



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, SEPTEMBER 15, 2020
MILPITAS, CA
6:00 PM (CLOSED SESSION)
7:00 PM (PUBLIC BUSINESS)

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

City Council meeting is held via teleconference /Zoom webinar only (no physical meeting space).
Submit any Public Forum or agenda item comments in writing on the form online, to be read aloud by
the City Clerk.

Meeting shall be livestreamed - Go to:

Facebook: <https://www.facebook.com/CityofMilpitas/>
YouTube: <https://www.ci.milpitas.ca.gov/youtube>
Web Streaming: <https://www.ci.milpitas.ca.gov/webstreaming>

Virtual public comments may be submitted on a form from the City website:
<http://www.ci.milpitas.ca.gov/publiccomment>

MILPITAS CITY COUNCIL CODE OF CONDUCT

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

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (6:00 PM)

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to California Government Code §54957.6

City representative: Human Resources Director Jeannine Seher

Employee Groups: International Association of Firefighters (IAFF), Mid-Management and Confidential Unit (Mid-Con), Milpitas Employees Association (MEA), Milpitas Professional and Technical Group (ProTech), and Unrepresented Employees

Under Negotiation: Wages, Hours, Benefits and Working Conditions

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 (7:00 PM)

INVOCATION (assigned to Mayor Tran)

PRESENTATION

- Proclaim September 15 - October 15, 2020 as *Hispanic Heritage Month*

PUBLIC FORUM (7:05 PM)

Those interested are invited to address City Council on any subject not on tonight's agenda, by submitting written comments using the form available online. Submitters may provide their name and city of residence for the Clerk's record, and comments read aloud by the City Clerk may be limited 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.

Virtual public comments may be submitted on a form here: [:www.ci.milpitas.ca.gov/publiccomment](http://www.ci.milpitas.ca.gov/publiccomment)

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:20 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 September and October 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve Meeting Minutes of the August 27 and September 1, 2020 City Council meetings (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: To approve the City Clerk's draft meeting minutes of the August 27, 2020 Special meeting and September 1, 2020 Regular City Council meeting.

C3. Adopt a Resolution Certifying Election Results and Adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19); Approve Final Tract Map No. 10475; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for a Residential Development at 551 Lundy Place (Staff Contact: Steve Erickson, 408-586-3301)

Recommendations:

- 1) Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19); and
- 2) Approve Final Tract Map No. 10475, including approval of street names and accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
- 3) Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Toll West Coast LLC for a residential development at 551 Lundy Place.

C4. Adopt a Resolution Granting Acceptance of Alviso Adobe Renovation, Phase V – Interior Restoration, Project No. 5055, authorizing the City Engineer to file a Notice of Completion, and Authorizing Him to issue a Notice of Final Acceptance (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a resolution granting acceptance of Alviso Adobe Renovation, Phase V- Interior Restoration, Project No. 5055, authorizing the City Engineer to file a Notice of Completion, and authorizing him to issue a Notice of Final Acceptance after the one-year warranty.

C5. Authorize the City Manager to Execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for Reimbursement for Repairs to City Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1 and Related Budget Amendment (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Authorize the City Manager to execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for reimbursement for repairs to City Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1 and appropriate \$86,125 to Capital Improvement Project Sinclair Horizons LLMD No. 98-1.

C6. Approve and Authorize the City Manager to Execute an Energy Service Agreement with ENGIE Services U.S. Inc. to Develop Energy and Water Efficiency Projects Pursuant to California Government Code Section 4217 (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve and authorize the City Manager to execute an Energy Service Agreement with ENGIE Services U.S. Inc. for the development of Energy and Water Conservation Measures on City facilities and land, pursuant to California Government Code Section 4217.

C7. Approve Award of Youth Advisory Commission Scholarships of \$500 Each to Five Recipients for Year 2020 (Staff Contact: Renee Lorentzen, 408-586-3409)

Recommendation: Approve award of five Youth Advisory Commission Community Service Scholarships of \$500 each for a total amount of \$2,500.

COMMUNITY DEVELOPMENT (7:30 PM)

- 8. Receive progress report from Urban Field Studio and Staff on the Milpitas Metro Specific Plan (TASP Update), Discuss Plan Objectives and Priorities and Provide Direction on Key Planning Concepts, Multi-modal Connections, and Open Space Strategies (Staff Contacts: Ned Thomas, 408-586-3273 and Kevin Riley, 408-586-3292)**

Recommendations: Receive a presentation from staff, and discuss Plan objectives and priorities and provide direction on key planning concepts, multi-modal connections and open space strategies.

LEADERSHIP AND SUPPORT SERVICES (8:30 PM)

- 9. Designate Milpitas City Councilmembers as Delegate and Alternates to 2020 League of California Cities Annual Conference (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendations:

- 1) Among those City Councilmembers registered and planning to be in attendance at the League of California Cities 2020 Annual Conference, move to designate one member to serve as the voting delegate.
- 2) Among those City Councilmembers registered and planning to be in attendance at the League of California Cities 2020 Annual Conference, move to designate one or two members to serve as the alternate voting delegate(s).

- 10. Approve and authorize the City Manager to execute the Agreements between the City of Milpitas and Verizon, and AT&T, for the installation of Small Cell Facilities on Municipal Facilities (Staff Contact: Mike Luu, 408-586-2706)**

Recommendation: Approve and authorize the City Manager to execute the Municipal Facilities License Agreements (MLA) with Verizon and AT&T to attach Small Cell Antennas to City-owned vertical infrastructure in the public right-of-way.

- 11. Approve and Authorize the City Manager to Execute a Funding Agreement with Santa Clara County for Countywide isolation and quarantine services related to COVID-19 (Staff Contacts: Ashwini Katak, 408-586-3053 and Christopher Diaz, 408-586-3040)**

Recommendation: Approve and authorize the City Manager to execute a Funding Agreement with Santa Clara County for Countywide isolation and quarantine services related to COVID-19 for an amount not to exceed \$109,588.

- 12. Approve and Adopt a City Social Media Policy (Staff Contacts: Ashwini Katak, 408-586-3053 and Christopher Diaz, 408-586-3040)**

Recommendation: Approve and adopt a City of Milpitas Social Media Policy.

REPORTS OF MAYOR & COUNCILMEMBER (10:30 PM)

- 13. Receive and Direct Staff on List of 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 a City 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.

14. Discuss Council Sponsored Events; and, Discuss and Provide Direction on 2020 United States Census Outreach and Any Council Sponsorship (Contact: Councilmember Dominguez, 408-586-3031)

Recommendation: Discuss City Council sponsored event process; and, discuss and provide direction on the City's 2020 US Census outreach before the September 30, 2020 deadline and any Council sponsorship.

NEXT AGENDA PREVIEW

15. Receive Preview List of Anticipated Items for the Next Regular City Council Meeting Scheduled on October 6, 2020 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Receive list of anticipated agenda items for the October 6, 2020 regular City Council meeting.

ADJOURNMENT (11:00 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

APPLY TO SERVE ON A CITY COMMISSION

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

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance.

August 2020						
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October 2020						
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31						

Milpitas City Council Calendar

September 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 6:00 PM -Closed Session 7:00 PM -City Council	2 10:00 AM -Special City Council 2:00 PM -Santa Clara VTA Briefing - Northeast Group (BN) 7:00 PM -Community Advisory Commission (BN)	3 5:30 PM -Santa Clara VTA Board of Directors (BN) 5:30 PM -Milpitas Chamber of Commerce Board (CM)	4	5
6	7 City Hall Closed  In Observance of Labor Day	8 7:00 PM Special Arts Commission (CM)	9 6:00 PM -Special Planning Commission (no Regular mtg) 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM)	10 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 4:00 PM -Treatment Plant Advisory Committee (CM) 5:30 PM -General Plan Advisory Committee (GPAC) 7:00 PM -Cities Assoc SCC (CM) 7:00 PM -Youth Advisory Commission (AP)	11 <i>*4:30 PM-City Council Finance Subcommittee (RT/CM)</i>	12
13	14 4:30 PM -Economic Development and Trade Commission (KD) 7:00 PM -Library and Education Commission (CM)	15 6:00 PM -Closed Session 7:00 PM -City Council	16 6:00 PM -Energy and Environmental Sustainability Commission (BN)	17 2:00 PM -VTA Safety, Security & Transit Operations (BN) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) 7:00 PM -Public Safety and Emergency Prep. Comm. (KD)	18	19
20	21 7:00 PM -Science, Technology, and Innovation Commission (BN)	22 7:00 PM -Parks, Recreation & Cultural Resources Comm. (AP)	23 7:00 PM -Planning Commission	24	25	26
27	28 7:00 PM -Arts Commission (CM)	29 6:30 PM -Special Joint City Council & Planning Commission Study Session	30 6:30 PM -Community Workshop: Milpitas Metro Plan			

**Finance Subcommittee will meet only as needed*

September 2020						
S	M	T	W	T	F	S
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Milpitas City Council Calendar

October 2020

November 2020						
S	M	T	W	T	F	S
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 5:30 PM -Milpitas Chamber of Commerce Board (CM) 5:30 PM -Santa Clara VTA Board of Directors (BN)	2	3
4	5 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	6 ?:00 PM -Closed Session 7:00 PM -City Council	7 5:30 PM -Veterans Commission (RT) 7:00 PM -Community Advisory Commission (BN)	8 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)	9	10
11	12 4:30 PM -Economic Development and Trade Commission (KD)	13	14 7:00 PM -Silicon Valley Clean Energy Board of Directors (CM) 7:00 PM -Planning Commission	15 2:00 PM -VTA Safety, Security, & Transit Operations (BN)	16 4:30 PM -City Council Finance Subcommittee (RT/CM)	17
18	19 7:00 PM -Science, Technology, and Innovation Commission (BN)	20 ?:00 PM -Closed Session 7:00 PM -City Council	21 6:00 PM -Energy and Environmental Sustainability Commission (BN)	22 12:00 PM -Santa Clara Library Joint Powers Authority (CM)	23	24
25	26	27 1:30 PM -Senior Advisory Commission (AP)	28 12:00 PM -Santa Clara Valley Water District - Water Commission (CM) 7:00 PM -Planning Commission	29	30	31 

**Finance Subcommittee will meet only as needed*

Draft **CITY OF MILPITAS
MEETING MINUTES**

Minutes of: Special Meeting of the Milpitas City Council
Date: Thursday, August 27, 2020
Time: 10:00 AM
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

PRESENT: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez

ABSENT: Councilmembers Montano and Phan

Via zoom webinar online, a session was provided by the Milpitas City Attorney to a select City audience and the public to explain the Brown Act and answer questions. With a majority of City Councilmembers in attendance, this session was noticed as a Special City Council meeting. Members of the Planning Commission and many members of 11 other Commissions, some Department Heads and staff were in attendance online. The meeting began at 10:00 AM.

PUBLIC FORUM

None.

TRAINING SESSION

Assistant City Manager Ashwini Kantak introduced City Attorney Chris Diaz. He provided an oral presentation and powerpoint slides reviewing and explaining important sections of California's Ralph M. Brown Act, regarding open and public meetings. He presented this information to City Councilmembers, City of Milpitas Commissioners and City staff who serve as liaisons to Commissions and Council Subcommittees.

Following the formal training time, the Attorney responded to many questions from participants.

The training session was recorded and was posted to the City's website on the Commissions page and City Council meetings page.

ADJOURNMENT

The training and meeting was concluded at 11:45 AM.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*

**Draft CITY OF MILPITAS
MEETING MINUTES**

Minutes of: Regular Meeting of the Milpitas City Council
Date: Tuesday, September 1, 2020
Time: 6:00 PM Closed Session
7:00 PM Open Session
Location: Meeting held via teleconference/zoom webinar online
Milpitas, CA

CALL TO ORDER Mayor Tran called the meeting to order at 6:02 PM. City Clerk Mary Lavelle called the roll. The meeting took place via teleconference and zoom webinar.

PRESENT: Mayor Tran, Vice Mayor Nuñez, Councilmembers Dominguez, Montano and Phan

ABSENT: None

CLOSED SESSION City Council convened into Closed Session (online webinar) to discuss one litigation matter listed on the agenda.

At 7:04 PM, Mayor and Council reconvened for the Open Session.

ANNOUNCEMENT – from Closed Session City Attorney Chris Diaz stated there was no announcement out of Closed Session, while City Council did provide direction to staff.

PLEDGE Mayor Tran led all in the pledge of allegiance to the flag.

INVOCATION Mayor Tran offered remarks for the invocation.

PRESENTATIONS Mayor Tran proclaimed:

- September 6 - 12, 2020 as *National Suicide Prevention Week*
- September 2020 as *National Preparedness Month*

The Mayor also presented a special commendation to City Attorney Chris Diaz upon his five years of service to the City.

Code of Conduct
City Attorney Chris Diaz read aloud the Milpitas City Council Code of Conduct, as printed on the meeting agenda.

PUBLIC FORUM City Clerk read aloud comments submitted via form online from 28 residents:

Mayor Tran asked the City Manager to issue information to express what the City had done to provide service to homeless persons, including in the budget.

ANNOUNCEMENTS Councilmember Dominguez highlighted two Milpitas businesses.

Vice Mayor Nuñez had read an article about Project Homekey in Milpitas, and sought a method for the community to have conversation, allowing all City Council to participate.

Councilmember Phan thanked all Milpitas firefighters in containing the many wildfires.

Councilmember Montano announced the Gardner Health Center, with help from the County Board of Supervisors, would provide weekly no-cost Covid testing in San Jose.

Councilmember Dominguez asked for a new agenda item: to clarify what City sponsored events look like, to give community updates, and bring it back for discussion at the next meeting. She also asked for a new agenda item regarding the US Census, to discuss Council ideas at the next meeting. All Councilmembers were in favor of both requests.

City Manager Steve McHarris announced the successful Micro Enterprise program's grant lottery, in which 38 Milpitas businesses were selected, and a wait list was formed. The Business Spotlight program launched on August 21, with nominations for local favorite businesses to be highlighted in an upcoming ad.

Councilmember Montano requested City staff to follow up with a business owner who stated (in the public forum) that he'd had to pay permit fees for his business expansion, and sought assistance including possibly waiving fees.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked the Mayor and City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, no conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the September 1, 2020 meeting agenda, as presented

Motion/Second: Councilmember Montano/Councilmember Dominguez

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

CONSENT CALENDAR

Motion: to approve the consent calendar including agenda items no. C1, C2, C4, C5, C7 and C8

City Attorney Diaz stated three clerical corrections to documents for the purchase and sale of property (agenda item no. C4). Those would be incorporated into the documents when signed, if City Council approved the item.

Vice Mayor Nuñez asked to remove agenda items no. C3 and no. C6 from consent.

Motion/Second: Councilmember Montano/Vice Mayor Nuñez

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

C1. Council Calendar

Received the City Council calendar of upcoming meetings for September 2020.

C2. Meeting Minutes

Approved the City Council meeting minutes of the Regular City Council meeting on August 18, 2020.

City Clerk read aloud one comment from Urvish Mehta.

Vice Mayor Nuñez asked for the City Council to go through the budget status again at the first City Council meeting in October, for Council to each present new programs for the community that would be funded with some of the remaining reserve funds. Then staff could return in November with a report on those ideas and possible implementation.

Motion:

- a) to accept the Fiscal Year 2019-20 Quarterly Financial Status Report for the quarter ended on June 30, 2020
- b) to approve a budget appropriation from Affordable Housing Fund for \$26,419 to the City Attorney's operating budget, from Hetch-Hetchy Fund for \$258 to the Non-Departmental operating budget, from 2008 Community Facilities Fund for \$7,933 to the Public Works and Non-Departmental operating budget and from Vehicle Registration Fee Fund for \$303,331 to CIP No. 3440 Annual Street Light, Signal and Signage Project
- c) to direct staff to place on the agenda an item on October 6, and potentially the first meeting in November, to talk about the need for programs and funding associated with that need in the community and those programs

Motion/Second: Mayor Tran/Vice Mayor Nuñez

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

10. 2021-2030 Forecast

Finance Director Rossmann provided an updated ten year financial forecast, with more current data having been received following the close of the last quarter of prior Fiscal Year. He displayed changes in the forecast with significant further reduced revenue expected. Ongoing anticipated deficits were forecast due to the ongoing negative effects of Covid-19 on the economy.

City Clerk read aloud one comment from Voltaire Montemayor.

Motion: to accept the FY 2021-2030 Ten-Year General Fund Financial Forecast update

Motion/Second: Mayor Tran/Vice Mayor Nuñez

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

11. Resolution – Fiscal Strategies

Mr. Rossmann reported that the drafted Resolution was before the City Council based on direction given two weeks prior. Staff presented the resolution for adoption, with specific strategies to follow allowing the City to be successful in the current challenging economy.

Staff provided Strategies and Guidelines - numbered 1 – 13 - including the use of technology.

City Clerk read aloud one comment from Urvish Mehta.

Motion: to adopt Resolution No. 9001 approving and directing the City Manager to implement the COVID-19 Fiscal Response Strategies and Guidelines

Motion/Second: Mayor Tran/Vice Mayor Nuñez

Motion carried by a vote of: AYES: 5

NOES: 0

12. Side Letter with MPOA

Employee Relations Officer Francine Hunt addressed the need to extend a previous side letter, to continue the contribution related to police (MPOA) retirees.

Motion: to approve Side Letter No. 4 between the Milpitas Police Officers Association (MPOA) and the City of Milpitas regarding the MPOA Retiree Dependent Health Care Fund for Fiscal Year 2020-21

Motion/Second: Vice Mayor Nuñez/Mayor Tran

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

REPORT

13. List of Agenda Items

Vice Mayor Nuñez noted that the City Council had accomplished item no. 7 on the list, and the City Manager agreed to update that item. No action was taken by Council and the list was received.

NEXT AGENDA PREVIEW

14. Anticipated Agenda

Received list of anticipated agenda Items for the next regular City Council meeting on September 15, 2020.

ADJOURNMENT

Mayor Tran adjourned the meeting at 10:21 PM in memory of Rex Skiver, a long time Milpitas resident.

*Draft meeting minutes submitted by
City Clerk Mary Lavelle*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Certifying Election Results and Adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19); Approve Final Tract Map No. 10475; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for a Residential Development at 551 Lundy Place
Category:	Consent Calendar-Community Development
Meeting Date:	9/15/2020
Staff Contact:	Steve Erickson, City Engineer, 408-586-3301
Recommendations:	<ol style="list-style-type: none"> 1. Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19); and 2. Approve Final Tract Map No. 10475, including approval of street names and accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and 3. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Toll West Coast LLC for a residential development at 551 Lundy Place.

Background:

On February 20, 2018, the City Council approved a Vesting Tentative Map (MT16-0003), Site Development Permit (SD16-0009) and Conditional Use Permit (UP16-0028) to allow construction of 89 residential condominium units located on a 3.65 acre site within the Transit Area Specific Plan area at 551 Lundy Place. This project is known as 551 Lundy Place, and the developer is Toll West Coast LLC (Developer).

Analysis:

The final map for the development is now complete and ready for approval by the City Council. The City Engineer has examined the final map for Tract No. 10475 and determined that the map is substantially the same as the previously approved Vesting Tentative Map, and finds that it conforms to all requirements of the State of California Subdivision Map Act, and Milpitas Municipal Code (MMC) and the terms and conditions of the Vesting Tentative Map. The Developer has offered required dedications to the City for public use, including easements for public service and utility, emergency vehicle access and public pedestrian and bicycle access purposes, as shown on the final map. Staff recommends the City Council approve the final map and accept the dedications, subject to completion and acceptance of public improvements to be installed by the Developer.

On March 26, 2018, the City's Facilities and Streets Naming Subcommittee reviewed and recommended approval of the street names as shown on the final map. Those private street names are Joshua Tree Circle and Terracotta Court respectively, without duplication. City Council shall approve all street names pursuant to MMC Section XI-1-7.01-8.

The Developer has agreed to enter into a Subdivision Improvement Agreement (SIA) with the City for the construction of off-site public improvements for the project which will be completed with the on-site work, and the public improvements will be accepted by the City after final map approval. Offsite public improvements to be constructed and accepted by the City include asphalt concrete pavement, signing and striping, curb and gutter, sidewalk, driveway approach, utility services, landscaping and other miscellaneous items of work identified on the improvement plans. The improvements will be completed within 1-year from the date of the

SIA, and the work is guaranteed by bonds or similar securities to be posted by the Developer in the amount of \$161,000.

The City Engineer has reviewed the public improvement plans (E-EN18-0188) and is recommending the City Council approve the Subdivision Improvement Agreement to allow for the construction of public improvements after final map approval.

The final map for Tract No. 10475 is subject to annexation into the Community Facilities District No. 2008-1 (CFD 2008-1). The City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are no registered voters residing within the boundaries of the proposed CFD Annexation No. 19 for this development. The Developer is the sole property owner, and on September 10, 2020, the property owner was scheduled to vote on agreeing to the proposed Annexation No. 19. The resolution attached hereto documents the results of the election on annexation into CFD 2008-1. Annexation into CFD 2008-1 is subject to the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Section 53311 of the Government Code. While the Act has a number of requirements for annexation and imposition of the special tax, the Developer (as the sole landowner within the annexation territory) has agreed to waive many of the formalities. A copy of the waiver executed by the Developer is on file with the City Clerk.

Policy Alternatives:

Alternative 1:

Deny approval of Final Map and Subdivision Improvement Agreement.

Pros: None

Cons: The site is currently vacant and a denial of approval of the Final Map or the Subdivision Improvement Agreement will cause the lot to remain vacant and undeveloped. The City would not benefit from the addition of 89 new residential housing condominium units.

Reason not recommended: To allow the development to move forward, staff recommends approval of Final Map and Subdivision Improvement Agreement for Tract No. 10475.

Alternative 2:

Deny Annexation of Tract No. 10475 to CFD 2008-1.

Pros: None

Cons: Denying the Annexation of Tract No. 10475 into the CFD No. 2008-1 would prevent the City from levying special taxes within Tract No. 10475, in order to fund public services.

Reason not recommended: To adequately fund the perpetual maintenance of improvements and services within CFD No. 2008-1, staff recommends adoption of a resolution certifying election results and adding Tract No. 10475 to CFD 2008-1.

Fiscal Impact:

Adding Tract No. 10475 to the CFD No. 2008-1 would allow the City to levy special taxes to properties within Tract No. 10475, in order to fund for public services.

California Environmental Quality Act:

Approval of final subdivision map is a ministerial action exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15268(b)(3). Approval of the Subdivision Improvement Agreement implements this project for which CEQA review has already been completed through the City Council's adoption of Resolution No. 8509 adopting an addendum to the previously certified Transit Area Specific Plan Environmental Impact Report.

Recommendations:

1. Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10475 to Community Facilities District No. 2008-1 (Annexation No. 19);
2. Approve Final Tract Map No. 10475, including approval of street names and accept all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
3. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Toll West Coast LLC for a residential development at 551 Lundy Place.

Attachments:

- 1: Resolution
- 2: Final Tract Map No. 10475
- 3: Subdivision Improvement Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CERTIFYING THE RESULTS OF AN ELECTION AND ADDING TERRITORY TO COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)

(Annexation No. 19)

WHEREAS, the City Council of the City of Milpitas (the "City Council") has previously formed Community Facilities District No. 2008-1 (Public Services) ("CFD No. 2008-1") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), as amended, for the purpose of financing certain Public Services; and

WHEREAS, acting pursuant to the Act, the City Council also authorized by the adoption of Resolution No. 8601 (the "Resolution Authorizing Future Annexation") the annexation in the future of territory to CFD No. 2008-1, such territory designated as Future Annexation Area, Community Facilities District No. 2008-1 (the "Future Annexation Area"); and

WHEREAS, at this time the unanimous consent to the annexation of certain territory located within the Future Annexation Area to CFD No. 2008-1 has been received from the property owner of such territory, and such territory has been designated as Annexation No. 19 (the "Territory"); and

WHEREAS, less than twelve (12) registered voters have resided within the Territory for each of the ninety (90) days preceding the election date established for the Territory, therefore, pursuant to the Act the qualified elector of the Territory shall be the "landowner," as such term is defined in Government Code Section 53317(f), of such Territory and such landowner who is the owner of record as of the applicable election date, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of the parcel of land that landowner owns within such Territory; and

WHEREAS, the time limit specified by the Act for conducting an election to submit the levy of the special taxes on the Territory to the qualified elector thereof and the requirements for impartial analysis and ballot arguments have been waived with the unanimous consent of the qualified elector of the Territory; and

WHEREAS, the City Clerk of the City of Milpitas has caused a ballot to be distributed to the qualified elector of the Territory, has received and canvassed such ballot and made a report to the City Council regarding the results of such canvass, a copy of which is attached as **Exhibit A** hereto and incorporated herein by this reference; and

WHEREAS, at this time the measure voted upon and such measure did receive the favorable vote of the qualified elector of the Territory, and the City Council desires to declare the results of the election; and

WHEREAS, a map showing the Territory and designated as Annexation Map No. 19 (the "Annexation Map"), a copy of which is attached as **Exhibit B** hereto and incorporated herein by this reference, has been submitted to this legislative body.

NOW, THEREFORE, the City Council of the City of Milpitas, California, acting as the legislative body of Community Facilities District No. 2008-1, hereby finds, determines and resolves as follows:

1. **Recitals.** The above recitals are true and correct.
2. **Findings.** This legislative body does hereby further determine as follows:
 - A. The unanimous consent as described in the recitals hereto to the annexation of the Territory to CFD No. 2008-1 has been given by the owner of the Territory and such consent shall be kept on file in the Office of the City Clerk of the City of Milpitas.
 - B. Less than twelve (12) registered voters have resided within the Territory for each of the ninety (90) days preceding the election date established for the each of the parcels located within the

Territory, therefore, pursuant to the Act the qualified elector for the Territory shall be the "landowner" of the Territory as such term is defined in Government Code Section 53317(f).

- C. The qualified elector of the Territory has voted in favor of the levy of special taxes on the Territory upon its annexation to CFD No. 2008-1.
- 3. Territory. The boundaries and parcels of property within the Territory and on which special taxes will be levied in order to pay for the costs and expenses of authorized Public Services are shown on the Annexation Map as submitted to and hereby approved by this legislative body.
- 4. Declaration of Annexation. This legislative body does hereby determine and declare that the Territory, and each parcel therein, is now added to and becomes a part of CFD No. 2008-1. The City Council, acting as the legislative body of CFD No. 2008-1, is hereby empowered to levy the authorized special tax within the Territory.
- 5. Notice. Immediately upon adoption of this Resolution, notice shall be given as follows:
 - A. A copy of the Annexation Map as approved shall be filed in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.
 - B. An Amendment to the Notice of Special Tax Lien (Notice of Annexation) shall be recorded in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.
- 6. Effective Date. This Resolution shall become effective upon its adoption.

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

EXHIBIT B

ANNEXATION MAP

SHEET 1 OF 1

Filed in the office of the City Clerk of the City of Milpitas this ____ day of _____, 2020.

City Clerk, City of Milpitas

I hereby certify that the within map showing proposed boundaries of Annexation Map No. 19 of City of Milpitas Community Facilities District No. 2008-1 (Public Services), City of Milpitas, County of Santa Clara, State of California, was approved by the City Council of the City of Milpitas at a regular meeting thereof, held on the ____ day of _____, 2020, by its Resolution No. _____.

City Clerk, City of Milpitas

Filed this ____ day of _____, 2020, at the hour of ____ o'clock ____ m., in Book ____ of Maps of Assessment and Community Facilities Districts at Page ____ in the office of the County Recorder in the County of Santa Clara, State of California.

County Recorder, Regina Alcomendras
County of Santa Clara

The boundary of Community Facilities District No. 2008-1 is co-terminous with the boundary of the City of Milpitas in _____, 2020.

Reference is hereby made to the Assessor maps of the County of Santa Clara for an exact description of the lines and dimensions of each lot and parcel.

The territory included in the Community Facilities District shall include only Santa Clara County Assessor's for the following Annexation Maps:

Initial formation CFD 2008-1 : 08632033, 08632034, 08632035, 08632036
 Map No. 1: 08641020, 08641021, 08641022
 Map No. 2: 08636043
 Map No. 3: 08633094, 08633095, 08633098, 08633099
 Map No. 4: 08632044
 Map No. 5: 08632039, 08632045, 08632046
 Map No. 6: 08636003, 08636004, 08636005, 08636006
 Map No. 7: 08633092
 Map No. 8: 08637019, 08637037, 08637038
 Map No. 9: 08632029, 08632070
 Map No. 10: 08633089, 08633107, 08633108
 Map No. 11: 08641009, 08641032, 08641033, 08641034
 Map No. 12: 086037039, 086037040
 Map No. 13: 08633105
 Map No. 14: 08636040
 Map No. 15: 08633111
 Map No. 16: 09208077
 Map No. 17: 08636039
 Map No. 18: 08336003
 Map No. 19: 08636038

and all publicly owned areas in the City of Milpitas landscaped or capable of being landscaped, such as parks, pathways, street medians, interchange areas, light rail areas, open space and all similar areas. All other areas depicted on this map indicate territory that may be annexed to the Community Facilities District in the future.

ANNEXATION MAP NO. 19 AND UPDATE OF ANNEXATION MAP NO. 18 OF CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES), COUNTY OF SANTA CLARA STATE OF CALIFORNIA AS RECORDED IN BOOK 53 PAGE 18 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, O.R., SANTA CLARA COUNTY

AMENDED FOR MAP NO. 19 ANNEXATION

KARRIE MOSCA, RECORDER

* THE SIGNATURE ABOVE IS ONLY FOR THE UPDATE TO ANNEXATION MAP NO. 19 AND IS UPDATING THE RECORDED SIGNATURE OF THE CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1

DATE _____

Drawn By: BP File No. CFD 2008-1 Sheet 1 of 1

Exhibit B

20

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS FOR PUBLIC PURPOSES FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. EASEMENTS FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
2. EASEMENTS FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
3. EASEMENTS FOR PUBLIC PEDESTRIAN AND BICYCLE ACCESS PURPOSES (PAE).

THE ABOVE MENTIONED EASEMENTS SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

THE UNDERSIGNED HEREBY DECLARES THAT ALL OF THE PRIVATE STREETS (JOSHUA TREE CIRCLE, AND TERRACOTTA COURT) ARE ESTABLISHED AS ACCESS WAYS FOR THE BENEFIT OF ALL THE CONDOMINIUM OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS AND TENANTS, BUT ARE NOT OFFERED FOR DEDICATION FOR PUBLIC USE. SAID PRIVATE STREETS ARE ALSO RESERVED FOR THE BENEFIT OF TRACT 10421 OF 913 M 8 AND TRACT 10455 OF 926 M 23 FOR ACCESS WAYS TO AND FROM THE PUBLIC STREET (TAROB COURT AND LUNDY PLACE, FORMALLY TRIMBLE ROAD). MAINTENANCE OF SAID PRIVATE STREETS IS TO BE THE RESPONSIBILITY OF THE HOMEOWNER'S ASSOCIATION OF TRACT 10475, ALL IN ACCORDANCE WITH THE COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs).

THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND WILL NOT BE ACCEPTED FOR PUBLIC MAINTENANCE.

PRIVATE STORM DRAIN EASEMENTS (PRSDE) ARE RESERVED FOR THE BENEFIT OF TRACT 10475, 10455, AND 10421. SAID EASEMENTS ARE FOR THE RIGHT TO CONVEY STORM WATER THROUGH THE UNDERGROUND PIPES ACROSS THE SUBJECT PROPERTY ONLY. THE MAINTENANCE, REPAIR AND/OR REPLACEMENT OF SAID STORM DRAIN FACILITIES SHALL BE THE SOLE RESPONSIBILITY OF THE HOMEOWNER'S ASSOCIATION OF TRACT 10475.

ALL WATER, SANITARY SEWER, AND STORM DRAIN UTILITIES WITHIN THE DISTINCTIVE BOUNDARY LINE OF THIS MAP ARE PRIVATELY OWNED AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION. ALL DRY UTILITIES (GAS, ELECTRIC, TELEPHONE, CABLE, ETC.) WITHIN THE DISTINCTIVE BOUNDARY LINE OF THIS MAP ARE OWNED AND MAINTAINED BY THE RESPECTIVE UTILITY COMPANY.

OWNER:

TOLL WEST COAST LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____
 NAME: ROBERT D. MOORE
 TITLE: GROUP PRESIDENT

OWNER'S 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 _____ } SS.
 COUNTY OF _____ }
 ON _____, BEFORE ME,
 _____, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND
 STATE, 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:

SIGNATURE: _____

NAME (PRINT): _____

PRINCIPAL PLACE OF BUSINESS: _____

MY COMMISSION NO.: _____

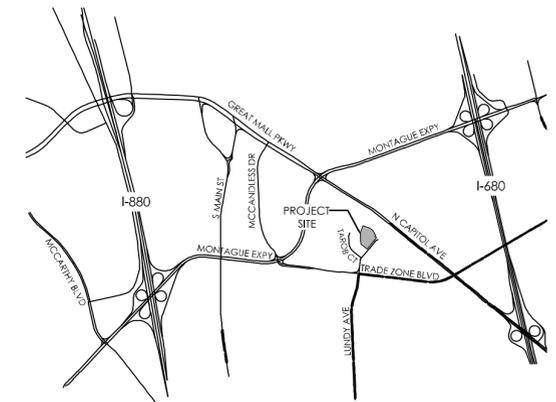
MY COMMISSION EXPIRES: _____

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF TOLL WEST COAST LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN APRIL 2017. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER 31, 2021; AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

 RYAN M. SEXTON, P.L.S.
 L.S. NO. 9177

 DATE



VICINITY MAP
 N.T.S.

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2020 AT _____, IN BOOK _____ OF MAPS, AT PAGES _____, AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

FEE: \$ _____

SERIES: _____

REGINA ALCOMENDRAS
 COUNTY RECORDER
 SANTA CLARA COUNTY, STATE OF CALIFORNIA

 DEPUTY COUNTY RECORDER

TRACT MAP 10475
 551 LUNDY PLACE
 FOR 89 RESIDENTIAL CONDOMINIUM UNITS

BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN
 BOOK 518 OF MAPS, PG 32-34
 OFFICIAL RECORDS OF SANTA CLARA COUNTY
 CITY OF MILPITAS, STATE OF CALIFORNIA

SEPTEMBER 2020



Sheet 1 of 6

JOB # 3266015

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: DEAN A. JURADO, PLS ACTING CITY SURVEYOR, CITY OF MILPITAS KIER & WRIGHT PLS NO. 9032 DATE: _____



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: STEVEN PATRICK ERICKSON, P.E. CITY ENGINEER, CITY OF MILPITAS R.C.E. NO. 57242 DATE: _____

GEOTECHNICAL NOTE

GEOTECHNICAL REPORTS ON THIS PROPERTY HAVE BEEN PREPARED BY ENGEO INCORPORATED DATED OCTOBER 16, 2018, PROJECT NO. 13944.000.002, SIGNED BY SEEMA BARUA, PE NO. 87595 AND ROBERT H. BOECHE, CEG NO. 2318. SAID REPORT HAS BEEN FILED WITH THE CITY OF MILPITAS.

BASIS OF BEARINGS

THE BEARING NORTH 50°39'32" WEST BETWEEN FOUND MONUMENTS ON TAROB COURT AS SHOWN ON TRACT 10224 FILED NOVEMBER 7, 2014 IN BOOK 878 OF MAPS AT PAGES 1-9 WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

REFERENCES

- (1) 518 MAPS 32-34 (PARCEL MAP)
(2) 431 MAPS 2-3 (PARCEL MAP)
(3) 878 MAPS 1-9 (TRACT 10224)
(4) 913 MAPS 8-11 (TRACT 10421)
(5) 926 MAPS 23-28 (TRACT 10455)

NOTES

- 1. ALL CURVE DIMENSIONS SHOWN ARE ARC LENGTH AND DELTA, ALL DISTANCES SHOWN ARE GROUND DISTANCES AND ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
2. TOTAL AREA OF THIS SUBDIVISION CONTAINS 3.73± ACRES
3. THE DISTINCTIVE BORDER LINE DELINEATES THE BOUNDARY OF LAND SUBDIVIDED BY THIS MAP.
4. THERE ARE A TOTAL OF 13 RESIDENTIAL LOTS FOR 89 RESIDENTIAL CONDOMINIUM UNITS IN THIS SUBDIVISION.
5. PROPOSED EASEMENT LINES ARE PARALLEL AND/OR PERPENDICULAR TO LOT LINES UNLESS SPECIFIED OTHERWISE ON THE MAP.
6. RECIPROCAL EASEMENTS CREATED BY 518-M-32 REFERENCE(1) HAVE BEEN EXTINGUISHED BY: DOC NO. 24000211 RECORDED AUGUST 9, 2018
7. SIDELINES OF THE PROPOSED 5' WIDE STRIP EASEMENTS EXTEND TO AND TERMINATE AT THE "PSUE, EVAE, PRSDE" SHOWN HEREIN AND TO THE FACE OF THE FUTURE CONSTRUCTED BUILDINGS.

CITY CLERK'S STATEMENT

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON _____, HAS TAKEN THE FOLLOWING ACTIONS:

- 1. APPROVED THIS TRACT MAP NO. 10475.
2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
A. EASEMENTS FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE)
B. EASEMENTS FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE)
C. EASEMENTS FOR PUBLIC PEDESTRIAN AND BICYCLE ACCESS PURPOSES (PAE)
3. PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT, THE FILING OF THIS MAP SHALL CONSTITUTE ABANDONMENT OF THE FOLLOWING:
A. PORTION OF AN EASEMENT SHOWN HEREON DEDICATED AND ACCEPTED ON THE PARCEL MAP - BOOK 431 OF MAPS AT PAGES 2-3, 10' PUBLIC SERVICES UTILITY EASEMENT (PSUE) ALONG LUNDY PLACE
B. THAT PORTION OF LUNDY PLACE (FORMERLY TRIMBLE ROAD) SHOWN HEREON THAT LIES WITHIN THE DISTINCTIVE BOUNDARY OF THIS SUBDIVISION. SAID PORTION OF LUNDY PLACE (FORMERLY TRIMBLE ROAD) WAS DEDICATED AND ACCEPTED ON THE PARCEL MAP - BOOK 431 OF MAPS AT PAGES 2-3

DATED: _____ MARY LAVELLE CITY CLERK, CITY OF MILPITAS

OMITTED SIGNATURES

IN ACCORDANCE WITH SECTION 66436 OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING HOLDERS OF RIGHTS OF WAY OR EASEMENTS, WHICH CANNOT RIPEN INTO FEE, HAVE BEEN OMITTED:

- 1. AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED FEBRUARY 15, 1984 IN BOOK 1308, PAGE 88 OF OFFICIAL RECORDS. IN FAVOR OF: PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION.

TRACT MAP 10475 551 LUNDY PLACE FOR 89 RESIDENTIAL CONDOMINIUM UNITS

BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 518 OF MAPS, PG 32-34 OFFICIAL RECORDS OF SANTA CLARA COUNTY CITY OF MILPITAS, STATE OF CALIFORNIA



WOOD RODGERS BUILDING RELATIONSHIPS ONE PROJECT AT A TIME 4670 WILLOW ROAD, STE 125 TEL 925.847.1556 PLEASANTON, CA 94588 FAX 925.847.1557

SEPTEMBER 2020

Sheet 2 of 6

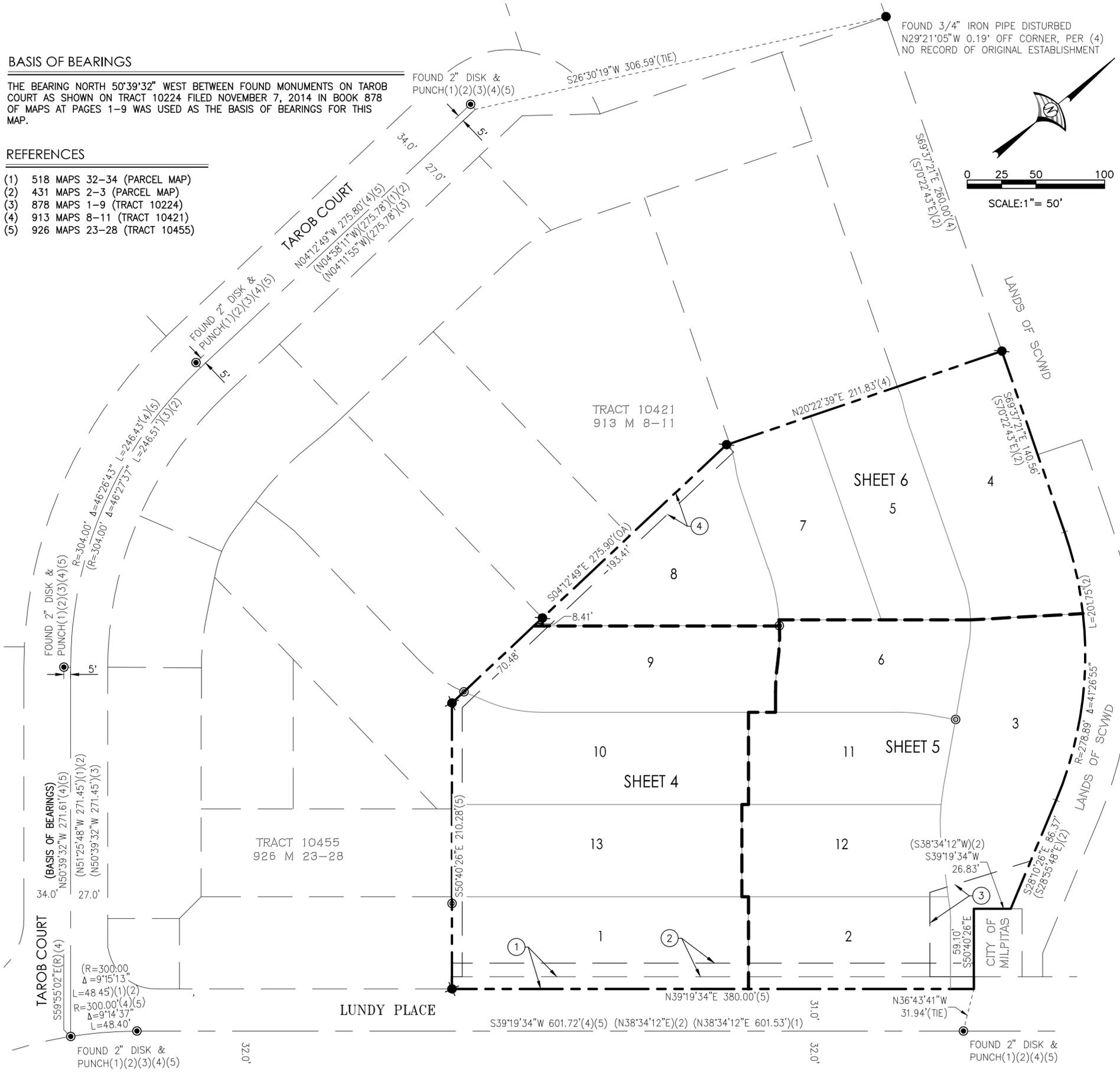
JOB # 3266015

BASIS OF BEARINGS

THE BEARING NORTH 50°39'32" WEST BETWEEN FOUND MONUMENTS ON TAROB COURT AS SHOWN ON TRACT 10224 FILED NOVEMBER 7, 2014 IN BOOK 878 OF MAPS AT PAGES 1-9 WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

REFERENCES

- (1) 518 MAPS 32-34 (PARCEL MAP)
- (2) 431 MAPS 2-3 (PARCEL MAP)
- (3) 878 MAPS 1-9 (TRACT 10224)
- (4) 913 MAPS 8-11 (TRACT 10421)
- (5) 926 MAPS 23-28 (TRACT 10455)



LEGEND

●	FOUND STANDARD CITY MONUMENT AS NOTED
●	MONUMENT TO BE SET BY TRACT 10421
●	MONUMENT TO BE SET BY TRACT 10455
⊗	SET SCRIBE IN CONCRETE CURB OR 3/4" IRON PIPE TAGGED LS 9177 OR REBAR AND CAP TAGGED LS 9177
⊙	STANDARD CITY MONUMENT WELL STAMPED L.S. 9177 SET PER THIS MAP
M-M	MONUMENT TO MONUMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PSUE	PUBLIC SERVICE AND UTILITY EASEMENT
C.L.	CENTERLINE
PRUDE	PRIVATE STORM DRAIN EASEMENT
PRWLE	PRIVATE RECYCLED WATER LINE EASEMENT
PAE	PUBLIC ACCESS EASEMENT (TRAIL)
(OA)	OVERALL DISTANCE
(R)	RADIAL LINE
SF	SQUARE FEET
SFNF	SEARCHED FOR NOT FOUND
(1)	RECORD REFERENCE
---	SUBDIVISION BOUNDARY
---	LOT LINE
---	CENTERLINE
---	MONUMENT LINE
---	EXISTING EASEMENT LINE
---	PROPOSED EASEMENT LINE
---	C.L. 5' WIDE PSUE

VACATION/ABANDONMENT NOTES (SEE CITY CLERK'S STATEMENT ON SHEET 2)

- ① THAT PORTION OF LUNDY PLACE (FORMERLY TRIMBLE ROAD) SHOWN HEREON. SAID PORTION OF LUNDY PLACE WAS DEDICATED ON THE PARCEL MAP - BOOK 431 OF MAPS AT PAGES 2-3
- ② PORTION OF AN EASEMENT SHOWN AND DEDICATED ON THE PARCEL MAP - BOOK 431 OF MAPS AT PAGES 2-3 FOR: PUBLIC SERVICE UTILITY EASEMENT. SAID PORTION ABANDONED PER THIS MAP.
- ③ AN EASEMENT FOR INGRESS AND EGRESS AND INCIDENTAL PURPOSES - RECORDED MAY 24, 1983 IN BOOK H578, PAGE 641. IN FAVOR OF SANTA CLARA VALLEY WATER DISTRICT - TO BE EXTINGUISHED BY SEPARATE INSTRUMENT

EASEMENTS TO REMAIN

- ④ AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES - DOC. NO. 7977667 IN BOOK 1308, PAGE 88. IN FAVOR OF PACIFIC GAS AND ELECTRIC COMPANY

TRACT MAP 10475

551 LUNDY PLACE
FOR 89 RESIDENTIAL CONDOMINIUM UNITS

BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 518 OF MAPS, PG 32-34
OFFICIAL RECORDS OF SANTA CLARA COUNTY
CITY OF MILPITAS, STATE OF CALIFORNIA



WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
4670 WILLOW ROAD, STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1557

SEPTEMBER 2020

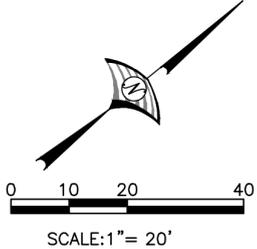
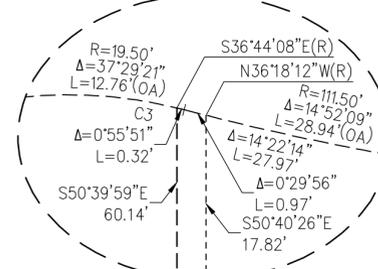
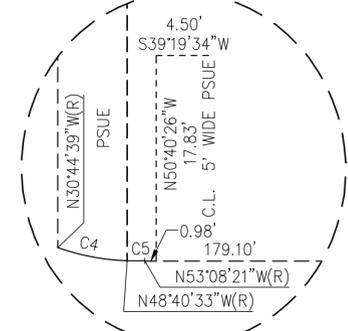
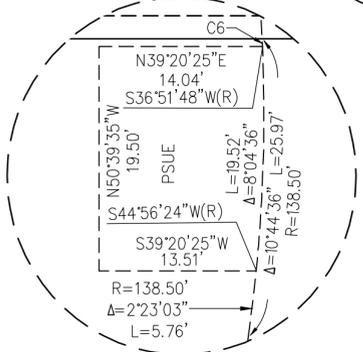
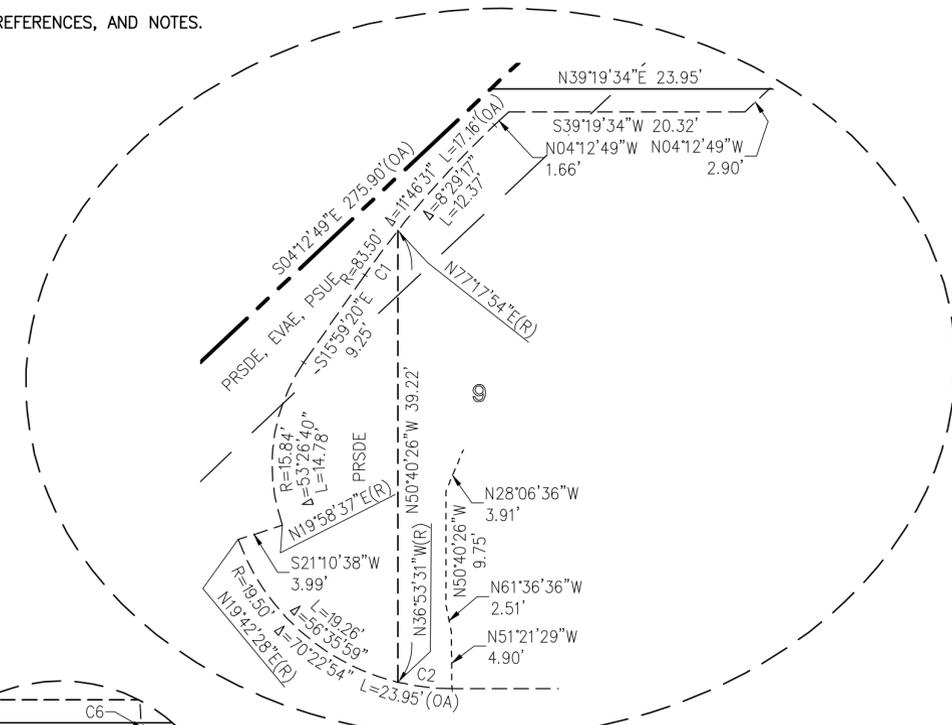
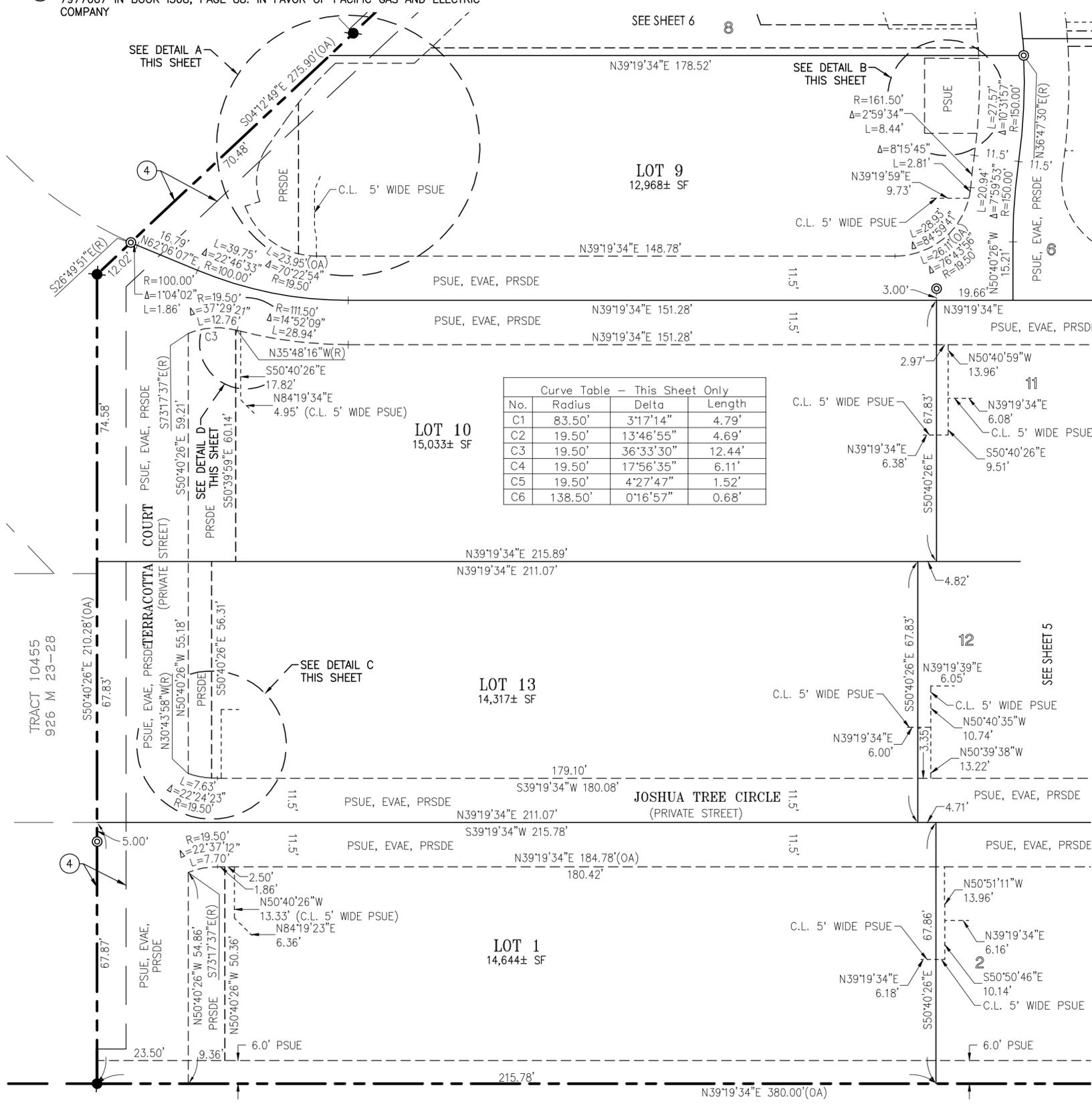
Sheet 3 of 6

JOB # 3266015

EASEMENTS TO REMAIN

④ AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES - DOC. NO. 7977667 IN BOOK 1308, PAGE 88. IN FAVOR OF PACIFIC GAS AND ELECTRIC COMPANY

SEE SHEET 3 FOR LEGEND, REFERENCES, AND NOTES.



