the City Council hereby finds and proclaims and ratifies a local emergency caused by

conditions or threatened conditions of COVID-19 in the City of Milpitas, which constitutes an extreme peril of health and safety of persons within the territorial limits of the City.

**Section 2.** The local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council.

**Section 3.** The City Manager, acting as the Director of Emergency Services, is hereby authorized to furnish information, to promulgate orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, to enter into agreements and to take all actions necessary to obtain State emergency assistance to implement preventive measures to protect and preserve the residents of the City within the scope of the local emergency hereby declared.

**Section 4.** During the existence of said local emergency, the powers, functions, and duties of the emergency organization of this City shall be those prescribed by State law, ordinances, and resolutions of this City of Milpitas.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney



**A PROCLAMATION OF LOCAL EMERGENCY IN THE  
CITY OF MILPITAS, CALIFORNIA BY THE DIRECTOR OF  
EMERGENCY SERVICES**

**BE IT PROCLAIMED BY THE CITY OF MILPITAS AS FOLLOWS:**

**WHEREAS**, the federal Centers for Disease Control and Prevention (“CDC”) has confirmed multiple cases of individuals who have severe respiratory illness caused by a novel coronavirus, called COVID-19, as well as deaths caused by this illness; and

**WHEREAS**, the World Health Organization declared COVID-19 a public health emergency of international concern, and the CDC announced that community spread of COVID-19 is likely to occur in the United States; and

**WHEREAS**, on March 4, 2020, California Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple State agencies and departments, and help the State prepare for broader spread of COVID-19; and

**WHEREAS**, the increase of reported cases and deaths associated with COVID-19 has also prompted the County of Santa Clara and the Department of Public Health to proclaim a local and public health emergency; and

**WHEREAS**, the imminent and proximate threat of introduction of COVID-19 in the City of Milpitas threatens the safety and health of City residents; and

**WHEREAS**, California Government Code Section 8630 and Milpitas Municipal Code V-1-4.02 empowers the City Council to proclaim the existence of a local emergency to protect and preserve public welfare when the City is affected or likely to be affected by a public calamity;

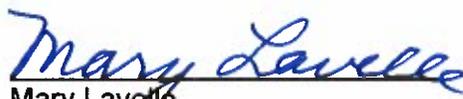
**NOW, THEREFORE, IT IS HEREBY PROCLAIMED:**

1. That the Director of Emergency Services hereby finds that conditions of extreme peril to the safety of persons and property do warrant and necessitate the proclamation of a local emergency throughout the City of Milpitas.
2. That the Director of Emergency Services of the City of Milpitas proclaims the existence of a local emergency within the City of Milpitas on March 12, 2020.
3. That it is therefore proclaimed and ordered that the local emergency shall be ratified by the City Council within seven (7) days of this proclamation, or otherwise expire.
4. Effective date. This proclamation shall become effective immediately.

Dated: 3/12/2020

Signed:   
Steve McHarris  
Interim City Manager/Emergency Services Director

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A PROCLAMATION OF LOCAL EMERGENCY FOR THE CITY OF MILPITAS, CALIFORNIA BY THE DIRECTOR OF EMERGENCY SERVICES ON THE 12<sup>TH</sup> DAY OF MARCH, 2020.

Attest:   
Mary Lavelle  
City Clerk  
City of Milpitas, California



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women</b>
<b>Category:</b>	Reports of Mayor and Councilmembers
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Councilmember Karina Dominguez, 408-586-3031; Councilmember Anthony Phan, 408-586-3032</b>
<b>Recommendation:</b>	<b>Adopt Resolution in Support of the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women</b>

**Background:**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world. To date, 187 out of 193 United Nations member states have ratified CEDAW. The United States is one of only six countries—along with Iran, Sudan, Somalia, Palau and Tonga—that have not ratified CEDAW. CEDAW defines discrimination and provides a practical blueprint to promote human rights and open opportunities for women and girls in all areas of society. The treaty calls on each ratifying country to overcome barriers to discrimination in the political, social, economic, and cultural fields. This includes addressing issues of domestic violence, trafficking, affordable health care and child care, economic security, pay inequities, paid family leave, and educational and vocational opportunities.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women.

**Analysis:**

The Convention of Elimination of All Forms of Discrimination Against Women lays out specific universal standards that affirm the fundamental rights of women and girls and offers a framework to foster gender equality and eliminate discrimination against women. It defines what constitutes discrimination against women broadly to encompass policies that negatively affect women’s human rights, and offers a blueprint to create more equitable opportunities and outcomes for the City of Milpitas.

By using an intersectional approach, the City of Milpitas, can help women by building policies that address all aspects of their identity. CEDAW seeks to foster not only equal opportunities, but also more equitable outcomes. Furthermore, the City of Milpitas will be able to form outcomes that will help prevent workplace violence, discrimination and sexual harassment.

**Fiscal Impact:**

None.

**California Environmental Quality Act:**

N/A.

**Recommendation:**

Adopt the resolution in support of the principles of the United Nation Convention on The Elimination of All Forms of Discrimination Against Women, referenced as “CEDAW.”

**Attachments:**

Resolution

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS IN SUPPORT OF THE PRINCIPLES OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

**WHEREAS**, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a comprehensive international women's rights treaty that calls for appropriate measures, such as legislation, to ensure women's rights and equality in all aspects of life, including in the political, social, economic, cultural, and civil fields; and the CEDAW was adopted by the United Nations General Assembly in 1979 and ratified by 187 countries but the United States remains one of only six countries that have not ratified the treaty; and

**WHEREAS**, the spirit of the Convention is rooted in the goals of the United Nations to affirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and as CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex; and

**WHEREAS**, CEDAW, sometimes called an International Bill of Rights for Women, obligates those countries which have ratified or acceded to it to take all appropriate measures to ensure the full development and advancement of women in all spheres; political, educational, employment, health care, economic, social, legal, marriage and family relations, as well as to modify the social and cultural patterns of conduct of men and women to eliminate prejudice, customs and all other practices based on the idea of inferiority or superiority of either sex; and

**WHEREAS**, fifty-two countries, including the United States, signed CEDAW during the 1980 Mid-Decade Conference for Women in Copenhagen, Denmark, and to date 161 countries, representing over half of the world's countries, have now ratified or acceded to the Convention, and yet the United States has not ratified or acceded to it; and

**WHEREAS**, municipal governments have an appropriate and legitimate role in affirming the importance of international law in our communities as universal norms and to serve as guides for public policy; and

**WHEREAS**, there are vast gender disparities at the local, state, and national level; women, particularly women of color, disabled women, Native women, immigrant women, trans women, and women from marginalized communities suffer from unequal pay in Santa Clara County; and

**WHEREAS**, CEDAW provides a comprehensive framework for governments to examine their policies and practice in relation to women and girls and to rectify discrimination based on gender; and

**WHEREAS**, the adoption would further support the initiative of the California State Legislature in endorsing ratifications of CEDAW, when by resolution in 1997, it encouraged the United States Senate to ratify the Convention.

**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 supports the principles of the United Nations Convention on The Elimination of All Forms of Discrimination Against Women referenced as “CEDAW.”
- 3. The City Council hereby directs staff to come back with an ordinance to implement in the City of Milpitas using the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in city operations.

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

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Request No.	Topic	Submitted by:	A, F, or CM	Date requested or Rec'd Form	To CC Rules Subcomm:	on City Council meeting agenda this date:
<b>2020</b>						
12	Community Workforce Agreement	Nuñez	A	2/18/2020		
11	Discuss having 4th of July parade	Nuñez	A	2/18/2020		
10	Responsible Construction Ordinance	Phan	A	2/4/2020		3/3/2020
9	Support for Laura's Law	Phan	A	2/4/2020		3/3/2020
8	Parade for MHS Trojans Football	Tran, City Manager	A	1/21/2020		1/28/2020
7	Request for Dumpster Days	Tran	A	1/7/2020		
6	Resolution in support of elimination of discrimination v. women	Dominguez	A	1/7/2020		3/17/2020
5	Proposed ban on vaping, restrict smoking	Montano	A	1/7/2020		3/3/2020
4	Street/traffic calming update	Nuñez	A	1/7/2020		3/3/2020
3	Report on parking in The Pines	Nuñez	A	1/7/2020		2/18/2020
2	Report on speed cameras like Fremont (radar displays) - no enforcement	Phan	A	1/7/2020		
1	Info. on new SB 50	Phan	A	1/7/2020		memo
<b>2019</b>						
10	Maintain Dagupan, P.I. as a Sister City	Tran, Montano	F	9/17/2019	9/20/2019	12/17/2019
9	Have "Dumpster Days"	Tran, Montano	F	9/17/2019	9/20/2019	
8	Add Green Bike Lanes	Tran, Montano	F	9/17/2019	9/20/2019	1/28/2020
7	Establish Railroad quiet zone	Tran, Montano	F	9/17/2019	9/20/2019	
6	Rename Augustine Park to include "Sunnyhills"	Tran, Montano	F	9/17/2019	9/20/2019	2/4/2020
5	Community Theater, perhaps with MUSD	Nuñez, Phan	F	8/20/2019	8/23/2019	
4	Consider Community Museum and Park on Main St.	Nuñez, Phan	F	8/20/2019	8/23/2019	
3	Rename Dixon Landing Rd. as Barack Obama Blvd	Nuñez, Phan	F	8/20/2019	8/23/2019	

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

2	policy for Proclamations and Commendations	Nuñez, Phan	F	8/20/2019	8/23/2019	
1	policy for Social Media	Nuñez, Phan	F	8/20/2019	8/23/2019	

A: @Announcements

F: on a Form

CM: to City Manager



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law”</b>
<b>Category:</b>	Reports of Mayor and Councilmembers
<b>Meeting Date:</b>	3/17/2020
<b>Staff Contact:</b>	<b>Councilmember Anthony Phan, 408-586-3032 and Mayor Tran, 408-586-3029</b>
<b>Recommendation:</b>	Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law” and consider directing staff to send letter of support.

### **Background:**

On February 4, 2020, Councilmember Phan requested his colleagues to consider directing staff to research and consider Council support locally of "Laura's Law" related to mandatory conservatorship by the County for those with severe mental health illness.

### **Recommendation:**

Hear Request of Councilmember Phan and Mayor Tran in Support of “Laura’s Law” and consider directing staff to send letter of support.

### **Attachments:**

Memorandum by Councilmember Phan and Mayor Tran  
City of San Jose Letter of Support  
Report to San Jose City Council with Attachments



# MEMORANDUM

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479  
PHONE: 408-586-3000, FAX: 408-586-3056, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

**TO:** City Manager Steve McHarris  
City Attorney Chris Diaz  
**CC:** City Clerk Mary Lavelle

**DATE:** 02/03/2020

**FROM:** Mayor Rich Tran

Councilmember Anthony Phan

**SUBJECT:** County Implementation of Laura's Law and Enhanced Conservatorships

## **RECOMMENDATION**

Place the following item on the February 18, 2020 Agenda for Council discussion and action; Direct the City Manager to submit a letter from the City Council to the Santa Clara County Board of Supervisors and the County Executive's Office to request County implementation of Laura's Law (Assisted Outpatient Treatment) and strengthened conservatorship policies, and add these objectives to the City's legislative priorities.