TRACT MAP 10475
551 LUNDY PLACE
FOR 89 RESIDENTIAL CONDOMINIUM UNITS
 BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN
 BOOK 518 OF MAPS, PG 32-34
 OFFICIAL RECORDS OF SANTA CLARA COUNTY
 CITY OF MILPITAS, STATE OF CALIFORNIA

SEPTEMBER 2020

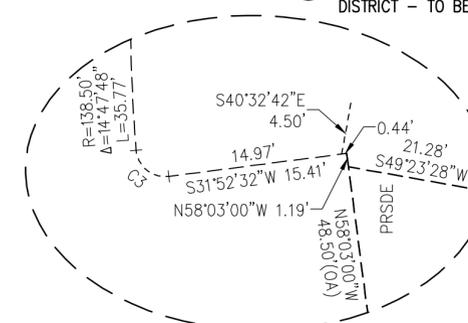
WOOD RODGERS
 BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
 4670 WILLOW ROAD, STE 125 TEL 925.847.1556
 PLEASANTON, CA 94588 FAX 925.847.1557

Sheet 4 of 6
 JOB # 3266015

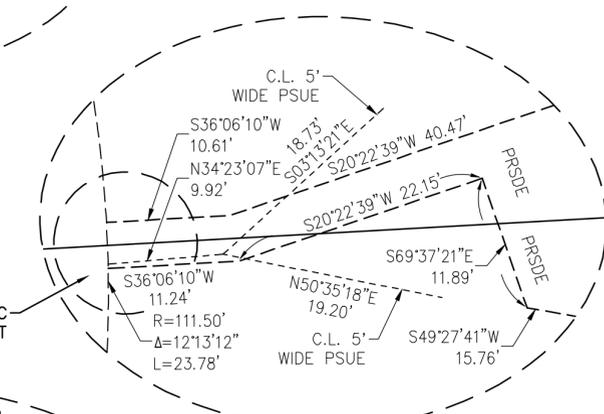
EASEMENTS TO BE EXTINGUISHED

③ AN EASEMENT FOR INGRESS AND EGRESS AND INCIDENTAL PURPOSES - RECORDED MAY 24, 1983 IN BOOK H578, PAGE 641. IN FAVOR OF SANTA CLARA VALLEY WATER DISTRICT - TO BE EXTINGUISHED BY SEPARATE INSTRUMENT

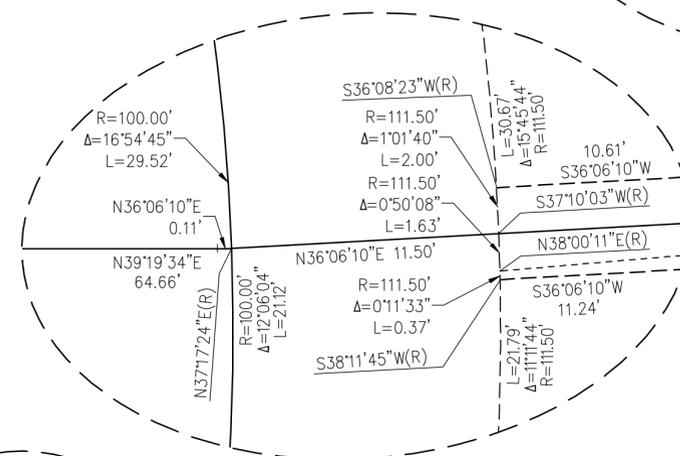
SEE SHEET 3 FOR LEGEND, REFERENCES, AND NOTES.



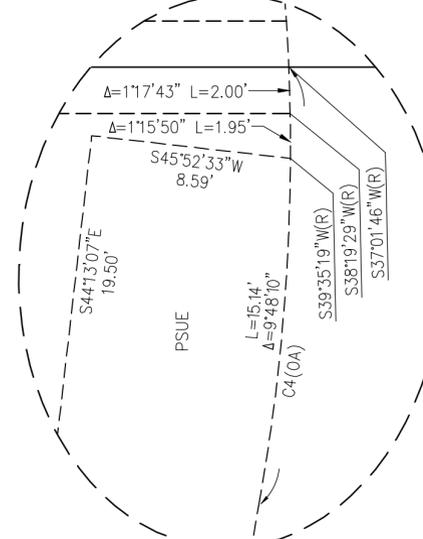
DETAIL A
1"=10'



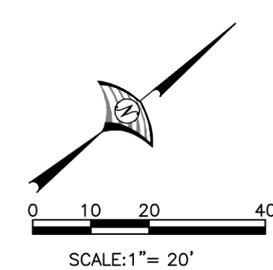
DETAIL B
1"=10'



DETAIL C
1"=5'



DETAIL D
1"=5'



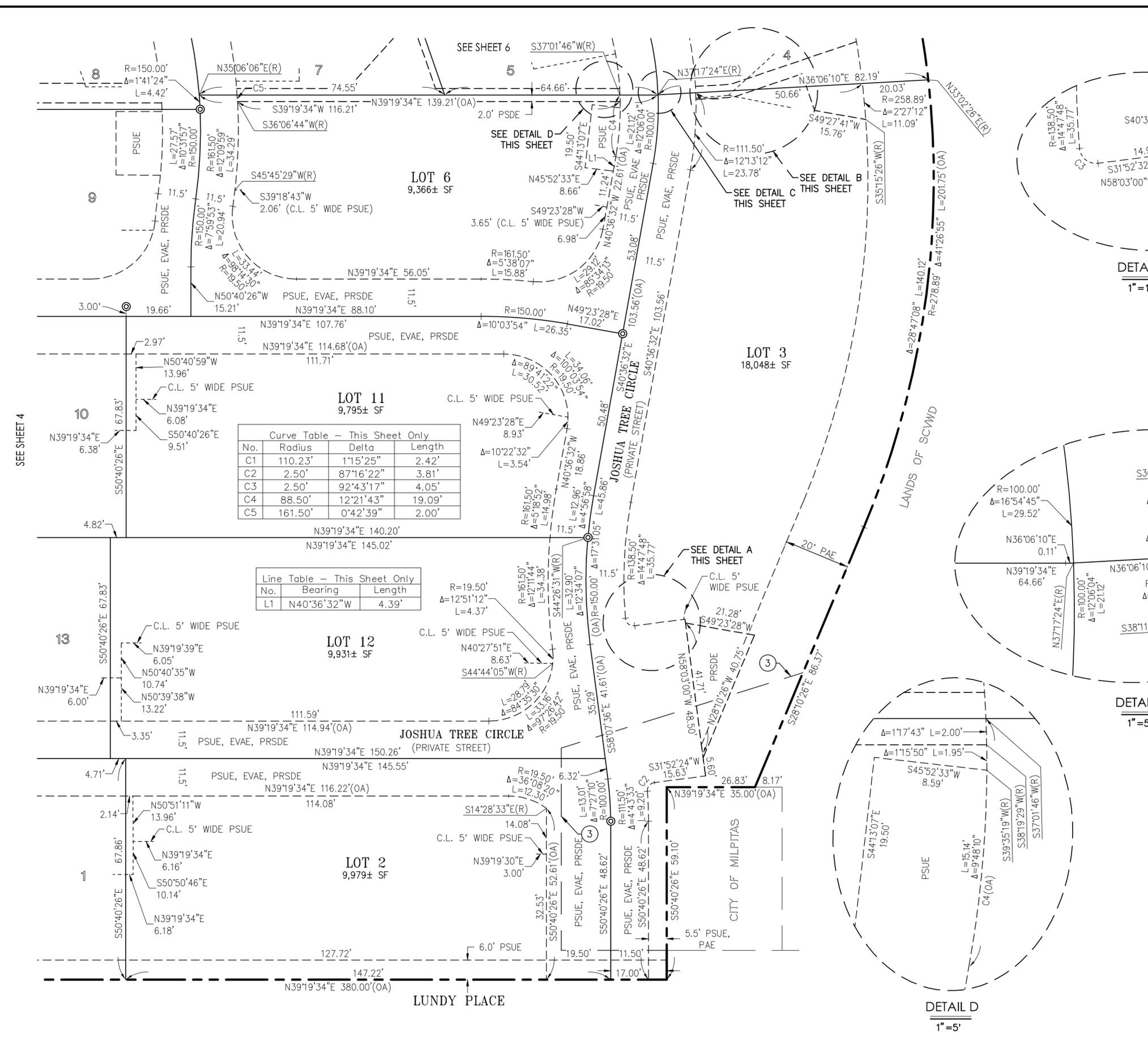
TRACT MAP 10475
551 LUNDY PLACE
FOR 89 RESIDENTIAL CONDOMINIUM UNITS
BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN
BOOK 518 OF MAPS, PG 32-34
OFFICIAL RECORDS OF SANTA CLARA COUNTY
CITY OF MILPITAS, STATE OF CALIFORNIA

SEPTEMBER 2020

WOOD RODGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
4670 WILLOW ROAD, STE 125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 925.847.1557

Sheet 5 of 6

JOB # 3266015



Curve Table - This Sheet Only

No.	Radius	Delta	Length
C1	110.23'	1'15"25"	2.42'
C2	2.50'	87'16"22"	3.81'
C3	2.50'	92'43"17"	4.05'
C4	88.50'	12'21"43"	19.09'
C5	161.50'	0'42"39"	2.00'

Line Table - This Sheet Only

No.	Bearing	Length
L1	N40'36'32"W	4.39'

SEE SHEET 4

SEE SHEET 6

SEE DETAIL D THIS SHEET

SEE DETAIL B THIS SHEET

SEE DETAIL C THIS SHEET

SEE DETAIL A THIS SHEET

LOT 3
18,048± SF

LOT 6
9,366± SF

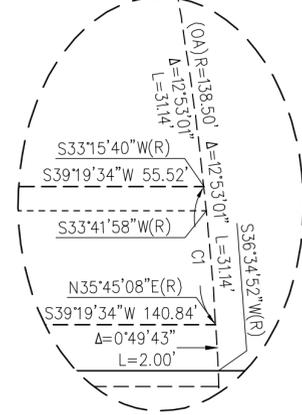
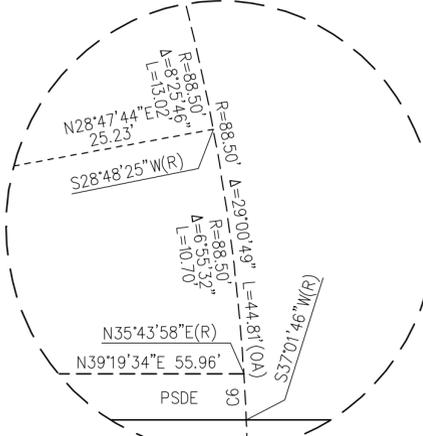
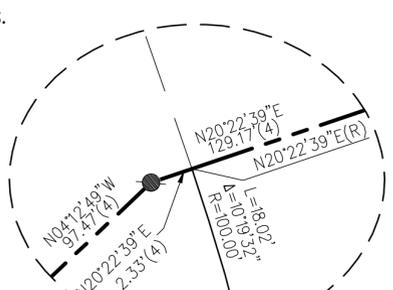
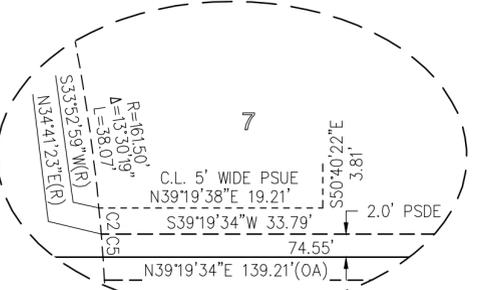
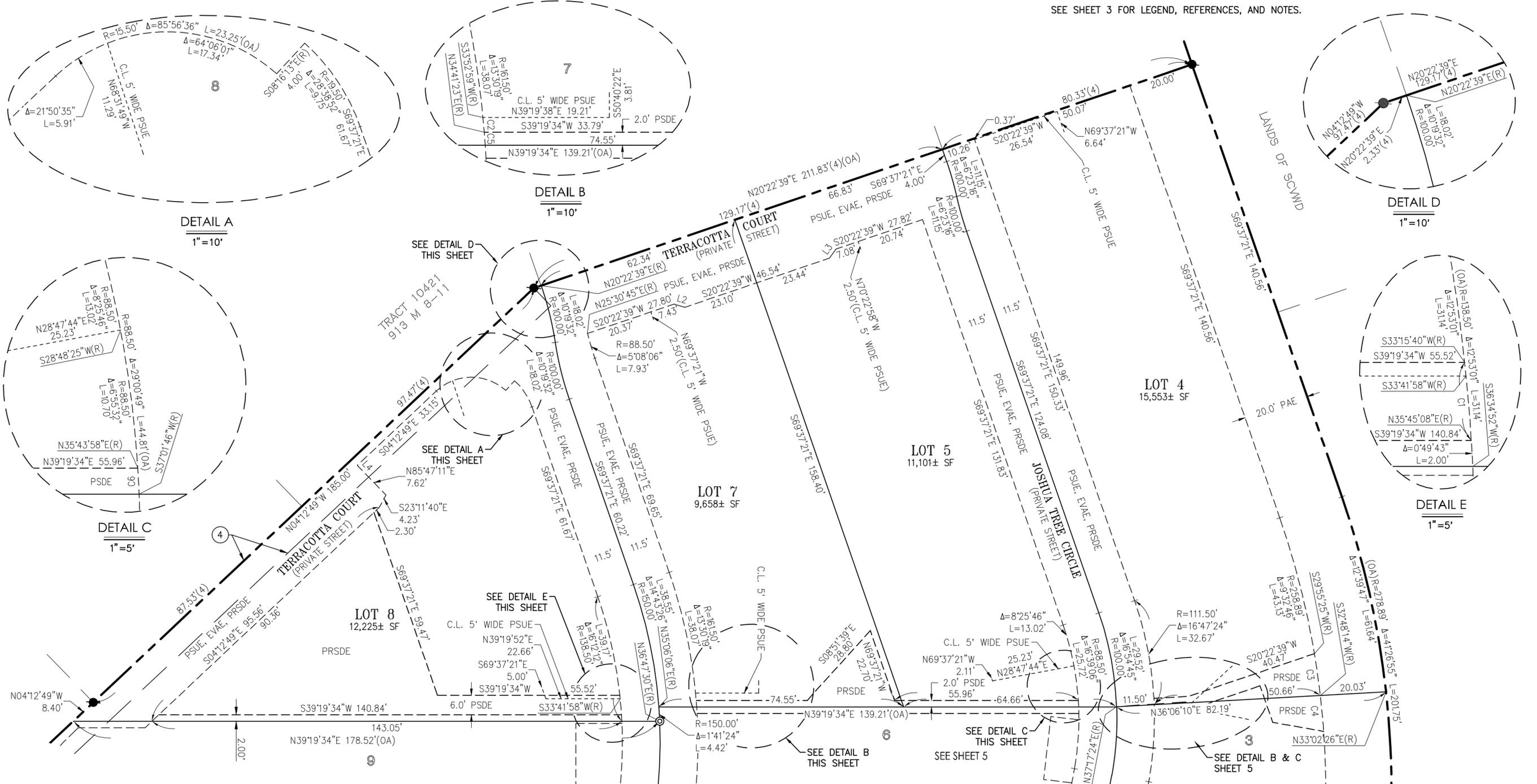
LOT 11
9,795± SF

LOT 12
9,931± SF

LOT 2
9,979± SF

③

SEE SHEET 3 FOR LEGEND, REFERENCES, AND NOTES.



EASEMENTS TO REMAIN

- ④ AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES - DOC. NO. 7977667 IN BOOK 1308, PAGE 88. IN FAVOR OF PACIFIC GAS AND ELECTRIC COMPANY

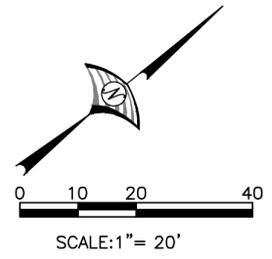
Curve Table - This Sheet Only

No.	Radius	Delta	Length
C1	138.50'	2°29'28"	6.02'
C2	161.50'	0°48'25"	2.27'
C3	258.89'	2°52'49"	13.01'
C4	258.89'	2°27'12"	11.09'
C5	161.50'	0°42'42"	2.01'
C6	88.50'	1°17'48"	2.00'

Line Table - This Sheet Only

No.	Bearing	Length
L1	N69°37'21"W	4.00'
L2	N55°38'31"E	3.46'
L3	N14°53'13"W	3.46'
L4	N85°47'11"E	5.00'

TRACT MAP 10475
551 LUNDY PLACE
FOR 89 RESIDENTIAL CONDOMINIUM UNITS
 BEING ALL OF PARCEL "A" ON THAT CERTAIN PARCEL MAP RECORDED IN
 BOOK 518 OF MAPS, PG 32-34
 OFFICIAL RECORDS OF SANTA CLARA COUNTY
 CITY OF MILPITAS, STATE OF CALIFORNIA



WOOD RODGERS
 BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
 4670 WILLOW ROAD, STE 125 TEL 925.847.1556
 PLEASANTON, CA 94588 FAX 925.847.1557

SEPTEMBER 2020

Sheet 6 of 6
 JOB # 3266015

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 E. Calaveras Blvd
MILPITAS, CA 95035
ATTN: Kan Xu, PE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code
Section 6103

SUBDIVISION IMPROVEMENT AGREEMENT

TRACT NO. 10475

Between

CITY OF MILPITAS

a California municipal corporation

and

TOLL WEST COAST LLC

a Delaware limited liability company

**SUBDIVISION IMPROVEMENT AGREEMENT
TRACT MAP NO. 10475**

I. PARTIES AND DATE.

This Subdivision Improvement Agreement (“Agreement”) is entered into as of this _____ day of _____, _____ by and between the City of MILPITAS, a California municipal corporation (“City”) and TOLL WEST COAST LLC, a Delaware limited liability company with its principal office located at 6800 Koll Center Parkway #320, Pleasanton, CA 94566 (“Developer”). City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

II. RECITALS.

A. On December 20, 2016, THE TRUE LIFE COMPANIES, LLC, a Delaware limited liability company (“Previous Developer”) submitted to City an application for approval of a vesting tentative tract map for real property located within City, a legal description of which is attached hereto as Exhibit “A” (“Property”). The vesting tentative tract map was prepared on behalf of Previous Developer by Wood Rodgers, Inc., and is identified in City records as Vesting Tract Map No. 10475 (“Tract No. 10475”).

B. Previous Developer’s application for a vesting tentative tract map for Tract No. 10475 was deemed complete on June 12, 2017. On February 20, 2018 the MILPITAS CITY COUNCIL conditionally approved Previous Developer’s application for a vesting tentative tract map for Tract No. 10475.

C. Previous Developer has since transferred ownership of Property to Developer.

D. Developer has not completed all of the work or made all of the public improvements required by Title XI, Chapter 1, Section 7 of City’s municipal code, the Subdivision Map Act (Government Code sections 66410 et seq.) (“Map Act”), the conditions of approval for Tract No. 10475, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the subdivision of land.

E. Pursuant to Title XI, Chapter 1, Section 17 of the City’s municipal code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for Tract No. 10475.

F. Developer’s execution of this Agreement and the provision of the security are made in consideration of City’s approval of the final map for Tract No. 10475.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of SANTA CLARA and (c) the City Council of the City ("City Council") approves the final map for Tract No. 10475. If the above described conditions are not satisfied within 60 days after the entry date of this Agreement, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for Tract No. 10475.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of Tract No. 10475, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for Tract Map No. 10475 ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by each utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee.

Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement 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. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit “B” are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer’s surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted by City pursuant to Section 11.0. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City’s acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer’s responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City

may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within one (1) year of the effective date of this Agreement, unless extended pursuant to Section 4.1.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the security required under Section 13.0 et seq. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Tract No. 10475 shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Sections 11.0 and 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within Tract No. 10475 in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to Tract No. 10475.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“Notice”). Developer shall substantially commence the work required to remedy the default or violation within thirty (30) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City’s issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City’s right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City’s demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0 et seq. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11.0 Acceptance of Improvements by City Council; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete and reduce the requirement Security amount pursuant to Section 13.0 et seq., which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of SANTA CLARA a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. If Tract No. 10475 was approved and recorded as a single phase map, City shall not accept any one or more of the improvements until all of the Public Improvements are completed by Developer and approved by City. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the Public Improvements and acceptance of them by the City Council ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and subject to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following the City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Improvement Security; Surety Bonds. Prior to this Agreement taking effect as set forth in Section 1.0 above, Developer shall provide City with surety bonds in the amounts and under the terms set forth below (“Security”). The amount of the Security shall be based on the City Engineer’s approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping (“Estimated Costs”). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer’s compliance with this provision (Section 13.0 et seq.) shall in no way limit or modify Developer’s indemnification obligation provided in Section 16.0 of this Agreement.

13.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0 et seq. of this Agreement, and to secure Developer’s one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of **One Hundred Sixty One Thousand Dollars (\$161,000)**, which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as portions of the Public Improvements are completed and accepted by the City Council, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10475, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10475.

13.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of **One Hundred Sixty One Thousand Dollars (\$161,000)**, which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic’s lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City’s anticipated administrative and legal expenses arising out of such claims.

13.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best’s rating of no less than A:VIII, shall be licensed to do business in California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney’s fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit “C,” unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit “C” and incorporated herein by this reference.

14.0 Monument Security. Prior to this Agreement taking effect as set forth in Section 1.0 above, to guarantee payment to the engineer or surveyor for the setting of all subdivision boundaries, lot corners, and street centerline monuments for Tract No. 10475 in compliance with the applicable provisions of City’s Municipal and/or Development Code (“Subdivision Monuments”), Developer shall deposit cash with City in the amount of **Eleven Thousand Five Hundred Dollars (\$11,500)**, which sum shall not be less than one hundred percent (100%) of the costs of setting the Subdivision Monuments as determined by the City Engineer. Said cash deposit may be released by written authorization of the City Engineer after all required Subdivision Monuments are accepted by the City Engineer, City has received written acknowledgment of payment in full from the engineer or surveyor who set the Subdivision Monuments, and provided Developer is not in default of any provision of this Agreement or condition of approval for Tract No. 10475.

15.0 Lien. To secure the timely performance of Developer’s obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer’s default on those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

16.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of Agency as determined by a court or administrative body of competent jurisdiction. Developer’s obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

16.1 Public Works Determination. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

17.0 Insurance.

17.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below (“Required Insurance”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

17.1.1 General Liability. Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

17.1.2 Business Automobile Liability. Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

17.1.3 Workers’ Compensation. Developer and its contractors shall procure and maintain workers’ compensation insurance with limits as required by the Labor Code of the State of California and employers’ liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.

17.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

17.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

17.3 Additional Insured; Separation of Insureds. The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

17.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

17.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days prior written notice to City.

17.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

18.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to Tract No. 10475, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

20.0 General Provisions.

20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

20.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 92236
Attn: Steve Erickson, PE

DEVELOPER:

Toll West Coast LLC
6800 Koll Center Pkwy #320
Pleasanton, CA 94566
Attn: Robert D. Moore

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

20.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

20.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

20.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

20.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of SANTA CLARA, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

City of Milpitas,
a California municipal corporation

Toll West Coast LLC,
a Delaware limited liability company

By: _____

By: _____

Name: Steve McHarris

Name: Steve M. Savage

Title: City Manager

Title: Vice President

APPROVED AS TO FORM:

Christopher J. Diaz
City Attorney

APPROVED:

Walter C. Rossmann
Risk Manager / Director of Finance

APPROVED AS TO SUFFICIENCY:

Steven Erickson
Engineering Director / City Engineer

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

All Capacity Acknowledgment

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

STATE OF CALIFORNIA
 COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer
- _____ Title(s)
- Partner Limited (s)
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

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

 Signer(s) Other Than Named Above

All Capacity 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

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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.

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- Other:

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

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

 Signer(s) Other Than Named Above

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY
TRACT NO. 10475

EXHIBIT "B"
LIST OF PUBLIC IMPROVEMENTS
TRACT NO. 10475

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

TRACT NO. 10475

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$161,000

Surety: _____

Attorney-in-fact: _____

Address: _____

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$161,000

Surety: _____

Attorney-in-fact: _____

Address: _____

CASH MONUMENT SECURITY: \$11,500

Amount deposited per Cash Receipt No. _____ Date: _____

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF MILPITAS
TRACT MAP NO. 10475 IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California (“City”) and TOLL WEST COAST LLC, a Delaware limited liability company (“Principal”), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 10475 (“Public Improvements”);

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, _____. (“Improvement Agreement”);

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and _____ (“Surety”), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of **One Hundred Sixty One Thousand Dollars (\$161,000)**, said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, 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 Principal, 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, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, 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 to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed 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.

This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____, this ____ day of _____, _____.

(Corporate Seal)

Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF MILPITAS
TRACT MAP NO. 10475 IMPROVEMENTS
LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California (“City”) and TOLL WEST COAST LLC, a Delaware limited liability company (“Principal”), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 10475 (“Public Improvements”);

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, _____ (“Improvement Agreement”);

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney’s fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and _____ (“Surety”), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all contractors, subcontractors, material suppliers, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of **One Hundred Sixty One Thousand Dollars (\$161,000)**, said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, 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 Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed 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.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____, this ____ day of _____, _____.

(Corporate Seal)

Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

All Capacity 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 Limited (s)
- General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

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

 Signer(s) Other Than Named Above

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STATE OF CALIFORNIA
 COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

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:

DESCRIPTION OF ATTACHED DOCUMENT

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

_____	Title or Type of Document
_____	Number of Pages
_____	Date of Document

 Signer(s) Other Than Named Above



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Granting Acceptance of Alviso Adobe Renovation, Phase V – Interior Restoration, Project No. 5055, authorizing the City Engineer to file a Notice of Completion, and Authorizing Him to issue a Notice of Final Acceptance
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/15/2020
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Adopt a resolution granting acceptance of Alviso Adobe Renovation, Phase V – Interior Restoration, Project No. 5055, authorizing the City Engineer to file a Notice of Completion, and authorizing him to issue a Notice of Final Acceptance after the one-year warranty.

Background:

On September 17, 2019, the City Council awarded a construction contract to CRW Industries, Inc., for the Alviso Adobe Renovation (Phase V – Interior Restoration), Project No. 5055 (“Project”) in the amount of \$523,900. This Project represents the final phase of the Alviso Adobe Renovation program and provides for the interior restoration of the first floor of the Adobe as well as the installation of period correct furnishings, exhibits, signage, and visual media to replicate the experiences of an original Spanish-Mexican Era adobe home. The work included in this contract provides for building code upgrades to allow public visitation, stabilization and restoration of existing historic finishes and fixtures such as wallpaper, fireplaces, wainscoting, wood ceilings, and furniture. The creation and installation of period furnishings, exhibits, interpretive signage, and visual media will be completed under a separate contract to be bid later this year.

Analysis:

The interior restoration work has been completed on time and within budget. Staff recommends the City Council adopt a Resolution granting acceptance of the Project and authorizing the City Engineer to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code. Staff also recommends the City Council authorize the City Engineer to issue a notice of final acceptance after the one-year warranty period without further City Council action, provided that all warranty work is completed to the satisfaction of the City Engineer.

Policy Alternative:

Alternative: Do not adopt Resolution and deny Project acceptance, deny filling the notice of completion and not begin the one-year warranty.

Pros: None

Cons: A denial would result in the City being unable to commence the one-year warranty, release the retention to the Contractor and release any funds remaining back into the Project budget.

Reason not Recommended: Denial would result in the City being unable to close out the Project and release any funds remaining back into the Project budget.

Fiscal Impact:

No additional funding is requested as the Project was completed within budget. Annual operations and maintenance costs for the Alviso Adobe Building are included in the fiscal year Operating Budget for the Public Works Department.

California Environmental Quality Act:

The Project has an approved Mitigated Negative Declaration.

Recommendation:

Adopt a resolution granting acceptance of Alviso Adobe Renovation, Phase V- Interior Restoration, Project No. 5055, authorizing the City Engineer to file a Notice of Completion, and authorizing him to issue a Notice of Final Acceptance after the one-year warranty.

Attachment:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING ACCEPTANCE OF THE ALVISO ADOBE RENOVATION (PHASE V – INTERIOR RESTORATION, PROJECT NO. 5055

WHEREAS, the City of Milpitas has heretofore entered into a contract with CRW Industries, Inc., for the Alviso Adobe Renovation (Phase V – Interior Restoration), Project No. 5055 (“Project”) in the amount \$523,900, and the City Engineer of the City of Milpitas has recommended acceptance of the Project as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept the Project as completed on this 15th day of September, 2020, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 9204 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account.
3. The City Council authorizes the City Engineer to issue the Notice of Final Acceptance after the one-year warranty period without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this _____ day of _____, 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

Recording Requested by and

When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Section 9204)

NOTICE IS HEREBY GIVEN:

1. On or about September 17, 2019, the City Council of the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Alviso Adobe Renovation (Phase V- Interior Restoration), Project No. 5055.**
2. A description of the site of which the City is co-owner for said work of improvement is: **2087 Alviso Adobe Court** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The name and address of the direct contractor is: **CRW Industries, Inc., 5346 Scotts Valley Drive, Suite E, Scotts Valley, CA 95066.**
4. A general statement of the kind of work done or materials furnished to the City is as follows: **The improvements include, building code upgrades, stabilization and restoration of finishes and fixtures such as adobe brick and lath & plaster walls, fireplaces, wainscoting, wood ceilings, ceramic tiles, lighting fixtures, and furniture.**
5. Said work of improvement was accepted by the Milpitas City Council as complete on September 17, 2020.

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on September 17, 2020 at Milpitas, California.

Steve
Erickson,
Engineering Director/City Engineer
City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for Reimbursement for Repairs to City Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1 and Related Budget Amendment
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/15/2020
Staff Contacts:	Steve Erickson, 408-586-3301 Christopher J. Diaz, 408-586-3040
Recommendation:	Authorize the City Manager to execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for reimbursement for repairs to City Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1 and appropriate \$86,125 to Capital Improvement Project Sinclair Horizons LLMD No. 98-1.

Background:

In 2016 the Valley Water District and the United States Army Corp of Engineers (USAC) entered into a project partnership for the improvement of Upper Berryessa Creek (UBC) for the purpose of improving flood control activities along a portion of Berryessa Creek in Milpitas. The limits of the UBC project were from State Route 237 (Calaveras Boulevard) south to the City of San Jose border near Montague Expressway. Under the partnership agreement, the USAC hired the contractor and administered the construction contract within the Valley Water District Berryessa Creek right of way. USAC hired the construction firm of Suulutaaq, Inc. and Kiskokwim Corporation, collectively referred to as “Contractor”, and construction activities started in 2017 and were completed in early 2019.

While working near Los Coches Street, the contractor damaged a City water main which supplied irrigation water to City maintained landscaping adjacent to Los Coches Street and Sinclair Frontage Road. As a result of no water, a significant area of landscaping was destroyed. These landscape improvements are maintained by the Lighting Landscape Maintenance Assessment District (LLMD 98-1). The City restored the landscape improvements at a cost of \$86,125 and worked with the Valley Water District and the Contractor (Suulutaaq, Inc. and Kiskokwim Corporation) to recover the City cost to make the repairs.

Analysis:

Valley Water and the Contractor have agreed to share in providing full reimbursement to the City for the cost to make the landscaping repairs. Release and Settlement Agreements (Attachment 1 & 2) were negotiated with both the Valley Water District and the Contractor to provide for the reimbursement to the City totaling \$86,125. Staff recommends the City Council approve the agreements and authorize the City Manager to execute them.

Policy Alternative:

Alternative: Do not enter into the Release and Settlement Agreements with both the Valley Water District and the Contractor to provide for the reimbursement to the City totaling \$86,125

Pros: None

Cons: A denial would result in the City not receiving reimbursement for funds it expended to make repairs to City owned landscape improvements damaged by a contractor working for another public agency.

Reason not Recommended: The City incurred the costs related to the contractor's damage. The Release and Settlement Agreements allow the City to recover the monies expended.

Fiscal Impact:

The \$86,125 provided through the Release and Settlement Agreements will be appropriated into the Capital Improvement Program Project No. 3411 Sinclair Horizons LLMD 98-1 to reimburse the project for landscape repair costs.

Recommendation:

Authorize the City Manager to execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for reimbursement for repairs to City Lighting Landscape Maintenance Assessment District (LLMD) No. 98-1, and approve appropriation of \$86,125 to Capital Improvement Project No. 3411 Sinclair Horizons LLMD No. 98-1.

Attachments:

- 1: Release and Settlement Agreement – Valley Water
- 2: Release and Settlement Agreement - Kuskokwim Corporation, and Suulutaaq, Inc.
- 3: Budget Change Form

RELEASE

This settlement agreement and release dated _____, 2020, by and between the City of Milpitas (hereinafter “Claimant”) and Santa Clara Valley Water District (hereinafter “SCVWD”).

RECITALS

WHEREAS, on or about May 17, 2016 SCVWD and the U.S. Army Corp of Engineers (“USACE”) entered into a Project Partnership Agreement for the construction of the Berryessa Flood Risk Management Project “Project”);

WHEREAS, a portion of the Project included removal, construction and modifications to improvements owned by Claimant. As a result, Claimant and SCVWD entered into a master agreement for the removal & construction of City improvements, modifications to Claimants’ facilities and work within Claimants right-of-way;

WHEREAS, on or about June 2016, USACE published an invitation and solicitation to bid on the public project which invitation and solicitation was expressly based on a set of contract specifications;

WHEREAS, Suulutaaq, Inc. and Kiskokwim Corporation (collectively referred to as “Contractor”) submitted a bid on the project and became the low responsible bidder thereby accepting the contract specifications which were part of the published invitation and solicitation to bid;

WHEREAS, as part of the contract specifications to which Contractor agreed, Contractor was to secure additional insured endorsements under its insurance policy covering Claimant, USACE and SCVWD for any and all damage caused as a result of the construction activities;

WHEREAS, Claimant’s property was allegedly damaged as a result of construction activities on the Berryessa Creek Flood Control Channel Project which occurred on or after April 2017 (“dispute”) and which generally included landscaping damage;

WHEREAS, Claimant presented a claim to SCVWD for the alleged damages, and in turn, SCVWD tendered the claim to Contractor and its insurer (Crum & Forster Specialty Insurance Company);

WHEREAS, in lieu of the expense and time involved in litigation, the parties have agreed to the resolution, compromise and settlement of all disputes, claims and controversies among them as provided herein;

WHEREAS, a separate and unrelated construction project is currently underway and involves Claimant and SCVWD which includes the removal, construction and modification of Claimant’s facilities which have, heretofore, been constructed and for which Claimant owes SCVWD. Said separate project is commonly known as the Lower Berryessa Creek Flood Protection Project.

WHEREAS, as consideration for the release herein, and in lieu of payment by SCVWD for a portion of the alleged damages involved in the dispute, SCVWD will provide a credit to Claimant for monies owed by Claimant to SCVWD for the Lower Berryessa Creek Flood Protection Project.

WHEREAS, Contractor through its insurer is entering into a separate release which contemplates the payment by Contractor and its insurer to Claimant the amount of \$45,000 which represents payment for the remaining portion of the alleged damages involved in the dispute.

WHEREAS, payment by Contractor and its insurer and acknowledgment of the set off by Claimant in favor of SCVWD, shall represent the full consideration paid or attributed to Claimant.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. SCVWD agrees to provide a credit to Claimant's account with SCVWD in the amount of forty one thousand one hundred twenty-five dollars (\$41,125.00) in settlement of the Claim presented by Claimant. Said credit shall be applied to amounts owed by Claimant to SCVWD for removal, construction and modification of Claimant's facilities as part of the Lower Berryessa Creek Flood Protection Project which improvements have been completed and an outstanding balance is owed.

2. In executing this agreement, Claimant also acknowledges that it has entered into a separate release with Contractor for the receipt of the sum of \$45,000 from Contractor and its insurer.

3. Claimant, its heirs, executors, administrators, successors and assigns, and on behalf of all those for whom it filed a government claim, hereby remises, releases and forever discharges SCVWD its subsidiaries, divisions, affiliates and agents from all claims, suits, actions, charges, demands, judgments, costs and executions present and future, known or unknown, both legal and equitable, in any manner arising out of the dispute. **Claimant hereby waives the provisions of Civil Code section 1542 which states:**

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

4. Claimant further agrees Claimant shall indemnify and hold SCVWD harmless from, any loss or liability on account of any claim, lien, demand, damages, obligation or cause of action or suits of any kind or nature whatsoever, now, in the past or hereinafter pursued by them, or any other person or entity (whether or not against the SCVWD) in connection with any matter in any way related to the dispute. Claimant agrees that this provision shall be deemed breached, and a cause of action pursuant to this paragraph shall accrue to SCVWD upon the assertion of any such claim, lien, demand, damages obligation or cause of action or suits of any kind or nature whatsoever related to the dispute.

5. As of the date of execution of this Release, Claimant shall be deemed to have surrendered all of its rights in connection with Claim described above, and/or the causes of action asserted therein, as well as for any and all other claims or causes of action for alleged "bad faith" or wrongful handling of claims made by SCVWD in connection with the incidents giving rise to said claim.

6. Claimant further agrees, understands and stipulates that this release, and any dismissal filed in connection herewith, shall not act to in any way affect, diminish, bar, or compromise any right or cause of action SCVWD may have against Claimant, whether or not already filed, in connection

with the Lower Berryessa Creek Flood Protection Project referred to above, that any release is not intended to act as a retraxit, and that the SCVWD's own rights are unaffected by it or this compromise.

7. Claimant represents and warrants that it knows of no other claims, demands, obligations, or causes of action related to the dispute referred to above, which have been, are now or may in the future be held, asserted, or maintained by any other person or entity; that Claimant has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Release. Claimant further agrees that it is entering into this Release on behalf of all parties that may have had claims as a result of the conduct and cases referred to above.

8. Claimant acknowledges that in executing this Release, it has carefully reviewed this Release and is fully aware of the extent of its rights and obligations under this Agreement. Claimant has signed this Release on its own free will and, in making this agreement, Claimant has obtained the advice of its legal counsel. Claimant further agrees that the language of this Release shall not be construed presumptively against any of the parties to this Release.

9. This Release shall not constitute an admission of any liability, wrongdoing or anything improper. It is agreed this settlement is for a doubtful and disputed claim.

10. Claimant agrees and accepts that each party will bear their own attorney's fees and costs associated with the claim submitted to SCVWD for this matter.

11. The two separate agreements contemplated herein will form the basis of the full consideration given for the releases and Claimant acknowledges that each agreement can be enforced separately by those parties herein released.

12. This agreement and the separate agreement releasing Contractor, contain the entire understanding of the parties, and there are no representations, warranties, covenants, inducements or undertakings other than those expressly set forth in the two agreements.

FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM:

Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

Date

Authorized Agent for CITY OF MILPITAS
Steven McHarris, City Manager

Date

APPROVED AS TO FORM:

Attorney for CITY OF MILPITAS
Christopher Diaz, City Attorney

RELEASE AND AGREEMENT

THIS RELEASE is given

BY the Releasor(s) City of Milpitas
455 E Calaveras Blvd.
Milpitas, CA 95035
referred to as “Claimant”

TO the Releasee(s) The Kuskokwim Corporation
4300 B Street, Suite 207
Anchorage, AK 99503

Suulutaaq, Inc.
110 Railroad Avenue, Suite A
Suisun City, CA 94585
and its Insurers, including Crum & Forster Specialty Insurance Company,
referred to as “Releasees”. The Kuskokwim Corporation and Suulutaaq, Inc may sometimes be collectively referred to as “Contractor” and Crum & Forster Specialty Insurance Company may sometimes be referred to as “insurance carrier”.

RECITALS

WHEREAS, on or about May 17, 2016, Santa Clara Valley Water District (“SCVWD”) and the U.S. Army Corp of Engineers (“USACE”) entered into a Project Partnership Agreement for the construction of the Berryessa Flood Risk Management Project (“Project”);

WHEREAS, a portion of the Project included removal, construction and modifications to improvements owned by Claimant. As a result, Claimant and SCVWD entered into a master agreement for the removal & construction of City Improvements, modifications to Claimant’s facilities and work within Claimant’s right-of-way;

WHEREAS, in or about June 2016, USACE published an invitation and solicitation to bid on the Project which invitation and solicitation was expressly based on a set of contract specifications;

WHEREAS, Suulutaaq, Inc. and Kuskokwim Corporation (collectively referred to as “Contractor”) submitted a bid on the Project and was awarded a contract as the lowest responsible bidder thereby accepting the contract specifications which were part of the published invitation and solicitation to bid;

WHEREAS, as part of the contract specifications to which Contractor agreed, Contractor was to secure additional insured endorsements under its insurance policy covering Claimant, USACE and SCVWD for any and all damage caused as a result of the construction activities;

WHEREAS, Claimant’s property was allegedly damaged by Contractor as a result of construction activities on the Project, which occurred on or after April 2017 (“dispute”) and which generally included landscaping damage;

WHEREAS, Claimant presented a claim to SCVWD for the alleged damages, and in turn, SCVWD tendered the claim to Contractor and its insurer;

WHEREAS, in lieu of the expense and time involved in litigation, the parties have agreed to the resolution, compromise and settlement of all disputes, claims and controversies among them as provided herein;

WHEREAS, a separate and unrelated construction project is currently underway and involves Claimant and SCVWD which includes the removal, construction and modification of Claimant's facilities which have heretofore been constructed and for which Claimant owes SCVWD a reimbursement. Said separate project is commonly known as the Lower Berryessa Creek Flood Protection Project.