## **BACKGROUND**

In Santa Clara County, homelessness has become a crisis. Nearly 10,000 individuals are currently homeless in Santa Clara County, and these numbers are projected to continue to increase at an alarming rate. Last year, homelessness increased at a drastic increase of 31.3% in Santa Clara County.<sup>1</sup>

According to the U.S. Department on Housing and Urban Development, it is estimated that on average, amongst homeless individuals nationally, 45% are mentally ill and 25% are seriously mentally ill. Locally, Santa Clara County statistics show data based on self-reported responses that parall national numbers, with 42% of homeless respondents indicating that they suffer from mental illness of some form and 35% of respondents reporting having experienced alcohol or substance abuse.

## **BACKGROUND ON LAURA'S LAW AND CONSERVATORSHIP**

Laura Wilcox was a teenage college student shot to death in 2001, by a severely mentally deranged individual. Despite pleas from his own family and recommendation from his social worker, the individual actively refused psychiatric treatment and continued to be defiant, as he increasingly became delusional and paranoid, in the events leading up to the shooting.

In 2002, Assisted Outpatient Treatment Demonstration Project Act, also known as Laura's Law, was signed into law by Governor Gray Davis. The legislation aims to help individuals suffering with severe mental health needs by mandating their access to assisted outpatient treatment. The policy applies to those who meet a specific set of exhaustive requirements to demonstrate

<sup>1</sup> "County of Santa Clara, City of San Jose Release Results of 2019 Homeless Census." County News, County of Santa Clara, 16 May 2019, [www.sccgov.org/sites/opa/newsroom/Pages/2019homelesscensus.aspx](http://www.sccgov.org/sites/opa/newsroom/Pages/2019homelesscensus.aspx).

their history of non-compliance, such as if they were hospitalized or jailed at least twice within 36 months.

The policy heavily relies on County implementation and enforcement. In California, twenty Counties have opted to implement Laura's Law, with Bay Area Counties including Contra Costa, Marin, San Mateo, San Francisco and San Mateo.

In 2018, Senate Bill 1045 was signed into law, allowing the City and County of San Francisco, Los Angeles, and San Diego Counties to pilot a 5-year program of housing-based conservatorship. The bill establishes conservatorships to individuals suffering from both a severe mental illness and a substance use disorder. Ultimately, the bill increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare. Senate Bill 40, passed in 2019, similarly addresses procedures regarding 5150 psychiatric holds and expands conservatorship provisions for these often-neglected individuals, many of whom at high risk of harming themselves.

### **ANALYSIS**

Expanding a framework for conservatorship and County implementation of Laura's Law will expand access to critical services and treatment for our community's most vulnerable struggling with severe mental health needs.

Although we acknowledge these policies will help a relatively smaller population of people who are homeless, and that there is much more work to be done to address the crisis in homelessness, however it will go a long way and positively change many lives. Furthermore, it will make our community safer for our residents and our first responders in public safety, who risk their lives every day. In tragic scenarios where officers have no choice but to use deadly force to stop dangerous individuals with severe mental health needs from harming others, it is unacceptable to write off the case as a situation that could not have been avoided.

Our County has the ability to save lives, make our community safer, and prevent these tragedies from occurring. The implementation of Laura's Law and expanded conservatorship will serve as much-needed reform to our negligent and flawed system which has failed our community's most vulnerable people.

The City of Milpitas should support County implementation of Laura's Law and work with the Board of Supervisors and County Administration to expand conservatorship programs through efforts in adding Santa Clara County to Senate Bill 1045 and related legislation.

Dear Santa Clara County Board of Supervisors,

As community leaders, we recognize that Santa Clara County has a mental health crisis. Of the homeless in our County, 42% reported mental illness, yet current efforts in the County to address this issue are tragically lacking.

Homeless individuals who lack capacity because of a severe mental illness to provide for their basic human needs cannot continue to fall victim to uninhabitable living conditions, drug and alcohol abuse, and risks of harm to themselves or [others on the streets](#). It is imperative that we consider the benefits of Laura's Law and strengthened conservatorship in Santa Clara County.

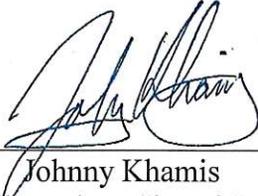
Laura's Law passed the California State Legislature in 2002, aiming to remedy the issues posed by mentally ill individuals occupying the streets: introducing court-mandated assisted outpatient treatment for those who are likely to benefit from it. To date, 20 counties in California have done just this, including the Bay Area Counties of San Mateo, Alameda, Contra Costa, Marin, and San Francisco-- achieving a high degree of success. Specifically, In San Francisco County, 91% of patients saw reduced hospitalization, with 88% reducing their time spent incarcerated and 74% reducing their use of Psychiatric Emergency Services. Not only that, but in Nevada County, where Laura's Law was first implemented, the law has saved between \$1.82 to \$2.52 per \$1.00 invested in the program. Laura's Law is saving lives, saving money, and giving people the help that they need.

Furthermore, in pursuit of the most comprehensive care for suffering residents, conservatorship for substance abusers and the mentally ill also must be re-examined. While Santa Clara County's LPS Conservatorship was an important first step starting in 1972, now is the time to revisit and strengthen this piece of legislation.

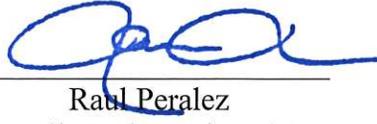
In September of 2018, the State of California passed Senate Bill 1045, which provides for the formation of a 5-year pilot program consisting of housing based conservatorship policies in San Francisco and Los Angeles Counties. SB 1045 increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare in by making available a conservatorship when those individuals are suffering from both a severe mental illness as well as a substance use disorder, something we are unable to achieve under the current standard. Individuals that fail to qualify as "gravely disabled" often get stuck in a chronic cycle of coming in and out of 72-hour psychiatric holds, and are victims of a dysfunctional system that is in desperate need of reform. We would like to see Santa Clara County advocate for inclusion in this or comparable legislation that effectively treats the most vulnerable in our County.

For all these reasons and more, we urge the County to act to strengthen conservatorship laws and to adopt Laura's Law.

Signed:



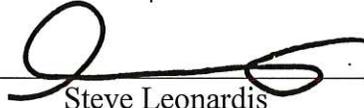
Johnny Khamis  
Councilmember, City of San José



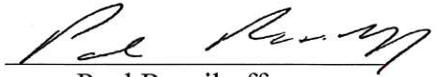
Raul Peralez  
Councilmember, City of San José



Lisa Dailey  
Treatment Advocacy Center



Steve Leonardis  
Mayor, Town of Los Gatos



Paul Resnikoff  
Councilmember, City of Campbell



Katherine Decker  
Registered Nurse



Stephani Rideau  
Parent of Homeless Mentally Ill Adult

# Memorandum

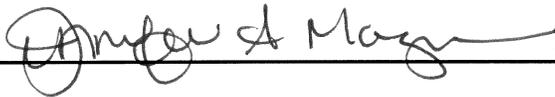
**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lee Wilcox

**SUBJECT: COUNTY OF SANTA CLARA  
BEHAVIORAL HEALTH  
PROGRAMS**

**DATE:** January 22, 2020

Approved



Date

1-22-20

## INFORMATION

At the November 20, 2019 Rules and Open Government Committee, the Administration was directed to submit a letter from the City of San José Mayor and City Council to the Santa Clara County Board of Supervisors and the County Administration requesting implementation of Laura's Law (Assisted Outpatient Treatment) as well as a strengthening of conservatorship policies for residents that struggle with serious mental illness. This item was again discussed at the December 10, 2019 City Council meeting under item 3.6<sup>1</sup> where a request was made for additional information regarding the Santa Clara County's expansion of Behavioral Health Services for adults and older adults, which was scheduled for implementation in fall 2019.

In response to Council direction, on December 12, 2019 a letter was submitted to the Santa Clara County Board of Supervisors on behalf of the City of San José Mayor and City Council (*Attachment A*).

Attached to this memorandum are two reports authored by Toni Tullys, Director of the County's Behavioral Health Services. The first report was submitted to the Health and Hospital Committee on August 22, 2019 providing an update on Assisted Outpatient Treatment (*Attachment B*). It summarizes the 2002 California Assembly Bill 1421 (Laura's Law) and its implementation in California through April 2017 as summarized by the State of California's Department of Health Care Services, Mental Health and Substance Use Disorder Services in its July 2018 Report. This memo also outlines the County's Behavior Health Services expansion of programs for its adult system of care.

<sup>1</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4263938&GUID=32623866-8137-46E7-8D24-DFCECA1C562B&Options=&Search=>

January 22, 2020

**Subject: County of Santa Clara Behavioral Health Programs**

Page 2

The second memorandum was submitted to the Board of Supervisors on December 17, 2019 as part of a report requested by Supervisors Chavez and Cortese (Board Referral Item Number 16 ID#98761 approved on November 5, 2019)<sup>2</sup>, which directed the Behavioral Health Services Department to provide options for consideration relating to the provision of safe places and support services for members of the community with high needs, who are severely mentally ill, dually diagnosed, and unhoused (*Attachment C*).

The Administration understands the Mayor and City Council's shared interest in ensuring that adequate and high quality resources are available and accessible to residents struggling with mental illnesses, substance use, or both. As part of its work in helping draft the Community Plan to End Homelessness, the City Manager's Office and Housing Department are working with their County partners to better assess the existing capacity of behavioral health resources against the need in the community. As the City moves from the planning and community engagement phases of this process to implementation of a San José-specific operational plan, the Administration will continue to advocate for the resources necessary to close any existing resource gaps.

/s/

LEE WILCOX

Chief of Staff, City Manager's Office

For questions, please contact Sarah Zárate, Assistant to the City Manager, at (408) 535-5601.

Attachments:

- Attachment A: December 12, 2019 Letter to Board of Supervisors regarding Conservatorship in Santa Clara County
- Attachment B: County of Santa Clara Behavioral Health Services Update on Assisted Outpatient Treatment (Laura's Law)
- Attachment C: County of Santa Clara Behavioral Health Services Report on Safe Places and Support Services for Mentally Ill/Dually Diagnosed Individuals

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<sup>2</sup> [http://sccgov.iqm2.com/Citizens/Detail\\_Legifile.aspx?Frame=SplitView&MeetingID=11147&MediaPosition=&ID=99307&CssClass=](http://sccgov.iqm2.com/Citizens/Detail_Legifile.aspx?Frame=SplitView&MeetingID=11147&MediaPosition=&ID=99307&CssClass=)



December 12, 2019

Board of Supervisors  
County of Santa Clara  
70 West Hedding Street  
San Jose, CA 95110

**Re: Conservatorship in Santa Clara County**

Dear Santa Clara County Board of Supervisors,

We write on behalf of the City of San José to encourage the County to pursue additional options in addressing mental health treatment for homeless individuals, including conservatorship. Currently the County of Santa Clara staff, Destination: Home, and City of San José staff are working to finalize a new Community Plan to End Homelessness—better aligning our goals and strategies. As we embark on implementing this plan we must collectively align our operations, resources, and policies to meet these goals.