WHEREAS, as consideration for the release herein, and in lieu of payment by SCVWD for a portion of the alleged damages involved in the dispute, SCVWD will provide a credit to Claimant for monies owed by Claimant to SCVWD for work performed on the Lower Berryessa Creek Flood Protection Project through a separate agreement between SCVWD and Claimant.

WHEREAS, Contractor through its insurer is entering into this separate release which contemplates the payment by Contractor and its insurer to Claimant the amount of \$45,000 which represents payment for the remaining portion of the alleged damages involved in the dispute.

WHEREAS, upon payment by Contractor and its insurer and acknowledgment of the set off by Claimant in favor of SCVWD, said consideration will represent the full consideration paid or attributed to Claimant.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Release.** Claimant, for and in consideration of the sum of Forty Five Thousand and no/100 Dollars (\$45,000.00), and together with the setoff provided by SCVWD pursuant to a separate but related agreement, the receipt of which is hereby acknowledged, does hereby remise, release and forever discharge, the Releasees, their heirs, executors, administrators, successors or assigns, owner or employees, together with all other persons, firms and corporations whomsoever of and from any and all actions, claims and demands, whatsoever which Claimant now has or may hereafter have on account of or arising out of property damages sustained on or after April, 2017 resulting from work on the Project, and including any known or unknown damages, injuries and/or the consequences thereof which may hereafter develop, as well as those which have already developed or are now apparent.

2. **Representations and Warranties**

Claimant represents, warrants and agrees that:

A. Claimant has read this entire Release and Agreement, that the terms hereof are contractual and not merely recitals, and that Claimant has signed this Release and Agreement of Claimant's own free act and, in making this Agreement, Claimant has obtained the advice of his legal counsel.

B. *In executing this Release and Agreement, Claimant also acknowledges it has entered into a separate release with SCVWD for the receipt of a setoff from SCVWD for amounts owed by Claimant related to the removal, construction and modification of Claimant's facilities as part of the separate Lower Berryessa Creek Flood Protection Project*

C. No promise or agreement not herein expressed has been made to Claimant, that in executing this Release and Agreement, Claimant is not relying upon any statement or representation made by the Releasees concerning the nature, extent or duration of injuries or damages, or concerning any other thing or matter but is relying solely upon Claimant's and his counsel's judgment and knowledge that the above mentioned sum is received by Claimant in full settlement and satisfaction of all claims and demands whatsoever, that Claimant is of legal age and competent to execute this Release and Agreement; and that before signing this Release and Agreement, Claimant has been fully informed by his counsel of its contents and meaning and has executed it with full knowledge thereof.

D. The within Release and Agreement is not to be construed as an admission of liability on part of the said Releasees and that the within Release and Agreement shall not be used by the Claimant or anyone on Claimant's behalf as a defense or estoppel in any action which is now pending or may be brought hereafter.

3. **Who is Bound.** Claimant and Releasees are bound by this Release and Agreement along with anyone who succeeds to each of those parties' rights and responsibilities, including but not limited to heirs or the executor of the parties' respective estates. Each party on behalf of itself, and on behalf of its heirs, executors, administrators, successors and assigns, and on behalf of all those for whom it filed a claim related to the dispute, if applicable, hereby remises, releases and forever discharges the other parties and their respective subsidiaries, divisions, affiliates, insurers and agents from all claims, suits, actions, charges, demands, judgments, costs and executions present and future, known or unknown, both legal and equitable, in any manner arising out of the dispute. **Each party hereby waives the provisions of Civil Code section 1542 which states:**

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

4. **Signatures**

Date

Authorized Agent for
THE KUSKOKWIM CORPORATION

Date

Authorized Agent for
SUULUTAAQ, INC.

Date

Authorized Agent for
Steven McHarris, City Manager,
CITY OF MILPITAS

Date

APPROVED AS TO FORM:

Christopher Diaz, City Attorney
CITY OF MILPITAS

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	331-9513411153741	\$86,125	331-951341124237	\$86,125

Authorize the City Manager to Execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for Reimbursement for Repairs to City Lighting Landscape Maintenance Assessment District (LLMD) 98 and appropriate \$86,125 to Capital Improvement Project Sinclair Horizons LLMD 98-1

Background:

In 2016 the Valley Water District and the United States Army Corp of Engineers (USAC) entered into a project partnership for the improvement of Upper Berryessa Creek (UBC) for the purpose of improving flood control activities along a portion of Berryessa Creek in Milpitas. The limits of the UBC project were from State Route 237 (Calaveras Boulevard) south to the City of San Jose border near Montague Expressway. Under the partnership agreement, the USAC hired the contractor and administered the construction contract within the Valley Water District Berryessa Creek right of way. USAC hired the construction firm of Suulutaaq, Inc. and Kiskokwim Corporation, collectively referred to as "Contractor", and construction activities started in 2017 and were completed in early 2019.

While working near Los Coches Street, the contractor damaged a City water main which supplied irrigation water to City maintained landscaping adjacent to Los Coches Street and Sinclair Frontage Road. As a result of no water, a significant area of landscaping was destroyed. These landscape improvements are maintained by the Lighting Landscape Maintenance Assessment District (LLMD 98-1). The City restored the landscape improvements at a cost of \$86,125 and worked with the Valley Water District and the Contractor (Suulutaaq, Inc. and Kiskokwim Corporation) to recover the City cost to make the repairs.

Analysis:

Valley Water and the Contractor have agreed to share in providing full reimbursement to the City for the cost to make the landscaping repairs. Release and Settlement Agreements (Attachment 1 & 2) were negotiated with both the Valley Water District and the Contractor to provide for the reimbursement to the City totaling \$86,125. Staff recommends the City Council approve the agreements and authorize the City Manager to execute them.

Policy Alternative:

Alternative: Do not enter into the Release and Settlement Agreements with both the Valley Water District and the Contractor to provide for the reimbursement to the City totaling \$86,125

Pros: None

Cons: A denial would result in the City not receiving reimbursement for funds it expended to make repairs to City owned landscape improvements damaged by a contractor working for another public agency.

Reason not Recommended: The City incurred the costs related to the contractor's damage. The Release and Settlement Agreements allow the City to recover the monies expended.

Fiscal Impact:

No funding is requested. The \$86,125 provided through the Release and Settlement Agreements will be appropriated into the Capital Improvement Program Project No. 3411 Sinclair Horizons LLMD 98-1 to reimburse the project for landscape repair costs.

California Environmental Quality Act: N/A

N/A

Recommendations:

Authorize the City Manager to Execute Release and Settlement Agreements with Valley Water District, Kuskokwim Corporation, and Suulutaaq, Inc. for Reimbursement for Repairs to City Lighting Landscape Maintenance Assessment District (LLMD) 98 and appropriate \$86,125 to Capital Improvement Project Sinclair Horizons LLMD 98-1.

Attachments:

Attachment 1: Release and Settlement Agreement – Valley Water
Attachment 2: Release and Settlement Agreement - Kuskokwim Corporation, and Suulutaaq, Inc.
Attachment 3: Budget Change Form

Check if City Council Approval required.

Meeting Date: September 15, 2020

Requested by:	Department Head: Steve Erickson	Date: September 15, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: September 15, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute an Energy Service Agreement with ENGIE Services U.S. Inc. to Develop Energy and Water Efficiency Projects Pursuant to California Government Code Section 4217.
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/15/2020
Staff Contact:	Tony Ndah, 408-586-2602
Recommendation:	Approve and authorize the City Manager to execute an Energy Service Agreement with ENGIE Services U.S. Inc. for the development of Energy and Water Conservation Measures on City facilities and land, pursuant to California Government Code Section 4217.

Background:

A significant amount of the City's infrastructure is at or near the end of its useful life, resulting in deferred and/or recurring maintenance problems and inefficient operations. As a result, the City's utility and operation and maintenance (O&M) costs have increased above their optimum levels. Energy Savings Performance Contracting can provide a budget-neutral approach to implementing infrastructure improvement projects without using funds from capital budgets. An Energy Services Company (ESCO) develops and implements energy and water conservation projects and guarantees ongoing cost savings to the City for a specified period of time. Guaranteed cost savings from energy and water saving projects are designed to meet any finance payments over the useful life of the equipment.

California Government Code Sections 4217.10-4217.18 were enacted in 1984 as a result of an energy crisis. The purpose was to assist public agencies in expediting and financing energy conservation measures. This Code eliminates the necessity to separately contract for the design and construction phases of a project. As well, it provides public agencies an exception from statutory competitive bidding requirements for public works energy services contracts related to renewable energy and energy conservation. Under these provisions of law, the agency must:

- (1) provide a two-week public notice before authorizing the procurement; and,
- (2) find that funds for the repayment of the financing or the cost of design, construction, and operation of the facility, or both, as required by contract, are projected to be available from revenues derived from the annual savings of the projects implemented.

For the past few months, Staff have been in discussions with ENGIE Services U.S. Inc. (ENGIE) on potential projects to increase water and energy efficiency throughout City Facilities. Approval of the Energy Services Agreement with ENGIE will allow for the development of two-phased ESCO program for the City consisting of (1) preparation and presentation of a Comprehensive Energy Analysis report (CEA) and, (2) construction and implementation of any City recommended energy and water conservation measures.

Analysis:

An ESCO program contains a series of Energy Savings Measures (ECMs) where the projected savings derived from implementing the ECMs equal or exceed the cost of implementing the ECMs as measured over what is generally a 10-17 year financing term. Furthermore, the program is proposed to be separated into two

phases, each with several distinct elements. The first phase is project development and the second phase is implementation of the identified projects. The chart below outlines the components of each phase.

Project Development	Project Implementation
Comprehensive Energy Analysis report (CEA)	Financing
Energy Saving Measures (ECM) Identification	Construction Contract Award
Selection of ECMs for Implementation	Construction
Project Package Development	Monitoring and Verification (M&V)

The components of the project development phase are incorporated into the Energy Services Agreement – which is the contract staff is currently asking Council to approve. The components of the project implementation phase will be incorporated as an amendment to the Energy Services Agreement. Staff will be returning to the Council at a subsequent date to request approval of ECMs and any amendment to the Energy Services Agreement.

Phase 1 – Project Development:

Project development involves several stages of review of the City’s assets to develop a CEA for the City. The CEA provide an intense look at City property and facilities and is conducted to an industry standard level of detail. The analysis is used to identify ECMs at an investment grade level, meaning the degree of certainty in the savings associated with projects is high at the completion of this stage. The completion of the CEA is expected to result in one or more groupings or "packages" of ECMs that are "feasible." A package of ECMs is feasible if--over the period of time needed to finance implementation of those ECMs--the combined savings from the ECMs is projected to exceed the combined cost of implementing the ECMs. Accordingly, not every individual ECM included in a "package" must have a projected savings that exceeds the projected cost of implementing that individual ECM.

The development of the ECM packages is the end of the first phase. Once the ECM packages are developed, a financing plan will be prepared for each package and the package will be implemented through an amendment to the Energy Services Agreement, if approved by Council. At this point, the ECM package will include all delivery costs, including City project management costs and costs associated with issuing financing. This ensures that Council has the opportunity to review each ECM package and the associated financing prior to authorizing the implementation phase.

The City does not begin incurring contract costs until the CEA has been completed. Once the audit has been completed, the fee for the completion of the CEA for the City would be \$150,000. If feasible ECM packages are brought forward for Council consideration and approved, the cost of the CEA would be incorporated into the overall project costs as part of the Project Implementation Phase. If the City does not proceed with any of the ECMs, the City will compensate ENGIE for the lump sum CEA development fee, under the energy service agreement, and the City can choose to implement the ECMs through future CIP and O&M projects.

The costs associated with the CEA are extremely reasonable and it is in the interest of ENGIE and the City to move to the project implementation phase, since that will be the phase where the City is expected to realize the energy and water savings it desires and ENGIE generates the profit for its work.

Phase 2 - Project Implementation:

Council is not being asked to approve anything related to the Project Implementation at this time. An amendment to the Energy Services Agreement with contract terms for the design and implementation of the ECM packages will be presented to Council for approval if ECM packages are identified for implementation. As ECM packages are assembled, staff will work to establish a financing plan associated with those packages.

The project implementation phase is expected to take 8 – 12 months to complete, depending on the final scope of the ECMs selected by the City.

PROPOSED MEASURES:

As part of the initial discussions staff has had with ENGIE, ENGIE has developed a preliminary list of ECMs for the City. Some of the measures that were identified for the City fall in the areas below:

- Lighting - LED lighting retrofits (interior, exterior, and streetlights).
- Renewables and Energy Storage - solar photovoltaics, battery storage, microgrid controls, and electric vehicle charging stations.
- Energy Management and Controls – Plug load control, high-efficiency transformers, and SCADA control upgrades.
- Heating and Cooling systems – building HVAC retrofits and controls
- Water Savings – weather based irrigation controls and indoor water fixture retrofits and commissioning.

Before and during ECM installation, ENGIE would provide the City with the required documents concerning installation procedures such as a quality assurance plan, notification of work outside regular hours, planned utility outages, and ECM testing. ENGIE would also be responsible for bidding the work, awarding the contract, and managing the installation of the projects. The City would be responsible for monitoring the ESCO's progress during ECM installation to ensure that the work is proceeding as planned.

PROJECT BENEFITS:

There are several benefits to the ESCO model including:

- Potential opportunity for cost savings (i.e. any savings beyond the financed costs for project implementation).
- The ability to renew aging infrastructure and address some portion of the deferred maintenance backlog in a timely manner.
- The possibility to further address the City's Climate Action Plan goals, especially those focused on energy efficiency, renewable energy, and water savings at a rate far quicker than might otherwise be possible.

NEXT STEPS:

Upon Council approval, ENGIE will begin the project development phase, which includes detailed on-site energy audits, interviews with City staff and stakeholders to ascertain priorities, problematic equipment, and ongoing maintenance concerns.

ENGIE will provide a final CEA report that provides a comprehensive evaluation of potential efficiency, water, and other infrastructure upgrade measures, along with costs, savings, and simple payback of any viable measures. City staff will work with ENGIE to determine a final scope for the Council to approve, and negotiate terms of an amendment to the Energy Services Agreement.

Policy Alternatives:

Alternative 1: The City could establish its own team for evaluation of lands and facilities to identify ECMs and potential projects.

Pros: City would not spend funds on consultant services for this work.

Cons: City would have to hire staff with the appropriate expertise for this effort.

Reason not recommended: This alternative is not recommended at this stage as ENGIE provides expertise not currently held among City staff.

Fiscal Impact:

The fee for the completion of the Comprehensive Energy Analysis report (CEA) for the City is \$150,000. If feasible Energy Saving Measures (ECM) packages are then made a part of a project package and brought forward to Council for approval as part of the Project Implementation Phase, the cost of the CEA will be carried forward and financed in association with the project package and the related Capital Improvement Program

(CIP) project budget. If there is a situation where the ECMs are not brought forward for approval, the City will compensate ENGIE for the lump sum CEA development fee.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a “project” for the purpose of CEQA 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 an Energy Service Agreement with ENGIE Services U.S. Inc. for the development of Energy and Water Conservation Measures on City facilities and land, pursuant to California Government Code Section 4217.

Attachments:

Energy Services Agreement with ENGIE Services U.S. Inc.

ENERGY SERVICES AGREEMENT

Between

CITY OF MILPITAS

(as "Owner")

and

ENGIE Services U.S. Inc.

(as "Contractor")

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EXHIBITS

- Exhibit A – Scope of Work
- Exhibit B - Project Schedule
- Exhibit C – Project Owner Requirements
- Exhibit D – Request for Information Form
- Exhibit E – Form of Change Order
- Exhibit F – Form of Application for Payment
- Exhibit G– Form of Final Completion Certificate
- Exhibit H– Escrow Agreement for Security Deposit In Lieu of Retention
- Exhibit I – Waiver and Release Forms
- Exhibit J – Certification Regarding Claim
- Exhibit K – Payment and Performance Bond Forms

ENERGY SERVICES AGREEMENT

COVER PAGE

This Energy Service Agreement (“**Agreement**”) is entered into by and between the following parties:

[**ENGIE Services U.S. Inc. (“Contractor”)**]
 Attn: <contact name>
 <address>
 <city>, <state> <zip> |
 Phone No.: <phone> |
 FAX No.: <fax> |
 Email Address: <email> |

City of Milpitas (“**Owner**”)
 Attn: <contact name>
 <address>
 <city>, <state> <zip> |
 Phone No.: <phone> |
 FAX No.: <fax> |
 Email Address: <email> |

A. The “Effective Date”:	B. The “Completion Date”:
<start date>	<end date>
C. “Required License”: In accordance with Public Contract Code section 3300, Contractor shall have, throughout the Contract Term, the following license classification issued by the California Contractors State License Board (<i>state license classification(s)</i>):	
[INSERT]	
D. “Contract Price” to be paid to Contractor:	
[The “Contract Price” is the full and complete amount to be paid to the Contractor for the performance of all obligations required by the Contract Documents for all Sites, and shall be broken down as follows:	
Phase 1 in the total amount of: [\$COST]	F. “LD Rate” (see Section 4.8(e)):
Phase 2 in the total amount of: [\$COST].	[INSERT]
	G. “Utility”:
	[INSERT]
G. Contractor Required Insurance:	
See Section 2.20(g)	
H. “Project Sites” or “Sites”:	
See Section 1.2	

ENERGY SERVICES AGREEMENT

This Energy Services Agreement for an energy savings assessment and implementation of renewable energy generation and energy management systems (“Agreement”) is made by and between, City of Milpitas, a public agency organized and existing under the laws of the State of California (“Owner”), and ENGIE Services U.S. Inc., a [INSERT ENTITY TYPE] and contractor licensed by the State of California (“Contractor”).

RECITALS:

WHEREAS, Government Code section 4217.10, *et seq.*, authorizes the Owner, as a public agency, to enter into an energy services agreement wherein the Contractor provides conservation services to the Owner from an energy conservation facility on terms that its governing body determines are in the best interest of the Owner;

WHEREAS, pursuant to Government Code section 4217.11(d), “conservation services” include electrical, thermal, or other energy savings resulting from conservation measures, which shall be treated as a supply of such energy;

WHEREAS, through this Agreement, the Owner intends to contract for project development (“Phase 1”) and implementation, including engineering, system design, fabrication and installation, of renewable energy generation and energy management systems (“Phase 2”) that will result in energy savings to the Owner and which shall be a supply of energy to the Owner (collectively, the “Project”) at various sites owned or controlled by Owner (the “Project Sites” or “Sites”, and each individually a “Site”), consistent with the terms of Government Code section 4217.10, *et seq.*;

WHEREAS, the Owner’s governing body, after holding a hearing at a regularly scheduled public hearing and after having provided two weeks advance notice of such hearing, made all findings required by Government Code section 4217.12 for the Owner to enter into this Agreement;

WHEREAS, under Phase 1, Contractor shall perform project development by undertaking a comprehensive energy analysis and present the Owner with a detailed comprehensive energy analysis report (“CEA Report”) and recommended energy plan to implement certain energy conservation measures and services (“ECMs”) under Phase 2 of the Project. The CEA Report will identify potential energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. The CEA Report will include data showing that the anticipated cost to the Owner for the recommended ECMs will be less than the anticipated cost to the Owner of electrical or other energy that would have been consumed by the Owner in the absence of the Project;

WHEREAS, contingent upon satisfactory completion of Phase 1 by Contractor, presentation of the CEA Report and recommended ECMs to the Owner’s governing body for review and ratification and completion of all applicable requirements under the California Environmental Quality Act, the Contractor shall engineer, design, and construct the ECMs pursuant to this Agreement;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, including all recitals and Exhibits incorporated herein by this reference, the Owner and Contractor agree as follows:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE

1. GENERAL DEFINITIONS

1.1 Interpretation As used in this Agreement, the terms “herein”, “herewith”, “hereof” are references to this Agreement, taken as a whole, the terms “includes” or “including” shall mean “including, without limitation”, and references to a “Section”, “Article” or “Exhibit” shall mean a Section, Article, or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa.

1.2 Defined Terms Capitalized terms used in this Agreement without other definition shall have the meanings specified in this Section 1.2 unless the context requires otherwise.

“**Abnormally Severe Weather Conditions**” means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work is then being performed. The term “Abnormally Severe Weather Conditions” specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“**Additional Insured**” has the meaning set forth in Section 2.21(d).

“**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“**Agreement**” has the meaning set forth in the preamble and shall include the Cover Page and all Exhibits hereto. The Agreement represents the entire and integrated contract between the Parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement shall not be construed to create any kind of contractual relationship other than between the Owner and Contractor.

“**Applicable Law**” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, act, code, ruling, proclamation, resolution, declaration, requirement or interpretive or advisory opinion or letter of such Governmental Authority, as construed from time to time by any Governmental

Authority, in each case, applicable to the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Application for Payment” has the meaning set forth in Section 3.6.

“Assessment” shall mean all feasibility and configuration assessments conducted by the Contractor to fulfill its obligations under this Agreement.

“Beneficial Use” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Exhibit A.

“Builders All Risk Insurance” has the meaning set forth in Section 2.21(a)(vi).

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business.

“Change in Law” means any of the following events or circumstances occurring after the Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“Change Order” or “CO” A change order is a written instrument prepared by the Owner and the Contractor pursuant to Section 2.18 stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Price, if any; and (C) the extent of the adjustment in the Project Schedule.

“Claim” has the meaning set forth in Section 6.7.

“Completion Date” shall be the date set forth in the Cover Page by which Contractor is guaranteeing Substantial Completion will be achieved, as may be adjusted from time to time in accordance herewith.

Comprehensive Energy Analysis Report or “CEA Report” shall be the report providing for an assessment of energy generation and operational savings opportunities and curtailable load capabilities developed during Phase 1 of the Project. The CEA Report shall identify an energy plan to implement certain ECMs.

“Consultant” shall mean any Person performing or providing expert or professional advice.

“Contract Documents” means shall mean this Agreement and all final Drawings, Specifications, Change Orders, surveys, plans, models, reports and designs, addenda thereto (whether or not attached due to their size), Engineering Documents, Non-collusion Declaration, and other documents referred to in the Agreement, and written modifications issued after execution of the Agreement.

“Contract Price” shall mean the amount set forth in the Cover Page, which is the total payable by Owner for the Work under this Agreement, as the same may be modified from time to time in accordance with the terms hereof.

“Contractor” shall have the meaning set forth in the preamble and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representatives.

“Contractor Event of Default” shall have the meaning set forth in Section 6.1.

“COVID-19” has the meaning set forth in Section 7.21.

“Day” shall mean a calendar day unless it is specified that it means a Business Day.

“Delay” means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work.

“Design Life” means the period of time during which an item is expected by designers to work within its specified parameters and current technology. This is a theoretical calculation based upon the data and assumptions utilized in those engineering calculations as depicted in the Drawings. Design Life is an estimate of the constructed Project’s time in service and not a guarantee, nor is it tantamount to a manufacturer’s representation of product life. Ultimately, the statistical plot of the actual life cycle for a group of a particular product will result in a lognormal distribution curve with a heavy tail to the right where some products fail sooner than others; in fact, it is possible that certain items will fail prior to the target design life. The Design Life is not intended to extend the Warranty Period or increase the Contractor’s liability should a product prove to fail prior to attaining such theoretical Design Life, and Owner shall not have a reliance claim therefor.

“Dollar” and **“\$”** shall mean the lawful currency of the United States of America.

“Drawings” The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn by Contractor or its Subcontractor or Consultants.

“Early Termination Payment” has the meaning set forth in Section 6.3.

“Effective Date” shall mean the date on which the Agreement shall become effective as set forth in the Cover Page.

“Equipment” shall mean all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required, by the terms of the Contract Documents and all Legal Requirements .

“Equipment Documentation” shall mean copies or originals of (i) all operating specifications, warranties and other similar information obtained by Contractor from equipment vendors or Subcontractors or prepared by Contractor or Subcontractors as part of the Work, (ii) a complete inventory list of all Equipment comprising the System, and (iii) all documentation and identification information with respect to all Equipment comprising part of the Project, including reference or serial numbers for all photovoltaic panels, inverters and other equipment listed in the Scope of Work.

“Equipment Warranties” shall mean the product warranty from any Supplier for the Equipment incorporated into the Project.

“Energy Conservation Measures” or ECMs shall mean those renewable energy generation and energy efficiency improvements identified and recommended by Contractor during Phase 1 of the Project.

“Engineer” shall mean the licensed professional engineer experienced in the design and construction of projects comparable to the Project and responsible for the overall design of the System.

“Engineering Documents” shall mean all documents including Drawings, diagrams, plans, Equipment Documentation, Equipment Warranties, Shop Drawings, Assessments, addenda, reports calculations, performance models and other models, designs schedules, and other documents prepared or furnished by Contractor pursuant to this Agreement in respect of the design, engineering and construction of the System.

“Environmental Law” means all Laws related to health, safety, the protection of the environment or regulation or prohibition of the environmental pollution or contamination, including laws relating to land use, emission and pollution, discharges into or pollution of water, and Hazardous Materials.

“Escrow Agreement” has the meaning set forth in Section 0

“Excusable Event” means any reasonably unforeseeable act, event, occurrence, condition or cause beyond the control of Contractor and against which Contractor could not have reasonably mitigated. Subject to the foregoing, Excusable Events may include the following: (i) any act or failure to act of, or other Delay caused by any Owner Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement or Governmental Approval; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Owner Person and any Delays caused thereby; (iv) undisclosed or unforeseen conditions encountered at the Project Location; (v) any Change in Law; (vi) Delay caused by pending arbitration; (vii) Force Majeure Events; (viii) work or requirement by Utility affecting the Work; (ix) labor, equipment or material shortages or delays; (x) Abnormally Severe Weather Conditions; (xi) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Site and/or other reliable calibrated and appropriate weather station representative of such Site; (xii) Owner fails to inform Contractor of scheduled or required activities prior to the execution of this Agreement pursuant to Section 4.10 and (xiii) Owner’s delay in issuing, or failure to issue the Notice to Proceed as set forth in Section 4.2(a).

“Exhibits” means the Exhibits comprising part of this Agreement referenced and listed in the Table of Contents.

“Final Completion” means “Final Completion” of the Project in accordance with Section 4.2(b)(v).

“Final Completion Certificate” has the meaning set forth in Section 4.2(b)(v).

“Final Completion Date” shall mean the actual date on which the Final Completion has occurred, as set forth in the Final Completion Certificate.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any act or event (to the extent not caused by the fault or negligence of such Party or its agents or employees) which is unforeseeable, or being foreseeable, reasonably unavoidable (including by taking prudent commercially reasonable protective and preventative measures) and outside the reasonable control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its material obligations under this Agreement including natural disasters, acts of God, drought, flood, earthquake, storm, fire, explosion, lightening, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, and strikes, lockouts or other labor disturbances or disputes of a national or regional scope. Notwithstanding the foregoing to the contrary, Force Majeure Events shall not include any of the following:

(a) mechanical or equipment failures (except to the extent any failure is itself caused by a Force Majeure Event);

(b) any condition of the Site for which the affected Party is responsible under this Agreement;

(c) increases in the cost of performance of a Party’s obligations under this Agreement (except to the extent any such increase is itself caused by a Force Majeure Event);

(d) any delay or other problems associated with the issuance of any Governmental Approval or for the application therefor, other than the failure of the Governmental Authority to issue its approval to start construction of the Project on or before the date specified therefor in the Project Schedule, through no fault of the Party claiming the Force Majeure Event and despite the Party’s best efforts which shall constitute a Force Majeure Event; and

(e) strikes, walkouts, lockouts or other labor disturbances or disputes specific to the Project or such Party claiming a Force Majeure Event.

Notwithstanding the foregoing, each of (x) economic hardship of either Party or (y) increases in the cost of performance of a Party’s obligations, shall not constitute Force Majeure Events under this Agreement.

“Governmental Approval” shall mean each and every national, autonomic, regional and local license, approval, authorization, certification, registration, exemption, filing, recording, permit or other approval with or of any Governmental Authority, including each and every construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.

“Governmental Authority” shall mean any national, autonomic, regional, provincial, town, city, local or municipal government, authority, body, agency, ministry, court, judicial or administrative body, taxing authority or other governmental organization having jurisdiction over the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Hazardous Material” shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyls (“PCBs”), urea formaldehyde

insulation, lead paints and coatings, any chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.

“Incentive Funds” has the meaning set forth in Section 2.10.

“Incentives” shall mean subsidies, rebates, credits, reductions, allowances or other financial incentives which the Contractor shall apply for on behalf of the Owner.

“Industry Standards” shall mean those standards of care and diligence generally practiced or accepted by reasonably prudent contractors of the energy services industry in engineering, designing, constructing, installing and operating energy efficiency and/or renewable energy generation projects of similar scope and with equipment similar to the Project in the United States and in accordance with good engineering and design practices, sound construction procedures, Governmental Approvals, the Contract Documents and other generally accepted standards established for such Work. Industry Standards are not intended to be limited to optimum practice, methods, equipment specifications or acts to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods generally accepted within the energy services industry to accomplish the desired results and must take into consideration the conditions specific to any given facility, including to the extent such conditions would require a person to (a) perform its duties in good faith, (b) perform its duties in compliance with the Contract Documents, (c) use sufficient and properly trained and skilled personnel, and (d) use parts and supplies that meet the specifications set forth in the Contract Documents, in all cases with respect to (a) through (d) herein, taking into account all of the costs, expenses and benefits of operation of the System.

“Instruments of Service” has the meaning set forth in Section 7.3(c).

“Interconnection Agreement” means an agreement entered into by and between Owner and the Utility.

“Interconnection Point” shall mean the physical point where the renewable energy generation system and related improvements installed by Contractor as part of the System ties into the existing Site electrical facilities.

“LD Rate” shall have the meaning set forth in Section 4.8(e).

“Legal Requirement” means the requirement of any Applicable Law, including any Environmental Law or any Governmental Approval.

“Liquidated Damages” shall have the meaning set forth in Section 4.8(e).

“Notice to Proceed” shall have the meaning set forth in Section 4.2(a).

“Owner” shall have the meaning set forth in the preamble and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

“Owner Persons” means Owner, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Owner or for whom Owner is responsible.

“Party” shall mean, individually, each of the parties to this Agreement.

“Performance Monitoring and Reporting Service” or “PMRS” has the meaning set forth in Exhibit A, Section 5.1.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority or other entity.

“Phase 1” shall mean the project development phase of the Project, which shall include development of a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project.

“Phase 2” shall mean the implementation phase of the Project, under which the Contractor shall engineer, design, and construct the ECMs.

“Progress Payment” shall mean a payment made in accordance with the terms of each Progress Payment Milestone.

“Progress Payment Milestones” shall mean the schedule of separately identifiable major portions of the Work, together with the portion of the Contract Price allocable to each such portion of the Work, set forth in Section 3.9.

“Project” shall mean the project development (Phase 1) and engineering, design, and total construction of the System and completion of the Work (Phase 2) performed in accordance with the Contract Documents.

“Project Development Fee” shall mean the fee identified in Section 3.9(a)(i) for successful performance of Phase 1 of the Project.

“Project Phases” shall mean the schedule of separately identifiable major portions of the Work as set forth in Section 4.2.

“Project Manual” shall mean the volume assembled for the Work which shall include, without limitation, to the extent within Contractor’s possession, Contract Documents, Governmental Approvals, Equipment Documentation, Equipment Warranties, results of the Start Up and Operational Tests and other test conducted under the Testing and Commissioning Plan, Engineering Documents including As-Built Drawings, an O&M manual and all other documents that are reasonably applicable to the Work, as required, with reasonably specific instructions and in reasonably sufficient scope and detail to permit Owner to safely operate, monitor and maintain the System at its tested output level in the ordinary course of business. The Project Manual shall include a table of contents in a format agreed upon by the Contractor and Owner, which agreement will not be unreasonably withheld, conditioned or delayed.

“Project Owner Requirements” shall mean the specific requirements of the Work required by the Owner and that includes the Site Procedures and other elements set forth in Exhibit C, as may be altered from time to time by the Owner as a ministerial matter.

“Project Schedule” shall mean the schedule for prosecution of the Work, including all project development, engineering, permitting, mobilization, construction, Equipment procurement, testing and commissioning in connection with the Project, as set forth in Exhibit B.

“Punchlist” shall mean the list of Work uncompleted upon the achievement of the Commissioning Phase, the lack of which or the failure of which to complete (considered individually or in the aggregate) does not or will not, in the reasonable opinion of Owner or the Engineer, impair the ability of Owner to safely operate, monitor and maintain the System in the ordinary course of business. The Punchlist must be agreed upon by Owner, which agreement will not be unreasonably withheld, and by the Engineer.

“Recovery Plan” shall mean a plan prepared by Contractor, and submitted to the Owner, demonstrating to the Owner’s reasonable satisfaction, the measures that Contractor has taken or will take in order to (i) remedy a delay in completing a portion of the Work by the scheduled dates for such Work as provided in the Project Schedule including achievement of Substantial Completion by the Completion Date.

“Request for Information” A Request for Information is a written request prepared by the Contractor asking the Owner to provide additional information above and beyond that which is available in the Contract Documents and all reference standards, regarding fulfilling the obligations under the Agreement.

“Request for Proposal” A Request for Proposal is a written request prepared by the Owner asking the Contractor to submit to the Owner an estimate of the effect of a proposed change on the Contract Price and the Project Schedule.

“Safety Plan” shall mean a plan prepared by Contractor that includes the elements required by Owner and otherwise includes all matters relating to safety as required by Applicable Law and the Contract Documents. The Safety Plan shall not be completed until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Samples” shall mean physical examples furnished by Contractor to illustrate materials, equipment, or quality.

“Schedule of Values” has the meaning set forth in Section 3.9(a). The Schedule of Values shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Schedule of Rates” means the list of prices attached hereto as Exhibit [insert] to be used for invoicing and the labor and equipment rates for Change Directives and time and material based Change Orders.

“Scope of Work” shall mean the scope of the Work set forth in Section 2.1 and Exhibit A.

“Shop Drawings” shall mean drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, Suppliers, or distributors illustrating some portion of the Work. The Contractor shall obtain and submit with the Shop Drawings all seismic and other calculations and all product data from Equipment manufacturers. Shop Drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

“Site” or **“Sites”** shall have the meaning set forth in the third recital. The Site or Sites shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Site Assessment Table” shall mean a table providing details regarding the Project, the Site(s) and the System at each Site attached hereto as Exhibit [insert]. The Site Assessment Table shall not be completed until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Site Procedures” shall mean the duly authorized procedures developed and implemented by Contractor and approved by Owner as part of the Safety Plan including procedures addressing access, safety, working hours, security, compliance with legal requirements, environmental compliance, the permit to work system, lock-out procedures, tag-out/tag-in procedures and all other standing orders applicable to work carried out on the Site.

“Specifications” The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

“Start Up and Operational Tests” shall mean a test of the System. The Start Up and Operational Tests shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Subcontract” shall mean any contract, subcontract, purchase order, or other agreement whereby a Subcontractor undertakes (a) to perform or provide any portion of the Work or (b) to provide all or a portion of the Equipment required by any Person performing or providing any portion of the Work.

“Subcontractor” shall mean (a) any Person, other than Contractor, performing or providing any portion of the Work, whether retained by Contractor, any Affiliate of Contractor or any Person hired by Contractor or any of its Affiliates and including every tier of subcontractors, sub-subcontractors and so forth, and (b) any Supplier.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions set forth in Section 4.2(b)(iii).

“Superintendent” shall have the meaning set forth in Section 2.4(b).

“Supplemental Instruction” or “SI” A Supplemental Instruction is a written instrument prepared by the Owner and submitted to the Contractor requesting a minor change to the Work that does not impact the Contract Price or Project Schedule.

“Suppliers” shall mean any Person providing or supplying all or a portion of the Equipment required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the System, including any materialman, vendor or supplier.

“System” shall mean the comprehensive energy management system, including all energy efficiency and renewable energy generation components of the ECMs, to be installed by Contractor in order to provide a fully integrated and operational Project, at each Site as applicable, in accordance with the Contract Documents and as more specifically described in the Scope of Work.

“Target Annual Energy Production” shall mean the target number of kWh that the renewable energy generation system installed as part of the System shall produce in the first year following the Final Completion Date. The Target Annual Energy Production shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Testing and Commissioning Plan” shall mean a plan prepared by Contractor that includes the elements required to implement the Start Up and Operational Tests and otherwise includes all matters relating to testing and commissioning as required by the Contract Documents.

“Utility” shall mean the utility providing electrical services to the Site(s) as set forth in the Cover Page.

“Warranties” shall mean, collectively, the warranties provided by Contractor to the Owner hereunder, as described in Section 2.20.

“Warranty Period” shall have the meaning set forth in Section 2.20(d).

“Work” shall mean (a) complete engineering and design of the System including As-Built Drawings (b) the procurement, installation, construction and erection, commissioning, start-up and testing, and all other services, including all labor, materials’ storage, services, demolition, Site preparation, equipping, verification, training, manuals and other things and actions in connection therewith, as necessary for the Contractor to fulfill all of its obligations pursuant to this Agreement, the Contract Documents, any Change Orders; and the requirements of the Utility and the Interconnection Agreement, the Governmental Approvals, and any other Legal Requirement, (c) the provision of Equipment (d) transportation and storage of the Equipment; and (e) all of the foregoing that Contractor performs through any Subcontractor or Consultant.

ARTICLE TWO

2. **CONTRACTOR’S AND OWNER’S OBLIGATIONS**

2.1 **Scope of Work**

2.1.1 Contractor agrees to (1) furnish all engineering, system designs, supervision, labor, equipment and materials, tools, utilities, communications, implements,

appliances and transportation, to procure all Governmental Approvals, (2) assist Owner in Owner's completion and execution of (i) Incentive related documents pursuant to Section 2.10 and (ii) the Interconnection Agreement and all related applications, (3) coordinate with Utility for any and all requirements to allow the Project to be placed in operation, (4) erect, install, start-up, test and commission the Project, (5) perform all obligations set forth in the Contract Documents, (6) perform related activities for the successful completion of the Work and the delivery of the Project in compliance with the Contract Documents and (7) perform all the Work in a good and workmanlike manner, free from any and all liens and claims (other than liens and claims created by the non-payment by Owner of an invoice amount hereunder which is not the subject of a good faith dispute or any liens imposed by or through acts or omissions of Owner) from mechanics, material suppliers, Subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents, all in strict compliance with the Contract Documents, Industry Standards, Legal Requirements and quality control and inspections relating thereto and so that the Project (i) meets or exceeds all requirements of Legal Requirements and the Project is installed in accordance with manufacturer's specifications or by methods otherwise approved by the manufacturer; (ii) complies with all requirements of the Utility and the Interconnection Agreement; (iii) meets or exceeds the warranties and guarantees set forth in the Contract Documents; (iv) is safe and adequate for the purpose and conditions specified in the Scope Of Work; (v) is free from defects in materials and workmanship; and (vi) is comprised of equipment which is new (unless otherwise mutually agreed) and of the agreed quality when installed, designed and manufactured and of a grade in accordance with generally accepted national standards for the design, manufacture and quality of such equipment. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters. Notwithstanding anything herein to the contrary, the Scope of Work may not exceed that set forth in the Contract Documents, except pursuant to a Change Order.

- 2.1.2 The Scope of Work is more fully and specifically defined in Exhibit A-2 hereto. The Phase 1 portion of the Project shall be fully set forth in Exhibit A-1. The Phase 2 portion of the Scope of Work shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added to Exhibit 2 by written amendment to this Agreement.

2.2 Performance of the Work Contractor shall perform the Work in accordance with requirements of the Contract Documents, the Scope of Work and the Specifications, the Project Owner Requirements, the Utility, Industry Standards, Legal Requirements and the Safety Plan. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors or Consultants shall be equally applicable to the Contractor. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

2.3 Construction of Agreement It is understood and agreed by Owner and Contractor that the terms of this Agreement, including all Exhibits, may be subject to amendment, replacement or deletion in their entirety based upon the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree to negotiate and amend this Agreement in good faith to amend, replace or delete the terms herein as necessary to accommodate the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree that the terms of this Agreement exclusively applicable to Phase 2 shall not be operative until Owner and Contractor execute a written amendment to this Agreement following satisfactory completion of Phase 1 of the Project, as determined by the Owner in good faith. It is further understood and agreed by Owner and Contractor that this Agreement may be amended to incorporate and comply with any applicable funding requirements that may become known to the Parties following completion of Phase 1 of the Project. Nothing herein shall be interpreted to create any obligation for Owner to proceed with Phase 2 of the Project.

2.4 Contractor Personnel

(a) Competency Contractor agrees to use, and agrees that it shall require each Subcontractor to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to perform the Work. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any Superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

(b) Superintendent Contractor shall provide a competent superintendent and assistants as necessary based on final Scope of Work, all of whom shall be reasonably proficient in speaking, reading and writing English, and, who shall be in attendance at the Project Site(s) during performance of the Work (the "Superintendent"). The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor.

(c) Prevailing Wage The Project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 *et seq.* of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Agreement. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any Subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

(d) Penalties The Contractor and any Subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each Day or

portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

(e) Debarment A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work. Contractor shall post all required job site notices pursuant to the Labor Code and related regulations.

(f) Working Time Limits In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one Day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per Day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per Day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each Day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement. The Contractor shall as a penalty to the Owner forfeit \$25.00 for each worker employed in the execution of this Agreement by the Contractor or by any Subcontractor for each Day during which such worker is required or permitted to work more than 8 hours in any one Day, and 40 hours in any one calendar week, except as herein provided.

(g) Apprentices The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

(h) Employment List The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

(i) Payroll Records Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social

Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Agreement. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (“DIR”) on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

(j) Compliance Monitoring; 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 the Contract Documents 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.

(k) 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. 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.

2.5 Contractor Responsibility The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors, material and Equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under contract with the Contractor or any of its Subcontractors. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections, or approvals required or performed by persons other than the Contractor. Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

2.6 Subcontractors and Other Contracts for Portions of the Work

(a) Subcontractors shall be selected by Contractor and presented to Owner pursuant to the Agreement. Subcontractor substitution shall be subject to mutual agreement. Any substitutions of Subcontractors required by Owner may result in an increase in the Contract Price (except to the extent Owner requires a substitution for reasonable safety or performance concerns) or the granting of an extension of time for the Project Schedule. Substitutions of Subcontractors made at the election of Contractor shall not result in any increase in the Contract Price. Contractor shall enter into written agreement with each Subcontractor performing any portion of the Work and shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to abide by the terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to perform Work.

(b) Each Subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- (i) Assignment is effective only after termination of the Agreement with the Contractor by the Owner for cause pursuant to Section 6.1 and only for those Subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- (ii) Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

2.7 Supply and Procurement of Equipment

(a) Except as expressly provided to the contrary in the Scope of Work, Contractor, at its expense, shall purchase, transport and deliver all Equipment and shall inspect, unload, store, construct and install all Equipment required to complete the System. Contractor shall maintain all Equipment Warranties, obtain required extended warranties when available, and, upon the expiration of the Warranty Period, cause any such remaining Equipment Warranties to be assigned and passed-through to Owner (subject to Section 2.20). Contractor shall at all times perform the Work in a manner consistent with all such Equipment Warranties and will not perform any actions that may violate such warranties.

(b) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or any Subcontractor in the performance of its obligations under this Agreement shall be new, unless otherwise specified or mutually agreed (if being incorporated into the System) or in good operating condition (if not being incorporated into the System). Such materials and Equipment shall at all times be maintained, inspected and operated by Contractor pursuant to Industry Standards and as required by Applicable Law until Final Completion. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any

Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or any Subcontractor in the performance of any of Contractor's or such Subcontractor's obligations under this Agreement.

(c) Contractor shall maintain an active inventory list in respect of the System and, upon completion of any Work with respect to the Equipment (including in respect of any claim under the Warranties), Contractor shall update the active inventory list to reflect the serial numbers and all other information reasonably required by Owner with respect to any new Equipment installed as part of such Work.

2.8 Utilities Contractor shall supply temporary power (this shall not apply to any power required by Owner as a result of any temporary shutdown by Contractor required in connection with the performance of the Work), telecommunications, water, waste disposal, and other utilities and services required for performance of the Work. Contractor shall also be responsible for providing Equipment and facilities to enable Owner to interconnect with local telecommunications utilities and obtain permanent telecommunications services such as telephone, television cable and other communications utilities as required for the Project.

2.9 Utility Rate Changes If applicable, and subject to Owner's prior authorization, if required, Contractor shall be responsible for coordinating the desired rate schedule changes with the Utility for the Project. Desired rate schedules for each Project Utility meter are defined in the Site Assessment Table. Contractor will be responsible for ensuring that the System meets the requirements for inclusion in the desired rate schedules and will promptly inform Owner if there is any discrepancy between such requirements and the specifications for the System set forth in the Scope of Work. It is preferred that the switching to these rate schedules happen after the Project has been operational continuously for a thirty (30) day period as required for Final Completion. If the Utility only allows the rate schedule to be changed at the time of interconnection, then the rate schedule change should occur at the time of interconnection.

2.10 Incentives Contractor shall provide such assistance to the Owner as may be reasonably requested to secure any subsidies, rebates or other incentives that may be available to Owner from any Governmental Authority or the Utility in connection with or relating to the installation and operation of the Project or otherwise. Contractor acknowledges that it shall have no right or interest in any such subsidies, rebates or other incentives. Owner acknowledges that the Contractor has no control over final payment or availability of such incentives. Contractor makes no guarantee that Owner will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; Contractor expressly disclaims any liability for Owner's failure to receive any portion of the Incentive Funds, and Owner acknowledges and agrees that Contractor will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Price or the payment timeline associated with payment of the Contract Price.

2.11 Permits and Approvals

(a) Contractor shall obtain, maintain and pay for all Governmental Approvals and governmental fees, licenses, and inspections necessary for performance of the Work which are legally required by any Governmental Authority for the Project. In order to assist Contractor to obtain all required Governmental Approvals, Owner shall provide Contractor with such reasonable assistance

as Contractor may request and shall waive all fees for any permits issued by the City of Milpitas. Copies of all Governmental Approvals shall be provided to Owner within five (5) Business Days or less after they are obtained or completed. Owner will review and approve the documents prior to commencement of construction.

(b) If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity prior to the start of any construction activity.

(c) Contractor is required to obtain all approvals from any Governmental Authority, including, but not limited to: Incentive program guidelines, fire safety, California Occupational Safety and Health Administration (“OSHA”), Utility interconnection, right-of-way permits, easement agreements and other codes and best practices.

2.12 Testing and Inspection The Contractor shall at its own expense conduct the Start Up and Operational Tests and such other tests described in the Scope of Work and shall be responsible for all testing and inspection fees for and coordination with any Governmental Authority for the approval of the Project. Contractor will notify Owner no less than five (5) days prior to the commencement of testing and Owner or its representative will have the right to observe all such tests. Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other Legal Requirements. The following shall apply to the testing and inspection of the Project:

(a) Rejection of Work The Owner’s selected representative may, acting reasonably, recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

(b) Testing Off-Site If applicable, any material shipped by Contractor from the source of supply, prior to having satisfactorily passed testing and inspection requirements per Exhibit A, Applicable Law or the requirements of any Governmental Authority shall not be incorporated in the Project.

(c) Responsibility for Errors and Omissions If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services (other than those professional services already within Owner’s scope) for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention.

(d) Additional Testing or Inspection, and Costs Related Thereto

(i) If the Owner or Governmental Authority determines that any portion of the Work on the Project require additional testing, inspection, or approval, the Contractor will, upon Owner’s written authorization, arrange for such additional testing, inspection, or approval. Owner shall bear such costs except in paragraph (ii), below.