To that end, we share the position outlined in the November 5, 2019 memo from Supervisors Chavez and Cortese that “the County of Santa Clara needs to act with urgency as it relates to providing safe places and supportive services to very vulnerable members of our community who are severely mentally ill, dually-diagnosed, unhoused and unable to proactively access community-based mental health services.”

According to the 2019 City of San José Homeless Census and Survey, 42% of homeless survey respondents reported a psychiatric or emotional condition in the City of San José. Homeless individuals who lack capacity because of a severe mental illness to provide for their basic human needs cannot continue to fall victim to uninhabitable living conditions, drug and alcohol abuse, and risks of harm to themselves or others on the streets. It is imperative that we examine conservatorship options, including implementing Laura’s Law in Santa Clara County for outpatient services and inpatient options to address a portion of this population’s needs.

As you know, the State of California passed Laura’s Law in 2002 to introduce court-mandated assisted outpatient treatment for those who are likely to benefit from it. To date, 20 counties in California have implemented Laura’s Law, including the Bay Area Counties of San Mateo, Alameda, Contra Costa, Marin, and San Francisco. In San Francisco County, 91% of patients saw reduced hospitalization, with 88% reducing their time spent incarcerated, and 74% reducing their use of Psychiatric Emergency Services. Not only that, but in Nevada County, where Laura’s Law was first implemented, the law has saved between \$1.82 to \$2.52 per \$1.00 invested in the

District 1-Chappie Jones, Vice Mayor  
District 3-Raul Peralez  
District 5-Magdalena Carrasco  
District 7-Maya Esparza  
District 9-Pam Foley

Sam Liccardo, Mayor

District 2-Sergio Jimenez  
District 4-Lan Diep  
District 6-Dev Davis  
District 8-Sylvia Arenas  
District 10-Johnny Khamis

Letter from City of San José City Council  
Conservatorship in Santa Clara County  
December 12, 2019

program. Laura's Law is saving lives, saving money, and giving people the help that they need.

Additionally, in September of 2018, the State of California passed Senate Bill 1045, which allows the City and County of San Francisco, Los Angeles, and San Diego Counties to pilot a 5-year program of housing-based conservatorship. SB 1045 increases the responsiveness of courts to individuals lacking capacity to take care of their health and welfare by making available a conservatorship when those individuals are suffering from both a severe mental illness as well as a substance use disorder. Individuals that fail to qualify as "gravely disabled" often get stuck in a chronic cycle of coming in and out of 72-hour psychiatric holds, and are victims of a dysfunctional system that is in desperate need of reform. We encourage Santa Clara County to advocate for inclusion in this or comparable legislation that effectively treats the most vulnerable in our County.

We are heartened that the County is examining additional service needs for homeless individuals, including those suffering mental health disease and drug addiction. We share your goals of ending homelessness in our community, and look forward to continuing to collaborate on solutions.

Sincerely,  


Mayor Sam Liccardo  
on behalf of the City of San José City Council

C. County Administration  
City Manager



**DATE:** August 22, 2019  
**TO:** Health and Hospital Committee  
**FROM:** Toni Tullys, Director, Behavioral Health Services  
**SUBJECT:** Update on Assisted Outpatient Treatment (Laura's Law)

---

On June 19, 2019, at the request of Supervisor Ellenberg, the Behavioral Health Services Department (the Department) was asked to provide an update on Assisted Outpatient Treatment (AOT), also known as Laura's Law, at the August 2019 Health and Hospital Committee.

On September 13, 2017, the Department provided a detailed report to the Board of Supervisors (Board) through the Health and Hospital Committee related to the possible implementation of Assisted Outpatient Treatment (also known as Laura's Law), which allows using the judicial system when constituents are in high need of mental health services (LF # 88121). The report describes the history of the AOT legislation, the 2004 development of the Mental Health Services Act (MHSA), which emphasized voluntary programs, and the AOT goals, eligibility criteria and court process.

In 2002, California Assembly Bill 1421 (Laura's Law) authorized the provision of AOT which is defined as categories of outpatient services that have been ordered by a court per California Welfare and Institution Code (WIC) 5346. The bill was a result of a Nevada County shooting death of three people, including Laura Wilcox, by an individual with mental illness who was not participating in treatment. While the law was passed, it was not funded, leaving County Boards of Supervisors to decide whether or not they would implement AOT and how they would fund the program. Each County Board of Supervisors must approve AOT implementation in their county. Per state statute, no voluntary mental health programs may be reduced as a result of the implementation of AOT.

### **Update on California's AOT Implementation**

While Nevada County implemented AOT in 2008 and Yolo County in 2013, the majority of counties who chose to implement AOT did not begin implementation until 2015-2016. As reported in the Department's September 2017 AOT report, 14

counties had implemented the program, three had adopted AOT, but had not implemented, and one county was considering AOT. Currently, 20 counties have implemented AOT as an available tool for people with serious mental illness who are unable and/or unwilling to participate in treatment and meet the criteria for AOT in the WIC 5346. The 20 counties are:

- |                 |                     |                   |
|-----------------|---------------------|-------------------|
| 1. Alameda      | 8. Nevada           | 15. Santa Barbara |
| 2. Contra Costa | 9. Orange           | 16. Shasta        |
| 3. El Dorado    | 10. Placer          | 17. Solano County |
| 4. Kern         | 11. San Diego       | 18. Stanislaus    |
| 5. Los Angeles  | 12. San Francisco   | 19. Ventura       |
| 6. Marin        | 13. San Luis Obispo | 20. Yolo          |
| 7. Mendocino    | 14. San Mateo       |                   |

### **AOT Evaluations and Results**

In July 2018, the California Department of Health Care Services (DHCS) Mental Health and Substance Use Disorder Services released a report on Laura’s Law: Assisted Outpatient Treatment Demonstration Project Act of 2002 (Attached). DHCS is required to establish criteria and collect outcomes data from counties that choose to implement the AOT program and to produce an annual report on the program’s effectiveness, which is due to the Governor and Legislature annually by May 1. The attached report is based on May 2016 - April 2017 data, which was provided by six counties: Contra Costa, Los Angeles, Nevada, Orange, Placer and San Francisco. The Report Summary stated that there are three important developments for this reporting period:

- 1) Two additional counties provided data on AOT clients as compared to the previous reporting period,
- 2) The six counties that provided data to DHCS reported a positive impact on the three data items emphasized by the statute governing AOT (WIC Sections 5345-5349.5) – homelessness, hospitalizations, and incarcerations, and
- 3) Counties continue to report that few individuals require court involvement to participate in AOT services.

There were 63 court-ordered involved individuals in the six counties that provided data. A total of 380 individuals were served voluntarily by the six counties reporting data and the majority were in Los Angeles and Orange counties.

The programs reported that the majority of their AOT referrals responded to the initial invitation to participate in voluntary services and did not require a court petition or process. Counties reported that this is due to a successful engagement process, as most individuals referred for assessment accept the first offer for voluntary services. Many individuals due to their symptoms, do not immediately access mental health services, but may accept a voluntary service in response to county engagement efforts and to avoid a court process.

DHCS also identified several limitations of this analysis. While the data has increased since additional counties have implemented AOT programs, the number of court-ordered participants remains small and counties were not using standardized measures. There was no comparison and/or control group, so it was unknown as to whether the improvements were a result of AOT program services, or other factors. The report was based on aggregated outcomes of the 63 individuals from the six counties that reported court-ordered services.

In conclusion, the DHCS report indicated that the program was successful in reducing the need for hospitalizations and/or incarcerations, largely due to an increased amount of support and increasing employment during the reporting period.

Contra Costa and San Francisco Counties recently completed extensive evaluations of their AOT pilot programs. Contra Costa completed their evaluation in October 2018, following two and a half (2 ½) years of implementation, and served 80 individuals in the Assertive Community Treatment (ACT) program; 63 volunteered and 17 were court-ordered. San Francisco completed their three-year evaluation in March 2019 and 89 out of 129 individuals in the AOT program voluntarily engaged in services; 85 individuals remained connected to a treatment provider at the time of the evaluation. The AOT team provided clinical case management to 43 of these individuals (26 voluntary and 17 court ordered). Both counties reported positive client outcomes (decrease in crisis services, inpatient psychiatric hospitalization and incarceration), cost savings, and small numbers of court-ordered individuals.

### **Summary of Findings**

A significant majority of individuals that have been referred and meet the criteria for AOT programs voluntarily accept services and achieve positive outcomes, including reductions in crisis/emergency psychiatric services, inpatient psychiatric hospitalization, homelessness and incarceration. There are small numbers of court-ordered clients in AOT programs, which cannot show statistical significance.

However, court-ordered clients have demonstrated individual progress and some have achieved the same types of positive outcomes as the voluntary clients.

Counties have developed and learned from AOT pilots, implemented AOT outreach, engagement and clinical teams to serve the population, and utilized Full Service Partnerships (FSPs) or ACT teams for clinical services. Consistent outreach and peer support have been important components to engage and support individuals in AOT services.

AOT program costs may vary based on each county, but the primary costs are for direct service staff, which often includes a program manager, clinical staff, peer workers and administrative support. Orange County and Nevada County estimated the AOT mental health treatment costs at \$35,000 to \$40,000 per person per year. This aligns with the estimated cost for the Department's new ACT program for adults with serious mental illness that need intensive outpatient services.

In reviewing the evaluations and discussing AOT services with county and consultant colleagues, AOT can be a useful tool to identify, engage and treat a small group of people with serious mental illness who would otherwise be unable to participate in services that they need. However, the data on court-ordered individuals enrolled is limited, and while AOT has produced positive outcomes, it will not engage every person with serious mental illness into services or every loved one that a family member cares about.

### **Expansion of Behavioral Health Services for Adults and Older Adults**

Over the past year, the Department has implemented several new programs to address gaps, expand the continuum of care, outreach and engage individuals for services, and track and evaluate client/consumer outcomes. The intent of the new programs is to connect Adults/Older Adults into the appropriate services for their needs.

New programs include the County-operated In-home Outreach Team (IHOT), which will outreach to Emergency Psychiatric Services (EPS) clients/consumers and connect them to services, and the IHOT community-based teams that will serve clients/consumers and families across the county. For individuals in crisis, there is a Crisis Text Line (text RENEW to 74141) and Adult Mobile Crisis Response Teams that assess individual needs over the phone, identify and connect callers to services, and make home visits when needed. These new services are available 24/7.

Vendors have been selected to provide ACT and Forensic ACT (FACT) services, which are evidence-based and the highest level of outpatient services for individuals with serious mental illness. While these are new services in Santa Clara County, ACT and FACT have demonstrated positive and consistent consumer outcomes for many years and are designed for individuals coming out of hospitals or custody and/or those who need intensive and frequent services. In addition, new Intensive

Full Service Partnerships (FSPs) will provide “whatever it takes” mental health services for Transitional Age Youth, Adults and Older Adults. The ACT, FACT and Intensive FSPs will provide 800 new service slots for adult consumers. Substance Use Treatment Services has increased outpatient services by 220 slots and anticipates serving an additional 800 clients in the next year. Detoxification beds also have been increased from 28 to 36 with an expectation to serve over 500 clients.

The Department’s expansion of Adult/Older Adult services was designed to outreach, engage, connect, and support individuals with serious mental illness and substance use disorders in voluntary, evidence-based services. The new ACT/FACT programs and Intensive FSPs are the same services utilized in the AOT programs.

Implementation is planned for October 2019 and the Department expects an increase in the number of people receiving these intensive services and a decrease in EPS visits, psychiatric hospitalization, incarceration and homelessness over time.

**Attachment:**

- DHCS Laura’s Law: Assisted Outpatient Treatment Demonstration Project Act of 2002, July 2018



# **Laura's Law: Assisted Outpatient Treatment Demonstration Project Act of 2002**

**For the Reporting Period  
May 2016 – April 2017**

**Department of Health Care Services  
Mental Health and Substance Use Disorder Services**

**JULY 2018**

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## EXECUTIVE SUMMARY

Assembly Bill (AB) 1421 (Thomson, Chapter 1017, Statutes of 2002) established the Assisted Outpatient Treatment Demonstration Project Act of 2002 in Welfare and Institutions Code (WIC) Sections 5345 – 5349.5, known as Laura’s Law (named after one of the individuals killed during a 2001 incident in Nevada County, California). Laura’s Law requires the Department of Health Care Services (DHCS) to establish criteria and collect outcomes data from counties that choose to implement the AOT program and produce an annual report on the program’s effectiveness, which is due to the Governor and Legislature annually by May 1. Using data provided by participating counties, DHCS is required to provide an evaluation of the effectiveness of the county programs in developing strategies to reduce the clients’ risk for homelessness, hospitalizations, and involvement with local law enforcement. This report serves as the May 1, 2017 annual report and provides outcomes for the May 2016 – April 2017 reporting period.

The table below shows a list of counties that have received Board of Supervisors approval to operate an AOT program, counties that submitted an AOT report to DHCS and, of those, which county AOT reports provided data to DHCS during this reporting period. Seventeen counties have Board of Supervisors approval to operate an AOT program: Alameda, Contra Costa, El Dorado, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Stanislaus, Ventura, and Yolo<sup>1</sup>. During this reporting period, 12 counties submitted reports to DHCS: Alameda, Contra Costa, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Francisco, San Mateo, Ventura, and Yolo. Six of these counties had data to report on AOT court ordered or settled<sup>2</sup> individuals: Contra Costa, Los Angeles, Nevada, Orange, Placer and San Francisco. The remaining six programs did not have court-ordered individuals or had too little data for the reporting year to report to DHCS, but provided information on their programs’ progress. Accordingly, this report reflects aggregate outcomes for 63 individuals from the six counties that reported court-ordered or settled AOT client data to DHCS. This is more than double the number of participants compared to the previous 2015-16 reporting period, which included 28 court-involved individuals in AOT programs.

Participating County Implementation and Reporting Status (as of April 2017)\*

County	Board of Supervisors Approval	Submitted a Report to DHCS	Report Included AOT Data
Alameda	X	X	
Contra Costa	X	X	X
El Dorado	X		
Kern	X	X	

<sup>1</sup> Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

<sup>2</sup> Court “settled” means that the individual receives services through a court settlement, rather than a hearing.

County	Board of Supervisors Approval	Submitted a Report to DHCS	Report Included AOT Data
Los Angeles	X	X	X
Mendocino	X	X	
Nevada	X	X	X
Orange	X	X	X
Placer	X	X	X
San Diego	X		
San Francisco	X	X	X
San Luis Obispo	X		
San Mateo	X	X	
Santa Barbara	X		
Stanislaus	X		
Ventura	X	X	
Yolo	X	X	

\*Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

### 2016-17 Report Summary

There are three important developments for this reporting period: 1) two additional counties provided data on AOT clients as compared to the previous reporting period, 2) the six counties that provided data to DHCS reported a positive impact on the three data items emphasized by the statute governing AOT (WIC Sections 5345-5349.5) – homelessness, hospitalizations, and incarcerations, and 3) counties continue to report that few individuals require court involvement to participate in AOT services. In this reporting period, there were 63 court-involved individuals in the six counties that provided data<sup>3</sup>.

Laws governing AOT programs require individuals whose cases are court-ordered or settled to receive services in a program that also provides the same services to individuals who are participating in the program voluntarily. Individuals referred for an AOT assessment must be offered voluntary services first before a court petition is considered. The programs reported that the majority of their AOT referrals responded to the initial invitation to participate in voluntary services, and did not require a court petition or process. Counties report that this is due to a successful initial engagement process, as most individuals referred for assessment accept the first offer for voluntary services. Many individuals, due to the symptoms of their mental illness, do not initially access local mental health services, but may accept a voluntary services offer

<sup>3</sup> 380 individuals were served voluntarily by the six counties reporting data, the majority were in Los Angeles and Orange counties.

in response to county engagement efforts and to avoid a court process.

Due to the small number of court-ordered or settled individuals in each county AOT program, health privacy laws prevent DHCS from reporting specific numbers on each of the required outcomes. This report reflects the following aggregate findings for the AOT program clients, using data for the six counties that reported data from their AOT services, which were provided during this reporting period:

- Homelessness decreased amongst individuals participating in the program.
- Hospitalization decreased amongst individuals participating in the program.
- Contact with law enforcement decreased amongst individuals participating in the program.
- Most individuals remained fully engaged with services.
- Some individuals were able to secure employment.
- Little victimization<sup>4</sup> was reported for individuals in the program.
- Violent behavior decreased during the reporting period for some individuals.
- Some clients had co-occurring diagnoses. Many of those individuals were able to reduce substance use.
- Some clients were subject to enforcement mechanisms<sup>5</sup> ordered by the court during AOT. Some of these individuals were involuntarily evaluated, many had additional status hearings, and many received medication outreach.
- Many individuals achieved moderate to moderately high levels of social functioning.
- Some clients agreed to participate in satisfaction surveys and indicated high levels of satisfaction with services.

There are several noteworthy limitations of DHCS' analysis. Although the reportable data has increased since additional counties have implemented AOT programs, court-ordered participant numbers remain small and counties are not using standardized measures. This makes it difficult to make a comparable evaluation across counties, and further, there is no comparison and/or control group, so it is unknown as to whether or not all of the improvements in participant outcomes were a result of AOT program services or if other factors were involved. Some of the measures are based on self-reports and/or recollections of past events, which may or may not be accurate or reliable. Furthermore, individuals were followed for different periods of time (e.g., individual A may have been followed for one week, while individual B may have been followed for the entire reporting year). As with other programs that have transitory populations in different phases of program completion, there may be carry over data from the prior reporting year. Despite these limitations, the data submitted by counties indicate improvements to many of the reported outcomes for individuals who were served during this reporting period.

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<sup>4</sup> Victimization is based on county definitions and reports of victimization include descriptions of the incidents.

<sup>5</sup> Examples of enforcement mechanisms used by courts include, but are not limited to, involuntary evaluation, increased number of status hearings, and medication outreach.

## INTRODUCTION

AB 1421 (Thomson, Chapter 1017, Statutes of 2002) established the Assisted Outpatient Treatment (AOT) Demonstration Project Act of 2002, known as Laura's Law. AB 1569 (Allen, Chapter 441, Statutes of 2012) extended the sunset date for the AOT statute from January 1, 2013, to January 1, 2017; and AB 59 (Waldron, Chapter 251, Statutes of 2016) extended the sunset date for the AOT statute until January 1, 2022, and added the Governor as a direct recipient of this report. The program was transferred from the former Department of Mental Health (DMH) to the Department of Health Care Services (DHCS) and incorporated into DHCS' county mental health performance contracts with the enactment of SB 1009 (Committee on Budget and Fiscal Review, Chapter 34, Statutes of 2012).

DHCS is required to annually report to the Governor and Legislature on the effectiveness of AOT programs by May 1 of every year. Pursuant to WIC Section 5348, effectiveness of AOT programs is evaluated by determining whether persons served by these programs:

- Maintain housing and participation/contact with treatment;
- Have reduced or avoided hospitalizations; and
- Have reduced involvement with local law enforcement, and the extent to which incarceration was reduced or avoided.

To the extent data are provided by participating counties, DHCS must also report on:

- Contact and engagement with treatment;
- Participation in employment and/or education services;
- Victimization;
- Incidents of violent behavior;
- Substance use;
- Required enforcement mechanisms;
- Improved level of social functioning;
- Improved independent living skills; and
- Satisfaction with program services.

The AOT statute provides a process for designated individuals who may refer someone to the county mental health department for an AOT petition investigation. In order for an individual to be referred to the court process, the statute requires certain criteria to be met, voluntary services to be offered, and options for a court settlement rather than a hearing to be provided.

## BACKGROUND

The statutory requirements for Laura’s Law do not require counties to provide AOT programs and do not appropriate any additional funding to counties for this purpose. For many years, only Nevada County operated an AOT program. The passage of SB 585 (Steinberg, Chapter 288, Statutes of 2013) authorized counties to utilize specified funds for Laura’s Law services, as described in WIC Sections 5347 and 5348. Since the enactment of this legislation, an increasing number of counties have implemented AOT. See Appendix A for a history of AOT in California.

### Implementation of Laura’s Law

The table below shows a list of counties who have received Board of Supervisors approval to operate an AOT program, counties that submitted an AOT report to DHCS and, of those, which county AOT reports provided data to DHCS during this reporting period. Seventeen counties have Board of Supervisors approval to operate an AOT program: Alameda, Contra Costa, El Dorado, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Stanislaus, Ventura, and Yolo.<sup>6</sup> Most AOT programs are still in early implementation stages and have few or no clients who are court-ordered or settled.

The following 12 counties submitted reports to DHCS on their AOT programs for the reporting period: Alameda, Contra Costa, Kern, Los Angeles, Mendocino, Nevada, Orange, Placer, San Francisco, San Mateo, Ventura, and Yolo. Of these, Contra Costa, Los Angeles, Nevada, Orange, Placer, and San Francisco counties had data to report based on the individuals participating in their AOT programs that were court-ordered and/or settled. Kern and Yolo Counties reported on their programs, but did not yet have any individuals in AOT programs or did not have enough data to include. Alameda, Mendocino, San Mateo, and Ventura Counties reported on their new programs, but did not have clients during most of the reporting period, and therefore did not have enough data to include.