(ii) If the testing or inspection of Work on the Project reveal that the Work does not comply with the Contract Documents, Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, approval, or re-approval, including, but not limited to, compensation for services and expenses of the testing laboratory and any

other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 Days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement.

(iii) Where Contractor installs renewable energy generation systems as part of the System under Phase 2, Contractor will provide flash test data for all renewable energy generation systems installed as part of the System to Owner in MS Excel format upon procurement of the renewable energy generation systems. Upon providing Contractor at least thirty (30) days prior notice (to allow for coordination and mitigation of schedule and cost impact), Owner, at its sole discretion, may randomly select up to twenty (20) percent of the renewable energy generation systems used in the Project for delivery to a third party for quality verification testing, which may only be requested by Owner prior to on-site installation. The costs of such verification testing, as well as any additional costs in performing the Work resulting from delays due to Owner's failure to provide at least thirty (30) days' prior notice, shall be the responsibility of Owner. Contractor shall also be entitled to an adjustment of the schedule resulting from any such delays.

(e) Costs for Premature Test If Contractor requests any test or inspection for any portion of the Project and that portion is not ready for the inspection, Owner shall have the right to invoice Contractor for all costs and expenses relating to the testing or inspection, including, but not limited to, compensation for services and expenses of the testing laboratory, and any other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 Days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement.

(f) Covered Work If a portion of the Work is covered contrary to the request of any Governmental Authority, the Owner's request, or to requirements specifically expressed in the Contract Documents, it must, if required by the Governmental Authority or the Owner, be uncovered for the Governmental Authority, or the Owner's observation and be replaced at the Contractor's expense without change in the Contract Price or Project Schedule.

(g) Tests and Inspections Not to Delay Work Tests and inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work on the Project.

(h) Independent Testing Laboratory When required by the scope of the Project, Owner will select an independent testing laboratory to conduct all required tests and inspections, and, except as specifically provided otherwise in the Contract Documents, pay for all associated costs. Selection of the materials required to be tested shall be made by engineer of record, the laboratory or Owner and not by Contractor.

2.13 Local and General Conditions

(a) Contractor has conducted a visual examination of the Site, and acknowledges and agrees that it has satisfied itself as to the general and local conditions and circumstances affecting the Work that could be reasonably ascertained from a visual inspection to ensure that the Project can

be built according to all Applicable Laws and Industry Standards, is expected to achieve the Design Life target (provided that failure to achieve the Design Life target will not extend the Warranty Period or increase Contractor's liability in any respect), and, where renewable energy generation systems are installed as part of the System, will meet or exceed the Target Annual Energy Production. Provided that Contractor's (1) visual inspection and (2) interpretation of the following information disclosed by Owner: construction and record drawings, facilities maps, inventory of existing equipment, utility data, City reports and SCADA documents, in each instance met the "reasonably prudent contractor" standard, Contractor may rely on such Owner disclosed information and will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Price as a result of the discovery of subsurface or other site conditions that were not reasonably ascertainable from a visual inspection or interpretation of information disclosed by Owner, anticipated or disclosed to Contractor as of the Effective Date.

(b) Contractor acknowledges and agrees that where Assessments were conducted, the results have been provided to the Owner within five (5) Business Days of having been received by the Contractor if requested and all costs associated with the results have been accounted for in the Contract Price.

(c) Contractor acknowledges and agrees that it has taken into account all Assessments in any preliminary Engineering Documents that it has provided for use by the Parties in Project modeling and the development of the Agreement. All preliminary engineering and installation Drawings were completed to be consistent with Applicable Law, all prevailing construction standards and codes, and the ECMs that Contractor and Owner have agreed to be incorporated into the Project.

(d) Reserved.

(e) When required by the Scope of Work or otherwise required to satisfy Section (a)2.13(a), Contractor will furnish, at its expense, the services of geotechnical engineers or Consultants when reasonably required or as required by local or State codes. Such services with reports and appropriate professional recommendations shall include, if applicable, test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor or any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

(f) Unless specifically stated in writing by Owners, the Contractor may not rely upon the accuracy of any utility services or site survey information that the Owner may provide.

(g) Certain pre-existing conditions may be present within the Sites that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of Contractor's Work, (iii) may cause Contractor's completed Work to be non-compliant with applicable codes, (iv) may prevent Owner from realizing the full benefits of Contractor's Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Contractor's Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Contractor will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change

Order. Contractor, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with Owner for additional compensation and, if appropriate, an extension of time.

2.14 Safety Precautions and Programs

(a) Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement. Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project including the Safety Plan, which shall cover all Work performed by the Contractor and its Subcontractors. Subcontractors shall promptly report in writing and by phone to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. The Contractor will provide and maintain first-aid supplies for minor injuries.

(b) Prior to beginning construction, Contractor shall provide Owner with a copy of Contractor's Safety Plan, as well as, if requested, an evaluation and appropriate documentation of the safety record of any licensed first-tier Subcontractor that will be performing Work on the Project. The Safety Plan shall include the location of emergency utility shutoffs (both manual and electronic shutoffs, if applicable). Contractor shall review the emergency shut off and evacuation plan with Owner prior to start of construction.

(c) The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (A) Employees on the Work and other persons who may be affected thereby; (B) the Work, material, and Equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors; and (C) other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The Contractor shall give notices and comply with Legal Requirements, ordinances, rules, regulations, and lawful orders of Governmental Authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

(d) Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities, as needed.

(e) Contractor shall have mandatory pre-job safety briefing for all employees and Subcontractor employees on their first day of on site construction for their company. Hard hat stickers shall be issued as a proof of briefing attendance.

(f) Safety meetings will be held once a week during construction with all Contractor employees and Subcontractors employees attending. Printed names will be taken of those attending the meeting. No individual will start work on the Site without having attended a safety briefing on the dangers and protocols of the Site. Records of this training will be kept and provided to Owner upon request. No individual will operate a piece of equipment on which they have not had certification training. Certification shall be carried on the operator at all times.

(g) When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

(h) Pursuant to Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the Safety Plan, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Safety Plan or Applicable Law. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

2.15 Protection of Work and Property During such times as Contractor or Subcontractors are performing any portion of the Work, they shall protect and secure such Work, materials and Equipment, the Owner's property, and the property of others located where the Work is being performed from damage or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall repair damage or loss to Owner's property caused by them. Contractor will provide reasonable protection to prevent damage, injury, or loss to employees of Contractor and Subcontractors performing Work under this Agreement. Contractor will not be responsible for Owner's employees' safety unless Contractor's negligence in the performance of its Work is the proximate cause of the employee's injury. The following shall apply to the protection of Work and property:

(a) Contractor shall at all times comply with the requirements of the Project Owner Requirements, Legal Requirements and the Safety Plan with respect to the use, occupancy and condition of the Site, including the location and maintenance of storage and laydown areas used by Contractor.

(b) Contractor will be responsible for all storage and receiving of all freight at the Project Site(s) in a secure manner to be approved by Owner, such approval not to be unreasonably withheld or delayed.

(c) If materials shall be stored on-site during construction, prior to the arrival of equipment and materials at the Project Site(s), Contractor shall, as needed, install a fenced secured area or provide locked storage containers to be approved by Owner, such approval not to be unreasonably withheld or delayed.

(d) Contractor shall be solely responsible to timely notify all public and private utilities serving the affected Project Site before commencing work on the Project Site. Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to Owner or its designated representative, upon request.

(e) The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

(f) The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Agreement. The Site shall be maintained in a safe, reasonably neat (as may be expected during active construction or work), and orderly condition. If the Contractor fails to reasonably clean up as provided in the Contract Documents, upon providing prior written notice to Contractor and if Contractor fails to respond within five (5) Business Days, Owner may do so and the actual, direct and reasonable cost thereof shall be invoiced to the Contractor and withheld from Progress Payments and/or retention. Upon completion of the Project, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

2.16 Emergencies In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.8 and requested in accordance with Section 2.18. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details, and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

2.17 Hazardous Materials In the event the Contractor encounters or suspects the presence on the Site of Hazardous Materials, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner. Contractor will have no obligation to investigate the Sites for the presence of Hazardous Materials prior to commencement of the Work unless otherwise specified in the Scope of Work. Owner will be solely responsible for investigating Hazardous Materials and determining the appropriate removal and remediation measures with respect to the Hazardous Materials preexisting or discovered at the Sites. Owner will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Materials known or discovered at or around the Sites, and in connection therewith will execute all generator manifests with respect thereto. Contractor will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. Contractor will be accountable for delays, costs or penalties associated with the presence of Hazardous Materials where the presence of such Hazardous Materials is attributable to Contractor's negligent acts or omissions. To the extent Owner is aware of the presence of any hazardous waste at any Site, Owner shall be responsible for informing Contractor in writing of the location of such hazardous waste and shall bear responsibility for reasonable damages for personal injury or property damage caused by its failure to disclose the presence of such hazardous waste to Contractor. In connection with the foregoing, Owner represents and warrants, to its knowledge, that it is not aware of any (i) Hazardous Materials either on or within the walls, ceiling or other structural components, or otherwise located in or on the Sites, including, but not limited to, asbestos-containing materials; and (ii) unsafe working conditions at the Sites. Owner will indemnify, defend, and hold Contractor

harmless from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature that in any way result from, or arise under, such Owner owned or generated Hazardous Materials, except for liabilities to the extent arising from (1) the negligence or willful misconduct of Contractor, or its Subcontractors, agents or representatives, in the handling, disturbance or release of preexisting Hazardous Materials or (2) Hazardous Materials transported onto the Sites by Contractor, or its Subcontractors, agents or representatives. This indemnification will survive any termination of this Agreement.

2.18 Changes and Extra Work

(a) Based upon the services Contractor will have provided in preparing its response to Owner's request for proposals for the Work, and Contractor's duties and responsibilities regarding the engineering and design of the Project, Contractor and Owner intend and expect that Contractor will not submit any Change Order requests during the construction of the Project based upon alleged errors or omissions in the Engineering Documents for the Project – including those prepared and provided by Owner and/or Owner's Consultants. Rather, the parties intend and expect that Change Order requests will only be submitted for Owner-requested changes in the Scope of Work of the Project, errors and omissions in any Owner provided plans and specifications, or for changes in the work of the Project due to Excusable Events, all in accordance with this Agreement and the Contract Documents of the Project. When possible under the circumstances, Contractor will make reasonable efforts to mitigate any schedule or cost impact arising from an Excusable Event.

(b) Notwithstanding any other provision of this Agreement or the Contract Documents, in the event a Change Order is caused by, or necessitated as a result of wrongful acts or omissions on the part Contractor, or as a result of any errors or omissions in the Engineering Documents for the Project – excluding those prepared and provided by Owner and/or Owner's Consultants, or the Owner otherwise incurs costs or damages as a result of wrongful acts or omissions on the part Contractor, or as a result of any Contractor errors or omissions in the plans, specifications, Drawings, or designs for the Project, the Contractor shall be responsible for the cost of the following:

(i) The direct costs of all engineering, design, labor, and materials necessary to fully correct the wrongful acts or omissions on the part of Contractor, or the error or omission in the Engineering Documents for the Project;

(ii) Any other direct costs or damages which the Owner incurs as a result of wrongful acts or omissions on the part Contractor, or of errors or omissions in the Engineering Documents for the Project; and

(iii) The reasonable costs of any third-party engineer, contractor or consultant that the Owner, in the Owner's sole reasonable discretion, must retain or consult with to ensure the proper rectification of wrongful acts or omissions on the part of Contractor, or of errors or omissions in the Engineering Documents for the Project.

The Owner may backcharge, and withhold payment from, the Contractor for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the Agreement amount at the time of collection. When Owner so backcharges and withholds, upon Contractor's request Owner's and Contractor's senior project representatives shall meet and confer in good faith in an effort to reach agreement on (a) whether a wrongful act or omission occurred or whether there was an error or omission in the Engineering Documents for the Project, (b) whether it caused the Change

Order expense, (c) what damages have been incurred by Owner, and (d) what portion of the damages are attributable to Contractor as described above. If Contractor's and Owner's project representatives fail to meet, or if they are unable to resolve the dispute, senior executives for Contractor and for Owner, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the dispute, in an attempt to resolve the dispute and any other identified disputes or any unresolved issues. If Owner and Contractor do not reach agreement on all four of these items when meeting and conferring, then either Owner or Contractor can initiate a court action to resolve the dispute.

(c) Owner reserves the right to make such alterations, deviations, additions to, or deletions from the Engineering Documents, as may be deemed by the Owner to be necessary or advisable for the proper completion or construction of the Work contemplated, and the right to require Contractor to perform such work. There shall be no change whatsoever in the Engineering Documents, or in the Work without an executed Change Order or Supplemental Instruction by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Engineering Documents, and Contractor shall not be required to perform such work, unless the same shall have been authorized by and the cost thereof approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless adjusted in writing in the Change Order.

(d) Reserved.

(e) All Requests for Information should be substantially in the form of Exhibit D and shall, to the extent reasonably necessary, reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Price, Project Schedule, or the Contract Documents. Prior to issuing an RFI the Contractor, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. The Owner and Contractor agree that an adequate time period for the Owner to respond to an RFI is generally fourteen (14) Days after the Owner's receipt of a non-priority RFI, or seven (7) Days after Owner's receipt of a priority RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Owner shall take such time, whether more or less than fourteen (14) or seven (7) Days, as applicable, as is necessary in the professional judgment of Owner and the Owner's representatives to permit adequate review and evaluation of the RFI. The Contractor shall make efforts to coordinate the work in a timely fashion, so as to alleviate priority RFI's. If the RFI is considered a priority, the Contractor shall state the word "Priority" on the document, and the Contractor shall provide weekly RFI Priority Schedules.

(f) The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFI's in order of priority. The Owner shall endeavor to respect the Contractor's requested order of priorities and requested response dates. If the RFI response alters the Contract Price and/or Project Schedule, a Change Order may be issued for the changed condition(s).

(g) The Owner will have authority to order minor changes in the Work provided that there is: (i) no adjustment in the Contract Price, (ii) no extension of the Project Schedule, or (iii) any other change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

(h) To request a Change Order, Owner or Contractor shall prepare and submit a draft Change Order in the form of Exhibit E for review by the other Party.

(i) Each Change Order request, whether proposed by Contractor or Owner, shall include: (i) a detailed statement of the reason for and a description of the change; (ii) the estimated price of the proposed change, including the proposed change in the Contract Price and any costs or savings for carrying out the change including a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change; (ii) the projected effect of such proposed change on the Project Schedule including the relevant scheduled completion dates and deadlines; (iii) the projected effect of such proposed change on Contractor's ability to comply with any of its obligations hereunder, including the Warranties, Target Annual Energy Production (iv) and shall be accompanied by supporting documentation necessary to evidence the costs or savings and schedule adjustments requested therein.

(j) When the Contractor is requesting a Change Order, notice thereof must be provided to the Owner within fourteen (14) Days after Contractor's knowledge of the occurrence of the event giving rise to the claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Section 2.16 hereof. No notice shall be considered unless made in accordance with this Section; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Project Schedule, and/or the increase in the Contract Price. Any change in the Contract Price or extension of the Project Schedule resulting from such claim shall be authorized by a Change Order.

(k) Within twenty-one (21) Days after receipt of a Change Order request from Contractor or Owner, the receiving Party shall either (i) accept such Change Order request by execution thereof and deliver an executed copy to the initiating Party or (ii) reject such Change Order request and provide appropriate written explanation of the reasons therefor (which may include a request for additional information, documentation or cost detail).

(l) The amount of the increase or decrease in the Contract Price resulting from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or (D) by cost of material and labor and percentage of overhead and profit in accordance with the rates specified in the Schedule of Rates. Contractor may mark up the work by fourteen percent (14%) for aggregate overhead, bond and insurance premiums, and profit. It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Project as provided herein.

(m) The Owner may by means of a Construction Change Directive (CCD), without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, with the Contract Price (including fourteen percent (14%) for Contractor's aggregate overhead and profit) and Project Schedule being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a Change Order.

(n) With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

(o) A Request for Proposal issued by the Owner shall contain adequate information, including any necessary Drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 2.18(1). The Contractor shall not be required to provide a response to a Request for Proposal nor shall Contractor be entitled to any additional compensation for preparing a response to a Request for Proposal, whether ultimately accepted or not.

2.19 System Manuals and Drawings

(a) Submittal Contractor shall obtain and shall submit to Owner all required Engineering Documents and Samples in accordance with the Project Schedule and as required in the Contract Documents with such promptness as to cause no delay in the Work. Owner shall have the right, but not the obligation, to review all Engineering Documents and may direct Contractor to make such changes to the design and engineering of the Project as Owner reasonably believes are necessary and as are requested within a reasonable time after the Engineering Documents are submitted, so long as any such changes are within the Scope of Work (or, if not, a Change Order has been executed with respect to such changes), provided however, that no such review or requested changed shall impose any liability on Owner (other than to make payment in accordance with any applicable Change Order) or relieve Contractor of any of its responsibility for the design, engineering and performance of the Project as provided in this Agreement. Any submission, which in Owner's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unviewed by the Owner for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring an Engineering Document or Sample submission until the Owner has approved the submission.

(b) Samples Where Samples are requested by the Owner, and Work is approved based on the Samples, all Work shall be in accordance with the approved Samples.

(c) Extent of Review In reviewing Engineering Documents, the Owner will not verify dimensions and field conditions. The Owner will review and approve Engineering Documents, product data, and Samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Owner's review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Owner has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the Engineering Documents.

(d) Substitution Unless the Contract Documents state that no substitution is permitted, whenever in the Contract Documents any specific brand or trade name is specified such specification shall be deemed to be followed by the words "or equal." The Owner may consider an untimely substitution request if the product specified is no longer commercially available.

(e) Project Manual A Project Manual shall be assembled by Contractor and provided to Owner as a requirement for achieving Final Completion.

(f) Documents and Samples at the Site The Contractor shall maintain at the Project for the Owner one applicable copy of Titles 19 and 24 and a record copy of the Drawings, specifications, Addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Engineering Documents, Samples, and similar required submittals.

2.20 Warranties

(a) Contractor Warranties. Contractor warrants that, throughout and until the end of the Warranty Period:

(i) The Project will be developed, designed, engineered and constructed to satisfy all applicable Legal Requirements, the requirements of the Utility, the requirements of the Contract Documents, and all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement, and to produce a fully functional Project that is capable of operating free of major defects for a Design Life target of at least 25 years (provided that failure to achieve the Design Life target will not extend the Warranty Period or increase Contractor's liability in any respect), assuming customary operation and maintenance.

(ii) All Equipment installed as part of the agreed upon ECMs shall conform in all respects to the requirements of the Contract Documents, Legal Requirements, the requirements of the Owner, the Utility and all other requirements of this Agreement and shall be new, unused (unless otherwise mutually agreed in writing) and undamaged at the time it is put into service upon, and will be installed in accordance with the Equipment Documentation (including all requirements necessary to preserve and maintain in effect any and all Equipment Warranties) and all Equipment Warranties are in effect.

(iii) The Work, including all workmanship and materials incorporated therein will be free from defects in design, engineering, materials, construction, and workmanship, and shall conform in all respects with all Legal Requirements, the requirements of the Utility, requirements of the Owner, the requirements of the Contract Documents, and all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement;

(b) Subcontractor and Supplier Warranties. Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all Suppliers and Subcontractors from which Contractor procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to Owner to the full extent of the terms thereof. At all times during performance of Work under the Contract Documents Contractor shall perform the Work in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties. Contractor shall assign all remaining Equipment Warranties to the Owner upon expiration of the Warranty Period. Contractor shall deliver to Owner promptly following execution or receipt of the applicable agreement copies of all warranties and guarantees received from any Subcontractor or Suppliers, together with copies of such agreements (redacting confidential information as required thereunder).

(c) Independent Warranties. Contractor's Warranties under Section 2.20(a) are separate and independent of one another. Contractor's failure to meet any of the foregoing warranties shall be deemed a breach of the Warranties.

(d) Warranty Period. Contractor shall remedy any breach of the Warranties set forth in this Section 2.20(a) occurring during the period commencing on the Completion Date and ending on the date that is one (1) year after the Completion Date or Beneficial Use (the "Warranty Period").

(e) Remedies

(i) If any Warranty set forth in Section 2.20(a) is breached or a defect or deficiency is discovered during the Warranty Period, Contractor shall, upon written notice from Owner of a Warranty claim prior to the expiration of the Warranty Period, at Contractor's sole option, re-perform, repair, replace and/or correct the applicable Work and resulting damage to the System caused by such defective Work on a reasonably expedited basis while making reasonable attempts to minimize any impact of the failure on the availability, output and functionality of the System. Contractor shall have reasonable access to the System as necessary to perform its Warranty obligations hereunder. All costs of or incidental to Contractor's performance of its Warranty obligations shall be borne by Contractor, including, where required, revising or re-engineering any deficient systems, the removal, replacement and reinstallation of all equipment necessary to gain access to defective Work, the repair of any and all damage to any part of the System or the Site, and the cost of conducting all tests to confirm that all necessary corrective action has occurred. If the Project Warranties failure has the effect of voiding any Equipment Warranty, then Contractor will at its own expense correct and condition as required in order to ensure that the Equipment Warranty is reinstated by the manufacturer on such item, or that a replacement item with full Equipment Warranty is provided and installed.

(ii) Should Contractor fail to begin to perform such necessary repairs, replacement, or correction within ten (10) Days of notice of a Warranty claim or such shorter period as necessary in the event of an emergency (but not less than twenty-four (24) hours) and thereafter diligently pursue such correction, Owner shall have the right to perform such repair, replacement or correction, and Contractor shall be liable for all reasonable, direct costs, charges and expenses incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices certified by Owner. Owner's action in correcting defects in accordance with this Section shall not void Contractor's Warranty obligations hereunder, except in the case of Owner's or its agent's (other than Contractor or any Subcontractor) negligence or willful misconduct.

(f) Warranty Exclusions. Notwithstanding any provision herein to the contrary, the Warranty obligations of Contractor do not extend to (i) Work that is damaged by the active negligence or willful misconduct of Owner, (ii) the failure of Owner to maintain and operate the Equipment materially in accordance with all manufacturer's recommendations and any instructions, practices and procedures of which Owner has been advised in writing by Contractor (except if such failure is caused by Contractor or any Subcontractor), (iii) normal wear and tear, (iv) Force Majeure Events, (v) any alteration, repair or replacement made by a Person other than Contractor or any Subcontractor without the prior written approval of Contractor (excluding alterations, repairs or replacements made pursuant to Section 2.20(e)), except in the case of Owner's or its agent's (other

than Contractor or any Subcontractor) negligence or willful misconduct in the performance thereof) or contrary to instructions from Contractor; provided that Contractor's Warranty obligations shall continue for all but the portion of the Work so altered, and (vi) corrosion, erosion, deterioration and abuse.

(g) Waivers. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 2.20, CONTRACTOR MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. OWNER WILL HAVE NO REMEDIES AGAINST EITHER CONTRACTOR OR ANY CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE. SPECIFICALLY, NEITHER CONTRACTOR, NOR CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS, WILL BE LIABLE TO OWNER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

(h) Limitation of Liability. Contractor shall not be liable to Owner for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

2.21 Insurance

(a) Required Coverage At all times commencing no later than commencement of the Work and to remain in effect for the entire term of this Agreement including any extensions of time, Contractor shall, at its expense, obtain and maintain, and shall cause its Subcontractors to obtain and maintain, with insurers of recognized responsibility authorized to do business in the California as admitted carriers having a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies, the following insurance which shall include the minimum coverages and limits set forth below:

(i) *Commercial General Liability Insurance* Commercial general liability insurance on an "occurrence" basis arising out of claims for bodily injury (including death) and property damage, as will protect the Contractor, which may arise out of or result from the Contractor's operations under the Agreement and for which the Contractor legally liable, whether such operations are by the Contractor, by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall protect the Contractor and Owner against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other Owner facilities or equipment, resulting from acts of commission or omission by the Contractor, or otherwise resulting directly or indirectly from the Contractor's operations in the performance of this Agreement. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld and shall be in amounts not less than ten Million Dollars (\$10,000,000) general aggregate, ten Million Dollars (\$10,000,000) personal

and advertising injury aggregate, with a per occurrence limit of ten Million Dollars (\$10,000,000) (total limits required may be satisfied with an excess or umbrella policy). The comprehensive or commercial general liability policy shall also include a severability of interest clause and cross liability if the policy has multiple insureds. The aggregate limit shall apply on a “per project” basis. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by Owner or other Persons identified in this Agreement will be excess only and will not contribute with this insurance;

(ii) *Automobile Liability.* Automobile liability insurance, for Contractor’s liability arising out of claims for bodily injury and property damage covering all owned (if any), non-owned, leased, hired or borrowed automobiles of Contractor, including loading and unloading, with a minimum limit of not less than \$10,000,000 per accident for combined bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law;

(iii) *Worker’s Compensation Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out workers’ compensation insurance with an insurance carrier satisfactory to the Owner for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers’ Compensation Laws of the State of California. If the Contractor employs any engineer, expert, Consultant or Subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers’ compensation insurance to the Owner immediately upon employment. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the Owner.

(iv) *Employer’s Liability Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out employer’s liability insurance. with an insurance carrier reasonably satisfactory to the Owner. During the course of Contractor’s services, if Contractor ever intends to employ additional or different Engineers, experts, Consultants or Subcontractors, before so employing them Contractor shall furnish such reasonably satisfactory proof of insurance to the Owner. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance reasonably satisfactory to the Owner.

(v) *Errors and Omissions Insurance* Errors and omissions insurance on a claims made basis with limits of at least Two Million Dollars (\$2,000,000) with a deductible or self-insured retention in an amount not to exceed the sum of One Hundred Thousand Dollars (\$100,000), and Contractor will maintain such coverage for a period of five (5) years following the Final Completion Date.

(vi) *Builder’s All-Risk* Following completion of Phase 1 and approval by Owner of the Phase 2 Scope of Work and prior to commencing Phase 2, Contractor agrees to obtain and maintain Builder’s Risk/Course-of-Construction insurance, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall be subject to the approval of Owner, and Owner’s approval shall not be unreasonably withheld. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, wind, hail, lightning, smoke, riot or civil commotion,

debris removal (including demolition) and reasonable compensation for the Owner's costs and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace, or reconstruct the Work. Such insurance shall include the Owner, the Owner's designated representative, and any other person or entity with an insurable interest in the Work as an additional named insured.

(vii) Other Insurance Contractor shall provide all other insurance required to be maintained under Applicable Laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

(b) Consultants If not covered by Contractor's coverage, each of Contractor's Consultants shall carry coverage and limits proportionate to each such Consultant's scope of work, and Contractor shall include such provisions in its contracts with them. If any policy carried by any of the Consultants offers 50% or less of the limits required of the Contractor hereunder for an analogous policy, the Contractor shall notify the Owner of the proposed coverage to be carried by such Consultant, and the Owner shall have the right in its reasonable discretion to approve or reject the proposed coverage in each such case.

(c) Occupancy Owner may partially or fully occupy and/or use the Project before acceptance of the entire Project by the Owner. All of Contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

(d) Additional Insured; Primary and Non-Contributory; Waiver of Subrogation The Contractor shall name the Owner and the Owner's designated representative as additional insureds on Contractor's commercial general liability (using ISO CG 20 10 and CG 20 37 or exact equivalents), automobile liability, and excess/umbrella policies. The additional insured endorsement(s) included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. The coverage provided the additional insureds on Contractor's commercial general liability, automobile liability, and excess/umbrella policies shall apply on a primary and non-contributory basis. The Contractor's commercial general liability, automobile liability, excess/umbrella, and workers' compensation/employer's liability policies shall be endorsed to include a waiver of subrogation in favor of Owner and the Owner's designated representatives. Any excess/umbrella policies provided by Contractor shall include a follow form endorsement or schedule of underlying coverage showing that such policies sit in excess of and shall follow the form of the underlying policies set forth herein, which Contractor intends the excess/umbrella policy to supplement.

(e) Proof of Carriage of Insurance The Contractor shall not commence Work nor shall it allow any Subcontractor or Consultant to commence Work under this Agreement until all required insurance certificates, additional insured endorsements and declarations pages have been obtained for the period covered by this Agreement and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

(f) Notice of Cancellation or Non-Renewal The Contractor shall provide or shall obligate its insurance carriers or brokers/representatives to provide for thirty (30) Days written notice to the Owner of cancellation.

(g) Project Schedule Changes At the time of making application for any extension of time pursuant to the Contract Documents, Contractor shall submit evidence that insurance policies will be in effect during the requested additional period of time.

(h) Compliance If the Contractor fails to maintain such insurance or fails to cure any defects in coverage required herein within five (5) Days of receiving written notice of the defect(s), the Owner may, but shall not be required to, take out such insurance to cover any damages accrued for which the Owner might be held liable on account of the Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under this Agreement.

(i) Subcontractors and Consultant Obligations Each of Contractor's Consultants and Subcontractors shall comply with all applicable (commensurate with their respective scope of work) insurance obligations under this Section, and Contractor shall include such provisions in its contracts with them.

2.22 Performance and Payment Bonds Unless otherwise specified in the Contract Documents, prior to commencing Phase 2, the Contractor shall apply for and furnish Owner a Payment Bond and Performance Bond on the forms attached hereto as Exhibit K, which shall cover 100% faithful performance of all obligations arising under the Contract Documents and guaranteeing the payment in full of all costs for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner. Notwithstanding anything to the contrary in the Contract Documents, the liability of the surety on the performance bond will cease two (2) years after the Final Completion Date. Any warranty or guarantee required of Contractor by the Contract Documents shall be the sole obligation of Contractor after termination of the surety's performance bond liability. The liability of the surety on the payment bond shall continue only so long as required by law. Any guarantee of performance hereunder shall not be deemed to be covered by the terms of the Payment Bond or the Performance Bond.

2.23 Owner's Right to Stop the Work If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.

2.24 Owner's Right to Carry Out The Work If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a sixty (60) Business Day period after receipt of written notice or an alternative reasonable time period expressly stated in the written notice from the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, and may withhold for the cost of such correction from any sums due the Contractor under this Agreement

2.25 Owner's Obligations.

(a) Registration, Permits and Approvals.

(i) Prior to issuing the Notice to Proceed to, Owner must register the Project with the California Department of Industrial Relations, using Form PWC-100.

(ii) Owner will cooperate fully with and assist Contractor in obtaining all Governmental Approvals required under this Contract. Contractor is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Owner itself. Owner will be responsible for obtaining and paying for all other inspections, certifications, permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.

(iii) Owner is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, certifications, and utility interconnection(s), including any additional work that may be required by the authority having jurisdiction or by the Utility in relation to the Interconnection Agreement.

(b) Coordination. The Parties will work together in good faith to coordinate the activities of Contractor and Contractor's Subcontractors and Suppliers with those of Owner Persons to allow Contractor to timely complete the Work.

(c) Access. Owner hereby grants to Contractor, without cost to Contractor, all rights of ingress and egress at the Sites, necessary for Contractor to timely perform the Work and provide all services contemplated by this Agreement, including without limitation and at no extra cost to Contractor, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours when reasonably required to minimize interruptions to Owner's normal activities at the Sites. When applicable, Owner will issue necessary keys to Contractor to access Project Site(s). Contractor shall return keys to Owner upon Final Completion or at any time upon request by Owner. Contractor shall reimburse Owner for the cost of re-keying all of Owner's locks, if keys are not returned to Owner. The Contractor shall provide the Owner and the Owner's designees, access to the Work in preparation and progress wherever located.

(d) Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Agreement, and this Agreement does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the other Party's performance under this Agreement.

(e) Owner's Obligations.

(i) Owner will coordinate with Contractor in good faith to endeavor to provide a temporary staging area for Contractor, or its subcontractors, to use during the

construction phase to store and assemble equipment for completion of the Work, if needed. Owner will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Owner will provide access to the Sites, including parking permits and identification tags, for Contractor and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to Owner. Owner will also either provide a set or sets of keys to Contractor and its subcontractors (signed out per Owner policy) or provide a readily available security escort to unlock and lock doors. Owner will not unreasonably restrict Contractor's access to Facilities to make emergency repairs or corrections as Contractor may determine are needed.

(ii) Owner will maintain the portion of each Site that is not directly affected by Contractor's Work. Owner will keep the designated Site and staging area for the Project free of obstructions, waste, and materials within the reasonable control of Owner.

(iii) Owner will obtain any required environmental clearance from, and any inspections, including special inspections, or permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.

(iv) Subject to Section 2.13(a), subsurface conditions and obstacles (buried pipe, utilities, etc.) that were not reasonably ascertainable by Contractor or are not otherwise previously and accurately documented by Owner and such documentation made available to and reasonably relied upon by Contractor are the responsibility of Owner.

(v) Subject to Section 2.17, Owner will remove any Hazardous Materials either known to Owner prior to the commencement of the Work or encountered by Contractor during the construction of the Project, if necessary in order for the Work to progress safely. Contractor will respond to the discovery of Hazardous Materials at or around the Sites during the course of Contractor's construction in accordance with Section 2.17.

(vi) Owner will coordinate the Work to be performed by Contractor with its own operations and with any other construction project that is ongoing at or around the Sites, with the exception that Contractor will coordinate the interconnection facilities work, if any, which will be performed by the Utility.

ARTICLE THREE

3. PRICE AND PAYMENT

3.1 Contract Price As full and complete compensation for Contractor's obligations under the Contract Documents, Owner shall pay to Contractor in installments in accordance with the Progress Payment Milestones as specified in Section 3.9, and Contractor shall accept as payment in full by Owner for the delivery of the Project and its other obligations under the Contract Documents, the Contract Price and as may only be adjusted by Change Orders in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, the Contractor shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess

costs. Should the Contractor believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the Section 2.18 for Change Orders and Section 6.7 for Claims.

3.2 Allowances The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.3 Material Storage As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by Owner, the payments shall be conditioned upon submission by Contractor, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to Owner to establish Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to Owner by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse. Notwithstanding any other provision herein to the contrary, title to all or a portion of the equipment, supplies and other components of the Work will pass to Owner upon the earlier of (i) the date payment for such equipment, supplies or components is made by Owner or (ii) the date any such items are incorporated into the Site. Contractor will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Owner will in no way affect Owner's and Contractor's rights and obligations as set forth in other provisions of this Agreement. Except as provided in this Section 3.3, after the date of Substantial Completion, Contractor will have no further obligations or liabilities to Owner arising out of or relating to this Agreement, except for the obligation to complete any items required to achieve Final Completion, the obligation to perform any warranty service under Section 2.20, and obligations which, pursuant to their terms, survive the termination of this Agreement.

3.4 Retention The Owner shall, at Contractor's discretion, either retain an amount equal to 5% of each Progress Payment made for Phase 2 of the Project, or, in lieu of said retention, offer to enter into an Escrow Agreement for Security Deposits in Lieu of Retention ("Escrow Agreement") with Contractor, in the form attached as Exhibit H, as set forth in California Public Contract Code section 22300. Release of the retention or funds deposited with Escrow Agent ("Escrow Funds") pursuant to an Escrow Agreement between the parties, and the final Progress Payment shall be made in the manner described in Section 3.9(b)(iii).

3.5 Payment Schedule The Progress Payment Milestones defined in Section 3.9 shall be used as the basis for preparation of progress invoices. Subject to Section 3.9 and except as provided in the Agreement, Owner shall pay to Contractor the applicable Progress Payment set forth in the Progress Payment Milestones (on a per Site basis where applicable) when:

- (i) Contractor has completed the Work associated with such payment in accordance with the Progress Payment Milestones;

- (ii) Following submittal of the supporting documentation required by Section 3.9 for the respective Progress Payment Milestones to the satisfaction of the Owner;
- (iii) Following submittal of an Application for Payment; and
- (iv) Subject to Retention as provided in Section 0.

Contractor shall be entitled to payment and in the amount specified for each Progress Payment Milestone.

3.6 Application for Payment Except as provided in Section 3.5, Contractor shall submit to Owner an invoice (an "Application for Payment"), substantially in the form of Exhibit F. Each monthly progress report shall be certified by Contractor as being true and correct as of the date of such Application for Payment. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment.

3.7 Review of Progress Payment The Owner will, within seven (7) Days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Owner's reasons for withholding approval in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. Owner will pay Contractor the amount Owner approves pursuant to Section 3.8 within thirty (30) after the Application for Payment was properly submitted.

3.8 Decisions to Withhold Payment The Owner may withhold payment, in whole, or in part, to such extent as may be reasonably necessary to protect the Owner from loss because of any acts or omissions by Contractor, including any rights to withhold mentioned in the Contract Documents.

3.9 Progress Payment Milestones Progress Payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Price to Contractor on a per Project Site basis in accordance with the following schedule and after Contractor has complied with the requirements of this Section, Section 3.5 and the Contract Documents (each, a "Progress Payment Milestone"):

(a) Phase 1 Payment

(i) Project Development Fee. A fee of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) upon Contractor's completion of all work required in the Phase 1 (the "Project Development Fee").

(b) Phase 2 Payments. Notwithstanding anything to the contrary, Owner shall not be obligated to pay any amounts hereunder for Phase 2 of the Project until Owner, in its sole and absolute discretion, agrees to implement certain ECMs identified under Phase 1 of the Project and makes all required findings under Government Code section 4217.10 *et seq.*

(i) “Mobilization Payment”) Twenty (20) percent of the Contract Price upon Contractor’s mobilization.

(ii) Progress Payments: as the Work progresses, Contractor will submit to Owner its Applications for Payment based on the progress made on the Project through the date on which Contractor submits such application for payment. Within twenty-one (21) calendar days from the Effective Date, Contractor will prepare and submit to Owner a schedule of values apportioned to the various divisions or phases of the Work (“Schedule of Values”). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Price. All Applications for Payment will be in accordance with the Schedule of Values.

(iii) Final Payment: Ten (10) percent of the Contract Price upon the Owner’s delivery of the signed Final Completion Certificate to the Contractor, less any amounts properly withheld by Owner in accordance with the Contract Documents, until such time, if any, that such amount or amounts may be or are required to be released in accordance with the Contract Documents.

(c) Reserved

3.10 Payments and Information to Subcontractors No later than seven (7) Days after Contractor receives payment from Owner, pursuant to Business and Professions Code section 7108.5, Contractor shall pay to each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate Subcontract with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. Owner has no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by Applicable Law. Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor, and action taken thereon by Owner, on account of portions of the work done by such Subcontractor.

3.11 Waivers and Releases Within thirty (30) Business Days after receipt of each progress payment and the Final Payment, Contractor shall provide (and shall cause its Suppliers and Subcontractors, and their Subcontractors to provide) to Owner an unconditional lien waiver and release (related to the Progress Payment as applicable) in a form substantially similar to the forms attached hereto as Exhibit I.

3.12 Progress Payment Terms The obligation of the Owner to pay Progress Payments hereunder shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

3.13 Completion of Work Subject to Section 4.2(b)(v), upon receipt of the Contractor’s signed Final Completion Certificate, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner’s inspection discloses any item which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall,

before Owner's issuance of the signed Final Completion Certificate and the Final Payment, diligently complete or correct such item.

3.14 Partial Occupancy or Use To the extent reasonably practicable based on the particular portion of the scope of Work, Owner may occupy or use any completed or partially completed portion of the Work at any stage without accepting that Work and without waiving rights to claim damages as to that Work (to the extent expressly permitted herein). The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

3.15 Acceptance, Final Completion Certificate and Final Payment If the Owner's representatives find the Work fully performed under the Contract Documents, they shall so notify Contractor, who shall then submit to the Owner its final Application for Payment. After the Owner's representatives find the Work fully performed, the Owner's governing body should accept the Work as fully complete. After completion, the Owner may record a Final Completion Certificate with the County Recorder in accordance with Civil Code section 3093. Contractor shall, upon receipt of Final Payment from Owner, pay the amounts due Subcontractors. Owner shall pay the retainage pursuant to Public Contract Code section 7107. Any application for Final Payment shall be accompanied by the same details required for regular progress payments. Acceptance of the Final Payment shall constitute a waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of final payment.

3.16 Substitution of Securities In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon completion of the Agreement, the securities shall be returned to the Contractor. Securities eligible for investment under this Section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

3.17 Taxes Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

ARTICLE FOUR

4. COMMENCEMENT AND SCHEDULE

4.1 Project Schedule Time is of the essence in this Agreement (subject to any notice requirements and cure periods set forth in this Agreement), and, subject to the terms of the Contract Documents, the date for Substantial Completion of the Project shall be the Completion Date as set forth on the Cover Page, and Contractor shall develop, design, install and commission the Project and

perform all Work hereunder in accordance with the Project Schedule, Exhibit B. The Project Schedule shall be in the form of a tabulation, chart, or graph (on a per Site basis where applicable) including but not limited to all anticipated dates for achievement of the Project Phases including the issuance of the Notice to Proceed, the anticipated dates for 60%, 90% and 100% Engineering Documents submittal (as applicable) including adequate time for Owner review where required by Section 4.2, the anticipated attainment of each Governmental Approval, the anticipated award and delivery dates of major pieces of Equipment, the start and completion dates for construction and testing and commissioning, and the Completion Date. The Project Schedule will separately identify those milestones or events that must be completed before other portions of the work can be accomplished.

4.2 Project Phases and Notice to Proceed The date of commencement of the Phase 1 is the Effective Date. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible). The Work on the Project shall be performed in accordance with the following phases as more fully set forth in the Scope of Work, Exhibit A:

(a) Phase 1

(i) Project Development Phase Upon the Effective Date, Contractor shall develop a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project. The CEA Report will identify potential renewable energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. In the event Contractor fails to provide a CEA Report demonstrating that the anticipated cost to the Owner of the Project under the Agreement will be less than the anticipated marginal cost to the Owner of thermal, electrical, or other energy that would have been consumed by the Owner in the absence of the Project in accordance with Government Code section 4217.10 *et seq.*, the Owner may terminate this Agreement without further obligation and shall not be liable for any of Contractor's costs including the Project Development Fee. No work shall be performed until Owner's issuance of the Notice to Proceed to Project Development.

(b) Phase 2. Within ten (10) days after Owner has closed the financing for the Project, Owner will issue to Contractor a written notice to proceed with Phase 2 (the "Notice to Proceed"). Contractor will begin Work within thirty (30) calendar days after receipt of the Notice to Proceed (the If Owner fails to issue the Notice to Proceed within twenty (20) Days after the financing has closed, Contractor will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Price as a result of such delay.

(i) Design Phase Contractor shall prepare 60% Engineering Documents, and any inspections required by the date specified for each Site in the Project Schedule. Contractor shall deliver 60% Engineering Documents to Owner for review and approval, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date specified in the Project Schedule. Contractor shall incorporate Owner's comments and requested changes unless Contractor can demonstrate that such requested changes would materially impact the Contract Price, the Project Schedule, or any other material requirement of the Contract Documents in which case Contractor shall submit a Change Order in accordance with Section 2.18. Upon resolution of the provision hereinabove set forth, Contractor shall complete and submit the 90% Engineering Documents by the date specified in the Project Schedule. No work shall be performed until Owner's issuance of the Notice to Proceed.

(ii) Governmental Approval Phase Upon Owner's written approval of the 90% Engineering Documents, Contractor shall seek all such approvals of all required Engineering Documents and the Project as may be required by any Governmental Authority. Contractor shall exercise all reasonable diligence to ensure that all necessary Governmental Approvals are received by the date specified in the Project Schedule. Owner shall not unreasonably withhold its consent to any modifications to the Engineering Documents that may be requested by any Governmental Authority or quasi-governmental agency with jurisdiction over the Project or the Work, excepting any changes that materially affect the Contract Price or the Target Annual Energy Production, or that materially affect the sitting of the Project and its impact on Owner's operations. The Engineering Documents with all changes as necessitated by any Governmental Authority and as approved by Owner shall constitute the 100% Engineering Documents and serve as the basis for construction. The receipt and approval of the 100% Engineering Documents and copies of all Governmental Approvals by the Owner shall constitute the completion of the Governmental Approval Phase.

(iii) Construction Phase. Following approval of the 100% Engineering Documents and delivery of copies of all Governmental Approvals to Owner necessary to begin construction of the Project Owner, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner, any Owner representatives, Contractor, and any other relevant Party to this Agreement. Following the kick-off meeting, Contractor shall commence the construction of the Project in accordance with the 100% Engineering Documents and all other Contract Documents.

When Contractor believes it has achieved Substantial Completion, Contractor shall notify Owner of the same certifying completion of the Construction Phase. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Substantial Completion, Owner shall either (i) acknowledge and agree in a writing delivered to Contractor that the Construction Phase has been satisfactorily completed, or (ii) advise Contractor by written notice that Substantial Completion has not been achieved and identify any missing items or defects or deficiencies in the Work for which Contractor is responsible or any other reason why the requirements of Substantial Completion have not been met. Substantial Completion shall be achieved when, and completion of the Construction Phase requires that:

(1) The Project has been built in conformance with the terms and conditions of the Contract Documents and the requirements of the Utility;

(2) The Project complies with all applicable Legal Requirements and has passed all required inspections by any applicable Governmental Authority and all applicable Governmental Approvals have been received and copies thereof have been delivered to the Owner;

(3) Submission of a written request to schedule the Utility permission to operate inspection and a copy thereof provided to the Owner.

(4) Contractor shall have delivered a true, correct, and complete certification of Substantial Completion signed by Contractor and the Engineer.

(iv) Commissioning Phase During the construction phase of the work on the Project and before the Completion Date, Contractor shall conduct all commissioning tests

in accordance with the Contractor's Testing and Commissioning Plan which shall include but is not limited to the Start Up and Operational Tests. Contractor shall provide notice to Owner of any scheduled test(s) of installed equipment or the System, and Owner or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, or manufacturers of the Equipment. Contractor shall be responsible for correcting or adjusting all deficiencies in the System, Work and Equipment operations that Contractor provided and installed that may be observed during Equipment commissioning procedures. Completion of the Commissioning Phase requires that:

(1) If applicable, all requirements of the Utility for testing and interconnection of the renewable energy generation systems installed as part of the System have been satisfied, the System is fully interconnected and operating normally to produce electricity and Contractor has obtained written permission to operate from the Utility for each Site;

(2) The Start Up and Operational Tests and all other related tests have been completed to the Owner's satisfaction and the results provided to the Owner;

(3) All Work has been completed other than the Work solely required for Final Completion (including the Work set forth in the Punchlist);

(4) Contractor has delivered to the Site the Spare Parts in accordance with Section 0; and

(5) Contractor has verified that the PMRS system is operational.

(v) Final Completion When Contractor believes it has achieved Final Completion, Contractor shall deliver to Owner the written Final Completion Certificate, in substantially the form of Exhibit G, which certificate shall certify the Final Completion Date and the Contractors achievement of Final Completion. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Final Completion, Owner shall either (i) deliver such certificate to Contractor, acknowledged and agreed by Owner, and confirming the Final Completion Date (the "Final Completion Certificate"). The Project may only be accepted as complete by action of the Owner's governing body. Completion of Final Completion requires that:

(1) Contractor has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project;

(1) the Project has completed thirty (30) Days of continuous operation and is able to conserve, produce and deliver Energy to Owner pursuant to the terms of this Agreement;

(2) Owner has received from Contractor the final Project Manual (electronic and hardcopy format) including two (2) sets of full size as-built drawings approved and stamped by the Engineer of Record (as built drawings shall also be provided to Owner in PDF and native file format);

(3) Contractor has provided training to the Owner in the operation, emergency shut-down procedures, and recommended operation and maintenance of the Project and has provided Owner will two (2) sets of keys to all locks, equipment, and boxes that are part of the Project;

(4) All Contractor's materials and wastes have been removed from the Site and properly disposed of;

(5) All Punchlist Work with respect to the Project and the Site has been completed to the Owner's reasonable satisfaction;

(6) A final walkthrough of the Project and Site has been conducted with Contractor and Owner to determine completion of the terms of the Agreement. Any erroneous claims of completion by Contractor resulting in a premature walk through shall be at Contractor's sole cost and expense and Owner shall make adjustments to the Contract Price by reducing the amount thereof to pay for any costs incurred by the Owner due to the erroneous claims by the Contractor that the Project is complete; and

(7) Contractor shall have delivered a true, correct, and complete Final Completion Certificate signed by Contractor and the Engineer.

(c) Reserved

4.3 Hours of Work

(a) Sufficient Forces Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Project Schedule.

(b) Performance During Work Hours Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner. Subject to Section 2.25(b) and (c), Work may also be performed outside of regular working hours to minimize disruption to Owner operations.

4.4 Progress and Completion Time limits stated in the Contract Documents are of the essence of the Agreement (subject to any notice requirements and cure periods set forth in this Agreement). By executing the Agreement the Contractor confirms that the Project Schedule is a reasonable period for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Section 2.20(g) to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Project Schedule, subject to any extension rights set forth in this Agreement.

4.5 Reserved

Upon request, Contractor shall submit its daily logs for the monthly period with the updated schedule. Float is not for the exclusive use or benefit of either Party but it is a jointly owned expiring Project resource available to both Parties as needed to meet the Project Schedule.

4.6 Progress Meetings Unless otherwise stated in the Contract Documents and subject to change by Owner, the Parties shall meet at least biweekly during the performance of Contractor's work to, among other things, review work performed to date and to be performed. Contractor shall organize the meeting, prepare, and distribute meeting notes. Minute notes shall be taken in satisfactory written form and include a three (3) week look-ahead schedule, RFI log, and Change Order log, as applicable. Meeting minutes shall be updated during the meeting and distributed at the end of the meeting and Owner shall have five (5) Business Days after Owner's receipt of such minutes to object to them in writing and provide corrections in writing. A quorum of meeting attendees will be named at the first meeting. The named quorum shall be in attendance in all Project meetings.

4.7 Conformity with Project Schedule Contractor shall prosecute the Work, and shall cause each Subcontractor to prosecute the Work, so that the portion of the Work completed at any point in time shall be not less than as is required by the Project Schedule (subject to any extension rights set forth in this Agreement). If the rate of progress is such that the total amount of Work and/or the degree of completion of the Work accomplished by Contractor within any time period required by the Project Schedule and/or the Contract Documents is less than the amount therein specified to be completed within such time, and it reasonably appears that Contractor will be unable to complete any portion of the Work by the corresponding scheduled date or deadline, Contractor shall so notify Owner within ten (10) Days of Contractor's knowledge of the delay, or Owner may notify Contractor of the same. Contractor shall, within ten (10) Business Days of Contractor's knowledge of such delay or receipt of any such notice from Owner, submit a Recovery Plan to Owner allowing for completion of the Work on the Project by the Completion Date. If Owner directs Contractor in writing to implement the Recovery Plan, then Contractor shall do so within ten (10) Business Days or such request. If Owner, acting reasonably, does not agree that Contractor has demonstrated in the proposed Recovery Plan its ability to recapture lost time, meet interim milestones and complete the relevant portion of the Work by the applicable scheduled date or deadline, and the reasons therefor are not an Excusable Delay as outlined in Section 4.8(a), Owner may, without prejudice to any other right or remedies it may have, take one or more of the following actions: (a) require Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the Project Schedule, including, without limitation, requiring Contractor to increase its work force, work overtime, and/or extra shifts (at Contractor's sole cost and expense); and/or (b) withhold progress payments due under Section 3.9, or portions thereof, until such time as the Work is in conformity with the Project Schedule. If the cause for Contractor's inability to meet the Completion Date are as a result of an Excusable Delay as outlined in Section 4.8(a), then the terms of Section 4.8 shall dictate.

4.8 Extensions of Time – Liquidated Damages

(a) Excusable Delay The Contractor shall be entitled to an extension of time and shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to Excusable Events, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Agreement) with the Owner (collectively "Excusable Delay"). Contractor has the burden of providing reasonable evidence that any delay is excusable.

(b) Notice by Contractor Required The Contractor shall within ten (10) Days of its knowledge of the beginning of any Excusable Delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final Progress Payment under the Agreement) notify the Owner in writing of causes of delay. The Parties will then ascertain the facts and extent of the delay and determine an extension of time for completing the Work when, in their reasonable judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. Except as otherwise set forth in this Agreement, the sole remedy of Contractor for extensions of time under Section 4.8(a) shall be an extension of the Project Schedule at no cost to the Owner.

(c) Conditions for Extension of Time If the Contractor is delayed at any time in progress of the Work by an Excusable Event, by changes in the Work pursuant to Section 2.20(d) or (m), unusual delay in deliveries, or unavoidable casualties, by delay pending arbitration, or by other causes which the Owner determines may justify delay, then the Project Schedule shall be extended by Change Order for such reasonable time as required under the circumstances. Claims relating to time extensions shall be made in accordance with applicable provisions of Section 2.18.

(d) Early Completion If Contractor submits a revised schedule showing an earlier completion date for the Project, Owner's acceptance of this revised schedule shall not entitle Contractor to any additional compensation or Claim due to any such revised schedule (nor shall it subject Contractor to Liquidated Damages based on such earlier completion date). Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete the Work or the Project in a shorter period than established in the Contract Documents.

(e) Liquidated Damages Subject to the limitation of liability specified in Section 6 below, if Contractor fails to cause Substantial Completion to occur on or prior to the Completion Date, as may be extended in accordance with the terms of this Agreement, Contractor shall pay Owner as its sole and exclusive remedy therefore, as liquidated damages and not as a penalty, in an amount equal to the LD Rate (the "Liquidated Damages").

The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project and each individual Site, and the energy savings afforded by the Project and each individual Site, disruption of activities, costs of administration, supervision and the loss suffered by the public.

Accordingly, the Parties agree that the following Dollar figures shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to cause Substantial Completion to occur on or prior to the Completion Date shall be the Dollar amount specified in Section F of the Cover Page for each Day by which the Work, or portion thereof, is delayed beyond the Completion Date multiplied by the total nameplate capacity for each Site or the Project, as applicable, that has not achieved Substantial Completion by the Completion Date (the "LD Rate"). For the avoidance of doubt, if Contractor fails to complete the Work at more than one Site within the time set forth above, Owner may assess liquidated damages cumulatively, taking into account all Sites at which Work has not been timely completed, but in no case shall liquidated damages assessed with respect to one Site be greater than the LD Rate calculated using the total nameplate capacity required by the Contract

Documents to be installed at that Site and by the number of Days by which completion of the Work at that Site is delayed beyond the applicable Completion Date.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the retained percentage is not sufficient to discharge all liabilities of the Contractor incurred under this Section, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any Work or makes any Progress Payment under this Agreement after a default by reason of delays, the payment or payments shall not constitute a waiver or modification of any Agreement provisions regarding time of completion and Liquidated Damages.

4.9 Government Approvals Owner shall not be liable for any delays or damages related to the time required to obtain Government Approvals (any such delay may be an Excusable Event).

4.10 Delays Due to Project Site Activities Owner shall not be liable for any damages or compensation to Contractor resulting from, arising out of, or related to any delays caused by scheduled activities at Project Sites where Contractor was notified in writing of such scheduled activities prior to signing this Agreement, including Owner's construction projects and other events which would require access to Project Site(s). Where Owner did not inform Contractor in writing of such scheduled activities, or required activities arise during the Project that were not scheduled prior to Agreement signing and that impact the Project Schedule, Contractor shall be entitled to reasonable additional time for the Project Schedule in accordance with Section 2.17.

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to Owner in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held liable for damages to Owner for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractor's work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.

To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Owner in writing any discrepancy between executed work and Contract Documents.

It is the obligation of Contractor to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Owner in prosecution of the Project to the end that Contractor may perform its Agreement in the light of such other contracts, if any.

Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, Owner shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. If Owner directs Contractor to cease Work temporarily due

to the work of another contractor, Contractor shall be entitled to a Change Order upon documentation of actual, reasonable costs, but such costs shall not include overhead, profit or general conditions for the period of time during which Work has ceased.

If the Project is split into phases and/or separate contracts, then Contractor has made allowances for any delays or damages which may arise from coordination with contractors for other phases or contracts. If any delays should arise from a contractor working on a different phase or contract, Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the Owner. Contractor shall provide access to contractors for other phases or contracts as necessary to prevent delays and damages to contractors working on other phases or contracts.

ARTICLE FIVE

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties The Parties represent and warrant (to the extent set forth below) that:

(a) Contractor represents that it is duly organized, validly existing and in good standing as a contractor and licensed contractor under the laws of the State of California;

(b) Each Party represents has full power, authority and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate actions on the part of Contractor, and all governmental actions on the part of Owner, and do not require any further approvals or consents;

(c) Each Party represents that the execution, delivery, and performance of this Agreement does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which it is a party by which it or its property is bound;

(d) Each Party represents that there is no pending or, to its knowledge, threatened action, or proceeding before any court or administrative agency that will materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE SIX

6. BREACH AND TERMINATION

6.1 Termination by the Owner for Cause Contractor agrees that Owner shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances, each of which shall constitute an event of default hereunder (each, a "Contractor Event of Default"): (A) refuses or fails to supply personnel in accordance with Section 2.4 or materials in accordance with Section 2.7; (B) fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable; (C) disregards Applicable laws, ordinances, rules, regulations, or orders of a Governmental Authority; or (D) otherwise is in substantial breach of a provision of the Contract Documents.

Owner's authority to terminate this Agreement for cause shall be contingent upon providing written notice to Contractor of the Contractor Event of Default. Where the Contractor Event of Default can be cured, Contractor shall take action and cure the Contractor Event of Default within thirty (30) Days after the date of Owner's written notice. In the event the Contractor Event of Default cannot be cured within thirty (30) Days, Contractor shall provide written notice to Owner of the requirement of a longer cure period with a timeline for cure and shall commence actions necessary to cure the Contractor Event of Default within thirty (30) Days and diligently and timely proceed to complete the cure.

When any Contractor Event of Default exists and Contractor fails to cure the same pursuant to the procedure set forth above, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) Days, terminate the Agreement and may, subject to any prior rights of the surety, (A) take possession of the Site and of all material, Equipment, tools, and construction equipment and machinery thereon owned by the Contractor, (B) accept assignment of Subcontracts, and (C) complete the Work by whatever reasonable method the Owner may deem expedient.

If the unpaid balance of the Contract Price exceeds the reasonable, actual and direct costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Project and termination or expiration of this Agreement.

6.2 Suspension or Termination by the Owner for Convenience The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine. Contractor shall be entitled to an extension of time and an adjustment shall be made for increases in the cost of performance of the Agreement, including profit and overhead in an aggregate amount equal to fourteen percent (14%) on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent (A) that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee. If Owner suspends, delays or interrupts the Work for sixty (60) or more consecutive Days, Contractor may terminate this Agreement.

The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause upon thirty (30) Days written notice to Contractor. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take reasonable actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, make commercially reasonable efforts to terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for (i) Work wholly or partially executed, (ii) actual, direct out-of-pocket losses incurred by reason of such termination and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of termination and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Agreement and all costs and expenses reasonably incurred in exercising the

foregoing remedies, and (iii) fourteen percent (14%) aggregate overhead and profit on the Work not executed (collectively, the “Early Termination Payment”), and the license granted under Section 7.3(b) shall terminate.

6.3 Termination by the Contractor Contractor may not terminate for convenience. Contractor may only terminate for cause if (1) Owner fails to make payment when due and such failure is not made within thirty (30) days of Owner’s receipt of written notice from Contractor specifying same, (2) the Work is stopped by others for a period of ninety (90) consecutive Days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work, or (3) Owner is in material breach of a provision of the Contract Documents and such breach is not cured within thirty (30) days of Owner’s receipt of written notice from Contractor specifying same (in the event such Owner event of default cannot be cured within thirty (30) Days, Owner shall provide written notice to Contractor of the requirement of a longer cure period with a timeline for cure and shall commence actions necessary to cure the Owner event of default within thirty (30) Days and diligently and timely proceed to complete the cure. If such grounds exist, the Contractor may serve written notice of such belief on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within seven (7) Days of receipt of such notice. If such conference does not lead to resolution and Contractor believes the grounds for termination still exist, Contractor may terminate the Agreement and recover from the Owner the Early Termination Payment and the license granted under Section 7.3 shall terminate.

6.4 Not a Waiver Any suspension or termination under this Section 6 shall not act as a waiver of any claims by Owner against Contractor (or vice versa) or others for damages based on breach of contract, negligence or other grounds.

6.5 Early Termination Notwithstanding any provision herein to the contrary, if for any fiscal year of this Agreement the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Agreement after exercising reasonable efforts to do so, the Owner may upon thirty (30) Days’ notice, order work on the Project to cease. The Owner will remain obligated to pay for the Work already wholly or partially performed plus the Early Termination Payment (excluding item (iii)) but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

6.6 Indemnification

(a) Subject to the exclusions set forth in Section 2.13(g), to the extent applicable to the Site(s), Contractor shall make all necessary efforts to ensure the finished Project complies with all applicable standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Contractor has violated any of the above-referenced laws, Contractor shall remedy the violation at its own cost. Contractor shall indemnify, defend and hold the Owner harmless pursuant to this Section of this Agreement against claims brought by a party other than the Owner due to any breach of these provisions to the extent due to Contractor’s negligence, recklessness or willful

misconduct. In the event that either Party is or becomes aware of possible non-compliance with the foregoing standards, such Party shall have a duty to promptly notify the other Party in writing of the possible non-compliance.

(b) Contractor represents and warrants that Contractor has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, Drawings, estimates or other documents that Contractor or its Subcontractors or Consultants prepares or causes to be prepared pursuant to this Agreement. Contractor shall indemnify, defend and hold the Owner harmless against third-party claims brought by a party other than the Owner pursuant to this Section to the extent due to any breach of this representation due to Contractor's negligence, recklessness or willful misconduct.

The Contractor shall defend, indemnify, and hold harmless the Owner, and its officers, agents and employees against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Contractor, the Contractor's officers, employees, or Consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement. Under no circumstances shall Contractor be liable for claims to the extent such claims are due to the active negligence or willful misconduct of the Owner or its officers, agents or employees. For purposes of this Section 6.6 only, "claims" means any and all claims, demands, actions and suits brought by a party other than the Owner for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense obligation shall include but not be limited to payment of the Owner's reasonable attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim. This indemnification shall be in addition to the other indemnification provisions contained in the Contract Documents. Notwithstanding the foregoing, to the extent required by California 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 Owner or Owner Persons. If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor'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 California Civil Code section 2782.8, which is fully incorporated herein, Contractor'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 Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction or via a settlement reasonably approved by Owner, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

(c)

6.7 Claims Generally A claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment, or interpretation of Agreement terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement (a "Claim"). Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the Contractor. Contractor may only submit a Claim after having complied with the requirements in Section 2.18, as applicable, for the same matters.

Claims shall be submitted to the Owner and the Owner's designated representative. A timely decision by the Owner shall be provided. Claims must be made by written notice prior to the final Progress

Payment. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Agreement, and the Owner shall continue to make any undisputed payments in accordance with the Agreement. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall apply.

The Contractor shall make a certification at the time of submission of a Claim, substantially in the form attached as Exhibit J. Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

(a) Claims for Concealed or Unknown Conditions

(i) Trenches or Excavations Less Than Four Feet Below the Surface If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) Days after first observance of the conditions. The Owner will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Price, Project Schedule, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Owner shall so notify the Contractor in writing, stating the reasons. In the event a dispute arises between the Owner and the Contractor regarding whether the conditions materially differ, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

(ii) Trenches or Excavations Greater Than Four Feet Below the Surface Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

(1) The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(A) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(B) Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

(C) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(2) The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order under the procedures described in the Agreement.

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

6.8 Statutory Claim Procedures In addition to any other requirements set forth in the Agreement, all Claims shall be filed in accordance with the statutory claim resolution procedures set forth in Public Contract Code sections 9204 and 20104 *et seq.*, the implementation of which is set forth in this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change in price or time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Agreement or at law.

(a) Intent Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this 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.

(b) Supporting Documentation The Contractor shall submit all claims in the following format:

(i) Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

(ii) List of documents relating to claim:

(1) Specifications

(2) Drawings

(3) Clarifications (Requests for Information)

- (4) Schedules
- (5) Other

- (iii) Chronology of events and correspondence
- (iv) Analysis of claim merit
- (v) Analysis of claim cost
- (vi) Time impact analysis in CPM format

(c) Owner's Response Upon receipt of a claim pursuant to this Section, Owner 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 Owner issues its written statement.

(i) If the Owner 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 Owner's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three Days following the next duly publicly noticed meeting of the Owner's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 Days of receipt of a claim, the Owner may request in writing additional documentation supporting the claim or relating to defenses or claims the Owner 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 Owner and the Contractor. The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 Days of receipt of the Owner's response or within 15 Days of the Owner's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Owner shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

(e) Mediation Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the

Owner and the Contractor sharing the associated costs equally. The Owner 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.

(i) 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.

(ii) 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.

(iii) Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) 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.

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

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

(i) Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Agreement. 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.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this

subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

(h) Government Code Claims In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Owner may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**

(i) Non-Waiver The Owner'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.

ARTICLE SEVEN

7. MISCELLANEOUS

7.1 Representatives The Owner may provide administration of the Agreement as described in the Contract Documents and may designate one or several agents, representatives, or Consultants to provide administration upon written notice of such to Contractor. When such written notice is provided, except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Owner's selected representative.

Relationship The Parties hereto agree that Contractor, and any agents and employees of Contractor, its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Agreement, and not as a public official, officer, employee, consultant, or agent of Owner for purposes of conflict of interest laws or any other Applicable Laws.

7.3 Ownership and Use of Drawings, Data, Reports and Other Documents

(a) Except as expressly provided in this Contract, Owner will not acquire, by virtue of this Agreement, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. Contractor will own all inventions, improvements, technical data, models, processes, methods, and information and all other work

products developed or used in connection with the Work, including all intellectual property rights therein.

(b) Solely in connection with the Project, Contractor grants to Owner a limited, perpetual, royalty-free, non-transferrable license for any Contractor intellectual property rights necessary for Owner to operate, maintain, and repair any modifications or additions to Project, or equipment delivered, as a part of the Work.

(c) All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the “Instruments of Service”) furnished directly or indirectly, in writing or otherwise, to Owner by Contractor under this Agreement will remain Contractor’s property and may be used by Owner only for the Work. Contractor will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Owner or any Owner Person for future additions or alterations to the Project or for other projects, without the prior written agreement of Contractor. Any unauthorized use of the Instruments of Service will be at Owner’s sole risk and without liability to Contractor. If Owner uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of Contractor, Owner agrees to waive and release, and indemnify and hold harmless, Contractor, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

(d) If any materials or information provided by Contractor to Owner under this Contract are designated by Contractor as a “trade secret” or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the “Act”) and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than ten (10) calendar days) after receipt of such request, Owner will notify Contractor of such request and advise Contractor whether Owner believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Contractor may seek to enjoin Owner from disclosing the information requested through a court of competent jurisdiction.

7.4 Royalties and Patents The Contractor shall pay all royalties and license fees incurred by Contractor in performing the Work of this Agreement. Subject to Section 7.3, the Contractor shall defend suits or claims of infringement of patent rights brought by a party other than Owner and shall hold the Owner harmless and indemnify them from loss on account thereof.

7.5 Assignment of Antitrust Claims Pursuant to Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties.

7.6 Audit Contractor’s Agreement books, records, and files shall be subject to audit and examination under Government Code section 8546.7 and any amendments thereto for a period of four

(4) years following Final Completion and will exclude information that is proprietary and confidential unless required to be disclosed as a condition of funding, by law or by court order.

7.7 Construction In this Agreement, unless a clearly contrary intention appears (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any contract (including this Agreement), document or instrument means such contract, document or instrument (together with all schedules, exhibits, appendices and attachments thereto) as amended or modified or restated and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition, unless otherwise expressly set forth herein; (f) “hereunder,” “hereof,” “hereto,” “herein,” “herefrom” and words of similar import are references to this Agreement as a whole and not to any particular Section, Article or other provision hereof, unless otherwise expressly set forth herein; (g) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including;” (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

7.8 Severability/Governing Law If a court of competent jurisdiction shall hold any provision of the Contract Documents invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract Documents and venue shall be in the appropriate Superior Court in California.

7.9 Notices and Filings Any notices or filings required to be given or made under this Agreement shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or commercial overnight courier (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

Owner:	Name.
	Street Address
	City, State Zip Code
	Attention:
	Telephone:
	Facsimile:
	Email:

with a copy to: Name
 Street Address.
 City, State Zip Code
 Attention:
 Telephone:
 Facsimile:
 Email:

Contractor: Name
 Street Address.
 City, State Zip Code
 Attention:
 Telephone:
 Facsimile:
 Email:

with a copy to: Name
 Street Address.
 City, State Zip Code
 Attention:
 Telephone:
 Facsimile:
 Email:

7.10 Binding Effect Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract Documents shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

7.11 Amendments The terms of the Contract Documents shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner’s governing body.

7.12 Headings The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

7.13 Execution in Counterparts This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

7.14 Term and Termination The term of this Agreement begins on the Effective Date that is indicated on the Cover Page of this Agreement and, unless otherwise terminated in accordance with this Agreement, shall terminate upon the satisfaction of the conditions set forth in Section 4.2, including, but not limited to, the Owner’s recordation of the Final Completion Certificate, all in accordance with the Contract Documents. All of the covenants, representations and warranties set forth in the Contract Documents, including indemnification obligations, that are intended to bind the Parties after the completion of the Project or termination of the Contract Documents will survive such completion or termination for the periods provided for in the Contract Documents or otherwise

allowed by law. The Owner or Contractor may terminate the Contract Documents only as provided in the Contract Documents.

7.15 Exhibits Incorporated All Recitals, Exhibits and Attachments attached to this Agreement are hereby incorporated into the Agreement by this reference as if set forth in full.

7.16 Entire Agreement This Agreement, and all incorporated Exhibits, recitals and documents, including, but not limited to the Contract Documents, constitute the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract Documents. The Contract Documents are intended as the complete and exclusive statement of the parties' agreement pursuant to California Code of Civil Procedure section 1856. Notwithstanding any provision to the contrary in the Contract Documents, it is understood and agreed that in the event of a conflict between any term or provision of this Agreement and any other Contract Document, the terms of this Agreement shall govern.

7.17 Execution, Correlation, and Intent The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, Change Orders, third, this Agreement and fourth, the other Contract Documents. Subject to the foregoing, the several instruments forming part of this Agreement are to be taken as mutually explanatory of one another. Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the Agreement shall be amended in writing to make such insertion or correction.

7.18 Successors And Assigns The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other Party hereto and to partners, successors, assigns, and legal representatives of such other Party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither Party to the Agreement shall assign the Agreement as a whole or in part without written consent of the other. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all obligations under the Agreement. Notwithstanding the foregoing, Contractor may, without Owner's consent, but with written notice to Owner, assign this Agreement to any affiliate of Contractor.

7.19 Rights and Remedies; No Waiver Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

7.20 Execution of Other Documents The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract Documents.

7.21 COVID-19 Owner acknowledges and agrees that, as of the Effective Date of this Agreement, the coronavirus COVID-19 (“COVID-19”) is a global epidemic which may affect the production, supply and transportation of materials and equipment, as well as the ability for workers to perform the activities contemplated under this Agreement. To its actual knowledge as of the Effective Date, Contractor is not aware of any schedule or cost impact resulting from COVID-19 that may affect Contractor’s performance of the Work. Contractor shall continue to monitor the impact of COVID-19 on the performance of the Work and will promptly notify Owner if it becomes aware of any impact to Contractor’s performance of the Work. To the extent Contractor’s performance of the Work is impacted by COVID-19 due to circumstances occurring after the Effective Date, Contractor will be entitled to (a) an equitable extension of time and (b) an equitable adjustment to the Contract Price to the extent caused by the following: (i) acts of a Governmental Authority that affect Contractor’s ability to timely perform the Work or require additional safety precautions with increased costs, (ii) supply chain disruptions that affect the availability or cost of materials and equipment forming part of the Work, (iii) delays or increases in the cost of transportation of materials and equipment, and (iv) labor shortages that increase the availability and cost of labor. Within ten (10) business days of identifying any potential cost changes, Contractor will coordinate with Owner to determine how to proceed. Once a course of action is mutually agreed upon, any resulting cost increases or credits will be equitably allocated between both parties.

In consideration of the covenants, conditions, and stipulations set forth in this Agreement and for good and valuable consideration, the Parties, intending to be legally bound, agree as set forth in, and execute, this Agreement. Each person executing this Agreement on behalf of a Party represents that he or she is authorized to execute on behalf of, and to commit and bind, the Party to this Agreement.

CONTRACTOR

OWNER

By: _____

By: _____

Print Name: []

Print Name: []

Title: []

Title: []

EXHIBIT A
SCOPE OF WORK

Phase 2:

[TO BE INSERTED]

EXHIBIT B
PROJECT SCHEDULE

Phase 2:

[TO BE INSERTED]

EXHIBIT C

PROJECT OWNER REQUIREMENTS

The Project Owner Requirements identified herein may be altered by Owner from time to time as ministerial matter.

Phase 2:

[TO BE INSERTED]

EXHIBIT D

REQUEST FOR INFORMATION FORM

[OWNER TO INSERT OWNER'S STANDARD RFI FORM]

EXHIBIT E

FORM OF CHANGE ORDER

[OWNER TO INSERT OWNER'S STANDARD CHANGE ORDER FORM]

EXHIBIT F

FORM OF APPLICATION FOR PAYMENT

[ENGIE TO INSERT STANDARD APPLICATION FOR PAYMENT FORM]

EXHIBIT G

FORM OF FINAL COMPLETION CERTIFICATE

[ENGIE TO INSERT STANDARD FINAL COMPLETION CERTIFICATION FORM]

EXHIBIT H

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into, as of Month and Day, Year by and between the [INSERT OWNER NAME] whose address is [INSERT ADDRESS], hereinafter called "Owner," _____, [INSERT CONTRACTOR NAME], whose address is [INSERT ADDRESS], hereinafter called "Contractor" and _____, whose address is _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____, dated _____, (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agency shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the Owner, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in Escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notifications from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less Escrow fees and charges of the Escrow Account. The Escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notification from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as set forth on the following page.

On behalf of Owner:
[INSERT OWNER NAME]

On behalf of Contractor:
[INSERT CONTRACTOR NAME]

Title

Title

Name

Name

Signature

Signature

On behalf of Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Name

Signature

Title

Name

Signature

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner:
[INSERT OWNER NAME]

Contractor:
[INSERT CONTRACTOR NAME]

Title

Title

Name

Name

Signature

Signature

Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Name

Signature

EXHIBIT I

WAIVER AND RELEASE FORMS

[OWNER TO INSERT OWNER'S REQUIRED WAIVER AND RELEASE FORMS]

EXHIBIT J

CERTIFICATION REGARDING CLAIM

The Contractor shall make a certification at the time of submission of a Claim, substantially in the form below. Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner’s representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

The Certification Regarding Claim accompanying every Claim submitted by Contractor shall be in the following format on Contractor’s letterhead:

I, _____, BEING THE DULY AUTHORIZED
_____ (OFFICER) OF _____
(CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND DO HEREBY CERTIFY THAT SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA INCLUDED WITH SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650-12655, *ET SEQ.*, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

[INSERT CONTRACTOR NAME]

By: _____

Its: _____

Dated: _____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

- Partner(s) Limited
- General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT

PAYMENT AND PERFORMANCE BOND FORMS

[PAYMENT AND PERFORMANCE BONDS INSERTED BEHIND THIS PAGE]

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 **Contract No.** _____, (hereinafter referred to as the "Project").

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

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

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

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

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

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

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

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 California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

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

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

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

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

- Partner(s) Limited
- General

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

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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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: **Contract No.** _____ (the "Project"); and

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

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

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

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant

is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Five Youth Advisory Commission Scholarship Recipients for Year 2020
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/15/2020
Staff Contact:	Renee Lorentzen, 408-586-3409
Recommendation:	Approve five Youth Advisory Commission Community Service Scholarships of \$500 each for a total amount of \$2,500.

Background:

The Youth Advisory Commission (YAC) Community Service Scholarship was established and approved by City Council in 2013 and has been an annual Commission work plan item for the past seven (7) years. The purpose of the scholarship is to encourage and provide financial assistance to Milpitas youth so they may continue their education by attending trade school, college or other like secondary education courses. The YAC Scholarship is service-based and provides scholarships of \$500 to Milpitas residents going into their senior year in high school or outgoing seniors continuing their education.

As part of their approved FY 2019-20 Youth Advisory Commission work plan, Commissioners were tasked with helping to promote the YAC Scholarship in the community, review scholarship applications and make recommendations for final approval by the City Council.

Analysis:

The YAC Community Service Scholarship application was distributed to the general community through the City of Milpitas website, Social Media pages, Teen Center email list, and registered students at Milpitas High School and Calaveras Hills High School. Applicants were required to demonstrate and detail a history of community service beyond school requirements, show exemplary leadership, and be a role model in their community. Applicants submitted a 500-word essay on their proudest community service project and what they learned from the experience, one letter of recommendation from a teacher, counselor or organization leader and possess a minimum 2.5 accumulative GPA. YAC received 13 scholarship applications and reviewed those submittals at their August 13, 2020 meeting. Typically, YAC awards one scholarship to a deserving Milpitas student. Because of the COVID-19 pandemic, and its impact on many Milpitas families' incomes, the Commission is recommending five (5) scholarships in the amount of \$500 each, for a total of \$2,500. Monies for this scholarship are from proceeds from past YAC events like the youth Spelling Bee, Math Competition, and Hack-A-Thon. Seated Youth Advisory Commissioners are not eligible for this scholarship.

Fiscal Impact:

The item requires a budget appropriation of \$2,500 from the Youth Holding Account into the Recreation and Community Services operating budget. The Youth Holding Account balance is \$15,088.65 which includes monies derived from donations, grants and fundraisers hosted by the Youth Advisory Commission.

Recommendation:

Approve award of scholarships and appropriation of \$2500 into the Recreation and Community Services Department operating budget for five individual \$500 Youth Advisory Commission Community Service Scholarships.

Attachments:

- a) Scholarship Applications and essays
- b) Budget Change Form



Milpitas Recreation & Community Services

YAC COMMUNITY SERVICE SCHOLARSHIP APPLICATION

Scholarship Application and Questionnaire Due: July 31, 2020

The City of Milpitas Youth Advisory Commission has established a scholarship program for Milpitas residents currently in high school, junior or senior (outgoing) standing, looking for assistance to continue their education. A \$500 monetary scholarship will be awarded to one (1) high school junior or senior. The recipient must meet the following criteria and will be selected by the Youth Advisory Commission:

- Must be a high school junior or senior and a resident of Milpitas.
- Must demonstrate a history of community service beyond any school requirements.
- Must demonstrate exemplary leadership and be a role model in his/her community.
- Must complete the scholarship questionnaire, consisting of one short essay question.
- Must possess a minimum 2.5 accumulative, weighted GPA. Transcript is required.
- One (1) letter of recommendation, including contact information, from a teacher, counselor, or organization leader.
- Applications must be received no later than July 31, 2020 at 5:00 p.m.

Please Print

Nguyen	Angela	T
<i>Last</i>	<i>First</i>	<i>MI</i>
[Redacted]		

Street, City & Zip

[Redacted]

Phone [Redacted] *Email* [Redacted]

Milpitas High School Class of 2021	<i>Incoming Senior - Applying to college this fall.</i>
<i>Graduating High School</i>	<i>College or University you plan on attending</i>
4.36	GPA (accumulative, weighted)

Note: Please attach transcript. GPA and transcripts will be kept confidential.



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Milpitas Senior Center, 40 N. Milpitas Blvd. (408) 586-3400
Milpitas Sports Center, 1325 E. Calaveras Blvd., (408) 586-3225

YAC COMMUNITY SERVICE SCHOLARSHIP QUESTIONNAIRE

(Attach to application)

Please type your response to the following short essay question on a separate piece of paper. Response should not exceed 500 words.

1. Tell us about the Community Service project that you were most proud of and what have you learned from that experience.

All applications and questionnaires are to be submitted **by email**, by July 2, 2020 to:
Anthony Teschera
Recreation Program Coordinator
E-mail: ateschera@ci.milpitas.ca.gov
Questions: 408-586-3231

I, the undersigned, do hereby agree to allow the individual named herein to participate in the YAC Community Service Scholarship program. I certify that all statements made in this application are true and correct to the best of my knowledge, and I agree and understand that if I am to receive this scholarship, any false statements may result in my disqualification.



Signature of Applicant

7/29/20

Date

Born an Asian-American, English was not my first language—it was only until third grade when I was classified as English proficient. By living in a diverse community, many of my classmates and I found it difficult to learn foundational, English skills. As I faced regular difficulties with basic language conventions, I have grown to understand the challenges that young, first-generation students face. These shared experiences of adversity have grown into deep-rooted compassions for peers like me.

In middle school, I began tutoring elementary students in English and math; these weekly tutoring-sessions have diverged into new encounters with struggling students. By meeting diverse faces each week, I learned to collaborate, to teach, and to understand the young scholars of Milpitas. When students feel unmotivated—from afternoon fatigue or language barriers—I integrated hands-on activities within each lesson and spoke in English, Spanish, and Vietnamese to connect to the diversified student population. Over time, I recognized the language obstacles that I faced in primary school had lapsed onto younger peers—especially in reading and writing. Even with many tutoring institutions, many of them are inaccessible; high-tuition and rigid commitments have resisted underprivileged families.

One-to-one tutoring in the neighborhood-elementary school has ever since grown into the founding of my own English-tutoring non-profit. I created Project Lit Inc. to equip Milpitas and Bay Area communities with free, K-8 after-school programs—aiming to bridge the intellectual gap found in crowded classrooms. With weekly opportunities at local schools, underserved students can improve their math, reading, and writing skills through active-learning worksheets. With an extensive K-8 curriculum, Project Lit. Inc. provides personalized lesson plans to fit individual needs. Students can find free video tutorials and practice problems as well as direct assistance through qualified high school tutors. Since then, I have expanded my mission to also share my passion for tutoring and mentorship by offering volunteering opportunities to high schoolers. Project Lit. Inc. serves as an outlet for high school students to employ their skills in mentorship and develop their passions within the community—nurturing a greater academic cycle for the future generations of Milpitas.

With Project Lit., I have organized reading and writing competitions to encourage higher education in the community. Annual book-drives and fundraisers have maintained continuous tutoring at Thomas Russell Middle School. Online platforms have facilitated virtual one-to-one tutoring for students who had difficulties learning at home during the shelter-in-place and will continue to assist all students during distance-learning next school year.

From my first tutoring experiences at the next-door elementary school in middle school to establishing Project Lit. Inc., these first-hand encounters have emerged into life-long passions to understand younger classmates and promote education in communities. I have learned to adapt to the academic demands of diverse communities through tutoring and my tutoring non-profit, Project Lit.

July 24, 2020

Dear YAC Community Service Scholarship Review Committee,

It is with great pleasure that I write to you regarding Angela Nguyen whom I have known for 3 ½ years as an altar server and teen at St. Elizabeth Church in Milpitas, California. During this time and currently, I am the church's altar server coordinator.

Angela has shown through her academic and extracurricular activities that she has blended her intelligence, spiritual development, and interests into service for her church, school, and community. Angela's longevity of service and strong academics exhibits her realization and appreciation of her "gifts" from God and how she can best demonstrate her appreciation of these gifts. While working with others on an individual or group basis, Angela shows her perception of how to appreciate an individual or individuals as she strives to meet their academic as well as their emotional/ self-worth needs.

I have observed Angela serving extremely well at St Elizabeth Church. Her gentle ways while delivering her messages as being part of a scheduled team to assist our clergy with liturgy needs, mass or prayer services, prompted me to invite Angela 2 years ago to a leadership role as a trainer/mentor within the altar server ministry. As an altar server captain her skills and sense of responsibility, attention to detail and alertness to her situation and team members are constant and consistently high. Angela's emotional maturity provides an atmosphere of calm while using her respect of others and intelligence to complete any needed modifications during her liturgical duties. As a captain, her team ranges in age from 10-18 years for youth and 40-70 years for the adult leaders she so competently and respectfully interfaces with.

Being a Co-Founder of Project Lit and President of the executive board of the American Red Cross' Youth Component exhibits Angela's ability to perceive and strategize, "How might I influence a person for their long term growth and success at home, school and in the community?" She works towards areas that address multiple facets of life, such as academics, health, and social/emotional needs, in the lives of youth and adults. To do such as a teenager is extremely remarkable. Added to this, her multiple years of volunteerism in these and other organizations, secular and religiously based, reflects Angela's compassion and empathy to bring about a higher quality of life for people, young or old. Those around her are influenced by her positivity, earnestness, and action.

I highly recommend Angela Nguyen for your YAC Community Service Scholarship because of her consistent high level of commitment to serving others in her community while also maintaining high academic success.

Sincerely,

Brenda Hee Wong

Altar Server Coordinator, St. Elizabeth Church, Milpitas, CA



Milpitas Recreation & Community Services

YAC COMMUNITY SERVICE SCHOLARSHIP APPLICATION

Scholarship Application and Questionnaire Due: July 31, 2020

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- Must demonstrate exemplary leadership and be a role model in his/her community.
- Must complete the scholarship questionnaire, consisting of one short essay question.
- Must possess a minimum 2.5 accumulative, weighted GPA. Transcript is required.
- One (1) letter of recommendation, including contact information, from a teacher, counselor, or organization leader.
- Applications must be received no later than July 31, 2020 at 5:00 p.m.

Please Print

Pham	Jenny	Huyen
<hr/>	<hr/>	<hr/>
<i>Last</i>	<i>First</i>	<i>MI</i>
<div style="background-color: black; width: 100%; height: 15px;"></div>		

Street, City & Zip

(<div style="background-color: black; width: 100%; height: 15px;"></div>)	
<i>Phone</i>	<i>Email</i>

Milpitas High School	University of California, Berkeley
<hr/>	<hr/>
<i>Graduating High School</i>	<i>College or University you plan on attending</i>

4.16 _____ *GPA (accumulative, weighted)*

Note: Please attach transcript. GPA and transcripts will be kept confidential.



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YAC COMMUNITY SERVICE SCHOLARSHIP QUESTIONNAIRE

(Attach to application)

Please type your response to the following short essay question on a separate piece of paper. Response should not exceed 500 words.

1. Tell us about the Community Service project that you were most proud of and what have you learned from that experience.

All applications and questionnaires are to be submitted **by email**, by July 31, 2020 to:
Anthony Teschera
Recreation Program Coordinator
E-mail: ateschera@ci.milpitas.ca.gov
Questions: 408-586-3231

I, the undersigned, do hereby agree to allow the individual named herein to participate in the YAC Community Service Scholarship program. I certify that all statements made in this application are true and correct to the best of my knowledge, and I agree and understand that if I am to receive this scholarship, any false statements may result in my disqualification.



Signature of Applicant

07/29/2020

Date

Tell us about the Community Service project that you were most proud of and what have you learned from that experience.

As a member of the Environmental Society of MHS, my school's environmental club, I partook in bi-monthly recycling bin clean-outs on campus. As unappealing as rummaging through bins to find recyclables might sound, the clean-outs gave me a sense of satisfaction because it meant placing one less item into the ocean or landfill. When I recognized that the youth collaboration in the city of Milpitas could have a broader positive impact, I organized the first annual, youth neighborhood clean-up.

In January of my junior year, I reached a city council member and worked with them to set a date and location for the first clean-up. From there, I wrote emails inviting the students from my high school and collaborated with my club officers to present a speech at the town hall meeting. Standing on the podium, I invited the city to the event and proudly represented the youth of my generation in our fight for a cleaner future.

When March finally arrived, over 200 volunteers came to the clean-up! In a mobile home neighborhood with primarily senior residents, we helped weed their gardens and removed trash in the surrounding areas. Some senior residents even stepped out of their homes to offer us water. I was elated to see my efforts bring the city together to take care of our shared environment.

Besides the gratifying appreciation my club received from the city of Milpitas, we also received congressional recognition for our service. Most importantly, I established a way for the high schoolers in my city to not only maintain the recycling program on campus, but also better our surrounding community. Knowing that city residents of Milpitas can step out of their homes and no longer see trash or overgrown weeds, I felt fulfilled in my accomplishment.

Initiating the clean-up allowed me to be unafraid to enact change. I was able to use my voice to solve an issue I found prevalent in my community. What I learned from leading my community service event is that the first step in accomplishing what I envision is to think past any doubt of failure and simply go for it. Although there may be mishaps and obstacles along the way, I am constantly learning and working to achieve my full potential and purpose in life; if I stand by afraid of failure, I will be waiting for the change I want to see in my life, community, and world. Equally important, through the help of Milpitas city council members and advisors, I have found that the resources I need to carry out an event are abundant if I do my part and take the first initiative.

Ultimately, there is power in me and my community of people to advocate for what we believe in through collective expression in words and action. Through this, I realized that there are a multitude of opportunities around me; whether that means creating one or being a part of something, I can make a difference wherever I am.

To Whom It May Concern:

Jenny Pham is a well organized and disciplined young woman with a passion for helping people, both on personal and systemic levels. As her AP Environmental Science teacher, I have seen constant and varied examples of her academic success and organized social awareness. Beyond being one of the top students in an already highly accomplished and difficult class, and earning an impressive 4 on the AP test in Environmental Science, she has also shown her varied skills in social organization through multiple circumstances of formal school level student positions, including winning multiple school and community awards for her work. As president of the Environmental Society on campus, she helped the club not only do the continuing and complicated work in managing the recycling program on campus, but she led the club in earning formal recognition from our US Representative, Ro Khanna.

Jenny has shown great aptitude for helping bring people together within comfortable and focused environments, using not only her passion, but a mind for organizing and championing creative ideas, and focusing various resources to create spaces for learning and community. Her magnetic personality, drive to build community, and a wide variety of leadership experiences are an asset to any program, and she has used that in this high school environment to great effect.

Of special note, Jenny has come into my classroom more than a few times this year and last year with deep questions about subjects as varied as the philosophy behind the curriculum in various classes, to help find new ways to help people, and also ways that she can continue to create and enhance lasting social and environmental programs for the greater community.

On top of all of the work being the president of the MHS Environmental Society, she has been active in Key Club (as club president), Builders Club (founder), Model United Nations (as club president), and multiple Advanced Placement classes. Often, and shockingly, she has been active and successful in all of these time-consuming activities within the same time school year, showing a truly impressive level of calendar coordination and time management. I should also note that even with all these interests, Jenny has an active and vibrant social community.

I understand that Jenny is applying for a YAC Scholarship. I would like to strongly recommend her for this as she has shown that she has a socially active focus, community spirit, and clear academic ability to use this scholarship for the very best results. I have had the privilege to

teach Jenny both in AP Environmental Science, as a club advisor, and the joy of knowing her as an AP Lab Technician. I cannot think of a better choice for a YAC scholarship recipient.

To conclude, I would like to restate my very strong recommendation for Jenny Pham. If you have any further questions regarding this recommendation, please do not hesitate to contact me.

Sincerely,

Glen Barrett
Environmental Club Advisor
AP Environmental Science Teacher
Milpitas High School
gbarrett@musd.org



Milpitas Recreation & Community Services

YAC COMMUNITY SERVICE SCHOLARSHIP APPLICATION

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Please Print

Garcia	Karen	Sofia
<i>Last</i>	<i>First</i>	<i>MI</i>
[Redacted]		
<i>Street, City & Zip</i>		
[Redacted]		
<i>Phone</i>	<i>Email</i>	
June 2021	Fashion Institute of Design and Marketing	
<i>Graduating High School</i>	<i>College or University you plan on attending</i>	
2.96	<i>GPA (accumulative, weighted)</i>	

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Signature of Applicant

07/22/2020

Date

Volunteering has always been something I enjoyed. Recently, I was a volunteer for the Leukemia and Lymphoma Society (LLS). This volunteer job was big and something I had never done before. In November 2019, I was nominated to be part of the student of the year campaign for LLS. This program would not only give me community service hours, but also a lot of experience. I have done many volunteer jobs, but this one allowed me to acquire communication skills, leadership skills, and even some business skills. As a candidate for LLS's Student of the Year program (SOY), my team and I had to raise money for a nine-year-old patient fighting blood cancer. We had set our reach goal of \$25,000 and a more realistic goal of \$15,000. Within seven weeks, we had to try and reach those goals. I was now leading a team of more than ten high school students alongside my co-candidate. Being the leader of a group of high school students who are trying to raise money for patients taught me how to communicate and set deadlines. We began planning two months before the competition started because we were not just competing with other students from our school to see who could raise the most money, but students all around the bay area. I had recruited not just students, but other Milpitas community members to join us. One of my favorite parts of planning how we would raise money was organizing a charity dinner. For this specific event, we had many companies and people donate their time and merchandise for us to use. We sold many tables and had over 50 people supporting us and our cause. I had a chef donate food for 200 guests, Culligan Waters donate water bottles, a close family friend donate their venue for us to have our event, a printing company donating their services by creating our event tickets, the Golden State Warriors donate a team autographed basketball for our auction, and many more local companies supporting us. The event worked well because of the volunteers and support from many communities. At the end of the seven weeks of the campaign, we raised over \$6,000. Even if we hadn't won the grand prize which was a \$1,000 scholarship to our dream school, I know that my team learned as much as I did. I learned how to get in touch with companies, get communities involved for a good cause, plan events, and manage a campaign. But most importantly, I had fun planning and learning how to be a good leader and I was part of the fight against blood cancer. That is an experience I will never forget and I know that everything I learned during that time will help me later on in my path to my career.

July 30, 2020

To whom it may concern,

My name is Norma Morales, I am the Latino Community Liaison for the Milpitas Unified School District. I am writing this letter on behalf of Karen Garcia, an exceptional student and leader in the Milpitas community. I have known her since 2017 which was her freshman year at Milpitas High School. I met Karen when she walked into my office to ask for guidance on how to create a roadmap to college. As the Latino Community Liaison, I am specifically in charge of assisting the Latino student community succeed academically and professionally.

Karen is a student who is determined and consistent in reaching her goals. Throughout the years I got to meet Karen in many stages in her life. From the struggles to her successes. Not only she approached me for help on her roadmap but we also worked extensively with the MUSD in order to get her approved for the 504 plan, which is a plan developed for students with disabilities to get the accommodations needed to have access to their education. Due to her glaucoma it was hard for her to read the textbooks and even look at the board. We tried to get this plan and would not get approved but Karen never gave up and insisted to try again until we were able to get her the plan she needed. She is the type of person that will not hesitate to ask a question or raise a concern so we can all discuss it.

I also helped her look for resources for school clubs she took lead roles and created. These include being the president for MHS FIDM arts club which focuses on being a safe space for everyone to express themselves creatively. Also, being the Vice President at MHS Club Sweethearts, a club that spreads awareness for any condition on young adults, such as diabetes, anemia, etc. Her passion for community involvement has led her to also volunteer at other organizations such as the Vitas Hospice Healthcare in the admissions office and becoming a camp counselor at camp loma mar where she became a role model for the future student generation. I have no doubt Karen will achieve anything she believes because she is a motivated leader that does not think twice about taking the initiative when planning a project.