### Participating County Implementation and Reporting Status (as of April 2017)\*

County	Board of Supervisor Approval	Submitted a Report to DHCS	Report Included AOT Data
Alameda	X	X	
Contra Costa	X	X	X
El Dorado	X		
Kern	X	X	
Los Angeles	X	X	X
Mendocino	X	X	
Nevada	X	X	X
Orange	X	X	X

<sup>6</sup> Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

County	Board of Supervisor Approval	Submitted a Report to DHCS	Report Included AOT Data
Placer	X	X	X
San Diego	X		
San Francisco	X	X	X
San Luis Obispo	X		
San Mateo	X	X	
Santa Barbara	X		
Stanislaus	X		
Ventura	X	X	
Yolo	X	X	

\* Stanislaus County received board of supervisor approval to implement a pilot program in April 2018. Since this occurred after the reporting period, data for Stanislaus is not reflected in this report.

## DATA COLLECTION AND REPORTING METHODOLOGY

Most counties have implemented their AOT programs as part of their Mental Health Services Act (MHSA) Full Services Partnership (FSP) programs. Welfare and Institutions Code §5348(d) sets forth the reporting requirements for both the counties and the State and lists the required data elements that, if available, must be included. As a result, counties obtain data for AOT clients from some or all of the following sources:

- Client intake information
- MHSA FSP Outcome Evaluation forms
  - Partnership Assessment Form – The FSP baseline intake assessment.
  - Key Event Tracking (KET) – Tracks changes in key life domains such as employment, education, and living situation.
  - Quarterly Assessment – Tracks the overall status of a partner every three months. The Quarterly Assessment captures data in different domains than the KETs, such as financial support, health status, and substance use.
- “Milestones of Recovery Scale” (MORS)<sup>7</sup>
- Global Assessment of Functioning – Indicates the level of presence of psychiatric symptoms.

<sup>7</sup>This scale was developed from funding by a Substance Abuse and Mental Health Services Administration grant and designed by the California Association of Social Rehabilitation Agencies and Mental Health America Los Angeles researchers Dave Pilon, Ph.D., and Mark Ragins, M.D., to more closely align evaluations of client progress with the recovery model. Data collected from the MORS is used with other instruments in the assessment of individuals functioning level in the Social Functioning and Independent Living Skills sections. Engagement was determined using a combination of MORS score improvement, contact with treatment team tolerance and social activity.

- Mental Health Statistics Improvement Program Consumer Surveys – Measure matters that are important to consumers of publicly funded mental health services in the areas of access, quality, appropriateness, outcomes, overall satisfaction, and participation in treatment planning

Counties collected and compiled the required information into written reports, which were submitted to DHCS. Due to the small population sizes reported, AOT clients may be identifiable. DHCS is committed to complying with federal and state laws pertaining to health information privacy and security.<sup>8</sup> In order to protect clients' health information and privacy rights, summary numbers for each of the specified outcomes cannot be publicly reported. In order for DHCS to satisfy its AOT program evaluation reporting requirement, as well as protect individuals' health information, DHCS adopted standards and procedures to appropriately and accurately aggregate data, as necessary.

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<sup>8</sup> Federal laws: Privacy Rule and the Security Rule contained in the Health Insurance Portability and Accountability Act and clarified in Title 45 Code of Federal Regulations Part 160 and Subparts A and E of 164. State Laws: Information Practices Act and California Civil Code Section 1798.3, et. seq.

## FINDINGS FOR REPORTING PERIOD May 1, 2016 – April 30, 2017

Based on county-reported data, there are very few individuals entering the AOT programs as a result of court orders or settlements. Individuals referred for an AOT assessment must be offered voluntary services before a court petition is considered. The programs reported that the majority of their AOT referrals responded to the initial invitation to voluntary services and did not require a court petition or process. Counties report that this is due to a successful initial engagement process, as most individuals referred for assessment accept the first offer for voluntary services.

Although 16 counties have implemented AOT programs, the data summarized in this report reflect the six counties that had data for court-ordered or settled individuals. Data for these counties are aggregated, with highlights of each program listed first. The six counties' AOT programs collectively served a total of 63 court involved individuals. This is more than double the number of participants as compared to the last reporting period, in which 28 individuals were in AOT programs.

### **Part I: County Programs Serving AOT Court-Involved Individuals – Contra Costa, Los Angeles, Nevada, Orange, Placer, and San Francisco**

#### County Program Unique Highlights

Contra Costa County reported that, during its first year of operation, 91 percent of individuals referred for assessment for AOT services accepted voluntary services.

Los Angeles County reported serving voluntary clients since 2010 in a pilot AOT program. The county then fully implemented and expanded its AOT program in 2015. This is the first reporting year that Los Angeles has had court-ordered or settled AOT participants. As with the other counties, the Los Angeles court-ordered or settled participants are a fraction of its overall number of AOT participants.

Nevada County has had the longest running AOT program, dating back to 2008. Consistently over that time, the majority of the referred individuals accepted the program's invitation to participate in voluntary services rather than requiring a court-order or settlement.

Orange County noted that, while there was overall improvement in housing over the reporting period, participants still experienced challenges finding and maintaining housing.

Placer County continues to be in the early stages of providing AOT services to individuals and has a small number of participants.

San Francisco County has developed an [AOT Care Team](#), which is responsible for AOT court petitions and advocating for AOT individuals with preexisting charges to be referred to collaborative courts such as Behavioral Health Court. Behavioral Health Court is focused on family support including offering resources such as a Family Liaison, information, and assistance navigating the mental health and criminal justice systems. San Francisco County continues to host a quarterly conference call with other counties that have implemented AOT to share information and experiences of AOT programs.

### Demographic Information

Counties reported that the majority of participating individuals were Caucasian males between ages 26 and 59. This is similar to the information from the last reporting period, which indicated the majority of individuals in the programs were males identifying as Caucasian between 26 and 59 years of age. Some counties reported seeing more racial diversity in their AOT populations, and more female participants.

### Homelessness/Housing

In the previous reporting period, homelessness among those served decreased. For this reporting period, counties reported modest reductions in homelessness, with the majority of clients obtaining and maintaining housing while in the AOT program.

### Hospitalization

In the last reporting period, many of the individuals who were hospitalized prior to receiving AOT services experienced decreases in their hospitalization days. This reporting period, most programs reported that the majority of clients with psychiatric hospitalizations prior to AOT either reduced their days of hospitalization during AOT or entirely eliminated hospitalizations.

### Law Enforcement Contacts

In the last reporting period, programs reported law enforcement contacts (measured as “days of incarceration”) were reduced for all individuals that had experienced incarceration days prior to AOT. For this reporting period, this trend continues as all programs reported reductions in law enforcement contact for participants in AOT programs.

### Treatment Participation / Engagement

For the previous reporting period, participants’ ability to engage and participate in treatment varied significantly. Counties indicated that programs focused on assisting individuals with critical symptoms who were reluctant to approach treatment, and most participants were able to achieve at least moderate levels of engagement. For this reporting period, the majority of the participants again were able to engage in treatment and remain in contact with their programs. This continues to result in positive outcomes for reducing hospitalizations, incarcerations, and homelessness.

## Employment

In the prior reporting period, few clients were employed while in the program. Generally, clients were either not far enough along in treatment to gain employment or the AOT program had not yet implemented employment services as a component. For this reporting period, there was an increased level of employment for individuals across programs, including some participation in education.

## Victimization

For the previous reporting period, there were few reported instances of victimization for participants prior to AOT program participation, and none reported for individuals during their AOT program participation. For this reporting period, there were again few reports of victimization, with some programs reporting that individuals were reluctant to share such information via the questionnaires that were used. These programs indicate that they will modify their questionnaires and/or programs to provide more comfortable means for individuals to share such sensitive information.

## Violent Behavior

In the prior reporting period, counties reported an overall decrease in violent behavior. In the current reporting period, some programs reported violent episodes for individuals who were struggling with initial phases of stability, and other programs reported that the AOT program participants displayed decreased violent behavior or that they did not collect data on this outcome measure.

## Substance Abuse

During the last 2015-16 reporting period, one AOT program reported a decrease in substance use for the majority of its clients; however, most AOT programs could not report on the AOT program's impact on substance use due to lack of information provided by the participants.

For the 2016-17 reporting period, all programs reported varying levels of challenges with participant substance use. The majority of individuals in AOT have co-occurring diagnoses, meaning that they have both mental health and substance use disorder diagnoses. This presents a complication for programs to support individuals in recovery from both issues. In some cases, the majority of individuals in the programs relapsed during AOT, while other programs reported the majority were able to avoid substance use.

## Enforcement Mechanisms

For the last reporting period, medication outreach (e.g., visiting clients to discuss medication, helping prepare medication boxes) was the enforcement mechanism used most often to support individuals who experienced challenges in managing and regularly administering their own medications. Some programs used status hearings as a vehicle to help individuals re-focus on their treatment goals and self-care when they were

missing appointments and their mental health was beginning to decompensate.

For this reporting period, the most common enforcement mechanisms used were additional status hearings, with a small group of individuals receiving orders for hospitalization for the purpose of psychiatric evaluation. Some programs provided medication outreach as a regular support for their participants.

### Social Functioning

For the prior reporting period, all AOT programs provided DHCS with anecdotal information on clients' increased social functioning, generally credited to the staff's ability to develop good rapport with the clients.

For this reporting period, overall, AOT programs reported increased social functioning and considered the participants' ability to interact with staff and tolerate therapeutic interactions a significant outcome in this area.

### Independent Living Skills

For the last reporting period, most programs communicated to DHCS that the participants needed guidance with a wide array of independent living skills, such as medication management, money management, housing maintenance, and activities of daily living (e.g., dental hygiene), especially those who were generally homeless or frequently hospitalized prior to the court order.

During this period, programs reported that the majority of individuals improved in their independent living skills, as indicated by improved scores on the Milestone of Recovery Scale, and demonstrated strengthened skills in stress management, improved hygiene, food preparation, and transportation.

### Satisfaction with Services

For the last reporting period, most AOT programs leveraged the annual Mental Health Statistics Improvement Program to report satisfaction with services. Because satisfaction surveys are voluntary, some clients refused to complete them. AOT Programs that surveyed clients and families found that the majority responded positively about the program and services.

For this reporting period, the majority of surveyed individuals were also satisfied with their services. Some programs have or are developing their own survey tool to capture individual responses that are unique to AOT programs rather than utilizing a pre-established survey, which include services beyond AOT.

## **Part II: Programs with No AOT Court Ordered Individuals –**

El Dorado, Kern, Mendocino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Ventura, and Yolo Counties

### County Program Unique Highlights

El Dorado County is implementing AOT by conducting a pilot program and currently has voluntary clients.

Kern County began services in Fall 2015 and continues to have only voluntary clients during both the current and previous reporting periods.

Mendocino County has implemented a four-slot pilot program for AOT and had no court-ordered or settled participants.

San Diego County just completed the first year of their new program with no court-ordered or settled participants.