Sincerely,

Norma Morales
Latino Community Liaison (Grades 7th-12th)
nmorales@musd.org
408-635-2600
ext. 5034



Milpitas Recreation & Community Services

YAC COMMUNITY SERVICE SCHOLARSHIP APPLICATION

Scholarship Application and Questionnaire Due: July 31, 2020

The City of Milpitas Youth Advisory Commission has established a scholarship program for Milpitas residents currently in high school, junior or senior (outgoing) standing, looking for assistance to continue their education. A \$500 monetary scholarship will be awarded to one (1) high school junior or senior. The recipient must meet the following criteria and will be selected by the Youth Advisory Commission:

- Must be a high school junior or senior and a resident of Milpitas.
- Must demonstrate a history of community service beyond any school requirements.
- Must demonstrate exemplary leadership and be a role model in his/her community.
- Must complete the scholarship questionnaire, consisting of one short essay question.
- Must possess a minimum 2.5 accumulative, weighted GPA. Transcript is required.
- One (1) letter of recommendation, including contact information, from a teacher, counselor, or organization leader.
- Applications must be received no later than July 31, 2020 at 5:00 p.m.

Please Print

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Milpitas High School	stanford	
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<i>Graduating High School</i>	<i>College or University you plan on attending</i>	
4.0		
<i>GPA (accumulative, weighted)</i>		

Note: Please attach transcript. GPA and transcripts will be kept confidential.



Milpitas Community Center, 457 E. Calaveras Blvd., (408) 586-3210
Milpitas Senior Center, 40 N. Milpitas Blvd. (408) 586-3400
Milpitas Sports Center, 1325 E. Calaveras Blvd., (408) 586-3225

YAC COMMUNITY SERVICE SCHOLARSHIP QUESTIONNAIRE

(Attach to application)

Please type your response to the following short essay question on a separate piece of paper. Response should not exceed 500 words.

1. Tell us about the Community Service project that you were most proud of and what have you learned from that experience.

All applications and questionnaires are to be submitted **by email**, by July 2, 2020 to:
Anthony Teschera
Recreation Program Coordinator
E-mail: ateschera@ci.milpitas.ca.gov
Questions: 408-586-3231

I, the undersigned, do hereby agree to allow the individual named herein to participate in the YAC Community Service Scholarship program. I certify that all statements made in this application are true and correct to the best of my knowledge, and I agree and understand that if I am to receive this scholarship, any false statements may result in my disqualification.

DocuSigned by:

Myla Choates

8CDE8DE788B0442
Signature of Applicant

7/28/2020

Date

1. Tell us about the Community Service project that you were most proud of and what you have learned from that experience.

My name is Nyla Choates and I am a 17-year-old incoming senior at Milpitas High School. A recent community service project of mine was organizing the Black Lives Matter x Milpitas peaceful protest. I was motivated to take on this project after my city was being extremely quiet about the injustices that were and still currently happening in the Black community. I had gone to a couple of protests in nearby cities, but was put-off to know that my very own city wasn't speaking up or taking any type of action to show its support. I then remembered one of my favorite quotes "You have to be the change you want to see in the world" - [Mahatma] Gandhi. I then began planning on how I was going to be the change I wanted to see in my community. I definitely had my doubts and struggles throughout the process of the peaceful protest. Such as being afraid of no one coming, things getting out of control or having people who don't agree with the movement showing up. I had to keep reminding myself why I was having the march in the first place, which was to honor the lives lost due to police brutality. I knew I had to fight for them, and I knew my city needed to break silence and show their support for the Black Lives Matter movement as a whole.

I have been in many leadership positions before, from being Junior class president, Black Student Union president, and school board representative. Unlike those positions, this one resonated with me the most. Since no one else was speaking up, I decided to be the voice of change. With the support of my friends, family and teachers, I began planning, this event was put on through my non-profit My Roots Are Rich, its mission is to empower, inspire and educate people about the rich history of African Americans and their contributions to America. Throughout the process, I learned that my city was extremely supportive towards the movement, they just needed someone to lead [it]. Once I began planning, I got help from different people for unexpected tasks. I also learned that it is vital to have a support system to lean on.

The Black Lives Matter movement means hope. Hope that one day we will no longer have to say the phrase. Hope that there will be justice against the injustices happening each day to the black community. The Black Lives Matter movement affects my personal life in every way. From seeing a new police brutality video, hashtag, or wrongly incarcerated black person. The Black Lives Matter movement is and will be my everyday life until I'm no longer in fear of being the next person added to the lists of names. This is not a moment of time, but a movement in the right direction. Let's not let the fire die down, Black Lives Matter now, tomorrow, and forever.



Milpitas High School

1285 Escuela Parkway, Milpitas, California 95035 (408) 635-2800

To whom it may concern:

Nyla Choates is strong, independent, and inspiring. I actually do not think there are enough adjectives to fully describe how amazing this young woman is. It gives me great honor to recommend Nyla as a recipient of the Milpitas YAC Community Service Scholarship.

Prior to this summer I had only met Nyla a couple of times around campus. On the Milpitas High School campus Nyla is known as a leader. She is the President of the Black Student Union and she is in ASB. She is vocal about what is right, she is a supporter/advocate for all students, and she is a star in the classroom. Unfortunately I have not had the opportunity to have Nyla as a student but I was incredibly blessed that our paths crossed.

On June 4th 2020, I received a text message from a colleague expressing that her student Nyla Choates was organizing a Black Lives Matter protest in Milpitas and was wondering if a coworker and I could offer up some advice throughout the process. We met with Nyla a few days later to go over what she had in mind. Nyla witnessed her community maintain a silent voice after the death of George Floyd and she became the voice that we all needed. Nyla was the driving force behind the protest. She acted with more style, grace, and maturity than most adults I know. She met with the principal of MHS, the superintendent of MUSD, and constantly was in constant contact with the Milpitas Police Department. She knew if she wanted to reach as many people as possible and evoke real change she would need all stakeholders to be involved. As a junior in high school she knew the importance of letting all voices be heard. The protest gained so much attention and spirit. There were over a thousand people in attendance. We peacefully marched from the High School to the Milpitas City Hall. Nyla led the march and the speeches. Her words brought everyone to silence and tears in my eyes. She showed so much emotion, strength and intelligence. She then set the stage for other young adults to be heard. I think the young voices are so often overshadowed and silenced but they have the strongest impact. Then of greatest maturity, she invited the head of police to speak. This act cannot go unnoticed. By having the police chief present, he listened and by giving him a chance to speak, we heard that he listened and hopefully it was a step towards making real change. As I mentioned before Nyla did more for the Milpitas Community then almost anyone I know. She was a voice, she was a leader, and she was an inspiration for the whole community.

Every year I have hundreds of students enter my life. Nyla is a student that I feel so honored to have met. Nyla constantly shows perseverance and determination through all obstacles in life. She has a heart that knows no limits of compassion and I know there will be no limit or ceiling to her accomplishments. If you are ever in need any additional information, please feel free to contact me at 408-635-2800 ext. 3905 or by email at cbellott@musd.org.

Sincerely,

Caitlin Bellotti
Teacher, Milpitas High School



Milpitas Recreation & Community Services

YAC COMMUNITY SERVICE SCHOLARSHIP APPLICATION

Scholarship Application and Questionnaire Due: July 31, 2020

The City of Milpitas Youth Advisory Commission has established a scholarship program for Milpitas residents currently in high school, junior or senior (outgoing) standing, looking for assistance to continue their education. A \$500 monetary scholarship will be awarded to one (1) high school junior or senior. The recipient must meet the following criteria and will be selected by the Youth Advisory Commission:

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- Must demonstrate a history of community service beyond any school requirements.
- Must demonstrate exemplary leadership and be a role model in his/her community.
- Must complete the scholarship questionnaire, consisting of one short essay question.
- Must possess a minimum 2.5 accumulative, weighted GPA. Transcript is required.
- One (1) letter of recommendation, including contact information, from a teacher, counselor, or organization leader.
- Applications must be received no later than July 31, 2020 at 5:00 p.m.

Please Print

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<i>Last</i>	<i>First</i>	<i>MI</i>

[Redacted]

Street, City & Zip

[Redacted]

Phone

Email

Milpitas High School
Graduating High School

Stanford University
College or University you plan on attending

4.40 *GPA (accumulative, weighted)*

Note: Please attach transcript. GPA and transcripts will be kept confidential.



Milpitas Community Center, 457 E. Calaveras Blvd., (408) 586-3210
 Milpitas Senior Center, 40 N. Milpitas Blvd. (408) 586-3400
 Milpitas Sports Center, 1325 E. Calaveras Blvd., (408) 586-3225

YAC COMMUNITY SERVICE SCHOLARSHIP QUESTIONNAIRE

(Attach to application)

Please type your response to the following short essay question on a separate piece of paper. Response should not exceed 500 words.

1. Tell us about the Community Service project that you were most proud of and what have you learned from that experience.

Attached to email.

All applications and questionnaires are to be submitted **by email**, by July 2, 2020 to:
Anthony Teschera
Recreation Program Coordinator
E-mail: ateschera@ci.milpitas.ca.gov
Questions: 408-586-3231

I, the undersigned, do hereby agree to allow the individual named herein to participate in the YAC Community Service Scholarship program. I certify that all statements made in this application are true and correct to the best of my knowledge, and I agree and understand that if I am to receive this scholarship, any false statements may result in my disqualification.

Tran Le

Signature of Applicant

6/29/30

Date

One glance around Math Club: I was one of the few girls. Despite my attempts to contribute to the math riddles, the majority ignored me. Feeling uneasy and alienated, I was determined to catalyze a future school where every student could thrive with prevalent inclusivity and empowerment.

My determination to bridge the gender and education gaps—along with my interests in science and technology—sparked STEMgirls. As I drafted the constitution, my vision to bridge the STEM gender gap suddenly seemed unrealistic; I had neither funds nor connections. I began to inquire my teachers and utilized LinkedIn to connect with alumni. My first email received no response. I researched and drafted a better pitch. After weeks of emails and calls, the responses came. The STEMgirls members and I traveled all around the Bay Area, learning from powerful female engineers at Google to cancer researchers at Revolutionary Medicines. With widespread support, STEMgirls grew from 4 to over 100 participants.

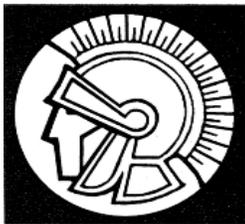
While working towards my vision, my childhood memories where educational camps were luxuries my parents could not afford inspired me to start a free STEM program for nearby underrepresented elementary students. After dedicating my summer to designing and raising funds, I then faced the most challenging part: convincing the administration teams that my idea was feasible.

Throughout the year, I introduced students to topics from chemistry with baking soda balloons to 3D printing with TinkerCAD. Through training more than 30 volunteers, I collaborated with my team to serve over 100 elementary students across three schools. I also encouraged other organizations like Math Club to coordinate more educational programs by sharing the resources I created from permission slips to program outlines.

Through STEMgirls, I have built strong connections with many professionals around the Bay Area. Witnessing their drive to succeed and invent solutions to worldwide issues motivates me to further my life endeavors. I now reach for goals that others deem unrealistic. I readily voice my perspectives and shatter stereotypes. Most importantly, I no longer let my current circumstances dictate my future.

By pursuing my computer science interest, I hope to not only cultivate my theoretical knowledge but also expand my creative technological mindset to innovate programs with greater impacts. When developing my own applications to combat more real-world problems in my future career, I hope to be able to apply my critical problem-solving skills I honed in my undergraduate degree to seek the right resources and answers. Furthermore, I also strive to continue learning from the unique perspectives of my peers and professors to thoroughly understand the world I will serve. The global connections that I will make in my higher education will serve as the foundations for

my social initiatives. With the computer science and entrepreneurial foundations I will learn in college, I intend to establish philanthropic organizations and further projects like STEMgirls worldwide.



Milpitas High School
1285 Escuela Parkway
Milpitas, CA 95035

Principal: Francis Rojas **Phone:** (408) 635-2800 **Fax:** (408) 635-2848

Assistant Principals: Skyler Draeger - Amanda Gross - Jennifer Hutchison - Jonathan Mach - Cheryl Rivera - Karisa Scott

Counselor Recommendation Letter for: Tran Le

January 21, 2020

Distinctive Qualities: It gives me great pleasure to recommend Tran Le as a strong candidate to be considered for any scholarship opportunities that may be available to her. I've had the pleasure of getting to know Tran over the course of this school year and last. Tran is bright, dedicated, and passionate about pursuing a major in a STEM related field pertaining to computer science, bioengineering, and potentially biochemistry. Tran is highlighting her academic strengths in STEM related subjects and enjoys sharing her knowledge with others through various endeavors and as a dedicated tutor here at Milpitas High School. Tran has been able to achieve an overall weighted GPA 4.45 while earning a 1540 on her SAT. She has continuously challenged herself by taking rigorous courses, including 5 advanced placement, 2 honor courses and various community college classes.

Areas of Impact/Interests: Tran has been involved in numerous activities both at Milpitas high school and outside: Founder of STEMgirls club, elementary outreach founder and coordinator, co-founder of Hopsforopps.com, director of photography and most recently president of the Milpitas high school American Red cross club. Tran was presented with a certificate of achievement in August of 2018 at a Milpitas Unified School District Community Board Meeting signed by Daniel Bobay, the president of the Milpitas Unified School District Board of Education and Superintendent Cheryl Jordan for her team's accomplishment at the Google VEX Robotics Competition and for STEMgirls and its impacts on the MUSD community. A pivotal highlight for STEMgirls includes coordinating ten plus workshops for the Milpitas Student body that featured guest speakers from Milpitas High School Alumni who now work for various organizations in the Silicon Valley. Tran extended STEMgirls to one of our nearby elementary schools Weller and feels inspired to help shape the vision for young female scholars. Her initiative with Weller elementary has now expanded to two other elementary schools in the Milpitas district. Tran has contributed numerous amounts of hours during her time in the American Red Cross club and a high light for her includes fundraising and donating emergency first aid kits to staff and resources. As director of photography for Girls Genius magazine, she combines her love for photography and uses it as a platform to creatively capture steam related photos for the 2nd issue of the magazine. She feels privileged to represent Girls Genius Magazine and feels strongly about mentoring other members on how to work with exposure, aperture, and shutter speed to create images.

This prior summer, Tran spent her summer networking and working with Cadence Design Systems in San Jose. She had the opportunity to receive a stipend which allowed her a platform to study computer science. She dedicated more than 250 hours where she helped create 12 plus coded mini projects in python, data analysis, web development, and robotics. A highlight for her was working with a team to study coding and creating Hopsforopps.com. Tran feels strongly about having created a platform for students and families of underrepresented communities to access equal educational opportunities and the website is just that.

Student Self Reflection: Tran's leadership is reflective in her tenacity to do meaningful work through her involvement with various organizations and in her community. She is highly resourceful and has a charismatic presentation of self as an immigrant and the first in her family to attend a four-year university. She displays a sincere maturity in her demeanor that stands out and I know that she is going to be a fantastic addition at the collegiate level. She has a unique intuition for supporting her peers and has great peer and staff relationships. She is in the top 5% of students that I have come across and I highly recommend her for scholarship opportunities that will help support her in her post-secondary endeavors. If you should need any further information, please feel free to contact me.

Sincerely,

Adrian Hernandez / School Counselor / adhernandez@musd.org

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	100-3750	\$2,500	100-1644221	\$2,500

Approve five Youth Advisory Commission Community Service Scholarships of \$500 each for a total amount of \$2,500.

Background:

The Youth Advisory Commission (YAC) Community Service Scholarship was established and approved by City Council in 2013 and has been an annual Commission work plan item for the past seven (7) years. The purpose of the scholarship is to encourage and provide financial assistance to Milpitas youth so they may continue their education by attending trade school, college or other like secondary education courses. The YAC Scholarship is service-based and provides scholarships of \$500 to Milpitas residents going into their senior year in high school or outgoing seniors continuing their education.

As part of their approved FY 2019-20 Youth Advisory Commission work plan, Commissioners were tasked with helping to promote the YAC Scholarship in the community, review scholarship applications and make recommendations for final approval by the City Council.

Analysis:

The YAC Community Service Scholarship application was distributed to the general community through the City of Milpitas website, Social Media pages, Teen Center email list, and registered students at Milpitas High School and Calaveras Hills High School. Applicants were required to demonstrate and detail a history of community service beyond school requirements, show exemplary leadership, and be a role model in their community. Applicants submitted a 500-word essay on their proudest community service project and what they learned from the experience, one letter of recommendation from a teacher, counselor or organization leader and possess a minimum 2.5 accumulative GPA. YAC received 13 scholarship applications and reviewed those submittals at their August 13, 2020 meeting. Typically, YAC awards one scholarship to a deserving Milpitas student. Because of the COVID-19 pandemic, and its impact on many Milpitas families income, the Commission is recommending five (5) scholarships in the amount of \$500 each, for a total of \$2,500. Monies for this scholarship are from proceeds from past YAC events like the youth Spelling Bee, Math Competition, and Hack-A-Thon. Seated Youth Advisory Commissioners are not eligible for this scholarship.

Policy Alternative:

N/A

Fiscal Impact:

The is item requires a budget appropriation of \$2,500 from the Youth Holding Account into the Recreation and Community Services operating budget. The Youth Holding Account balance is \$15,088.65 which includes monies derived from donations, grants and fundraisers hosted by the Youth Advisory Commission.

California Environmental Quality Act: N/A

N/A

Recommendations:

Approve budget appropriation of \$2500 to the Recreation and Community Services Department operating budget for five individual \$500 Youth Advisory Commission Community Service Scholarships.

Attachments:

1. Scholarship Application essays
2. Budget change form

Check if City Council Approval required.

Meeting Date: September 15, 2020

Requested by:	Department Head: Renee Lorentzen	Date: September 15, 2020
Reviewed by:	Finance Director: Walter C. Rossmann	Date: September 15, 2020
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive progress report from Urban Field Studio and Staff on the Milpitas Metro Specific Plan (TASP Update), discuss Plan objectives and priorities and provide direction on key planning concepts, multi-modal connections, and open space strategies
Category:	Community Development
Meeting Date:	09/15/2020
Staff Contacts:	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, Transit Area Specific Plan (TASP) Manager 408-586-3292
Recommendation:	Receive a presentation from staff; and, discuss Plan objectives and priorities and provide direction on key planning concepts, multi-modal connections and open space strategies.

Background:

On June 30, 2020, the City’s consultant, Urban Field Studio (UFS) and City staff met with the City Council to receive direction on initial urban planning and design concepts for the Milpitas Metro planning area. Since that time, the project team has continued to meet with key stakeholders and to develop key components of the specific plan update. During this same time, the Milpitas Transit Center has opened with BART service and the existing VTA light rail system connecting the City to the greater Bay Area. The long-range vision of the original Transit Area Specific Plan is now coming into sharper focus, even though the true value of these transit connections will not be fully realized until the current challenges of Covid-19 are effectively behind us.

Attached to this agenda report is an information report from UFS summarizing the key points from the previous City Council study session on June 30, 2020, and the results of a community survey conducted in July 2020. The report also outlines the additional direction requested from the Council on key concepts related to significant elements of the Metro Plan, including mixed-use development, multi-modal connections, and open space strategies. During this second study session with the Council, the project team will review background material from the first session and present a range of planning and design concepts for consideration and input from the Council. The project team will also facilitate a discussion with the Council to further clarify objectives and priorities and develop a design framework for future development of the area.

The information report from UFS also includes an attached Discussion Guide with questions for Council consideration and discussion at the Sept. 15th meeting. The input from this study session will allow staff and consultant to refine the plan concepts and further develop the policy framework for the Milpitas Metro Specific Plan.

Analysis:

A primary focus of the discussion with the Council will be the “big ideas” that were introduced in the first study session. These ideas include:

- Continuing to develop the Metro area with a mix of land uses to meet the needs of current and future residents, workers and visitors;
- Fulfilling the commitment to multi-modal connections throughout the Metro area; and
- Exploring concepts and strategies for providing sufficient high-quality open space and outdoor activi

Mix of Land Uses

As has been stated previously and as the Council is aware, the Great Mall was essentially untouched in the development scenario of the 2008 TASP. This 99-acre site has been a crucial generator of retail revenues over time, but the long view of the future of retail, and malls in particular, has been changing, and the Covid-19 pandemic has accelerated concerns about the ongoing viability of the Great Mall as it exists today. Exploring the possibilities for what eventually can be done on this and on abutting sites is now a major part of this Specific Plan update, as is expanding the geographic boundaries to the east and west for new opportunities.

Multi-modal Connections

Balancing the need for efficient traffic flow and ease of access through the Milpitas Metro area with safety and comfort of pedestrians and bicyclists will be an ongoing challenge for this project. The City's recent purchase of property to accommodate the extension of South Milpitas Blvd. into the Tango area demonstrates the Council's commitment to a multi-modal connections within the Milpitas Metro area. Other issues for consideration by the Council include moderating traffic speeds for pedestrian safety, narrowing vehicle travel lanes or medians for traffic calming, providing additional pedestrian crossing and bridges, and enhancing trails and open space along creeks. Options for future street connections within the Tango neighborhood will also be discussed.

High-quality Open Space

The Milpitas Metro Plan includes an effort to evaluate the public realm improvements laid out in the original plan and to explore ways to enhance or maximize the benefits of these public improvements. The important public benefits that should come with development include parks and open space, pedestrian and bicycle pathways and some remaining roadway and utility pieces that complete the critical connections throughout the Plan area. The project team will introduce a level-of-service approach to parks/open space for consideration and comment by the Council.

The presentation will also recap the public comments received in the Metro Plan survey provided online during the month of July, 2020.

Policy Alternatives:

This is an informational item for Council feedback and direction and is the second of several sessions for providing the Council with the progress of the update work for the Milpitas Metro Specific Plan.

Fiscal Impact:

This is an informational item. As such, there is no fiscal impact.

California Environmental Quality Act:

This report represents ongoing work on the Milpitas Metro Specific Plan; it is anticipated that an Environmental Impact Report (EIR) will be prepared for consideration prior to Plan adoption.

Recommendation:

Receive a presentation from staff; and, provide feedback and direction on Plan objectives and priorities for planning concepts, multi-modal connections, and open space strategies.

Attachments:

Project Report from Urban Field Studio
One-page Discussion Guide



Milpitas Metro Specific Plan Progress

Report prepared for the City Council Meeting on September 15, 2020

This report is a Project Update for the Milpitas Metro Specific Plan (formerly the Transit Area Specific Plan). It includes highlights from the last City Council meeting on June 30, 2020 and a brief summary of community engagement that occurred in July. The presentation at the City Council meeting on September 15th will also include proposed ideas for the Metro Plan. The big ideas presented address the **Great Mall Subdistrict, Completing Connections, and Open Space Level of Service**. These themes are briefly summarized in this report. Questions for City Council Members are on the last page. We recommend that you print this page out and have it handy during the presentation to note and speak to during the discussion period that follows. The Team is looking forward to your feedback on the ideas and priorities for the Specific Plan.

Recap of the City Council Meeting on June 30, 2020

The following summarizes Council member comments that address what kind of place Milpitas Metro should become and what future improvements City Council would like to see. Comments have been grouped into the following themes:

1. Make the Milpitas Metro Area a **vibrant destination**.
2. Create a **sense of community and connection**.
3. **Transit-Oriented and multi-modal**: Improve pedestrian and bike connections to make the options for getting around more attractive.
4. Improve **safety** for bicyclists and pedestrians, and add a new police substation to serve the area.
5. **Open Space**: Public spaces will be the front and back yards for the Milpitas Metro Area. Balance that space with natural elements and planting. Enhance the trails and walking paths. Celebrate water. Include good lighting. Include public art. Make it sustainable.
6. Provide **more equitable housing choices** for people of all ages (from kids to seniors) and all incomes to live and stay in the community.
7. **Mixed Use**: Bring in business and industry with office and retail. More mixed use is encouraged here to make it a more **complete neighborhood**.
8. **Great Mall**: Make a stronger connection to the Great Mall within the Plan Area. Rethink the site starting with the parking lots.
9. **Get ready for the Future**: Make Milpitas Metro a City of the Future with smart infrastructure and technology.

The ideas have been distilled into the Milpitas Metro Plan Objectives:

- To create a more complete neighborhood
- To expand neighborhood services and the variety of retail



- ❑ To preserve space for jobs near transit
- ❑ To provide affordable and market rate housing
- ❑ To provide safer and more attractive multimodal connections for walking and biking
- ❑ To provide a greater variety of shared public spaces
- ❑ To enhance the sense of place and identity of the Metro Area

Housing in Milpitas Metro

Milpitas Metro continues to be a major opportunity site for housing development in Milpitas. The process to define 6th cycle RHNA allocations for cities throughout the Bay Area is underway, and will likely bring a RHNA allocation more than 200% of the 5th cycle allocation. The City's next Housing Element is due in January 2023, and the process to develop it has not yet begun, however Milpitas Metro planners have been coordinating with Housing staff to support them as much as possible.

The current draft capacity for additional residential units in Milpitas Metro is 5,000-7,000 total, with 2,000-4,000 units on the Great Mall site, and 3,000 units on other sites. When the Housing Element is developed the City will determine which sites are included in the Housing Element. This may or may not include all the developable sites in Milpitas Metro.

Community Engagement Update

An online community survey, posted on the project website - milpitasmetro.org - was open between July 1 and August 2, 2020, which collected a total of 316 responses. Notice of the survey was distributed via the City's social media channels, and was sent to all City Committee and Commission members. The survey was available in English, Spanish and Chinese. Of the respondents, 59% live in and 10% work in the Milpitas Metro Area. Two-thirds of respondents have been involved in the Milpitas Metro Area for more than 5 years. The survey asked about demographics, favorite/least favorite places, areas for new housing, retail and office, commute patterns, public spaces, and other community services and amenities.

The key takeaways from the survey were:

1. Physical accessibility and retail/restaurant activity are the biggest determiners of how much people like an area
2. Pedestrian and bicycle connectivity and safety is a major concern throughout the Plan Area and particularly from the neighborhoods to the Transit Center
3. Automobile congestion is a concern
4. There is a demand for more retail activity, including cafes, restaurants, and grocery stores.
5. There is demand for more open space, particularly spaces that support social gatherings.

**The 5 most popular issues mentioned:**

1. Pedestrian/Bicycle Access and Safety (24%)
2. Dining/Retail/Grocery Stores (15%)
3. Housing (15%)
4. Parks and Open Space (14%)
5. Identity (10%)

More Community Engagement Opportunities: A live online Open House will be held on September 30th. The online workshop will include a presentation of the Milpitas Metro Framework Plan, real-time polling, chat based Q&A and public comment. A summary of workshop materials and an online survey will be available for two weeks after the event on the project website: milpitasmetro.org.

Great Mall Subdistrict

A major theme of the Metro Plan is to create a more complete neighborhood. This includes expanding neighborhood services and the variety of retail, preserving space for jobs near transit, moving towards a more urban pattern with safer multi-modal connections for walking and biking, providing a greater variety of shared public spaces, and enhancing the sense of place and identity of the Metro Area.

The Great Mall Subdistrict was largely left alone in the original Transit Area Specific Plan (TASP). The Subdistrict includes the Great Mall, the former VTA Bus Depot, JW Marriott Hotels, Stratford School, and a few more stakeholders. The next 20 years will likely bring a big change to the mall site, which is timely for the Metro Plan.

Mixed-use development will likely become more attractive as it has on other mall sites in California. The retail industry had already been experiencing declining interest in the indoor mall setting and had been anticipating shifts in habits and trends towards retail mixed with housing and outdoor amenities pre-COVID. Anticipated retail closures may also shift towards different commercial uses, perhaps as offices or diversify from being primarily regional to lifestyle or neighborhood retail categories.

There is an opportunity for this destination to have a bigger diversity of retail, housing, and employment. The regional draw for the area will also be strengthened with the BART Station opening. The Metro Plan will treat the Great Mall Subdistrict as an opportunity site for transit-oriented development much like what has been planned around it. It is also a site that could accommodate neighborhood amenities that would complete the Metro Area.



The Great Mall Subdistrict has the potential to transform over the next 20 years. The graphic below is an illustration of the major moves at the site, which range from redeveloping surface parking lots, to replacing part of the mall or even considering the entire site.



The Great Mall is 1,400,000 sf and the entire subdistrict is 99 acres (includes multiple property owners)

The Specific Plan may include some of the following ideas:



Phase Development to Create a Walkable Street Network



Create a Central Outdoor Gathering Space



Require Ground Floor Commercial Spaces



Enhance the Subdistrict Edges



Here is a Summary of the Ideas for the Great Mall Subdistrict that we invite your feedback on:

- Allow for more land uses: housing, office, and different types of retail
- Establish a more walkable street network within the subdistrict
- Create a big, centralized outdoor gathering space (about 1 acre) within the subdistrict and a new linear park on Great Mall Parkway
- Enhance the Great Mall subdistrict edges with urban development in order to house as many people as possible close to the Transit Center and Great Mall Parkway
- Require affordable housing on site
- Continue to require ground floor commercial spaces

Do these ideas reflect your priorities for the Great Mall Subdistrict?

Completing Connections

As we learned from the community survey, physical accessibility is a big determiner of how much people like an area and that pedestrian and bicycle connectivity and safety is a major concern throughout the Plan Area and particularly from the neighborhoods to the Transit Center. Automobile congestion is also a concern.

The Metro Plan will present a concerted move towards safer multi-modal connections and options choosing walking and biking as active transportation modes. There is a strong need to increase the capacity of modes beyond cars and to consider the “First and Last Mile” connections to transit.

More connections are needed throughout the Plan Area

The survey responses suggested:

- A need for pedestrian overcrossing at Great Mall
 - We suggest that building pedestrian overcrossings should be avoided when possible
 - We think that the Great Mall Parkway enhancements could address the desire for a better walking experience at the ground level.
- Traffic calming measures, road diets, and infrastructure upgrades to ensure safety of bikers, especially on Montague Expressway
 - Montague Expressway is a County Road and a major thoroughfare for the region.
 - We suggest building better bike and pedestrian trails and protected bike lanes parallel to, or off major roads like Montague Expressway, through the subdistricts. We will be proposing new street and park ideas for the Tango (Tarob/Sango) Subdistrict to illustrate this.
- More pedestrian-friendly spaces
 - We agree that we need to improve walkability and bikeability both within the Plan Area and to the Plan Area from other parts of Milpitas

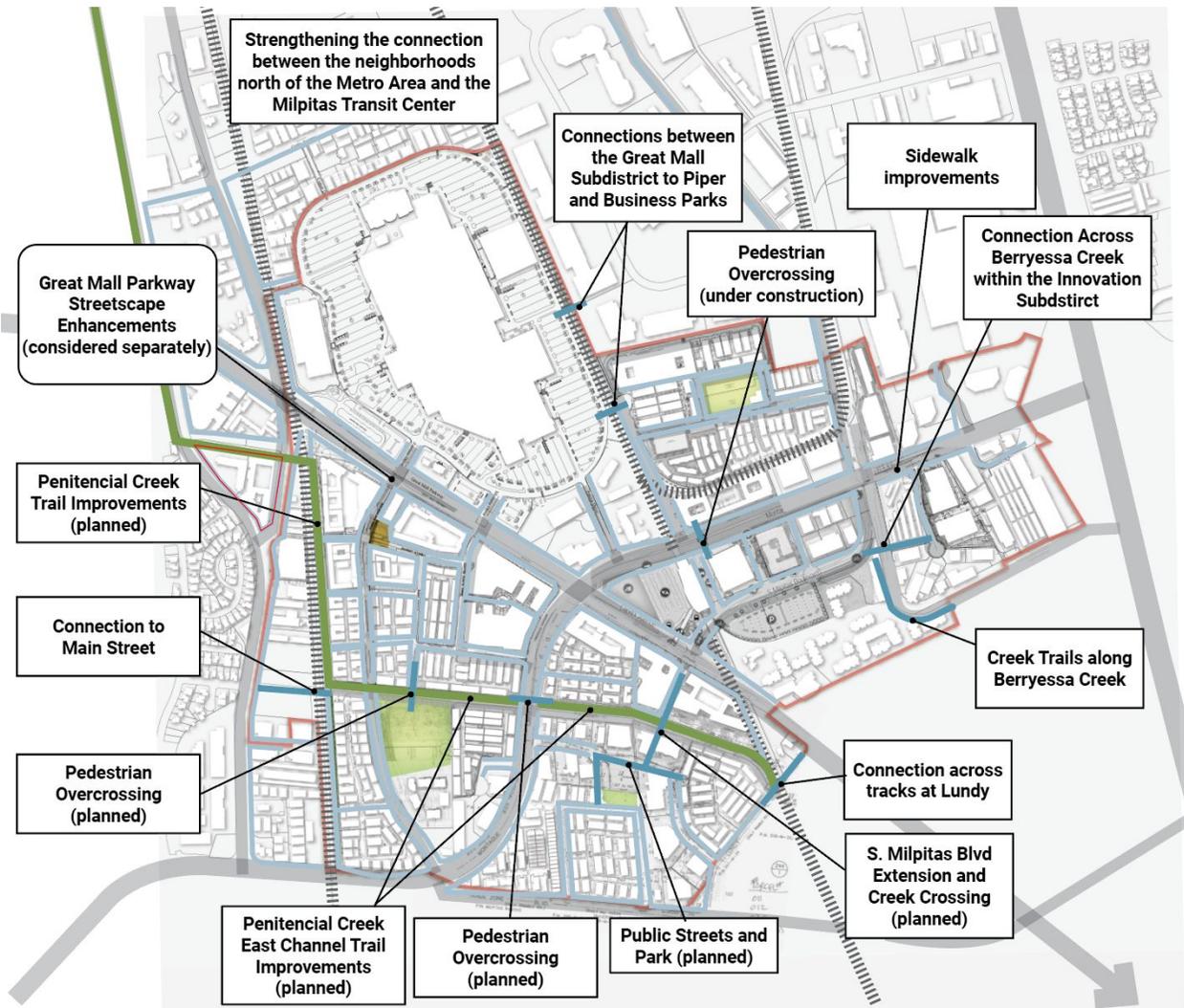


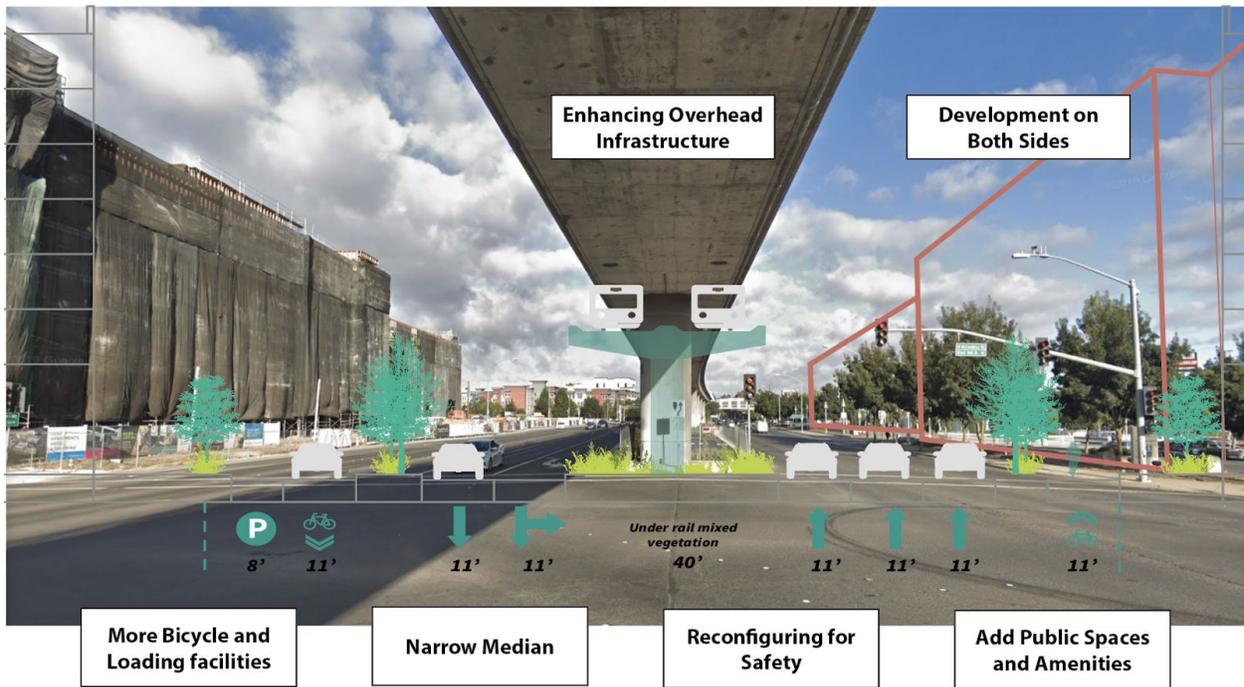
There are many new pedestrian and bike connections that could be made throughout the Metro Area to bridge the barriers that separate the Plan Area. There are connections over creeks, major streets, and between districts that improve the connectivity of the neighborhood.

Some projects are planned and have identified funding sources, others are potential connections that could make walking and biking easier. The funding for each of these projects may come at different stages over the Metro Plan horizon. Not all of these projects may be feasible, but we ask you to help us establish the priority for deciding which projects are the most important for the area.

Over the next 20 years the Capital Improvement Program for this area could include a number of projects that help complete connections. Here is a list of some that are planned or under construction and new ideas that fall into these general categories: Great Mall Parkway, Creeks, New Streets, and New Parks.

Planned/Under Construction	New Ideas
<ul style="list-style-type: none"> ● A Pedestrian Overcrossing over Montague Expressway at the BART Station Parking Garage ● A Pedestrian Overcrossing over Montague Expressway at Penitencia Creek ● A Pedestrian Overcrossing over Penitencia Creek to McCandless Park ● S. Milpitas Blvd Extension and Creek Crossing ● Tarob and Sango Court Street Connections ● A new Park in the Tango Subdistrict ● Creek Trails improvements along Penitencia Creek ● Creek Trail improvements along Penitencia Creek East Channel 	<ul style="list-style-type: none"> ● Great Mall Parkway Streetscape Enhancements ● A new connection across Berryessa Creek in the Innovation Subdistrict ● Creek Trails along Berryessa Creek ● A connection to Main Street across the Lower Penitencia Creek and Train Tracks ● Strengthening the connections between the neighborhoods north of the Great Mall subdistrict and the Milpitas Transit Center ● Intra-district connections across the BART tracks between the Great Mall Subdistrict to Piper and adjacent business parks ● Sidewalk improvements on Montague Expressway in the Innovation District ● A connection across tracks at Lundy





Great Mall Parkway Streetscape Enhancements

Presented at our last meeting, the Specific Plan will likely include a Multi-Modal transformation for the Great Mall Parkway as a way to improve the street and improve safety for pedestrians and bicyclists. It would mean:

- ❑ Moderating speed or traffic for pedestrian safety
- ❑ Narrowing vehicle travel lanes and narrowing the center median
 - ❑ Adding protected bike lanes
 - ❑ Adding a frontage road for loading
 - ❑ Adding a linear park
- ❑ Enhancing the overhead structure with public art

Creek Enhancements

Creeks are both a barrier and an amenity for the area. Creek enhancements were in the previous TASP. We have been talking with Valley Water to further implement the ideas proposed. The constraints and challenges for creeks within the Plan Area are about flood control and public use.

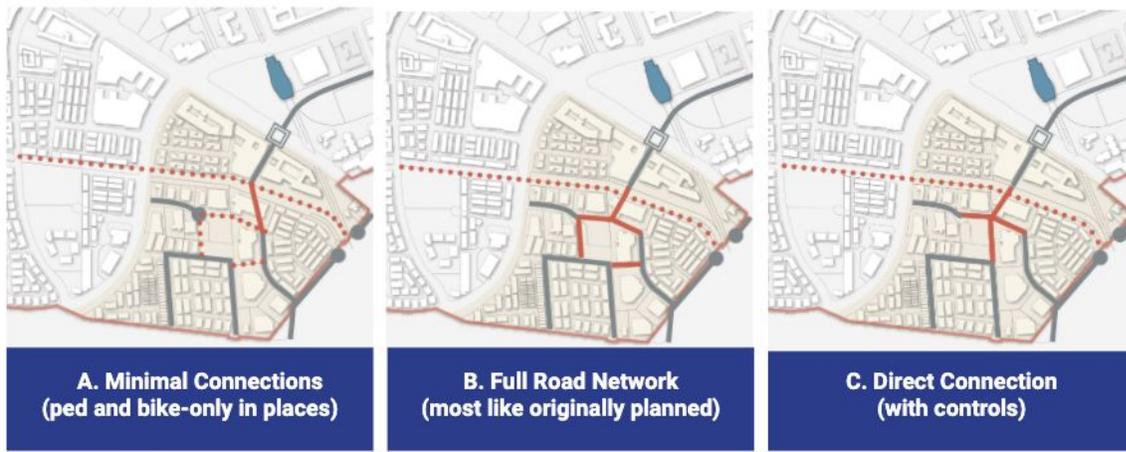
The ideas for the creeks include:

- ❑ Adding crossings and bridges where possible
- ❑ Enhancing trail edges with landscaping and lighting
- ❑ Making the creek channel more attractive
- ❑ Joint use of maintenance roads
- ❑ Landscaping flood control areas



Connecting Tarob and Sango Courts in Tango Subdistrict

There are many options for the Tango Subdistrict, the least connected subdistrict, in the Milpitas Metro Plan Area. The options shown below present a range of ways to improve connectivity to the Milpitas Transit Center and the McCandless Subdistrict. The City has recently purchased parcels for park lands in the area. It is now important to consider how the connections are completed into the Tango Subdistrict.



There are ideas for new streets in the Tango Subdistrict that connect Tarob and Sango Court. The dotted red line is for bikes and pedestrians only. The solid red line indicates a typical neighborhood street that includes cars. The streets could also include traffic calming solutions such as bollards and designated for limited vehicle access.

Which has a higher priority?

- Vehicular Traffic Speed and Ease of Access
- Pedestrian and Bicycle Connections

Which ideas support your priorities amongst the ones presented for the Great Mall Parkway Streetscape Enhancements, Creek Connections, and Tango Streets?

Open Space Level of Service

The survey revealed that people really want a place to gather, contemplative spaces and recreational spaces in this urban setting for open spaces. Urban open spaces are a new type of park for the City of Milpitas. Open spaces for the urban neighborhood residents will be the “backyard” and the amenities that come with it should include a variety of spaces that range from Active to Contemplate to Social Gathering. The types of spaces suggested should include a Central



Gathering Place (like a Town Square), a neighborhood serving park, and a network of walking paths along the creeks and in a linear park format on major streets.

Active

Supports exercise and interactive elements



Trails (Creek Paths) Promenades (Linear Parks)
Playgrounds
Dog Parks

Contemplative

Supports meditation and relaxation



Small Plazas
Pocket Parks
Community Gardens
Rooftop Decks
Outdoor Seating

Social Gathering

Supports gatherings and community building



Central Square
Farmer's Market
Performance Venues
Outdoor Dining
Event Spaces

The Existing Park Approach

Parks and open spaces are an integral part of the urban fabric. They increase property values, create a sense of place, and support public health and ecological functioning. Parks have historically been managed by working to provide a set number of acres per person. This is a suburban model and no longer possible within the Milpitas Metro Area based on a land availability and cost basis.

Level of Service (LOS) Approach

As neighborhoods urbanize, new models for evaluating park/open space success are needed. We ask you to consider using a "Level of Service" model to prioritize a variety of experiences and access over the existing park approach in the Milpitas Metro Specific Plan Area only. This model has been used in other cities to add variety and proximity as factors to consider, not just size.



The proposed Open Space LOS would:

- Require new developments to provide a ratio of private open space per residential unit
- Use a level of service rating to evaluate public space and count the private amenities provided by new development
- Improve existing public spaces by expanding the level of service through programming

Should the Milpitas Metro Plan use a level of service approach to parks/open space in place of an acreage to population ratio?

Preparation Guidance for our Next Meeting

The next page of this report is a Summary of Questions to City Council Members

The discussion period of questions will follow the presentation.

Please note that we aren't looking for decisions on the plan, rather advice for direction.

We know this is a lot of information to consider and welcome written comments if you include the Clerk on your correspondence.

We recommend that you print and use this next page during our presentation to note your responses for the discussion portion that follows.



Questions for City Council

1. **What do you think about the following draft Milpitas Metro Plan Objectives?**
 - To create a more complete neighborhood
 - To expand neighborhood services and the variety of retail
 - To preserve space for jobs near transit
 - To provide affordable and market rate housing
 - To provide safer and more attractive multimodal connections for walking and biking
 - To provide a greater variety of shared public spaces
 - To enhance the sense of place and identity of the Metro Area
2. **Do the following ideas reflect your priorities for the Great Mall Subdistrict?**
 - Allow for more land uses: housing, office, and different types of retail
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 - Enhance the Great Mall subdistrict edges with urban development in order to house as many people as possible close to the Transit Center and Great Mall Parkway
 - Require affordable housing on site
 - Continue to require ground floor commercial spaces
3. **What is the highest priority for connections? (Pick One)**
 - Vehicular Traffic Ease of Access
 - Pedestrian and Bicycle Connections
4. **How are your priorities supported in the ideas presented for the Great Mall Parkway Streetscape Enhancements, Creek Connections, and Tango Subdistrict?**
 - a. Great Mall Parkway Enhancements (Summary listed for reference)
 - i. Moderating speed of traffic for pedestrian safety
 - ii. Narrowing vehicle travel lanes and narrowing the center median to allow for other uses like: protected bike lanes, a frontage road for loading, and a linear park
 - iii. Enhancing the overhead structure with public art
 - b. Creeks Connections (Summary listed for reference)
 - i. Adding crossings and bridges where possible
 - ii. Enhancing trail edges with landscaping and lighting
 - iii. Making the creek channel more attractive
 - iv. Joint use of maintenance roads
 - v. Landscaping flood control areas
 - c. Connecting Tarob and Sango Courts in the Tango Subdistrict
 - i. A. Minimal construction of new roads with ped and bike-only paths in places.
 - ii. B. As a traditional street grid, most like originally planned
 - iii. C. Minimal new roads to create Direct Connections with access controls like bollards
5. **Should the Milpitas Metro Plan use a level of service approach to parks/open space in place of an acreage to population ratio?**



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5. **Should the Milpitas Metro Plan use a level of service approach to parks/open space in place of an acreage to population ratio?**



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Designate Milpitas City Councilmembers as Delegate and Alternates to 2020 League of California Cities Annual Conference
Category:	Leadership and Support Services
Meeting Date:	9/15/2020
Staff Contact:	Mary Lavelle, 408-586-3001
Recommendation:	<ol style="list-style-type: none"> 1) Among those City Councilmembers registered and planning to be in attendance at the League of California Cities 2020 Annual Conference, move to designate one member to serve as the voting delegate. 2) Among those City Councilmembers registered and planning to be in attendance at the League of California Cities 2020 Annual Conference, move to designate one or two members to serve as the alternate voting delegate(s).

Background

The League of California Cities will host its Annual Conference and General Assembly business meeting from October 7 – 9, 2020, virtually this fall. Two Milpitas City Councilmembers, Vice Mayor Nuñez and Councilmember Dominguez, have registered for the conference.

Analysis

In order to represent the City of Milpitas for voting purposes at the business meeting on Friday, October 9, the City Council must vote officially to designate which specific members of the Council in attendance will be the voting delegate and possible alternates. Once selected, those names must be submitted by the City Clerk to the League no later than September 30.

It is important to note that transferring the voting card to non-designated individuals will not be allowed at the conference. Action taken by the City Council is the only method to permit voting at the conference.

Policy Alternative

Alternative: do not vote to select delegate and/or alternates

Pros: none

Cons: Milpitas will not have representation when resolutions and actions are voted upon at League Annual Conference, including the general assembly.

Reason not recommended: it is prudent and responsible to designate voting members for City of Milpitas at the conference, so this alternative is not recommended.

Recommendations

a) Among those City Councilmembers registered and planning to be in attendance (online via zoom webinar) at the League of California Cities 2020 Annual Conference, move to designate 1 member to serve as the voting delegate.

b) Among those City Councilmembers registered and planning to be in attendance at the League of California Cities 2020 Annual Conference, move to designate 1 or 2 members to serve as alternate voting delegate(s).

Attachment

June 30, 2020 League memo

Council Action Advised by August 31, 2020

June 30, 2020

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – October 7 – 9, 2020**

City Clerk's Office
JUL 07 2020
RECEIVED

The League's 2020 Annual Conference & Expo is scheduled for October 7 – 9. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, October 9. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Wednesday, September 30. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting. These procedures assume that the conference will be held in-person at the Long Beach Convention Center as planned. Should COVID-19 conditions and restrictions prohibit the League from holding an in-person conference, new procedures will be provided.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open by the end of July at www.cacities.org. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the

special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 7, 8:00 a.m. – 6:00 p.m.; Thursday, October 8, 7:00 a.m. – 4:00 p.m.; and Friday, October 9, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city’s voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League’s office by Wednesday, September 30. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2020 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Wednesday, September 30, 2020. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____

Email: _____

Mayor or City Clerk _____
(circle one) (signature)

Date _____ Phone _____

Please complete and return by Wednesday, September 30, 2020

League of California Cities
ATTN: Darla Yacub
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: dyacub@cacities.org
(916) 658-8254



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and authorize the City Manager to execute the Agreements between the City of Milpitas and Verizon, and AT&T, for the installation of Small Cell Facilities on Municipal Facilities
Category:	Leadership and Support Services
Meeting Date:	9/15/2020
Staff Contact:	Mike Luu, 408-586-2706
Recommendation:	Approve and authorize the City Manager to execute the Municipal Facilities License Agreements (MLA) with Verizon and AT&T to attach Small Cell Antennas to City-owned vertical infrastructure in the public right-of-way.

Background:

Information has been transmitted using different wavelengths of electromagnetic radiation for a very long time. Over the last four decades, the ability to transfer data over the air has evolved. In 1979, the first generation (1G) cellular network wherein high-power radio towers communicated directly with phones installed in cars. While 1G used analog signals and could only be used for voice calls, 2G was the first cellular network to use digital cellular technologies. 2G provided more bandwidth so in addition to calls, users were able to send data enabling text messages. By 1996, there were about 44 million mobile users being served by about 50,000 macro cell sites.

Deployed in the early 2000s, 3G allowed thousands of users to share many frequencies more efficiently and also enabled mobile web. The number of mobile users grew to more than 50 million with about 125,000 macro cell sites.

By 2010, the world had standardized on an international standard of signal modulation called "Long Term Evolution" ("LTE") which most people are using to today. LTE uses various signal modulation techniques to squeeze more information into the bits and bytes digitally transmitted over-the-air. 4G LTE made everything about 10 times faster. There are about 375,000 macro cell sites. Today over half the wired-telephone users in the U.S had given up their landline phones in favor of being wireless-only households.

With all the groundwork set, the newest wireless connectivity is referred to as 5G, the fifth generation of cellular wireless services. This technology can transmit and receive wireless data a capacity of 20 gigabits per second which is 10 times that of 4G with nearly zero latency rate which is the delay in sending and receiving information between devices. With more people using wireless devices than ever before, it is projected that the United States will use 5.6 Exabytes of mobile data per month in 2021 vs 1.3 Exabytes per month in 2016. Internet traffic is expected to grow 3-fold from 2016 to 2021, a compound annual growth rate of 20%.

Thus, demand for wireless broadband is expected to continue to grow exponentially over the next several years with tremendous increases in the amount of available connected devices. Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. These deployments are subject to land use review under the zoning code.

In recent years, companies increasingly seek to install wireless facilities in the public right of way (ROW) on utility poles, streetlights and new poles. To accommodate the ever-growing demand for wireless broadband

tele-communications industry is starting to look for small cell 5G (fifth generation of cellular mobile communications) technology to meet this demand. 5G technology is distinguished from the present 4G based wireless service by use of low power transmitters with coverage radius of approximately 400 feet – 5G thus requires close spacing of antennas and more of them. Streetlight poles and other poles are therefore ideally suited for 5G antenna placement due to their sheer numbers and locations where they are deployed throughout the City. From an aesthetic perspective, use of existing poles is typically preferred over installation of additional new poles in the public ROW.

Analysis:

As the owner of poles in the public ROW, the City is responsible for entering into license agreements with wireless carriers in order for those carriers to attach to the poles. A wireless carrier will likely apply for multiple locations in the City, and given the short deadlines or (shot clocks) by which federal law requires the City to act on each wireless application (60 days for small cell installations on existing structures and 90 days for new structures). It is not feasible to take a separate license agreement to the City Council for approval for each installation. Therefore, staff proposes the approval of these MLAs will provide Verizon and AT&T with the needed flexibility to add additional locations over time as coverage needs change under the same Agreement, in compliance with the City's applicable permitting processes and design regulations.

The MLAs contain a standard term of 10 years with up to three successive five-year renewals, which is consistent with state law. The MLAs also provide the flexibility for Verizon and AT&T to add, remove, or relocate locations in the City under the terms of this Agreement by applying for a Supplement for each location. The MLAs require insurance, explains the parties' rights and obligations with respect to use and damage to any City infrastructure, and requires Verizon and AT&T to provide a performance bond.

The MLAs also include an annual rent payment for use of the City property. Under a Federal Communications Commission ("FCC") declaratory order and regulations ("FCC Order") that went into partial effect on January 14, 2019 and full effect on April 15, 2019, the FCC declared that all fees (including permit fees and rental fees for use of government-owned infrastructure, such as streetlights) must be based on a reasonable approximation of the city's costs, such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly situated competitors in similar situations. Recurring fees, such as the rent fee for attachment to municipal infrastructure and use of public ROW, are presumed reasonable if equal to \$270 per facility/per year.

The legal validity of this FCC Order has been challenged, and the Ninth Circuit Court of Appeals recently upheld the FCC's requirements for fees discussed above. The appeal period for the Ninth Circuit decision remains open, but the effectiveness of the Order has not been stayed. Therefore, given the potential that litigation will continue, Staff is accounting for uncertainty in the fee terms of this Agreement. Staff recommends that for all periods when the FCC Order is in effect, the annual rent per location be the \$270 suggested by the FCC (increased annually by three percent (3%)). For any period that the FCC Order is not in effect, meaning that it is stayed by a court of law or it is vacated or invalidated and not been replaced by the FCC with an alternative provision setting a specific amount as rent, then the rent would increase to the rate of \$1,500.00. This rate reflects the rate in similar agreements in some other cities in California. Streetlight and other poles have clear value to wireless service providers that the City may reasonably expect to capture through its lease pricing.

Presentations have been made to the Science, Technology and Innovation Commission and the Economic Development and Trade Commission for their recommendations. Both Commissions unanimously recommended approval to the City Council.

The proposed Agreements reflect revisions requested by the carriers through the public comment period. In some instances, carriers made inconsistent comments and the proposed Agreements are the City's good faith attempt to reconcile all of those comments and propose a reasonable agreement.

The MLAs do not grant present possessory property rights or unfettered access to any specific City-owned property, nor do they provide for the deployment of small cells under relaxed standards or criteria as compared to small cells deployed without an MLA. Further, the MLAs do not function as a substitute for any regulatory

approvals that would otherwise be required, including, for example, encroachment permits, traffic control permits, and electrical permits. The MLAs merely establish the procedures, terms and conditions under which the licensee may install wireless facilities on City-owned streetlight poles, request a site license (as further described below) or batch site license applications.

The MLAs contain the uniform terms and conditions applicable to all wireless facilities on City-owned structures in the public ROW and they work toward accomplishing the following:

- Establishing Site License Application and review process exclusive to parties to the MLA.
- City retaining absolute authority to deny any Site License Application for a facility that would create a hazardous or unsafe condition, or that fails to comply with the FCC's RF emissions standards.
- Setting baseline standards for construction, operation and maintenance of licensee's facilities on City-owned poles to ensure safe operation and consistency with community aesthetics.
- Strongly encouraging carriers to utilize existing City-owned poles whenever possible.
- Protecting the City's streetscapes by working in conjunction with the City's small cell design standards to strongly discourage the installation of new poles in the City's public ROW.
- Fostering robust wireless broadband services for City residents, businesses, and visitors.
- Preserving, in conjunction with the City's small cell design standards, aesthetic discretion for deployments on City infrastructure.
- Promoting efficient allocation of City resources to respond to individual Site License requests under the timelines set by the FCC-required shot clocks.
- Preserving City authority to check for compliance with City aesthetic standards and traffic safety regulations.
- Protecting the City's interests through indemnification requirements and limitations on the City's liability.

Policy Alternative:

Alternative 1: Do not approve the MLAs with Verizon and AT&T.

Pros: The City can enforce different terms within the boundary of the FCC Order and federal and state laws without being bound to a 10-year term.

Cons: The FCC Order limits the City's ability to regulate the use of city-owned vertical infrastructure for small cell facilities. The FCC shot clocks described above set 60 and 90 days shot clocks, depending on whether the small cell facilities are being mounted on an existing or new structure, in which the City must take final action, including all necessary City approvals and the MLA, on applications to install small cell facilities. The FCC Order also limits application fees and rent that the City can charge for installing small cell facilities on City-owned structures in the public ROW. The City can even face legal challenges for failing to take action on small cell applications within the short "shot clocks". Additionally, without any MLA, the City would need to find another means of establishing essential terms for installations on City-owned poles, such as performance of make-ready work, repairs, and pole replacements; indemnification; insurance; and rent.

Further, under state law, the wireless carriers have a franchise to install facilities within the public ROW. If the City does not allow installations on City-owned poles, and there are not sufficient alternatives in a given area, then there is a risk that the wireless carriers will seek to install new, standalone poles.

Reason not recommended: With the limits placed on the City's authority by federal and state laws, staff does not recommend the alternative due to the potential negative and complicating effects described above.

Fiscal Impact:

Approval of new wireless communications facilities located on City infrastructure in the public ROW will generate revenue in the form of license agreements for each installation in accordance with federal and state laws. However, due to uncertainty of the timing and quantity of installations, an actual revenue amount cannot

be estimated at this time. As part of the annual budget development process, the revenue amount will be estimated based on the terms of the agreements and number of installations completed and permitted.

California Environmental Quality Act:

The authorization of an MLA is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. This agreement sets forth the legal terms and obligations for use of the City infrastructure in the public right-of-way. The authorization for Verizon and AT&T to attach antennas to this infrastructure is guided by existing state and federal law and the Milpitas Municipal Code. This action does not authorize any specific development or installation on any specific piece of property within the City’s boundaries, most of which will be placed on existing infrastructure, and is mostly a means to streamline the contracting process in accordance with federal shot clocks.

Alternatively, even if the authorization to use this agreement is a “project” within the meaning of State CEQA Guidelines section 15378, the action is exempt from CEQA on multiple grounds. First, the action is exempt from CEQA because the City Council’s action is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). This template agreement creates terms for wireless carriers should they apply to place facilities in the public right-of-way, often on existing City infrastructure.

Moreover, in the event that the action is interpreted to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land), as these facilities are allowed under federal and state law, are by their nature smaller when placed in the public right-of-way and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

Recommendation:

Approve and authorize the City Manager to execute the Municipal Facilities License Agreements with Verizon and AT&T to attach small cell facilities to City-owned vertical infrastructure in the Public Right-of-Way.

Attachments:

Municipal Facilities License Agreement between the City of Milpitas and Verizon
Municipal Facilities License Agreement between the City of Milpitas and AT&T

NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF MILPITAS, CALIFORNIA AND GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, FOR THE USE OF MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT

This Agreement is made and entered into by and between the **City of Milpitas, California**, a California municipal corporation (“Licensor” or “City”) and **GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless** (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

- A. Licensor is the owner of certain Municipal Facilities (as defined below).
- B. Licensee is GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless, and is authorized to conduct business in the State of California.
- C. Licensee desires to use space on certain of Licensor’s Municipal Facilities located in the public rights of way and public utilities easements within the jurisdictional limits of the City of Milpitas to locate, place, attach, install, operate, control, and maintain Small Cell Equipment (as defined below) on Licensor’s Municipal Facilities.
- D. Licensee will agree to comply with Licensor’s requirements as provided herein.
- E. Licensee is willing to compensate Licensor in exchange for a right to use and physically occupy portions of the Municipal Facilities as provided herein.

AGREEMENT

1. **Definitions and Exhibits.**

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Code* means Licensor’s Municipal Code.
- (b) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.
- (c) *Infrastructure* means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication

services to a Municipal Facility or otherwise located in the public right of way or other location controlled or owned by Licensor.

(d) *Interference* means physical interference and radio frequency interference.

(e) *Laws* means any and all applicable federal, state or local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency (including the Federal Communications Commission (“FCC”) or any successor agency) having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

(f) *Make-Ready Work* means the work required on or in a Municipal Facility to create space for the Small Cell Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Small Cell Equipment including, but not limited to, rearrangement or transfer of existing Small Cell Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

(g) *Municipal Facilities* means City-owned structures and Infrastructure located within the PROW and public utility easements that are designated or approved by Licensor as being suitable for placement of Small Cell Equipment including but not limited to those Licensor-owned street lights defined in Section X-1-3.04 of the Code, traffic light poles, and other similar structures. The term includes Replacement Poles as defined in Section 6 below.

(h) *Permit* means a permit issued under the Code, which includes zoning and land use planning permits such as conditional use permits, and those permits that monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the City PROW or public utility easements.

(i) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

(j) *PROW* (or public right-of-way) shall mean the right-of-way of any street, as defined in the California Vehicle Code used by the general public, owned and/or controlled by the City and part of the City system of streets located within the territorial limits of the City.

(k) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(l) *Site Supplement* means each separate site license authorization granted by Licensor, pursuant to Section 2 below, and substantially in the form shown on Exhibit A, which shall be subject to the terms and conditions of this Agreement.

(m) *Small Cell Equipment* means compact communications antennas, transmitters, wires, fiber optic cables and other wireless communications equipment (in addition to control boxes, cables and conduit power sources) utilizing small cell technology in compliance with applicable FCC requirements that is used to provide wireless communications, and is specifically identified and described in Exhibit 1 attached to each approved Site Supplement (as defined below).

(n) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

- (a) Exhibit A: Site Supplement.
- (b) Exhibit B: Minimum Limits of Insurance.

In the event of any conflict or ambiguity between this Agreement together with the above-referenced exhibits, and any approved Site Supplement, the approved Site Supplement (but only with respect to the subject matter addressed therein) shall govern and prevail.

2. License Grant and Terms.

2.1. Scope. Licensors, acting in its proprietary capacity as the owner of Municipal Facilities in the PROW and public utility easements, does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities identified in Exhibit 1 to each approved Site Supplement to attach, install, operate, maintain, remove, reattach, reinstall, and replace the Small Cell Equipment identified in Exhibit 1 to each such Site Supplement. This grant is subject to the terms, conditions and other provisions set forth in this Agreement. Licensee may place its attachments on any parts of Licensors' Municipal Facilities consistent with the City's Small Cell design guidelines.

2.2. Use of Licensors Municipal Facilities. An approved Site Supplement allows Licensee to access, occupy and use allocated available space on each of the identified Municipal Facilities in Exhibit 1 to the corresponding Site Supplement to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Equipment, as identified in such Exhibit 1. Licensee shall have access to the Municipal Facilities upon which Small Cell Equipment is installed 24 hours a day, 7 days a week.

2.3. Limitations on Use. Except as otherwise expressly provided herein, the Site Supplement does not authorize Licensee to:

- (a) Install, occupy or use any City-owned poles, improvements or structures of any kind, whether within or without the PROW, other than the items identified as Municipal Facilities shown in Exhibit 1 attached to an approved Site Supplement;

(b) Enter upon the PROW or public utility easements and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Small Cell Equipment in or on new or existing poles or other structures located within the PROW or public utility easements and not owned by Licensor; and

(c) Install, operate and maintain ground based, pad mounted equipment cabinets and/or power pedestals needed for the operation of Small Cell Equipment attached to any of the Municipal Facilities, unless approved by Licensor because it would not be technically feasible for Licensee to omit ground based equipment or power pedestal.

2.4 Alterations/Unauthorized Equipment. Licensee represents that it will not install unauthorized equipment. If Licensee proposes to install equipment which is different in any material way from the then-existing and approved Small Cell Equipment, then Licensee shall first apply for and obtain the written approval for the use and installation of the unauthorized equipment from an authorized representative of the Licensor via a new or amended Site Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Municipal Facilities upon which it intends to attach Small Cell Equipment or modify approved Small Cell Equipment in the PROW or public utility easements. Notwithstanding the foregoing, Licensee may modify its Small Cell Equipment with like-kind Small Cell Equipment without prior written approval of the Licensor including, without limitation, substitution of internal components that does not result in any change to the external appearance, dimensions, or weight of the attachment or that involves replacement with an attachment that is substantially the same, or smaller in weight and dimensions as the approved attachment. Licensee’s failure to comply with these limitations will constitute a material breach of the applicable Site Supplement. For unauthorized equipment that Licensee cannot demonstrate, within 30 days after receiving notice, is authorized, Licensor may impose liquidated damages in an amount not to exceed \$1,000, and in addition, Licensee shall from the date of such written notice be obligated to pay for such unauthorized equipment an amount which is three (3) times the applicable Per Pole Fee in Section 4 until the breach is cured by Licensee by removing the unauthorized equipment or applying for and obtaining a Site Supplement (or a modification to an existing Site Supplement if applicable) for such unauthorized equipment.

3. **Term of Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of ten (10) years commencing on the first day of the month following mutual execution of this Agreement (“Commencement Date”), and expiring on the day before the tenth (10th) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the “Initial Term”). Provided that Licensee is not in material breach of the Agreement or any Site Supplement beyond applicable notice and cure periods, the Initial Term will be extended for up to three (3), successive, five (5) year periods (each, a “Renewal Term”) with the first five year extension commencing immediately upon the expiration of the Initial Term, and each additional five year extension commencing immediately upon the expiration of the preceding Renewal Term unless written notice of non-extension is provided by either Party to the other Party at least ninety (90) days prior to the commencement of the succeeding Renewal Term, as applicable. The Initial Term

and all Renewal Terms shall be collectively referred to herein as the “Term.” All of the provisions of this Agreement shall be in effect during the Term and any extension of the Term. Any holding over after the expiration of the Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee.

3.2 Licensee Cancellation. Licensee may cancel any Site Supplement at any time by providing the Licensor with thirty (30) days written notice of cancellation. Any prepaid fees shall be retained by Licensor. This Agreement and all Site Supplements may only be cancelled or terminated as provided in this Agreement or any Site Supplement.

3.3. Abandonment. If Licensee abandons the use of any Municipal Facility location for a period of six (6) or more consecutive months after the initial installation of Licensee’s Small Cell Equipment thereon, the Small Cell Equipment for such Municipal Facilities shall be removed by Licensee at the expense of Licensee within ninety (90) days of receipt of written notice from Licensor. In the event Licensee is unable or refuses to remove such Small Cell Equipment when requested by Licensor, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal.

3.4 Performance Bond. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licensor:

(a) Prior to the commencement of any work under this Agreement or any applicable Site Supplement, Licensee must provide a performance bond running to the Licensor in the sum of \$50,000 for the first twenty five Site Supplements, and an additional \$50,000 to cover up to an additional twenty-five Site Supplements, and so on. The performance bond is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply with any terms or conditions governing this Agreement beyond applicable notice and cure periods, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the Licensor as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee’s property, plus costs and reasonable attorneys’ fees up to the full amount of the performance bond. Licensee shall keep the performance bond in place during the term of this Agreement. The bond forms shall be in a form approved by the City Attorney. Upon completion of Licensee’s removal obligations hereunder, Licensee may terminate the performance bond and Licensor shall cooperate with Licensee in connection with such termination.

(b) **Assessment of the Bond**. The performance bond may be assessed by the Licensor for any failure by Licensee to pay Licensor an amount owed under this Agreement beyond applicable notice and cure periods, including, but not limited to:

(i) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(ii) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

(c) **Restoration of the Bond.** Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the performance bond and the reasons therefor. Failure to restore the bond to its full amount within thirty (30) days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the Licensor's decision to draw on the performance bond.

(d) **Costs of Collection.** If the performance bond is drawn upon, all of Licensor's reasonable costs of collection and enforcement of the provisions relating to the bond that are specified in this Section 3.4, including reasonable attorneys' fees and costs, will be paid by Licensee.

(e) **Required Endorsement.** The performance bond is subject to the approval of the Licensor and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by the City of Milpitas, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

(f) **Reservation of Licensor Rights.** The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

(g) **Admitted Surety Insurer.** The surety supplying the bond shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

(h) **Cash Deposit.** In lieu of obtaining a performance bond, Licensee shall have the right to instead deposit a cash deposit with Licensor securing Licensee's obligations under this Agreement.

4. **Fees and Charges.** Licensee shall be solely responsible for the payment of all costs, fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1. **License Fee.** Licensee acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the per pole fee and went into effect on January 14, 2019 but that Declaratory Ruling is currently the subject of litigation. Paragraphs 4.1, 4.2, 4.3, and 4.4 govern the calculation of the per pole fee and how it may be impacted by the Declaratory Ruling and the resolution of related litigation during the Term and any renewal terms.

4.2. During any period in which the FCC Declaratory Ruling (FCC 18-133) is in effect and during any period in which the Alternate Per Pole Fee provisions in paragraph 4.3 are not applicable, the Licensee shall pay the Per Pole Fee as described in this paragraph. Licensee shall

pay to the Licensor the base amount of two hundred seventy dollars (\$270.00) per calendar year for each location covered by a Site Supplement. Any new Site Supplements entered into during a given year shall commence at the per pole fee, as adjusted by Section 4.4 to reflect the then-current rate (the "Per Pole Fee"). The Per Pole Fee for the first calendar year of a Site Supplement for each location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Per Pole Fee paid due to the termination or expiration of the Agreement for any reason.

4.3. In the event the relevant provisions of the FCC Declaratory Ruling that hold that fair and reasonable compensation for use of local government-owned structures in the ROW must be cost-based cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as the Per Pole Fee), the Per Pole Fee will adjust to the rate of fifteen hundred dollars (\$1,500.00) per calendar year for each location covered by a Site Supplement, as adjusted by Section 4.4 to reflect the then-current rate ("Alternate Per Pole Fee"). Additionally, Licensee shall automatically be required to pay the Alternate Per Pole Fee in full for the remainder of the Term. Any new Site Supplements entered into during a given year shall commence at the Alternate Per Pole Fee, as adjusted by Section 4.4 to reflect the then-current rate. Alternate Per Pole Fee for the first calendar year of a Site Supplement for each individual location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Alternate Per Pole Fee paid due to the termination or expiration of the Agreement for any reason. The Licensor agrees that irrespective of whether the relevant provisions of the FCC Declaratory Ruling cease to be effective, no Alternate Per Pole Fee shall be due for any periods during which the FCC Declaratory Ruling's requirement that fair and reasonable compensation for use of local government-owned structures in the ROW must be cost-based is in effect.

4.4. Per Pole Fee and Alternate Per Pole Fee Escalator. Effective on January 1, and continuing annually thereafter during the Term, the Per Pole Fee or Alternate Per Pole Fee, as applicable, shall increase three percent (3%).

4.5. The amount to be paid with respect to each year of the Term ("Aggregate Annual License Fee") will be calculated based on an amount equal to the sum of the number of (a) Municipal Facilities upon which Small Cell Equipment was installed, and (b) Municipal Facilities which were not initially installed but contained Small Cell Equipment, during the preceding 12 months multiplied by the then-current Per Pole Fee or Alternate Per Pole Fee; provided, however, and notwithstanding the foregoing to the contrary, the Aggregate Annual License Fee shall be prorated with respect to each Municipal Facility for any months during which the applicable Site Supplement was not in force. The first Aggregate Annual License Fee after the Commencement Date is due and payable in arrears and not later than 45 days after receipt of an invoice from Licensor. Thereafter, the Aggregate Annual License Fee is due and payable each year in advance (based on the number of Municipal Facilities upon which Small Cell Equipment was installed at the end of the prior year) of January 1 of the following year. The first Aggregate Annual License Fee after the Commencement Date shall be prorated from the Commencement Date to December 31 of the same year. If Licensee discovers any error in the amount of compensation due, Licensee shall notify Licensor and the Parties shall work together in good faith to adjust the amount due.

Licensee shall pay Licensor within 30 days after discovery of the error or determination of the correct amount. If Licensee does not make such payment within 30 days, a ten percent (10%) late fee shall be added. Additionally, all unpaid fees shall accrue non-compounding interest on the amount due at the rate of ten percent (10%) per annum until paid in full. Upon agreement of the Parties, Licensee may pay the Aggregate Annual License Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose upon request of Licensee. City shall provide Licensee a completed current Internal Revenue Service Form W-9 and state and local withholding forms if required.

4.6. One-Time Fees. The Licensor activities described in Section 4.6 are “One-Time Fees” that reimburses the Licensor for its costs associated with reviewing and approving applications to attach Equipment on identified Municipal Facilities located in the PROW, this Agreement and Site Supplements to this Agreement for additional locations. The Licensor shall track its time spent reviewing the Licensee submittals for Licenses, Site Supplements and associated permit activities described below, and charge its hourly rate for any time spent above the amount to be recovered by any established fee. The fee amounts shall be assessed and administered consistent with standard Licensor practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law.

4.6.1. Permit Fees. Licensee shall be responsible for paying all costs associated with City review, processing, and inspection as part of all permit applications filed for the installation, modification, maintenance, and removal of Small Cell Equipment on identified Municipal Facilities located in the right-of-way.

4.6.2. Processing Fees. Licensee shall be responsible for paying all costs associated with City review and processing of this License and any Site Supplements thereto (or any amendment thereto) and/or the other administrative review, consultation, and inspection described in this License, including review of Company submittals (the “Processing Fees”).

4.7. Taxes. Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee’s Small Cell Equipment and/or provided services.

4.8. Electric meter. Except to the extent Licensor authorizes connection to its Infrastructure in accordance with the rules, regulations, and policies of PG&E, which authorization the Licensor shall not unreasonably withhold, Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee’s Small Cell Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Licensee shall comply with all Laws and rules and regulations of the electric utility relating to installation and connection of Licensee’s Small Cell Equipment to electricity. Additionally, Licensee shall have the right, at Licensee’s sole cost, to replace existing lighting on a Municipal Facility utilized by Licensee either with LED or other form of energy saving lighting design reasonably approved by Licensor, and Licensor will own, operate, maintain and repair the replacement lighting. If granted a choice between a pole-mounted smart meter and a pedestal-mounted meter, Licensee must choose a pole-mounted smart meter. Pedestal-mounted meters will

only be allowed if no alternative is available. The electricity purveyor in the City of Milpitas is PG&E.

4.9. Payments Made. All fees and/or additional payments shall be payable to Licensor at: City of Milpitas, Finance Department, 455 East Calaveras Blvd., Milpitas, CA 95035; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

5. Additional Licenses and Permits Required by Code. All of the Small Cell Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable Laws. Licensee or its designee is required to apply for and obtain all Permits required by the Code for installation of wireless communications facilities and for work performed within the PROW and public utility easements, and the Small Cell Equipment must be installed and the PROW or public utility easement used according to the plans submitted by Licensee and approved by the Licensor in issuing such Permits. Execution of this Agreement or any Site Supplement does not constitute the issuance of a Permit. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any required regulatory approvals from any Licensor department, board or commission or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the PROW and public utility easements and Licensee's obligation to obtain any required proprietary approvals or agreements to use Licensor property other than Municipal Facilities covered by this Agreement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the Licensor in accordance with its customary permitting procedures, including environmental clearance for each new installation in accordance with the California Environmental Quality Act (CEQA), if applicable.

6. Basic Design and Installation Requirements for Using Municipal Facilities. All of Licensee's construction and installation work for its Small Cell Equipment on the Municipal Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for Licensee's Small Cell Equipment, but the existing Municipal Facility needs to be replaced to accommodate the Small Cell Equipment, then the Site Supplement shall so specify and Licensee shall pay all costs related to replacing the Municipal Facility, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, and/or other items attached to the existing Municipal Facility to the Replacement Pole, and removal and salvage of the existing Municipal Facility to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the Replacement Pole in its "AS IS" condition without any representation or warranty of any kind, provided that the Replacement Pole is installed in accordance with a Site Supplement and passes Licensor inspection. The installation or attachment of the Small Cell Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

7. **Common Conditions or Requirements Applicable to Site Supplements Issued Under this Agreement.**

7.1. **Small Cell Equipment Locations.** For each installation, Licensee or its designee shall submit an application with plans and specifications for Licensor review and approval which shall, at a minimum, identify the Municipal Facility Licensee proposes to use and the basic design and location of the Small Cell Equipment. If any ground based equipment is proposed in connection with the operation of Small Cell Equipment on an individual Municipal Facility, the request must identify the ground based equipment and the plan must also depict such equipment. Upon Licensor approval, the approved plans are inserted in Exhibit 1 attached to a Site Supplement. Any approved Site Supplement shall also include a list of approved Small Cell Equipment in Exhibit 1 to each Site Supplement. If Licensee desires to change or add new locations, Licensee will submit a proposed Site Supplement application indicating the additional Municipal Facilities that it wishes to use. One Application is required per Municipal Facility. A total of 10 applications can be submitted at the same time if the projects use the same type of equipment and are being placed on the same type of structure.

7.2. **Pole Reservation.** Licensee shall submit an application no later than ninety (90) days after reserving a pole through the City's automated pole reservation system, or the reservation shall be cancelled without prejudice; provided, however, the City's Director of Engineering shall have discretion to extend the reservation upon written request by Licensee.

7.3. **Damage to Licensor Property.** If Licensee damages or disturbs the surface or subsurface of any PROW, public utility easement or adjoining property, Municipal Facility, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance.

7.4. **Public Emergency.** In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Small Cell Equipment, Licensor may require Licensee to deactivate such Small Cell Equipment if any of Licensor's employees or agents must move closer to the Small Cell Equipment than the FCC recommended minimum distance. In such case, Licensor will attempt to contact Licensee at Licensee's Network Operations Center at 800-264-6620 to request immediate deactivation. Further, Licensee shall install a disconnect device at each Municipal Facility on which it installs Small Cell Equipment pursuant to a Site Supplement so that in case of emergency or to protect the public health or safety where Licensee is not able to immediately deactivate the Small Cell Equipment, Licensor may disconnect such Small Cell Equipment from its power source and safely shut it down. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible at Licensee's Network Operations Center number provided above that power has been restored.

7.5. Make-Ready Work.

(a) Make-Ready Work and Costs. Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Small Cell Equipment, Licensee shall be responsible, at Licensee's sole expense, to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Small Cell Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request. Licensor shall endeavor to include the requirements of this subsection (a) or substantially equivalent language in Licensor's agreements with other licensees of a Municipal Facility.

(b) Construction, installation, and operation of the Small Cell Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with the National Electrical Safety Code ("NESC"), and with Licensor's regulatory rules and engineering standards; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant.

(c) Notification of Completion of Installation. Within thirty (30) business days of completing the installation of Small Cell Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion.

7.6. Pole Replacement.

(a) Subject to Section 7.6(f), if a Municipal Facility needs replacement or repair due to a traffic accident or deterioration, Licensee shall have the right to immediately replace the same at Licensor's reasonable cost, not to exceed the charges the City would normally have incurred from its third party vendor. In such event, Licensor shall reimburse Licensee within thirty (30) days of Licensee's receipt of an invoice. However, in the event Licensee elects in writing to have Licensor replace the Municipal Facility, Licensor shall perform such replacement within thirty (30) days thereafter, and Licensee shall cooperate with Licensor to temporarily relocate its Small Cell Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Small Cell Equipment. Licensor shall retain ownership of the Replacement Pole.

(b) At Licensee's option, Licensee may provide to Licensor, at Licensee's cost, a spare pole sufficient to serve as a Replacement Pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace the Municipal Facility as provided in this Section 7.6.

(c) In the event Licensee provides a spare pole, and elects in writing to have Licensor perform the replacement, Licensor will use the spare pole to replace the damaged existing pole within thirty (30) days of notice of the need for the replacement, and shall deliver the damaged

pole and any damaged Small Cell Equipment to the Yard. In such an event, Licensor shall have ownership of the Replacement Pole.

(d) Licensor will contact Licensee to pick up the damaged Small Cell Equipment and Licensee can reinstall its Small Cell Equipment once the Replacement Pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use a Municipal Facility for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole.

7.7. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Small Cell Equipment installations as provided in this Section 7.7(a). Licensee shall at Licensor's direction and upon one hundred eighty (180) days prior written notice to Licensee, relocate such Small Cell Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Small Cell Equipment is interfering with or adversely affecting proper operation of Licensor-owned Poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. Licensee acknowledges that if Licensor is permanently removing the Municipal Facility due to an undergrounding project, Licensee may be required to seek an appropriate location outside the PROW or another location within the PROW. Nothing in this Agreement gives the Licensee the authorization to install a new dedicated pole in the PROW or public utility easement as a result of any relocation requirement. If Licensee shall fail to relocate any Small Cell Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Small Cell Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor accompanied by supporting documentation.

(b) In the event Licensee desires to relocate any Small Cell Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

(c) In lieu of the relocation of Licensee's Small Cell Equipment in the case of an abandonment of a Municipal Facility as provided in Section 7.7(a)(iii), unless the Municipal Facility is needed for a legitimate Licensor purpose, Licensor may, in its sole discretion, allow Licensee to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Site Supplement, at a commercially reasonable price commensurate with its then existing value. Licensee and Licensor shall document any such transfer of ownership via a bill of sale. In the event that Licensee acquires a Municipal Facility pursuant to this Section 7.7(c), no Per Pole Fee shall be due or payable with respect to such acquired site and said fee shall be prorated in accordance with Section 4.1 above.

7.8. Non-exclusiveness. The rights and privileges granted to Licensee under this Agreement, and each Site Supplement described herein, are nonexclusive.

7.9. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation and/or maintenance of its Small Cell Equipment:

(a) RF Interference. Consistent with applicable Laws, Licensee shall ensure that the Small Cell Equipment will not cause radio frequency interference with wireless communication facilities or devices, cable television, broadcast radio or television systems, or satellite broadcast systems existing at the time of installation of the Small Cell Equipment. Further, Licensee shall ensure that the Small Cell Equipment will not cause any radio frequency interference with Licensor traffic, public safety or other communications signal equipment existing at the time of installation of the Small Cell Equipment.

(b) Primary and Existing Uses. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the public. Licensor has the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own primary service requirements or facilities. Licensor is willing to permit the installation of Licensee's Small Cell Equipment on Municipal Facilities only where such use will not interfere with the existing and future primary service requirements and facilities, or the existing uses (other than primary service requirements) of Licensor and existing uses of others authorized to use the Municipal Facility as of the date of the applicable Site Supplement. Licensee shall not materially interfere in any manner with the primary service requirements and existing uses of the Municipal Facilities or other Licensor property including PROW and public utility easements, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the written approval of the owner(s) of the affected property or properties. Notwithstanding the foregoing, Licensor will not grant after the date of this Agreement a right to use a Municipal Facility to any third party if, at the time such third party applies to use a Municipal Facility, Licensor knows that such third party's use may cause interference with the Licensee's existing Small Cell Equipment, Licensee's use of the Municipal Facility, or Licensee's ability to comply with the terms and conditions of this Agreement. Licensor shall endeavor to include the requirements of Sections 7.9(a) and (b) or substantially equivalent language in Licensor's agreements with other licensees of a Municipal Facility.

(c) Licensors Communications. Licensee shall not materially interfere in any manner with current or future Licensor public safety communication.

(d) Licensors Interference from New Non-Primary Uses. Licensor has the right, but not the obligation, to add new non-primary uses to its Municipal Facilities. Notwithstanding the foregoing sentence, if Licensee reasonably determines that a new non-primary use of a Licensor Municipal Facility is causing interference with Licensee's existing Small Cell Equipment, then Licensor will confer with Licensee upon receipt of notice of interference from Licensee, and otherwise work in good faith with Licensee to determine the root cause of the interference, develop workable solutions to resolve the interference in a mutually acceptable manner, and determine which party will cover the costs of implementing the solution.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone to Licensee's Network Operations Center at 800-264-6620 or to Licensor at 408-586-3051, the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

8. **Damage to Licensee's Small Cell Equipment.** In the event of any damage to Licensee's Small Cell Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. **Title and Ownership.**

9.1. Title to the Small Cell Equipment. Title to the Small Cell Equipment, exclusive of the Municipal Facility (original or replacement) used for support, shall remain with Licensee or its Carriers (defined below) and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2. No Ownership in Licensor Property. Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Small Cell Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Small Cell Equipment is located, or any portion of the PROW or public utility easements. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3 **“As Is” Condition.** Subject to Section 9, Licensee accepts the Municipal Facilities identified in any Site Supplement, or any Replacement Pole, in its “AS IS” condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee as to the present or future condition of or suitability of the Municipal Facilities for Licensee’s intended use, and subject to all applicable laws, rules and ordinances governing the use of the Municipal Facilities for Licensee’s intended purpose. Licensor disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and the merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee’s intended use.

10. **Maintenance and Repair.** Subject to Section 7.3, Licensor shall maintain and keep the Municipal Facility containing Small Cell Equipment in good condition and in accordance with Licensor’s standard maintenance requirements, at its sole cost and expense. Licensee shall keep the Small Cell Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair.

11. **Hazardous Substances.** Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the PROW or public utility easement in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. Notwithstanding the foregoing, Licensee shall not be liable for Hazardous Substances that existed within the area of a Municipal Facility or the PROW or public utility easement in which it is located before the execution of this Agreement, or that otherwise do not result from the activities of Licensee, its agents, contractors, subsidiaries, or entities otherwise associate with Licensee.

12. **Indemnity.** To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, reasonable attorneys’ fees, disbursements and court costs) of every kind and nature whatsoever (collectively, “Claims”) which relate to (i) Licensor's approval of this Agreement and any Site Supplement(s), and (ii) Licensee’s, and its employees’, contractors’, agents’ or Carriers’, construction, operation, use, or related activity taken pursuant to this Agreement; provided, however, the foregoing indemnity shall not apply to the extent such Claims are the result of the negligence or willful misconduct of Licensor. This indemnification shall include, but not be limited to, damages awarded against Licensor, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Licensee, Licensor, and/or the parties initiating or bringing such proceeding. Licensee shall indemnify Licensor for all of Licensor’s costs, reasonable attorneys’ fees, and damages which Licensor incurs in enforcing the indemnification provisions set forth in this condition. Licensee shall pay to Licensor within 30 days

after receipt of an invoice or, as applicable, to counsel of Licensor's choosing, any amount owed pursuant to the indemnification requirements prescribed herein.

13. **Insurance Requirements.**

13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B.

13.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

14. **Assignment/Subletting.**

14.1. Except as expressly provided herein, this Agreement and each site license granted pursuant to individual Site Supplements herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder; provided, however, the Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Cell Equipment deployed by Licensee on any Municipal Facility or in any PROW or public utility easement pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Small Cell Equipment shall be treated as Licensee's Small Cell Equipment for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Small Cell Equipment; (ii) Licensor's sole point of contact regarding such Small Cell Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Small Cell Equipment. This Agreement and the related rights, duties, and privileges may not be assigned or otherwise transferred in whole or in part without the prior written consent of Licensor; provided, however, Licensee shall have the right to assign this Agreement upon notice to Licensor but without Licensor's consent to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement. If the Agreement is assigned or otherwise transferred in accordance with this Section, this Agreement, including any amendments, shall be binding on the assignee to the full extent that it was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Small Cell Equipment to a Municipal Facility shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, may collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

15. **Default.** It is a “Default” if (i) either Party fails to materially comply with this Agreement or any Site Supplement and does not remedy the failure within thirty (30) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within ninety (90) days after the initial written notice, or (ii) Licensee fails to comply with this Agreement or any Site Supplement and the failure interferes with Licensor’s use of its Municipal Facility in a manner not covered by Section 7.4, and Licensee does not remedy the failure within twenty (20) days after written notice from Licensor or, if the failure cannot reasonably be remedied in such time, if Licensee does not commence a remedy within the allotted twenty (20) days and diligently pursue the cure to completion within thirty (30) days after the initial written notice.

16. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such Default, the non-defaulting Party may terminate this Agreement if the Default affects all Site Supplements and the Agreement as a whole, or any Site Supplement subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of California.

17. **Surrender.** Within one hundred eighty (180) days of the expiration or earlier termination of this Agreement or upon ninety (90) days of the expiration or termination of an individual Site Supplement, Licensee shall remove the affected Small Cell Equipment, at its sole expense, shall repair any damage to the Municipal Facilities or the PROW or public utility easement caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Small Cell Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee’s control excepted.

18. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Licensee

GTE Mobilnet of California Limited Partnership,
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate
Site: Milpitas SC MLA
NOC: 1-800-264-6620

Licensor

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

With copy to: Best Best & Krieger, LLP
2001 North Main Street
Suite 390
Walnut Creek, CA 94596
Attention: City Attorney, City of Milpitas

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) five business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

19. **Miscellaneous.**

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter herein, and supersedes all negotiations, understandings or agreements as to the same. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to choice of law rules.

19.4. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

19.5. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms. Licensor hereby designates, and authorizes, the City Manager to execute all Site Supplements and amendments thereto entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

19.6. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

19.7. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8 Limitation of Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.9 Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

19.10 Dispute Resolution.

(a) Good Faith Participation. Prior to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation and non-binding mediation processes set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.

(b) Upper Management Escalation and Mediation. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both Parties with authority to settle the dispute shall meet at a mutually acceptable time and place within thirty (30) calendar days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within thirty (30) calendar days of receipt of the disputing Party's notice, which period may be extended upon mutual agreement of the Parties, or if the Parties fail to meet within thirty (30) calendar days, either Party may initiate mediation. Such mediation shall take place at a mutually agreeable location. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, either Party may initiate litigation.

(c) Enforcement. The parties regard the aforesaid obligation to escalate to upper management and mediate as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

19.11 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ____ day of _____, 2020 (the “Execution Date”).

LICENSOR:

City of Milpitas, a California municipal corporation

By: _____
Print Name: _____
Its: _____

LICENSEE:

GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless

By: Cellco Partnership
Its: General Partner

By: _____
Print Name: _____
Its: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
Form of Site Supplement
Supplement

1. Supplement. This is a Site Supplement as referenced in that certain NON-EXCLUSIVE LICENSE AGREEMENT FOR THE USE OF CITY-OWNED MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT, between Licensor and Licensee dated _____, 2020 ("Agreement"). This Site Supplement is approved by Licensor this ____ day of _____, 20__ (the date executed by all parties, referred herein as "Site Supplement Effective Date"). Licensee has submitted an application for a Site Supplement pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site Supplement, the terms of this Site Supplement shall govern (but only with respect to the subject matter addressed therein). Capitalized terms used in this Site Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. IF THE SITE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN 30 DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SITE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSEE STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSEE WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.

2. Project Description and Locations. Licensee shall have the right to attach Small Cell Equipment to the designated space on the specific Municipal Facility as further described in Exhibit 1 attached hereto (the "Licensed Area").

3. Small Cell Equipment. The Small Cell Equipment to be installed at the Licensed Area is listed and depicted on plans included in Exhibit 1 attached hereto.

4. Term. The term of this Site Supplement shall be coterminous with the Agreement Term as set forth in Section 3.1 of the Agreement.

5. Fees. The initial annual Per Pole Fee or Alternate Per Pole Fee for the term of this Supplement shall be _____, as determined in accordance with the Agreement, and as adjusted by Section 4 of the Agreement.

6. Site Supplement Commencement Date. If Licensee does not commence installation of its Small Cell Equipment within one (1) year of the Site Supplement Effective Date, the Site Supplement shall be void unless Licensor, in its sole discretion, extends the time for commencing installation of Small Cell Equipment in writing.

7. Miscellaneous._____.

[Signature page follows]

APPROVED as of the date shown below.

LICENSOR:

City of Milpitas, a California municipal corporation

By: _____

Name: _____

Title: _____

DATE: _____

ACCEPTED BY LICENSEE:

LICENSEE:

GTE Mobilnet of California Limited Partnership,
d/b/a Verizon Wireless

By: Cellco Partnership

Its: General Partner

By: _____

Print Name: _____

Title: _____

Exhibits:

Exhibit 1

Exhibit 1

Licensed Area, Small Cell Equipment List and Plans

EXHIBIT B

Licensee's Minimum Insurance Requirements

1. General.

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance Licensee licensed, authorized or permitted to transact business in the State of California, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. Licensee shall, and shall require any of its contractors while working hereunder to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below. Licensee shall ensure that the Licensor is an additional insured on insurance required from Licensee's contractors. For CGL coverage Licensee's contractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability equal to those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Contractors' Pollution Legal Liability. Licensee must maintain Contractors' Pollution Legal Liability insurance with limits of \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If any coverage required is written on a claims-made coverage form:

(1) The retroactive date must be shown, and this date must be before the execution 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 years after completion of contract 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, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

(4) A copy of the claims reporting requirements must be submitted to the Licensor for review.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's required insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must 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.

(3) Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Licensor for all work performed by the Licensee, its employees, agents and subcontractors. The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for the duration of this Agreement. Licensee must submit an annual Certificate of Insurance evidencing Commercial General Liability insurance during this period

evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation of any required coverage that is not replaced. Such notice shall be sent directly to Licensor at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

C. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required herein. In the event Licensee elects to self-insure its obligation to include Licensor as an additional insured, the following additional provisions shall apply:

(i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF MILPITAS, CALIFORNIA AND NEW CINGULAR WIRELESS PCS, LLC FOR THE USE OF MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT

This Agreement is made and entered into by and between the **City of Milpitas, California**, a California municipal corporation (“Licensor” or “City”) and **New Cingular Wireless PCS, LLC**, a Delaware limited liability company (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

- A. Licensor is the owner of certain Municipal Facilities (as defined below).
- B. Licensee is duly organized and existing under the laws of the State of Delaware, and is authorized to conduct business in the State of California.
- C. Licensee desires to use space on certain of Licensor’s Municipal Facilities located in the public rights of way and public utilities easements within the jurisdictional limits of the City of Milpitas to locate, place, attach, install, operate, control, and maintain Small Cell Equipment (as defined below) on Licensor’s Municipal Facilities.
- D. Licensee will agree to comply with Licensor’s requirements as provided herein.
- E. Licensee is willing to compensate Licensor in exchange for a right to use and physically occupy portions of the Municipal Facilities as provided herein.

AGREEMENT

1. **Definitions and Exhibits.**

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Code* means Licensor’s Municipal Code.
- (b) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.
- (c) *Infrastructure* means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication

services to a Municipal Facility or otherwise located in the public right of way or other location controlled or owned by Licensor.

(d) *Interference* means physical interference and radio frequency interference.

(e) *Laws* means any and all applicable federal, state or local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency (including the Federal Communications Commission (“FCC”) or any successor agency) having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

(f) *Make-Ready Work* means the work required on or in a Municipal Facility to create space for the Small Cell Equipment, and/or replacing and/or reinforcing the existing Municipal Facility to accommodate Small Cell Equipment including, but not limited to, rearrangement or transfer of existing Small Cell Equipment and the facilities of other entities, and Municipal Facility relocation and replacement if applicable.

(g) *Municipal Facilities* means City-owned structures and Infrastructure located within the PROW and public utility easements that are designated or approved by Licensor as being suitable for placement of Small Cell Equipment including but not limited to those Licensor-owned street lights defined in Section X-1-3.04 of the Code, traffic light poles, and other similar structures. The term includes Replacement Poles as defined in Section 6 below.

(h) *Permit* means a permit issued under the Code, which includes zoning and land use planning permits such as conditional use permits, and those permits that monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the City PROW or public utility easements.

(i) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

(j) *PROW* (or public right-of-way) shall mean the right-of-way of any street, as defined in the California Vehicle Code used by the general public, owned and/or controlled by the City and part of the City system of streets located within the territorial limits of the City.