San Luis Obispo County is still in the early stages of implementing their new program.

San Mateo County assembled a team consisting of a Clinical Services Manager, one half-time Psychologist, one Psychiatric Social Worker, one half-time Deputy Public Guardian and two half-time Peer Support Workers that travel throughout the county to evaluate individuals and provide referrals to services if needed. San Mateo County includes a Peer Support Worker to enhance engagement and support for individuals encountering the AOT program.

Santa Barbara County did not have a full year of the new program for this reporting period and did not have any court-ordered or settled participants.

Ventura County recently began receiving individuals, but did not have any during the reporting period.

Yolo County has a five slot AOT program, which was implemented three years ago. To date, it has only voluntary individuals have utilized the program.

### Summary of Programs

The numbers of individuals participating in AOT services statewide has increased since more counties have implemented AOT programs. Programs report that ongoing efforts to develop robust engagement and support strategies have led to more engaged participation in AOT programs and voluntary participation in AOT services. With continued success in this area, programs are likely to maintain low numbers of individuals that require court involvement.

## LIMITATIONS

There are several noteworthy limitations of DHCS' analysis. Although participating counties have provided additional data, court ordered client numbers remain small. The small population size makes it difficult to determine if the data allows for statistically significant conclusions. Additionally, counties are not using standardized measures, which makes it difficult to make comparisons across counties. Further, there is no comparison and/or control group, so it is unknown as to whether or not the improvements were a result of AOT program services, or other factors. Some of the measures are based on self-reports and/or recollections of past events, which may or may not be accurate or reliable. Furthermore, individuals were followed for different periods of time (e.g., individual A may have been followed for one week, while individual B was followed for the entire reporting period). As with other programs that have transitory populations in different phases of program completion, there may be carry over data from the prior reporting period.

Despite these limitations, DHCS' analysis suggests improved outcomes for AOT program participants served during the reporting period. Notably, the majority of individuals referred for an assessment opt to engage in voluntary AOT program services after being offered those services as part of the assessment process.

## DISCUSSION

The data provided by counties suggest that individuals have benefited from participation in AOT programs, as evidenced by reductions in hospitalizations, homelessness, contact with law enforcement, and substance use. With respect to individuals that have both substance use and mental health issues, it is important to understand that concurrently recovering from both represents enormous challenges and requires a great deal of support and counseling. Some counties found that there were challenges with participants relapsing and at times relapses lead to further psychiatric hospitalizations.

Prior to participating in an AOT program, many individuals' experience with mental health treatment mainly involved locked facilities or hospitalization. Therefore, many clients had to adjust to forming relationships with supportive community mental health workers and to receiving intensive services outside of a locked setting. The success of this adjustment was indicated by the engagement by most individuals in AOT programs overall, whether voluntary or involuntary, and by the majority of individuals who completed a satisfaction survey indicating that they were satisfied with the services and supports.

Counties continue to report that only a small fraction of their overall AOT program populations (voluntary plus involuntary individuals) require a court order or settlement to participate. This suggests that counties are maintaining a strong effort to engage individuals in voluntary services and avoiding the court petition process.

## CONCLUSION

Seventeen counties currently have Board of Supervisors approval to operate an AOT program. During this reporting period, 12 counties submitted reports to DHCS, six of which had data to report on AOT court-ordered or settled individuals. The other reporting AOT programs did not have court-ordered or settled client data to report to DHCS, but provided information on their programs' progress. This report includes aggregate outcomes from 63 individuals from the six counties that reported court-ordered or settled AOT client data to DHCS.

The data indicates that the program was successful in reducing the need for hospitalizations and/or incarcerations, largely due to an increased amount of support, and increasing employment during this reporting period. DHCS recommends continuing to monitor the progress and effectiveness of the services in the programs as counties develop and expand their programs, and ensuring that any other counties that choose to implement Laura's Law report data to DHCS, as required.

## Appendix A

### History of Involuntary Treatment and the Development of Laura's Law in California

Among significant reforms in mental health care, the Lanterman-Petris-Short (LPS) Act (Chapter 1667, Statutes of 1967) created specific criteria by which an individual could be committed involuntarily to an inpatient locked facility for a mental health assessment to eliminate arbitrary hospitalizations. To meet LPS criteria, individuals must be a danger to themselves or others, or gravely disabled due to a mental illness (unable to care for daily needs). Following LPS, several state hospitals closed in 1973 to reduce the numbers of individuals housed in hospitals, and the intent at the time was to have communities provide mental health treatment and support to these discharged patients. However, due to limited funding, counties were unable to secure the resources necessary to provide adequate treatment or services. As a result, many of the individuals released from the hospitals ended up homeless or imprisoned with very little or no mental health treatment.<sup>9</sup>

In 1999, the state of New York (NY) passed a law that authorized court-ordered AOT for individuals with mental illness and a history of hospitalizations or violence requiring that they participate in community-based services appropriate to their needs. The law was named Kendra's Law in memory of a woman who died after being pushed in front of a New York City subway train by a man with a history of mental illness and hospitalizations. Kendra's Law defines the target population to be served by the AOT programs as "...mentally ill people who are capable of living in the community without the help of family, friends and mental health professionals, but who, without routine care and treatment, may relapse and become violent or suicidal, or require hospitalization." The program is required in all counties in NY and the individuals served by court order have priority for services. Kendra's Law improved a range of important outcomes for its recipients,<sup>10</sup> but differs from California's Laura's Law in two significant ways. It requires that all counties in NY implement AOT programs, and requires that the clients accessing these programs have priority for services.

Patterned after Kendra's Law, California passed AB 1421 (Thomson, Chapter 1017, Statutes of 2002), known as Laura's Law, that provides for court-ordered community

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<sup>9</sup> For additional historical information, see Laura's Law legislative report 2011 at:

<http://www.dhcs.ca.gov/services/MH/Documents/4LaurasLawFinalReport.pdf>

<sup>10</sup> See Kendra's Law, Final Report on the Status of Assisted Outpatient Treatment Outcomes for Recipients during the First Six Months of AOT [Office of Mental Health, State of New York 2005, [http://www.omh.ny.gov/omhweb/kendra\\_web/finalreport/outcomes.htm](http://www.omh.ny.gov/omhweb/kendra_web/finalreport/outcomes.htm)] and the New York State Assisted Outpatient Treatment Program Evaluation [Swartz, MS et al. Duke University School of Medicine, Durham, NC, June, 2009, [http://www.macarthur.virginia.edu/aot\\_finalreport.pdf](http://www.macarthur.virginia.edu/aot_finalreport.pdf)].

treatment for individuals with a history of hospitalization and contact with law enforcement. It is named after a woman who was one of three killed in Nevada County by an individual with mental illness who was not following his prescribed mental health treatment. The legislation established an option for counties to utilize courts, probation, and mental health systems to address the needs of individuals who are unable to participate on their own in community mental health treatment programs without supervision. Laura's Law authorizes counties to implement an AOT program and specifies that funding for established community services may not be reduced to accommodate the program. Laura's Law has resulted in reductions in homelessness, incarceration, and hospitalization for these individuals.

County of Santa Clara  
Santa Clara Valley Health & Hospital System  
Mental Health Services



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99307

**DATE:** December 17, 2019

**TO:** Board of Supervisors

**FROM:** Toni Tullys, Director, Behavioral Health Services

**SUBJECT:** Report on Safe Places and Support Services for Mentally Ill/Dually Diagnosed Individuals

**RECOMMENDED ACTION**

Under advisement from November 5, 2019 (Item No. 16): Receive report relating to safe places and support services for individuals who are mentally ill and dually diagnosed. (Behavioral Health Services Department)

**FISCAL IMPLICATIONS**

This is an informational report; therefore, there is no net fiscal impact as a result of this action.

**CONTRACT HISTORY**

Not applicable.

**REASONS FOR RECOMMENDATION**

At the request of Supervisor Chavez and Supervisor Cortese, Board Referral Item Number 16 (ID# 98761) approved on November 5, 2019, directs the Behavioral Health Services Department (Department) to provide a report on December 17, 2019 with options for consideration relating to the provision of safe places and support services for members of the community with high needs, who are severely mentally ill (SMI), dually diagnosed, and unhoused.

The following report addresses the options available to enhance engagement and provide support to provide for this population's safety and wellbeing. In addition, these options would help ensure that traditionally hard to engage members of the community would be able to gain access to and sustain participation in services that are safe and available day and night.

To better evaluate the potential options for enhancing engagement with services, included below is an overview of the support services the County currently provides for high needs, SMI, dual diagnosed, and unhoused people.

This Fall, in an effort to increase the services available for this population, the Department stood up the Assertive Community Treatment (ACT) Program, Forensic Assertive Community Treatment (FACT) Program and the In-Home Outreach Team (IHOT). Additionally, the Department has selected vendors to provide Intensive Full-Service Partnerships (IFSPs), which are based on the ACT model. These services will provide 800 new service slots for adult/older adult consumers. Substance Use Treatment Services (SUTS) has increased outpatient services by 220 slots and anticipates serving an additional 800 clients in the next year. Community-based detoxification beds also have been increased from 28 to 36 with an expectation of serving over 500 clients.

To ensure that clients/consumers and family members could provide their suggestions on the new and expanded services, the Department held a Peer and Family Support Services Discussion Group Meeting on December 5, 2019. Clients/consumers, peer workers, family members and National Alliance on Mental Illness (NAMI) staff met with Department leaders and senior managers to share their ideas for the service delivery system.

### ***Intensive Services Launched Fall 2019***

The ACT program is a long-standing evidence-based practice that has been widely used across the country for individuals with intensive mental health needs. With fidelity to the ACT model, outcomes are positive for high need clients. The ACT program will provide a comprehensive approach to serve 200 severely mentally ill individuals and will assist the homeless, severely mentally ill and individuals with both mental illness and substance use disorders by using a multi-disciplinary team approach to care. The treatment will include a psychiatrist, nurse, case managers, and peer support workers. The program is characterized by 1) low client to staff ratio, 2) a shared caseload among team members providing a coordinated care approach to service delivery, and 3) 24-hour staff availability. Referrals for this level care of care can occur through system partners such as the Office of the Public Guardian (OPG), the Office of Supportive Housing (OSH), and Whole Person Care (WPC).

The FACT Program serves high-risk criminal justice-involved adults (ages 18 to 59) and older adults (ages 60 and over) with severe and persistent mental health and/or co-occurring conditions that result in substantial functional impairments or symptoms. Due to the recalcitrant nature of their symptoms, these individuals are more likely to experience a high utilization and repetitive cycle of incarceration, homelessness, substance use, crisis, and/or hospitalization.

The FACT team, upon making a determination that the consumer has a history of chronic homelessness, will complete the Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT) to quickly assess the health and social needs of homeless individuals - matching them with the most appropriate services, support and housing interventions available. Immediate assistance with securing supported housing arrangements, including linkage to safe and permanent housing upon graduation from FACT, will be provided to these individuals.

The provision of FACT services will result in a diversion of individuals from correctional/judicial systems and higher levels of care which in turn will help reverse the cycle of ongoing criminal justice involvement. From the inception of treatment, FACT teams will address housing challenges for this population by conducting the VI-SPDAT which will play a critical role in addressing resistance from participants around housing, finding appropriate housing options for this population, and teaching participants skills necessary to live independently. This will prepare the individual for a more seamless transition into long-term permanent housing.

### ***Pay for Success “Partners in Wellness” Update and Outcomes***

On October 18, 2019, the Department submitted an off-agenda report to the Board of Supervisors on the outcomes to date of the County’s Pay for Success “Partners in Wellness” program. (Attached) In 2015, the Office of the County Executive (“County”) recognized that the Department cared for many high-need individuals who make extensive use of 24-hour psychiatric services (e.g., EPS, Barbara Aarons Pavilion, Institutes of Mental Disease (IMDs) and contract inpatient psychiatric hospitals) without finding stable recovery in the community. This was obviously hard on those clients and posed significant fiscal and logistical challenges for the county. To serve such individuals more effectively, while also being a good steward of public funds, the County launched a highly innovative “pay for success” mental health initiative in 2016.

The Department contracted with Telecare Corporation, the selected vendor in a procurement process, to provide a package of ACT and Supported Housing to individuals who both experience serious mental illness and have a history of extensive, repeated 24-hour psychiatric service utilization.

The Telecare agreement included two key components. First, individuals were randomly assigned to Telecare versus standard services, which will allow a rigorous assessment of the project’s conclusion about its clinical impact on clients. Second, under a novel financial agreement, Telecare would receive financial bonuses if it were unusually successful at reducing unnecessary 24-hour psychiatric utilization and would face financial penalties if they were not successful in this task.

During the first evaluation period (January 1, 2017 – June 30, 2017) and the second evaluation period (July 1, 2017 -June 30, 2018), Telecare patients required substantially lower than expected 24-hour psychiatric services. This included Telecare exceeding targets for reduced use of acute BAP services by 50% and use of IMDs by over 60%. For both periods, Telecare received the maximum pay for success bonus because they had overperformed so significantly. Analysis of the third evaluation period (July 1, 2018 – June 30, 2019) is nearly complete and while not finalized, again indicates very strong performance by Telecare at reducing psychiatric utilization.

As noted above, the Department has implemented ACT across the Adult and Older Adult (AOA) System with the goal of improving outcomes for all clients that would benefit from this level of care.

### ***In-Home Outreach Team Launched Fall 2019***

The IHOT is comprised of county-operated and contracted providers. This program is designed to 1) serve as an after-care program for individuals referred by law enforcement to the Mobile Crisis Response Team (MCRT). The IHOT will provide intensive outreach services by engaging the individuals and linking them to on-going services. The county-operated IHOT will also coordinate with Emergency Psychiatric Services (EPS) and provide outreach and engagement services to individuals who do not meet the criteria for inpatient hospitalization but require assistance in linkage to on-going outpatient services. Finally, the IHOT will serve as a care coordination team for individuals who may be receiving services through the OSH or through a conservatorship.

### ***Enhanced Street Outreach and Engagement***

Since the implementation of the Homeless Mentally Ill Outreach and Treatment (HMIOT) program, over 200 VI-SPDAT assessments have been completed. When HMIOT identifies homeless individuals with mental illness, they are referred to the HMIOT clinical outreach team. Currently, over 40 clients are enrolled and actively working with the clinical outreach team for continual engagement, crisis intervention, and linkage to services. Among those enrolled in HMIOT program, there was zero utilization of EPS. This is a 100% reduction in EPS services. The clinical outreach team responds to special cases addressing the needs of the homeless severely mentally ill individuals on the streets. As needed and as appropriate these individuals are assessed, provided with basic needs, interim housing/shelter, and continual follow up until they are linked to services. Among those who are enrolled with the clinical outreach team, over 50% are enrolled in Permanent Supportive Housing (PSH) programs, waiting for housing to become available.

### ***Expansion of Wellness and Drop-In Centers***

The Department continues to work on implementing culturally specific wellness and drop-in centers countywide. A Request for Proposal (RFP) to expand Wellness Centers and other community-based support services will be released in December 2019. These centers are designed to help create access and linkage to behavioral health treatment for unserved and underserved individuals and their families using strategies that are non-stigmatizing. Unlike the traditional Medi-Cal authorized services, the drop-in centers will operate using an open-door policy, whereby individuals not diagnosed with behavioral health-related disorders will also be welcome and free to attend. These wellness or drop-in centers can be co-located with non-clinical cultural services. These centers are expected to begin operations in July 2020.

### ***The Call Center: “No Wrong Door” Approach***

Through the use of updated workflows, additional staff training, and technology enhancements, the Call Center has implemented a concept typically referred to as the “No Wrong Door” approach. While supporting the Department’s compliance with network adequacy requirements, this concept has also proved to be beneficial in supporting individuals with coexisting mental health and substance abuse problems. Using this approach, individuals are connected to the appropriate services, resulting in “no wrong door” for access to these services. This includes services related to “same-day” access, and/or direct access to both mental health and substance use treatment services. With the new and expanded levels of care, individuals can more easily be directed or transitioned to levels of service which best meet their needs.

### ***Crisis Stabilization Unit and Sobering Center***

These are two distinct services that are offered by the Department. The Crisis Stabilization Unit (CSU) program provides up to 23 hours of psychiatric care to individuals experiencing a mental health crisis. The CSU provides crisis intervention, crisis stabilization, limited medical evaluation, and support. The program offers linkages to culturally and linguistically appropriate follow-up care for outpatient individuals within the Department’s continuum of care. Individuals can be brought in by law enforcement, be referred by community providers, or receive referrals from the EPS for follow-up care and coordination.

The Sobering Center provides up to 23 hours of care to individuals that are under the influence of alcohol. This program provides support during the individual’s stay while they dissipate the effects of alcohol intoxication. Staff assess the health and social needs of individuals and make referrals to appropriate community resources upon discharge from the program. Referrals are principally from local law enforcement agencies, followed by the EPS and/or the Emergency Department (ED), and individuals who voluntarily enter the program.

Both programs serve the community and provide alternative services to incarceration. Individuals that are provided housing are either affected by a mental health crisis or have relapsed to alcohol use that can negatively affect their permanent housing. These interim

services allow for stabilization and augmented case management services to address the stressors that have resulted in crisis or abuse of alcohol.

### ***Expansion of Walk-In Shelter Beds (Short-Term Needs)***

As of April 2019, there were 98 programs with a total unit capacity of 1,742. Over the past year, these programs have collectively served almost 7,500 individuals.

Inclement weather utilization increased from 27% to 44% over the past year. This increase is due to improved coordination with partners such as the National Weather Service, 211, Alert SCC, and the City of San Jose. In addition, through increased outreach and advanced inclement weather episode notification to homeless individuals; there was an enhanced awareness of the availability of beds that resulted in higher utilization. The majority of individuals and families accessing shelter and transitional programs are assessed at entry. The assessment provides information about the level of need for the household, as well as adds the household to the community queue for housing programs. During this reporting period, the individuals enrolled in the shelter and transitional programs had the following characteristics:

- Forty percent (40%) of shelter participants and 23% of transitional participants were assessed in the Permanent Supportive Housing range, indicating they may need permanent assistance to obtain and retain stable housing. Thirty-six percent (36%) of shelter participants and 43% of transitional participants were assessed at the Rapid Rehousing level, indicating a need for time-limited assistance to obtain and retain housing. The number of participants assessed at these levels far exceeds the resources available to serve all participants accessing either program.
- Participants of both shelter and transitional programs indicated a significant number of challenges related to personal wellness, demonstrating a need to address a wide range of issues to increase the participants' ability to obtain and maintain stable housing. This includes 51% of shelter participants and 25% of transitional participants reporting abuse or trauma and 27% of shelter participants and 12% of transitional participants reported a mental health issue or concern.
- Approximately a quarter (23%) of participants leaving shelter and half (48%) of the participants leaving Transitional Housing are exiting to a permanent destination. Until additional housing programs are available to serve participants (as they leave either of these programs), this percentage will likely remain stable.

### ***New Adult Residential Treatment Program***

The Department is implementing a new Adult Residential Treatment (ART) program designed for individuals who can take part in programs in the general community, but who without the supportive counseling in a therapeutic setting would be at risk of hospitalization. Without the long-term unlocked residential treatment, these individuals are more likely to be hospitalized. The ART program's goal is to provide a structured recovery-oriented residential setting that assists consumers to improve life skills and reduce functional impairments. The ART will serve individuals diagnosed with SMI and substance use disorders. The program is expected to engage adults and older adults with complex risk factors that include violence, homelessness, neglect, justice-involved and those exposed to trauma.

The ART RFP was released on November 20, 2019, with the intent of selecting one or more vendors by May 12, 2020 with an estimated contract start date on July 1, 2020. The RFP is requesting proposals that can provide both direct services and manage facility needs.

### ***Measures to Increase and Prevent Decline of Board and Care Homes and Beds***

The AOA System of Care is working with the OSH and Facilities and Fleet (FAF) to purchase board and care homes that have plans to close and go out of business. To support potential purchase(s) for the SMI/co-occurring population, the Department included the County's maximum allowable Mental Health Services Act (MHSA) funding (\$8 million) in the MHSA Plan Update to purchase and operate residential care facilities; this funding can be used for up to ten (10) years. By purchasing and preventing the closure of these homes, the intention is to mitigate the displacement of consumers currently living in these homes and abate further homelessness.

In addition, the Department recently received the Los Angeles County Mental Health Department (LADMH) report on stabilizing board and care facilities, recognizing the critical importance of maintaining and increasing these facilities. This report was approved by the Los Angeles County Board of Supervisors on November 12, 2019 and the Department, with OSH, plans to follow up with the LADMH team in December 2019.

In an effort to increase and prevent the decline of the board and care homes and beds, the AOA System of Care Division Director convenes a quarterly stakeholder meeting with the State Community Care Licensing staff and the Public Guardian Office. This meeting is used to collaborate and discuss ways to provide on-going support for existing board and care facilities that are struggling to maintain their licensure due to several deficiencies in their facility.

### ***Hospital Discharge Transition Treatment Team***

The Department continues to work on reducing the use of inpatient psychiatric hospital services for individuals diagnosed with serious mental illness. The readmission rate measures the unplanned readmissions of individuals who have been discharged from acute psychiatric

hospitals within the past 30 days. The AOA Hospital Liaison implemented a practice management solution to improve data captured at the Barbara Aarons Pavilion (BAP) and contract hospitals to allow for more efficient intervention.

To address the readmission rate, a pilot project using an Inpatient Liaison was instituted at the BAP in 2017, with the aim to provide care coordination for patients discharging from the hospital. Care coordination has improved for consumers transitioning from inpatient hospitals back into the community. In addition, the Inpatient Liaison has improved relationships with the Outpatient Treatment Team service providers and inpatient providers by instituting quarterly meetings with the inpatient and outpatient providers to discuss challenging issues that affect clients. Another area of improvement is the Inpatient Liaison's ability to flag consumers with two hospitalizations, through early identification and proactive case management of these high-risk patients, thereby reducing readmissions. The AOA System continues to track the monthly readmission rate, which is currently 10.7 %, a slight increase in the readmission rate due to several high-need, high acuity clients waiting for state hospital beds.

### ***New Step Down Service Option to Support Wellness and Recovery***

The new Wellness and Recovery Medication Services (WARMS) was initially piloted in County-operated mental health clinics and has been fully implemented at the Downtown Mental Health and Narvaez Clinics. WARMS was developed to support adult outpatient clients in maintaining their level of wellness with case management, peer support and medication support that is provided every 4-12 weeks from a psychiatrist and licensed psychiatric technician. For this lower level of care, clients continue to receive: 1) an annual mental health assessment, 2) ongoing treatment planning, and 3) light touch case management. In the past fiscal year, mental health contract providers communicated their interest in implementing WARMS to support their outpatient level of care. Currently, there are six (6) contract providers utilizing this option, and in the next fiscal year, the program will be expanded to all AOA outpatient providers.

### ***Exploration of Medical-Detoxification Services (MHTC)***

The MHTC is a service benefit covered under the Drug Medi-Cal Organized Delivery System Waiver (DMC-ODS). This would not be a "center," but rather a medical service provided in a hospital setting. The Department is working with Valley Medical Center leadership to explore implementation of an MHTC service that would provide medical detoxification and supportive treatment for clients. The intervention addresses severe addiction to drugs and/or alcohol that requires medical supervision as the individual detoxes from the substance. For individuals who are severely addicted to alcohol and other drugs, such as benzodiazepines, detoxification can be life-threatening during the early stages of detoxification. This is further exacerbated when an individual also has a chronic health condition that can further complicate the detoxification process.

To manage detoxification in these circumstances, medical interventions (including the administering of medication to minimize the deleterious effects of the detoxification process) are required. The services offered through SUTS are routinely provided to individuals that are homeless, involved with the criminal justice system, and have co-occurring mental health symptoms. These augmented services would effectively address and stabilize individuals with acute addiction issues who are involved with all system partners that also serve this population.

### **Enhanced Lanterman-Petris-Short (LPS) Act Conservatorship**

Mental health conservatorships, also known as LPS conservatorships, are established to provide mental health services for Santa Clara County residents who are gravely disabled (unable to provide for their food, clothing or shelter) due to serious mental illness. These individuals have been found by the Court unable or unwilling to accept voluntary treatment. Mental health conservatorships are also known as Lanterman-Petris-Short conservatorships or “LPS”, named after the state Assemblyman and Senators who wrote the legislation. The law went into effect in 1972. This procedure is established in the California Welfare and Institutions Code (WIC).

Mental health conservatorship is a legal procedure through which the Superior Court appoints a conservator of the person to authorize psychiatric treatment, including the use of psychotropic medications and placement in a locked facility. The conservatee must meet the narrow definition of grave disability due to a serious mental disease.

LPS conservatorships may only be initiated by a psychiatrist while a client is in an acute psychiatric setting. Only psychiatric facilities (including jail psychiatry), may make referrals for conservatorships. Clinicians have discretion about when to refer; the treating physician may choose not to refer if it is believed that a client will recover before the hold expires. If a person reaches the 17-day limit for a hospital hold, they must be released unless a conservatorship is in place.

LPS conservatorships start with a 72-hour psychiatric hold (also known as a Welfare and Institution Code (WIC) Section 5150 hold). If clients continue to be considered gravely disabled and need additional intensive treatment, a psychiatric clinician may file for a 14-day hold (WIC Section 5250 hold). Under these WIC provisions, a patient can be held for a maximum of 17 days without conservatorship. After the first three days, the client has the right to a hearing and representation by the Public Defender.

Upon receiving a referral, the Public Guardian Conservator will determine if the referral is appropriate (that the client is a Santa Clara County resident and is on an involuntary hospital hold). If deemed appropriate, the Public Guardian Conservator works with County Counsel to petition the Superior court to grant a temporary conservatorship (T-con). This ensures that

the client will continue to receive appropriate care during the judicial process. Once the T-con is granted, the Public Conservator completes an investigation, including consulting with the psychiatrist, reviewing medical records and meeting with family (if appropriate). The Public Guardian Conservator then works with County Counsel to file a petition with the Court for continued conservatorship. If the T-con expires before the petition is ready, the Court may grant a 30-day extension.

Proposed conservatees are appointed representation by an attorney from the Office of the Public Defender. If the Court determines that the client is gravely disabled due to serious mental illness and are unable or unwilling to accept voluntary treatment, the client is placed on a “permanent” conservatorship, which lasts up to one year. The client has a right to appeal the conservatorship and may request a trial.

The Public Guardian Conservator works with the Department’s 24-Hour Care team to place the client in treatment, which generally includes finding an appropriate residential facility based on the physician’s recommendation and the needs of the client. The Public Guardian Conservator:

- Prepares reports for the Court
- Recommends appropriate level of placement, seeking the best and most independent living environment available, within the conservatee’s abilities and resources
- Monitors psychiatric care in collaboration with treatment team
- Consents to medical treatment and psychiatric medications when authorized
- Advocates on behalf of conservatees
- Provides case management for clients

A general LPS conservatorship lasts for a year or until it is determined that the conservatee no longer meets the legal criteria for conservatorship. At the end of the year, if the conservatee continues to meet the criteria for conservatorship, County Counsel files a petition for renewal of conservatorship.

### **Implementation of Assisted Outpatient Treatment (AOT)**

In 2002, California passed The Assisted Outpatient Treatment Demonstration Project Act, aka Laura’s Law, authorizing the provision of assisted outpatient treatment (AOT). As explained in reports to the Health and Hospital Committee (HHC) on September 13, 2017 (ID# 88121) and August 22, 2019 (ID# 97937),<sup>1</sup> this law allows courts, in certain circumstances after following a specific set of procedures, to order people to receive

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<sup>1</sup> These reports are attached to this report for ease of reference.

involuntary outpatient mental health services.<sup>2</sup> The 2002 law did not provide any funding for implementing AOT<sup>3</sup> and specifies that funding for voluntary mental health programs may not be reduced as a result of the implementation of AOT. Each County Board of Supervisors must approve AOT implementation in its county.

Currently, 20 counties have implemented AOT and are able to use the court system to enroll in involuntary outpatient treatment people with serious mental illness who are unable and/or unwilling to participate in treatment and meet the criteria established in Welfare & Institutions Code § 5346. As part of the AOT process, before AOT proceedings can begin, the person must have been offered an opportunity to participate in a treatment plan and continue to fail to engage in treatment. So far, the vast majority of people involved in an AOT program voluntarily engaged with services before court proceedings began.

The most recent information available about the outcomes of those 20 AOT programs is derived from data six counties provided<sup>4</sup> to the California Department of Health Care Services (DHCS) for the 2016-2017<sup>5</sup> time period. During that time period, there were 63 court-involved individuals in the six reporting counties. All of the data collected indicates that those 63 people benefited from being connected to treatment via AOT: homelessness, hospitalization, and contact with law enforcement decreased; some people secured employment; and most individuals remained fully engaged with services at the end of their court ordered treatment. However, none of the reports used standardized measures, followed participants for a standard period of time, included a large enough sample size, or compared the AOT participants to a control group that did not face the threat of court order to enter treatment. Given these limitations, the utility of this outcome data is quite limited and cannot demonstrate a causal relationship between the AOT process and the outcomes for the participants.<sup>6</sup>

As detailed in other sections of this report, Santa Clara County recently stood up new FACT, ACT, and FSP services. These services use evidence-based practices to provide the level of care most AOT participants would require, using a “whatever it takes” approach. The Department has also been making efforts to expand the breadth and methods of its community engagement. AOT participants have the option of engaging Mobile Crisis Response Team, In-Home Treatment program, Crisis Text Line, Homeless Mentally Ill Outreach and Treatment program, and call center. With the recent expansion of services and

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<sup>2</sup> Please see the September 13, 2017 report for more detailed description of the goals of AOT (packet pages 585-86), eligibility criteria (586-87), court process (587), and service program requirements (588).

<sup>3</sup> Orange County and Nevada County estimated treatment costs at \$35,000-\$40,000 per person per year.

<sup>4</sup> The other counties did not have enough data to report.

<sup>5</sup> Most of the counties currently using AOT, did not begin implementation until 2015-2016.

<sup>6</sup> San Francisco and Contra Costa Counties have also released evaluation reports on their AOT implementation. These counties reported similar findings and the utility of their data is similarly limited.

continued efforts at voluntary engagement, the Department is already providing many of the beneficial pieces associated with AOT in Santa Clara County.

At the August 22, 2019 HHC meeting, Supervisors Ellenberg and Simitian asked the Department to provide the HHC with quarterly reports on the progress of these new services and include in those reports an analysis of the possibility of implementing an AOT program. Given how new the ACT, FACT, and FSP services are to the County, these reports will allow the HHC to keep a close eye on their implementation and gauge their effectiveness.

The recommended action supports the County of Santa Clara Health System's Strategic Road Map goals by increasing the number of healthy life years through improving access to safe, supportive, and effective care.

### **CHILD IMPACT**

The recommended action would have a positive impact on children by providing information on projects and resources for homeless, dually diagnosed, and severely mentally ill clients from this target population.

### **SENIOR IMPACT**

The recommended action would have a positive impact on seniors by providing information on projects and resources for homeless, dually diagnosed, and severely mentally ill clients from this target population.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action balances public policy and program interests and enhances the Board of Supervisors' sustainability goals of social equity and safety by outlining and developing processes and procedures to address the needs and engage homeless individuals, dually diagnosed and SMI individuals in Santa Clara County.

### **BACKGROUND**

At the August 22, 2019 HHC, the Department provided information on the Fiscal Year (FY) 2019 Work Plan and accomplishments, including expansion of the AOA System's crisis continuum, diversion and post justice services and planned implementation of new and expanded services (ID# 97937). These services include Assertive Community Treatment, Forensic Assertive Community Treatment, Intensive Full-Service Partnerships and the In-Home Outreach Teams. In addition, the Blackbird House, a new Peer Respite program operated by Caminar, opened its door in December 2018. The Department also reviewed the FY2020 Work Plan (ID# 97937) which includes new services in both County-operated programs and RFPs for new contract provider services. These services were designed to meet the needs of clients with intensive mental health and substance use issues.

### **CONSEQUENCES OF NEGATIVE ACTION**

Failure to approve recommended action would result in the inability of the Board of Supervisors to receive a report on the current and future projects, plans, and services that would help engage house, and serve homeless, dually diagnosed, and SMI individuals.

**LINKS:**

- Linked To: 98761 : 98761
- Linked To: 88121 : 88121
- Linked To: 97937 : 97937