(k) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(l) *Site Supplement* means each separate site license authorization granted by Licensor, pursuant to Section 2 below, and substantially in the form shown on Exhibit A, which shall be subject to the terms and conditions of this Agreement.

(m) *Small Cell Equipment* means compact communications antennas, transmitters, wires, fiber optic cables and other wireless communications equipment (in addition to control boxes, cables and conduit power sources) utilizing small cell technology in compliance with applicable FCC requirements that is used to provide wireless communications, and is specifically identified and described in Exhibit 1 attached to each approved Site Supplement (as defined below).

(n) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

- (a) Exhibit A: Site Supplement.
- (b) Exhibit B: Minimum Limits of Insurance.

In the event of any conflict or ambiguity between this Agreement together with the above-referenced exhibits, and any approved Site Supplement, the approved Site Supplement (but only with respect to the subject matter addressed therein) shall govern and prevail.

2. License Grant and Terms.

2.1. Scope. Licensor, acting in its proprietary capacity as the owner of Municipal Facilities in the PROW and public utility easements, does hereby grant to Licensee a nonexclusive license to use the Municipal Facilities identified in Exhibit 1 to each approved Site Supplement to attach, install, operate, maintain, remove, reattach, reinstall, and replace the Small Cell Equipment identified in Exhibit 1 to each such Site Supplement. This grant is subject to the terms, conditions and other provisions set forth in this Agreement. Licensee may place its attachments on any parts of Licensor's Municipal Facilities consistent with the City's Small Cell design guidelines.

2.2. Use of Licensor Municipal Facilities. An approved Site Supplement allows Licensee to access, occupy and use allocated available space on each of the identified Municipal Facilities in Exhibit 1 to the corresponding Site Supplement to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Equipment, as identified in such Exhibit 1. Licensee shall have access to the Municipal Facilities upon which Small Cell Equipment is installed 24 hours a day, 7 days a week.

2.3. Limitations on Use. Except as otherwise expressly provided herein, the Site Supplement does not authorize Licensee to:

- (a) Install, occupy or use any City-owned poles, improvements or structures of any kind, whether within or without the PROW, other than the items identified as Municipal Facilities shown in Exhibit 1 attached to an approved Site Supplement;

(b) Enter upon the PROW or public utility easements and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Small Cell Equipment in or on new or existing poles or other structures located within the PROW or public utility easements and not owned by Licensor; and

(c) Install, operate and maintain ground based, pad mounted equipment cabinets and/or power pedestals needed for the operation of Small Cell Equipment attached to any of the Municipal Facilities, unless approved by Licensor because it would not be technically feasible for Licensee to omit ground based equipment or power pedestal.

2.4 Alterations/Unauthorized Equipment. Licensee represents that it will not install unauthorized equipment. If Licensee proposes to install equipment which is different in any material way from the then-existing and approved Small Cell Equipment, then Licensee shall first apply for and obtain the written approval for the use and installation of the unauthorized equipment from an authorized representative of the Licensor via a new or amended Site Supplement. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Municipal Facilities upon which it intends to attach Small Cell Equipment or modify approved Small Cell Equipment in the PROW or public utility easements. Notwithstanding the foregoing, Licensee may modify its Small Cell Equipment with like-kind Small Cell Equipment without prior written approval of the Licensor including, without limitation, substitution of internal components that does not result in any change to the external appearance, dimensions, or weight of the attachment or that involves replacement with an attachment that is substantially the same, or smaller in weight and dimensions as the approved attachment. Licensee’s failure to comply with these limitations will constitute a material breach of the applicable Site Supplement. For unauthorized equipment that Licensee cannot demonstrate, within 30 days after receiving notice, is authorized, Licensor may impose liquidated damages in an amount not to exceed \$1,000, and in addition, Licensee shall from the date of such written notice be obligated to pay for such unauthorized equipment an amount which is three (3) times the applicable Per Pole Fee in Section 4 until the breach is cured by Licensee by removing the unauthorized equipment or applying for and obtaining a Site Supplement (or a modification to an existing Site Supplement if applicable) for such unauthorized equipment.

3. **Term of Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of ten (10) years commencing on the first day of the month following mutual execution of this Agreement (“Commencement Date”), and expiring on the day before the tenth (10th) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the “Initial Term”). Provided that Licensee is not in material breach of the Agreement or any Site Supplement beyond applicable notice and cure periods, the Initial Term will be extended for up to three (3), successive, five (5) year periods (each, a “Renewal Term”) with the first five year extension commencing immediately upon the expiration of the Initial Term, and each additional five year extension commencing immediately upon the expiration of the preceding Renewal Term unless written notice of non-extension is provided by either Party to the other Party at least

ninety (90) days prior to the commencement of the succeeding Renewal Term, as applicable. The Initial Term and all Renewal Terms shall be collectively referred to herein as the “Term.” All of the provisions of this Agreement shall be in effect during the Term and any extension of the Term. Except as provided in Section 17, any holding over after the expiration of the Term shall constitute a default by Licensee, notwithstanding that Licensor may elect to accept one or more payments of fees from Licensee.

3.2 Licensee Cancellation. Licensee may cancel any Site Supplement at any time by providing the Licensor with thirty (30) days written notice of cancellation. Any prepaid fees shall be retained by Licensor. This Agreement and all Site Supplements may only be cancelled or terminated as provided in this Agreement or any Site Supplement.

3.3. Abandonment. If Licensee abandons the use of any Municipal Facility location for a period of six (6) or more consecutive months after the initial installation of Licensee’s Small Cell Equipment thereon, the Small Cell Equipment for such Municipal Facilities shall be removed by Licensee at the expense of Licensee within ninety (90) days of receipt of written notice from Licensor. In the event Licensee is unable or refuses to remove such Small Cell Equipment when requested by Licensor, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal.

3.4 Performance Bond. In order to secure the performance of its obligations under this Agreement, Licensee will provide the following security instrument to the Licensor:

(a) Prior to the commencement of any work under this Agreement or any applicable Site Supplement, Licensee must provide a performance bond running to the Licensor in the sum of \$50,000 for the first twenty five Site Supplements, and an additional \$50,000 to cover up to an additional twenty-five Site Supplements, and so on. The performance bond is conditioned upon the faithful performance by Licensee of all the terms and conditions of this Agreement and upon the further condition that, if Licensee fails to comply with any terms or conditions governing this Agreement beyond applicable notice and cure periods, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the Licensor as a result, including, without limitation, the full amount of any compensation, indemnification, or costs of removal or abandonment of Licensee’s property, plus costs and reasonable attorneys’ fees up to the full amount of the performance bond. Licensee shall keep the performance bond in place during the term of this Agreement. The bond forms shall be in a form approved by the City Attorney. Upon completion of Licensee’s removal obligations hereunder, Licensee may terminate the performance bond and Licensor shall cooperate with Licensee in connection with such termination.

(b) **Assessment of the Bond.** The performance bond may be assessed by the Licensor for any failure by Licensee to pay Licensor an amount owed under this Agreement beyond applicable notice and cure periods, including, but not limited to:

(i) Reimbursement of costs borne by the Licensor to correct violations of the Agreement not corrected by Licensee, after Licensor provides notice and a

reasonable opportunity to cure such violations. This shall include, without limitation, removal of Equipment.

(ii) Providing monetary remedies or satisfying damages assessed against Licensee due to a material breach of this Agreement.

(c) **Restoration of the Bond.** Licensee must deposit a sum of money or a replacement instrument sufficient to restore the performance bond to its original amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the performance bond and the reasons therefor. Failure to restore the bond to its full amount within thirty (30) days will constitute a material breach of this Agreement. Licensee will be relieved of the foregoing requirement to replenish the bond during the pendency of an appeal from the Licensor's decision to draw on the performance bond.

(d) **Costs of Collection.** If the performance bond is drawn upon, all of Licensor's reasonable costs of collection and enforcement of the provisions relating to the bond that are specified in this Section 3.4, including reasonable attorneys' fees and costs, will be paid by Licensee.

(e) **Required Endorsement.** The performance bond is subject to the approval of the Licensor and must contain the following endorsement:

"This bond may not be canceled until sixty (60) days after receipt by the City of Milpitas, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

(f) **Reservation of Licensor Rights.** The rights reserved by Licensor with respect to the performance bond are in addition to all other rights and remedies Licensor may have under this Agreement or any other Law.

(g) **Admitted Surety Insurer.** The surety supplying the bond shall be an "admitted surety insurer", as defined in California Code of Civil Procedure Section 995.120 and authorized to do business in the State of California.

(h) **Cash Deposit.** In lieu of obtaining a performance bond, Licensee shall have the right to instead deposit a cash deposit with Licensor securing Licensee's obligations under this Agreement.

4. **Fees and Charges.** Licensee shall be solely responsible for the payment of all costs, fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1. **License Fee.** Licensee acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the per pole fee and went into effect on January 14, 2019 but that Declaratory Ruling is currently the subject of litigation. Paragraphs 4.1, 4.2, 4.3, and 4.4 govern the calculation of the per pole fee and how it may be impacted by the Declaratory Ruling and the resolution of related litigation during the Term and any renewal terms.

4.2. During any period in which the FCC Declaratory Ruling (FCC 18-133) is in effect and during any period in which the Alternate Per Pole Fee provisions in paragraph 4.3 is not applicable, the Licensee shall pay the Per Pole Fee as described in this paragraph. Licensee shall pay to the Licensor the base amount of two hundred seventy dollars (\$270.00) per calendar year for each location covered by a Site Supplement. Any new Site Supplements entered into during a given year shall commence at the per pole fee, as adjusted by Section 4.4 to reflect the then-current rate (the “Per Pole Fee”). The Per Pole Fee for the first calendar year of a Site Supplement for each location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Per Pole Fee paid due to the termination or expiration of the Agreement for any reason.

4.3. In the event the relevant provisions of the FCC Declaratory Ruling that hold that fair and reasonable compensation for use of local government-owned structures in the ROW must be cost-based cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as the Per Pole Fee), the Per Pole Fee will adjust to the rate of fifteen hundred dollars (\$1,500.00) per calendar year for each location covered by a Site Supplement, as adjusted by Section 4.4 to reflect the then-current rate (“Alternate Per Pole Fee”). Additionally, Licensee shall automatically be required to pay the Alternate Per Pole Fee in full for the remainder of the Term. Any new Site Supplements entered into during a given year shall commence at the Alternate Per Pole Fee, as adjusted by Section 4.4 to reflect the then-current rate. Alternate Per Pole Fee for the first calendar year of a Site Supplement for each individual location shall be pro-rated based on the number of days covered from the Site Supplement Effective Date to December 31. There shall be no refunds of the Alternate Per Pole Fee paid due to the termination or expiration of the Agreement for any reason.

4.4. Per Pole Fee and Alternate Per Pole Fee Escalator. Effective on January 1, and continuing annually thereafter during the Term, the Per Pole Fee or Alternate Per Pole Fee, as applicable, shall increase three percent (3%).

4.5. The amount to be paid with respect to each year of the Term (“Aggregate Annual License Fee”) will be calculated based on an amount equal to the sum of the number of (a) Municipal Facilities upon which Small Cell Equipment was installed, and (b) Municipal Facilities which were not initially installed but contained Small Cell Equipment, during the preceding 12 months multiplied by the then-current Per Pole Fee or Alternate Per Pole Fee; provided, however, and notwithstanding the foregoing to the contrary, the Aggregate Annual License Fee shall be prorated with respect to each Municipal Facility for any months during which the applicable Site Supplement was not in force. The first Aggregate Annual License Fee after the Commencement Date is due and payable in arrears and not later than 45 days after receipt of an invoice from Licensor. Thereafter, the Aggregate Annual License Fee is due and payable each year in advance (based on the number of Municipal Facilities upon which Small Cell Equipment was installed at the end of the prior year) of January 1 of the following year. The first Aggregate Annual License Fee after the Commencement Date shall be prorated from the Commencement Date to December 31 of the same year. If Licensee discovers any error in the amount of compensation due, Licensee shall notify Licensor and the Parties shall work together

in good faith to adjust the amount due. Licensee shall pay Licensor within 30 days after discovery of the error or determination of the correct amount. If Licensee does not make such payment within 30 days, a ten percent (10%) late fee shall be added. Additionally, all unpaid fees shall accrue non-compounding interest on the amount due at the rate of ten percent (10%) per annum until paid in full. Upon agreement of the Parties, Licensee may pay the Aggregate Annual License Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose upon request of Licensee. City shall provide Licensee a completed current Internal Revenue Service Form W-9 and state and local withholding forms if required.

4.6. One-Time Fees. The Licensor activities described in Section 4.6 are “One-Time Fees” that reimburses the Licensor for its costs associated with reviewing and approving applications to attach Equipment on identified Municipal Facilities located in the PROW, this Agreement and Site Supplements to this Agreement for additional locations. The Licensor shall track its time spent reviewing the Licensee submittals for Licenses, Site Supplements and associated permit activities described below, and charge its hourly rate for any time spent above the amount to be recovered by any established fee. The fee amounts shall be assessed and administered consistent with standard Licensor practice and fee schedule(s) as currently adopted and subsequently amended or replaced, in a manner consistent with applicable law.

4.6.1. Permit Fees. Licensee shall be responsible for paying all costs associated with City review, processing, and inspection as part of all permit applications filed for the installation, modification, maintenance, and removal of Small Cell Equipment on identified Municipal Facilities located in the right-of-way.

4.6.2. Processing Fees. Licensee shall be responsible for paying all costs associated with City review and processing of this License and any Site Supplements thereto (or any amendment thereto) and/or the other administrative review, consultation, and inspection described in this License, including review of Company submittals (the “Processing Fees”).

4.7. Taxes. Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee’s Small Cell Equipment and/or provided services.

4.8. Electric meter. Except to the extent Licensor authorizes connection to its Infrastructure in accordance with the rules, regulations, and policies of PG&E, which authorization the Licensor shall not unreasonably withhold, Licensee shall be solely responsible for obtaining and maintaining the provision of electricity to Licensee’s Small Cell Equipment, including, but not limited to, making payments to electric utilities and installation of separate electric meters, if necessary. Licensee shall comply with all Laws and rules and regulations of the electric utility relating to installation and connection of Licensee’s Small Cell Equipment to electricity. Additionally, Licensee shall have the right, at Licensee’s sole cost, to replace existing lighting on a Municipal Facility utilized by Licensee either with LED or other form of energy saving lighting design reasonably approved by Licensor, and Licensor will own, operate, maintain and repair the replacement lighting. If granted a choice between a pole-mounted smart meter and a pedestal-mounted meter, Licensee must choose a pole-mounted smart meter.

Pedestal-mounted meters will only be allowed if no alternative is available. The electricity purveyor in the City of Milpitas is PG&E.

4.9. Payments Made. All fees and/or additional payments shall be payable to Licensor at: City of Milpitas, Finance Department, 455 East Calaveras Blvd., Milpitas, CA 95035; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

5. Additional Licenses and Permits Required by Code. All of the Small Cell Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable Laws. Licensee or its designee is required to apply for and obtain all Permits required by the Code for installation of wireless communications facilities and for work performed within the PROW and public utility easements, and the Small Cell Equipment must be installed and the PROW or public utility easement used according to the plans submitted by Licensee and approved by the Licensor in issuing such Permits. Execution of this Agreement or any Site Supplement does not constitute the issuance of a Permit. Nothing in this Agreement shall limit in any way Licensee's obligation to obtain any required regulatory approvals from any Licensor department, board or commission or other governmental agency that has regulatory authority over the Licensee's proposed activities involving use of the Municipal Facilities in the PROW and public utility easements and Licensee's obligation to obtain any required proprietary approvals or agreements to use Licensor property other than Municipal Facilities covered by this Agreement. All work performed pursuant to the rights granted by this Agreement is subject to the prior review and approval of the Licensor in accordance with its customary permitting procedures, including environmental clearance for each new installation in accordance with the California Environmental Quality Act (CEQA), if applicable.

6. Basic Design and Installation Requirements for Using Municipal Facilities. All of Licensee's construction and installation work for its Small Cell Equipment on the Municipal Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for Licensee's Small Cell Equipment, but the existing Municipal Facility needs to be replaced to accommodate the Small Cell Equipment, then the Site Supplement shall so specify and Licensee shall pay all costs related to replacing the Municipal Facility, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, and/or other items attached to the existing Municipal Facility to the Replacement Pole, and removal and salvage of the existing Municipal Facility to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the Replacement Pole in its "AS IS" condition without any representation or warranty of any kind, provided that the Replacement Pole is installed in accordance with a Site Supplement and passes Licensor inspection. The installation or attachment of the Small Cell Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

7. **Common Conditions or Requirements Applicable to Site Supplements Issued Under this Agreement.**

7.1. **Small Cell Equipment Locations.** For each installation, Licensee or its designee shall submit an application with plans and specifications for Licensor review and approval which shall, at a minimum, identify the Municipal Facility Licensee proposes to use and the basic design and location of the Small Cell Equipment. If any ground based equipment is proposed in connection with the operation of Small Cell Equipment on an individual Municipal Facility, the request must identify the ground based equipment and the plan must also depict such equipment. Upon Licensor approval, the approved plans are inserted in Exhibit 1 attached to a Site Supplement. Any approved Site Supplement shall also include a list of approved Small Cell Equipment in Exhibit 1 to each Site Supplement. If Licensee desires to change or add new locations, Licensee will submit a proposed Site Supplement application indicating the additional Municipal Facilities that it wishes to use. One Application is required per Municipal Facility. A total of 10 applications can be submitted at the same time if the projects use the same type of equipment and are being placed on the same type of structure.

7.2. **Pole Reservation.** Licensee shall submit an application no later than ninety (90) days after reserving a pole through the City's automated pole reservation system, or the reservation shall be cancelled without prejudice; provided, however, the City's Director of Engineering shall have discretion to extend the reservation upon written request by Licensee.

7.3. **Damage to Licensor Property.** If Licensee damages or disturbs the surface or subsurface of any PROW, public utility easement or adjoining property, Municipal Facility, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance.

7.4. **Public Emergency.** In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Small Cell Equipment, Licensor may require Licensee to deactivate such Small Cell Equipment if any of Licensor's employees or agents must move closer to the Small Cell Equipment than the FCC recommended minimum distance. In such case, Licensor will attempt to contact Licensee at Licensee's Network Operations Center at 877-244-2889 to request immediate deactivation. Further, Licensee shall install a disconnect device at each Municipal Facility on which it installs Small Cell Equipment pursuant to a Site Supplement so that in case of emergency or to protect the public health or safety where Licensee is not able to immediately deactivate the Small Cell Equipment, Licensor may disconnect such Small Cell Equipment from its power source and safely shut it down. In the event of an unplanned power outage or other unplanned cut-off of power, or an emergency, the power-down will be with such advance notice as may be practicable. In all instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible at Licensee's Network Operations Center number provided above that power has been restored.

7.5. Make-Ready Work.

(a) Make-Ready Work and Costs. Licensee shall bear responsibility for all Make-Ready Work. If a Person other than Licensee or Licensor would have to rearrange or adjust any of its facilities in order to accommodate new Small Cell Equipment, Licensee shall be responsible, at Licensee's sole expense, to coordinate such activity. Licensee shall be responsible for directly paying such other Person for its charges for the same. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Small Cell Equipment to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, Licensee shall reasonably cooperate with such request. Licensor shall endeavor to include the requirements of this subsection (a) or substantially equivalent language in Licensor's agreements with other licensees of a Municipal Facility.

(b) Construction, installation, and operation of the Small Cell Equipment shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with the National Electrical Safety Code ("NESC"), and with Licensor's regulatory rules and engineering standards; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant.

(c) Notification of Completion of Installation. Within thirty (30) business days of completing the installation of Small Cell Equipment on each Municipal Facility, Licensee shall notify Licensor of such completion.

7.6. Pole Replacement.

(a) Subject to Section 7.6(f), if a Municipal Facility needs replacement or repair due to a traffic accident or deterioration, Licensee shall have the right to immediately replace the same at Licensor's reasonable cost, not to exceed the charges the City would normally have incurred from its third party vendor. In such event, Licensor shall reimburse Licensee within thirty (30) days of Licensee's receipt of an invoice. However, in the event Licensee elects in writing to have Licensor replace the Municipal Facility, Licensor shall perform such replacement within thirty (30) days thereafter, and Licensee shall cooperate with Licensor to temporarily relocate its Small Cell Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Small Cell Equipment. Licensor shall retain ownership of the Replacement Pole.

(b) At Licensee's option, Licensee may provide to Licensor, at Licensee's cost, a spare pole sufficient to serve as a Replacement Pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace the Municipal Facility as provided in this Section 7.6.

(c) In the event Licensee provides a spare pole, and elects in writing to have Licensor perform the replacement, Licensor will use the spare pole to replace the damaged existing pole within thirty (30) days of notice of the need for the replacement, and shall deliver

the damaged pole and any damaged Small Cell Equipment to the Yard. In such an event, Licensor shall have ownership of the Replacement Pole.

(d) Licensor will contact Licensee to pick up the damaged Small Cell Equipment and Licensee can reinstall its Small Cell Equipment once the Replacement Pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use a Municipal Facility for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole.

7.7. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Small Cell Equipment installations as provided in this Section 7.7(a). Licensee shall at Licensor's direction and upon one hundred eighty (180) days prior written notice to Licensee, relocate such Small Cell Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Small Cell Equipment is interfering with or adversely affecting proper operation of Licensor-owned Poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. Licensee acknowledges that if Licensor is permanently removing the Municipal Facility due to an undergrounding project, Licensee may be required to seek an appropriate location outside the PROW or another location within the PROW. Nothing in this Agreement gives the Licensee the authorization to install a new dedicated pole in the PROW or public utility easement as a result of any relocation requirement. If Licensee shall fail to relocate any Small Cell Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Small Cell Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor accompanied by supporting documentation.

(b) In the event Licensee desires to relocate any Small Cell Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

(c) In lieu of the relocation of Licensee's Small Cell Equipment in the case of an abandonment of a Municipal Facility as provided in Section 7.7(a)(iii), unless the Municipal Facility is needed for a legitimate Licensor purpose, Licensor may, in its sole discretion, allow Licensee to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Site Supplement, at a commercially reasonable price commensurate with its then existing value. Licensee and Licensor shall document any such transfer of ownership via a bill of sale. In the event that Licensee acquires a Municipal Facility pursuant to this Section 7.7(c), no Per Pole Fee shall be due or payable with respect to such acquired site and said fee shall be prorated in accordance with Section 4.1 above.

7.8. Non-exclusiveness. The rights and privileges granted to Licensee under this Agreement, and each Site Supplement described herein, are nonexclusive.

7.9. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation and/or maintenance of its Small Cell Equipment:

(a) RF Interference. Consistent with applicable Laws, Licensee shall ensure that the Small Cell Equipment will not cause radio frequency interference with wireless communication facilities or devices, cable television, broadcast radio or television systems, or satellite broadcast systems existing at the time of installation of the Small Cell Equipment. Further, Licensee shall ensure that the Small Cell Equipment will not cause any radio frequency interference with Licensor traffic, public safety or other communications signal equipment existing at the time of installation of the Small Cell Equipment.

(b) Existing Uses. Licensee acknowledges and agrees that the primary purpose of the Municipal Facilities is to serve the public. Licensor is willing to permit the installation of Licensee's Small Cell Equipment on Municipal Facilities only where such use will not interfere with the existing and future primary service requirements and facilities, or the primary service requirements of Licensor and others authorized to use the Municipal Facility as of the date of the applicable Site Supplement. Licensee shall not materially interfere in any manner with the existing uses of the Municipal Facilities or other Licensor property including PROW and public utility easements, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the written approval of the owner(s) of the affected property or properties. Notwithstanding the foregoing, Licensor will not grant after the date of this Agreement a right to use a Municipal Facility to any third party if, at the time such third party applies to use a Municipal Facility, Licensor knows that such third party's use may cause interference with the Licensee's existing Small Cell Equipment, Licensee's use of the Municipal Facility, or Licensee's ability to comply with the terms and conditions of this Agreement. Licensor shall endeavor to include the requirements of Sections 7.9(a) and (b) or substantially equivalent language in Licensor's agreements with other licensees of a Municipal Facility.

(c) Licensor Communications. Licensee shall not materially interfere in any manner with current or future Licensor public safety communication.

(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. Notwithstanding the foregoing, if Licensee reasonably determines that interference by Licensor is occurring with its existing Small Cell Equipment, then Licensor will confer with Licensee upon receipt of notice of interference from Licensee, and otherwise work in good faith with Licensee to determine the root cause of the interference and to develop workable solutions to resolve the interference in a mutually acceptable manner. Licensee is responsible for covering the costs of implementing the solution.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone to Licensee's Network Operations Center at 877-244-2889 or to Licensor at 408-586-3051, the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

8. **Damage to Licensee's Small Cell Equipment.** In the event of any damage to Licensee's Small Cell Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. **Title and Ownership.**

9.1. Title to the Small Cell Equipment. Title to the Small Cell Equipment, exclusive of the Municipal Facility (original or replacement) used for support, shall remain with Licensee or its Carriers (defined below) and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2. No Ownership in Licensor Property. Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Small Cell Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Small Cell Equipment is located, or any portion of the PROW or public utility easements. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3 **“As Is” Condition.** Subject to Section 9, Licensee accepts the Municipal Facilities identified in any Site Supplement, or any Replacement Pole, in its “AS IS” condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee as to the present or future condition of or suitability of the Municipal Facilities for Licensee’s intended use, and subject to all applicable laws, rules and ordinances governing the use of the Municipal Facilities for Licensee’s intended purpose. Licensor disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Municipal Facilities and the merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Municipal Facility for Licensee’s intended use.

10. **Maintenance and Repair.** Subject to Section 7.3, Licensor shall maintain and keep the Municipal Facility containing Small Cell Equipment in good condition and in accordance with Licensor’s standard maintenance requirements, at its sole cost and expense. Licensee shall keep the Small Cell Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair.

11. **Hazardous Substances.** Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the PROW or public utility easement in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. Notwithstanding the foregoing, Licensee shall not be liable for Hazardous Substances that existed within the area of a Municipal Facility or the PROW or public utility easement in which it is located before the execution of this Agreement, or that otherwise do not result from the activities of Licensee, its agents, contractors, subsidiaries, or entities otherwise associate with Licensee.

12. **Indemnity.** To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, reasonable attorneys’ fees, disbursements and court costs) of every kind and nature whatsoever (collectively, “Claims”) which relate to (i) Licensor’s approval of this Agreement and any Site Supplement(s), and (ii) Licensee’s, and its employees’, contractors’, agents’ or Carriers’, construction, operation, use, or related activity taken pursuant to this Agreement; provided, however, the foregoing indemnity shall not apply to the extent such Claims are the result of the negligence or willful misconduct of Licensor. This indemnification shall include, but not be limited to, damages awarded against Licensor, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Licensee, Licensor, and/or the parties initiating or bringing such proceeding. Licensee shall indemnify Licensor for all of Licensor’s costs, reasonable attorneys’ fees, and damages which

Licensor incurs in enforcing the indemnification provisions set forth in this condition. Licensee shall pay to Licensor within 30 days after receipt of an invoice or, as applicable, to counsel of Licensor's choosing, any amount owed pursuant to the indemnification requirements prescribed herein.

13. **Insurance Requirements.**

13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B.

13.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

14. **Assignment/Subletting.**

14.1. Except as expressly provided herein, this Agreement and each site license granted pursuant to individual Site Supplements herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder; provided, however, the Parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Cell Equipment deployed by Licensee on any Municipal Facility or in any PROW or public utility easement pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Such Small Cell Equipment shall be treated as Licensee's Small Cell Equipment for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Small Cell Equipment; (ii) Licensor's sole point of contact regarding such Small Cell Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Small Cell Equipment. This Agreement and the related rights, duties, and privileges may not be assigned or otherwise transferred in whole or in part without the prior written consent of Licensor; provided, however, Licensee shall have the right to assign this Agreement upon notice to Licensor but without Licensor's consent to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Licensee, or to any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement. If the Agreement is assigned or otherwise transferred in accordance with this Section, this Agreement, including any amendments, shall be binding on the assignee to the full extent that it was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Small Cell Equipment to a Municipal Facility shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, may collect any fees owed from Licensee all without prejudicing any other right or

remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

15. **Default.** It is a "Default" if (i) either Party fails to materially comply with this Agreement or any Site Supplement and does not remedy the failure within thirty (30) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within ninety (90) days after the initial written notice, or (ii) Licensee fails to comply with this Agreement or any Site Supplement and the failure interferes with Licensor's use of its Municipal Facility in a manner not covered by Section 7.4, and Licensee does not remedy the failure within twenty (20) days after written notice from Licensor or, if the failure cannot reasonably be remedied in such time, if Licensee does not commence a remedy within the allotted twenty (20) days and diligently pursue the cure to completion within thirty (30) days after the initial written notice.

16. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such Default, the non-defaulting Party may terminate this Agreement if the Default affects all Site Supplements and the Agreement as a whole, or any Site Supplement subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of California.

17. **Surrender.** Within one hundred eighty (180) days of the expiration or earlier termination of this Agreement or upon ninety (90) days of the expiration or termination of an individual Site Supplement, Licensee shall remove the affected Small Cell Equipment, at its sole expense, shall repair any damage to the Municipal Facilities or the PROW or public utility easement caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Small Cell Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted.

18. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Licensee

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: Wireless Installation on Public Structures
(City of Milpitas) (CA)
FA No.: _____
1025 Lenox Park Blvd . NE
3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept. - Network Operations
Re: Wireless Installation on Public Structures
(City of Milpitas) (CA)
FA No.: _____
208 S. Akard St.
Dallas, Texas 75202-4206

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

With copy to: Best Best & Krieger, LLP
2001 North Main Street
Suite 390
Walnut Creek, CA 94596
Attention: City Attorney, City of Milpitas

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) five business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

19. **Miscellaneous.**

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter herein, and supersedes all negotiations, understandings or agreements as to the same. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to choice of law rules.

19.4. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

19.5. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms. Licensor hereby designates, and authorizes, the City Manager to execute all Site Supplements and amendments thereto entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

19.6. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

19.7. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8. Limitation of Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.9. Time is of the Essence. Time is of the essence with regard to the performance of all of Licensee's obligations under this Agreement.

19.10. Change of Law. During the Initial Term, in the event that any legislative, regulatory, or judicial action ("New Law") affects the rights or obligations of the Parties or any term of the Agreement, the Parties agree that the Agreement shall nonetheless remain in effect until the end of the Initial Term unless an amendment to the Agreement to address the New Law is mutually agreed to in writing by the Parties.

19.11. Dispute Resolution.

(a) Good Faith Participation. Prior to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation and non-binding mediation processes set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as

compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.

(b) Upper Management Escalation and Mediation. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both Parties with authority to settle the dispute shall meet at a mutually acceptable time and place within thirty (30) calendar days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within thirty (30) calendar days of receipt of the disputing Party's notice, which period may be extended upon mutual agreement of the Parties, or if the Parties fail to meet within thirty (30) calendar days, either Party may initiate mediation. Such mediation shall take place at a mutually agreeable location. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, either Party may initiate litigation.

(c) Enforcement. The parties regard the aforesaid obligation to escalate to upper management and mediate as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

19.12 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ____ day of _____, 2020 (the “Execution Date”).

LICENSOR:

City of Milpitas, a California municipal corporation

By: _____
Print Name: _____
Its: _____

LICENSEE:

New Cingular Wireless PCS, LLC, a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
Form of Site Supplement
Supplement

1. Supplement. This is a Site Supplement as referenced in that certain NON-EXCLUSIVE LICENSE AGREEMENT FOR THE USE OF CITY-OWNED MUNICIPAL FACILITIES TO INSTALL SMALL CELL ANTENNAS AND ASSOCIATED EQUIPMENT, between Licensor and Licensee dated _____, 2020 ("Agreement"). This Site Supplement is approved by Licensor this ____ day of _____, 20__ (the date executed by all parties, referred herein as "Site Supplement Effective Date"). Licensee has submitted an application for a Site Supplement pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site Supplement, the terms of this Site Supplement shall govern (but only with respect to the subject matter addressed therein). Capitalized terms used in this Site Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. IF THE SITE SUPPLEMENT IS NOT COUNTER-SIGNED BY LICENSEE AND RETURNED TO LICENSOR WITHIN 30 DAYS AFTER LICENSOR HAS GRANTED APPROVAL, THE SITE SUPPLEMENT SHALL BE VOID AND OF NO LEGAL EFFECT. IF LICENSEE STILL WANTS TO USE THE MUNICIPAL FACILITY, LICENSEE WILL BE REQUIRED TO SUBMIT A NEW APPLICATION AND ASSOCIATED FEES.

2. Project Description and Locations. Licensee shall have the right to attach Small Cell Equipment to the designated space on the specific Municipal Facility as further described in Exhibit 1 attached hereto (the "Licensed Area").

3. Small Cell Equipment. The Small Cell Equipment to be installed at the Licensed Area is listed and depicted on plans included in Exhibit 1 attached hereto.

4. Term. The term of this Site Supplement shall be coterminous with the Agreement Term as set forth in Section 3.1 of the Agreement.

5. Fees. The initial annual Per Pole Fee or Alternate Per Pole Fee for the term of this Supplement shall be _____, as determined in accordance with the Agreement, and as adjusted by Section 4 of the Agreement.

6. Site Supplement Commencement Date. If Licensee does not commence installation of its Small Cell Equipment within one (1) year of the Site Supplement Effective Date, the Site Supplement shall be void unless Licensor, in its sole discretion, extends the time for commencing installation of Small Cell Equipment in writing.

7. Miscellaneous. _____.

[Signature page follows]

APPROVED as of the date shown below.

LICENSOR:

City of Milpitas, a California municipal corporation

By: _____

Name: _____

Title: _____

DATE: _____

ACCEPTED BY LICENSEE:

LICENSEE:

New Cingular Wireless PCS, LLC, a Delaware
limited liability company

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name: _____

Title: _____

Exhibits:

Exhibit 1

Exhibit 1

Licensed Area, Small Cell Equipment List and Plans

EXHIBIT B

Licensee's Minimum Insurance Requirements

1. General.

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance Licensee licensed, authorized or permitted to transact business in the State of California, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. Licensee shall, and shall require any of its contractors while working hereunder to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below. Licensee shall ensure that the Licensor is an additional insured on insurance required from Licensee's contractors. For CGL coverage Licensee's contractors shall provide coverage with a form at least as broad as CG 00 01 04 13.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability equal to those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Contractors' Pollution Legal Liability. Licensee must maintain Contractors' Pollution Legal Liability insurance with limits of \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If any coverage required is written on a claims-made coverage form:

(1) The retroactive date must be shown, and this date must be before the execution 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 years after completion of contract 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, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

(4) A copy of the claims reporting requirements must be submitted to the Licensor for review.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's required insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must 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.

(3) Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Licensor for all work performed by the Licensee, its employees, agents and subcontractors. The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for the duration of this Agreement. Licensee must submit an annual Certificate of Insurance evidencing Commercial General Liability insurance during this

period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation of any required coverage that is not replaced. Such notice shall be sent directly to Licensor at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any.

C. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required herein. In the event Licensee elects to self-insure its obligation to include Licensor as an additional insured, the following additional provisions shall apply:

(i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and

(iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Funding Agreement with Santa Clara County for Countywide isolation and quarantine services related to COVID-19
Category:	Leadership and Support Services
Meeting Date:	9/15/2020
Staff Contacts:	Ashwini Kantak, 408-586-3053 Christopher J. Diaz, 408-586-3040
Recommendation:	Approve and authorize the City Manager to execute a Funding Agreement with Santa Clara County for Countywide isolation and quarantine services related to COVID-19 for an amount not to exceed \$109,588.

Background:

On February 3, 2020, the Santa Clara County (County) Public Health Officer declared a local health emergency, and the County's Director of Emergency Services proclaimed a local emergency, to respond to the Coronavirus Disease ("COVID-19") pandemic and manage its spread throughout the County. On March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California because of the threat of COVID-19.

On March 12, 2020, in response to the growing Coronavirus threat and the State of California's declaration of a state of emergency, City Manager Steve McHarris declared a local emergency. On March 13, 2020, the President of the United States declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak. On March 16, 2020, the County of Santa Clara issued an Order to all residents to shelter in place and businesses to close except for essential activities, essential services, and governmental services as defined under Section 10 of the Order.

On March 19, 2020, the Governor issued an Order (Executive Order N-33-20) that all individuals living in the State of California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all.

As a result of the State Executive Orders and their national counterparts, County Order, and City Proclamation of Local Emergency in response to COVID-19, as may be extended and modified by federal, state, and local authorities, the County and City have identified an urgent need to provide a Countywide Isolation and Quarantine Support Program ("Program") as part of the response to COVID-19.

Analysis:

The County has established and will operate the Program as described in Exhibit A of the proposed Agreement. The Program assists all residents of Santa Clara County to isolate if they have tested positive for Coronavirus (COVID-19) or quarantine if they have been in close contact with a COVID-19 positive person ("Contacts"). The U.S. Centers for Disease Control and Prevention (CDC) defines a "close contact" as "someone who was within six feet of an infected person for at least 15 minutes starting from 48 hours before illness onset until the time the patient is isolated; however, the County Public Health Department's Special Investigations Unit or Case Investigation and Contact Tracing group ("CICT") will make determinations based on the circumstances of each interaction.

Many individuals and their families are able to isolate or quarantine in their homes without assistance while others have situations that make isolating or quarantining difficult. These challenges include, but are not limited to, overcrowded housing, the lack of paid sick leave, recent unemployment, co-habitation with at-risk individuals, and obligations to care for family members. Primary among these challenges are: 1) access to a room in which the case or contact may stay and remain separate from other members of the household; and, 2) access to one's own bathroom or the ability to clean the bathroom after each use. The County's CICT group is trained to speak with individuals about what they may need to effectively isolate or quarantine in their own home.

The intent of the proposed Agreement is that the City, along with all other 14 cities within Santa Clara County, will contribute funding to the County to pay the County for its costs in operating the Program.

Proposed Agreement Term

The Agreement would be effective retroactively from August 1, 2020 through December 31, 2020, unless extended by mutual consent. The County began operating this program as a pilot in mid-June, however, the County needed time to gather information evaluate the feasibility of a potential county wide program. It also took time to negotiate a draft agreement, thus requiring a retroactive agreement. To date, the County has helped 15 Milpitas individuals and families. The costs of the program prior to August 1 will be borne by the County.

Financial Obligation

As outlined in Exhibit E of the Agreement, the City's maximum obligation during the term of the Agreement would be \$109,588. This obligation includes fixed costs for program administration as well as actual costs for use of the Program by Milpitas residents.

Based upon prior utilization data, the County estimates that during the term of this Agreement, approximately 200 households who are Cases or Contacts will be referred to or will contact the Program weekly. Of the 200 households, it is estimated that approximately 25% (about 50 households) will decline services, are ineligible or cannot be contacted. Of the remaining households (approximately 150 households) who participate in the Program, 90% (about 135 households) will receive assistance to isolate or quarantine at home and 10% (about 15 households) would temporarily move into a motel. Of all households who enroll in the Program (150 households) each week, about 60% (90 households) also request and receive rental or financial assistance. Of the households participating in the program, it is estimated that approximately 82% will be residents of the City of San José. Residency is determined by the person's or family's home address.

Exhibit B of the proposed Agreement summarizes the projected needs among residents of each jurisdiction by Program component from August 1 through December 31, 2020, which is approximately 22 weeks. The number of residents by jurisdiction is based on current Program utilization and a minimum of five – one per month – for each jurisdiction. For planning purposes, at least one resident from each jurisdiction would need a motel placement. If the person or family is homeless, their residency is determined by the location of their last permanent address or the city where they spend most of their time.

Exhibit C of the proposed Agreement summarizes the assumptions used to determine the Program's fixed costs, the costs of operating a motel room for one month, at-home support services and rental or financial assistance.

Fixed Costs: Each city would reimburse the County for a portion of the Program's fixed costs regardless of utilization by the cities' residents. Each city's share of the fixed costs is proportional to its share of the countywide population (Exhibit D of the proposed Agreement). The services associated with these costs allow CICT, providers and residents to access the Program's services.

In addition to fixed costs, the Program will allocate costs to cities based on actual services provided to its residents. These costs will include lodging, support services and financial assistance.

- a. Motel Costs: Each jurisdiction will contribute to the cost of operating motels for isolation and quarantine based on the proportion of motel nights that its residents use. For example, in a given month, if a Milpitas resident stayed in one room for 30 days and a Campbell resident stayed in another room for 30 days – and no other cities’ residents stayed at the site – the costs for operating that motel site would be evenly split between the City of Milpitas and the City of Campbell.
- b. At-Home Support Services: Each jurisdiction will reimburse the County for the cost of supportive services provided directly to the jurisdictions’ residents while they isolate or quarantine in their own homes.
- c. Rental and Financial Assistance. Each jurisdiction will reimburse the County for the rental or financial assistance provided directly to the jurisdiction’s residents.

Total Estimated Costs: Exhibit E summarizes the total estimated cost by jurisdiction. These estimates form the basis for the maximum financial obligation during the term referenced in Section 2 of this Agreement. If the number of Milpitas residents participating in the Program exceeds 50% of the total estimated participation shown in Exhibit B, then the City agrees to confer with the County on adjustments to the maximum financial obligation.

The County shall submit invoices for any eligible cost up to the maximum financial obligation. For example, the County may submit the cost of information and referral for all motel rooms located in the City as a strategy to leverage Federal Emergency Management Agency (FEMA) reimbursements. The County may submit invoices to the City even if FEMA has not made a determination on the County’s request(s) for reimbursement under FEMA’s Public Assistance program. Invoices submitted by the County will be supported by backup documentation provided with the invoice.

Leveraging and Use of Funds

The City’s funds may be used for any expenses that are necessary for successful operation of the Program, as described in the proposed Agreement. This includes expenses that may be categorically ineligible for the FEMA Public Assistance program and the portion of expenses that is calculated to be the local match for the FEMA Public Assistance program.

The County has stated that it intends to work with the City to leverage state and federal funds and to conserve local resources. However, since some funding sources have limitations, the County has stated that it may not be able to true-up costs for each city until well after the Program has ceased operations. Furthermore, based on determinations of the agencies like FEMA, the County has stated that it may have to allocate certain funding to specific categories of expenses to maximize state and federal funds.

The County will submit requests for reimbursement through the FEMA Public Assistance program. Reimbursements from this program require a 25% match, and not all funding sources can be used as match. The County intends to use approximately \$250,000 in Community Development Block Grant Coronavirus (CDBG-CV) funds to operate the program and to pay for a portion of costs associated with unincorporated Santa Clara County.

Fiscal Impact:

Based on the current estimate, the proposed Agreement is for a not to exceed amount of \$109,588. However, of this amount, \$22,741 is for fixed costs while \$86,847 is an estimate and will be modified to reflect actual cost of services provided to Milpitas residents.

On August 18, the City Council approved the Coronavirus Relief Funds (CRF) Expenditure Justification Plan (Plan) for the City’s CRF allocation in the amount of \$962,595 and directed the Finance Director to submit the incurred and estimated future eligible costs for CRF funding to the State of California. The Plan identified the potential expenditure for the proposed agreement with Santa Clara County for isolation and quarantine services related to COVID-19.

The final tally of eligible expenditures submitted of approximately \$2.6 million exceeded the funding from the State and it was not even sufficient to cover eligible costs incurred until June 30, 2020. Therefore, staff proposes to use the Unanticipated Expenditure Reserve to fund the agreement.

California Environmental Quality Act:

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

Recommendation:

Approve and authorize the City Manager to execute a Funding Agreement with Santa Clara County for Countywide isolation and quarantine services related to COVID-19 for an amount not to exceed \$109,588.

Attachment:

Draft Funding Agreement with County

**FUNDING AGREEMENT BETWEEN THE
COUNTY OF SANTA CLARA
AND THE CITY OF MILPITAS
FOR COUNTYWIDE ISOLATION AND QUARANTINE
SUPPORT PROGRAM**

This Agreement is entered into by and between the **County of Santa Clara** (the “County”) and the **City of Milpitas** (the “City”), individually, a “Party” and, collectively, the “Parties,” in order to provide funding for a Countywide Isolation and Quarantine Support Program (“Program”) to be managed by the County.

RECITALS

- A. WHEREAS, on February 3, 2020, the County Health Officer declared a local health emergency, and the County's Director of Emergency Services proclaimed a local emergency, to respond to the Coronavirus Disease (“COVID-19”) pandemic and manage its spread throughout the County; and
- B. WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California because of the threat of COVID-19; and
- C. WHEREAS, on _____ March 12, 2020 _____, the City issued a Proclamation of Local Emergency finding that the existence and threat of COVID-19 in the community give rise to conditions of extreme peril to the safety and health of persons within the City; and
- D. WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued an Order to all residents to shelter in place and businesses to close except for essential activities, essential services, and governmental services as defined under Section 10 of the Order; and
- E. WHEREAS, on March 19, 2020, the Governor issued an Order (Executive Order N-33-20) that all individuals living in the State of California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all; and
- F. WHEREAS, as a result of the State Executive Orders and their national counterparts, County Order, and City Proclamation of Local Emergency in response to COVID-19, as may be extended and modified by federal, state, and local authorities, the County and City have identified an urgent need to provide a Countywide Isolation and Quarantine Support Program (“Program”) as part of the response to COVID-19; and,

- G. WHEREAS, the County has established and will operate the Program as described on Exhibit “A” attached hereto and incorporated herein by this reference; and
- H. WHEREAS, the Program assists all residents of Santa Clara County to isolate if they have tested positive for Coronavirus (COVID-19) (“Cases”) or quarantine if they have been in close contact with a COVID-19 positive person (“Contacts”); and
- I. WHEREAS, the U.S. Centers for Disease Control and Prevention defines a “close contact” as “someone who was within six feet of an infected person for at least 15 minutes starting from 48 hours before illness onset until the time the patient is isolated; however, the County Public Health Department’s Special Investigations Unit or Case Investigation and Contact Tracing group (“CICT”) will make determinations based on the circumstances of each interaction; and
- J. WHEREAS, many individuals and their families will be able to isolate or quarantine in their homes without assistance; and
- K. WHEREAS, others have situations that make isolating or quarantining difficult. These challenges include, but are not limited to, overcrowded housing, the lack of paid sick leave, recent unemployment, co-habitation with at-risk individuals, and obligations to care for family members. Primary among these challenges are: 1) access to a room in which the case or contact may stay and remain separate from other members of the household; and, 2) access to one’s own bathroom or the ability to clean the bathroom after each use. The County’s CICT group is trained to speak with individuals about what they may need to effectively isolate or quarantine in their own home; and
- L. WHEREAS, it is in the intent of this Agreement that City, along with all other 14 cities within Santa Clara County, will contribute funding to the County to pay the County for its costs in operating the Program.

In consideration of the foregoing Recitals, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

SECTION 1 TERM

This Agreement is effective August 1, 2020 and will continue thereafter until December 31, 2020, unless extended by mutual consent.

SECTION 2 MAXIMUM FINANCIAL OBLIGATION

As explained in Section 3 below and stated in Exhibit E, City’s maximum financial obligation during the Term of this Agreement is **\$109,588**.

SECTION 3 ESTIMATE OF COUNTYWIDE NEED AND COST SHARING

To ensure that appropriate services are available to all Santa Clara County residents who need help with isolation or quarantine, it is the intent of this Agreement that the County and all 15 cities within the County would share in the Program's costs on a roughly proportional basis.

a) **Estimates of Countywide Need:**

- i) Based upon prior utilization data, the County estimates that during the term of this Agreement, approximately 200 households who are Cases or Contacts will be referred to or will contact the Program weekly. Of the 200 households, it is estimated that approximately 25% (about 50 households) will decline services, are ineligible or cannot be contacted. Of the remaining households (approximately 150 households) who participate in the Program, 90% (about 135 households) will receive assistance to isolate or quarantine at home and 10% (about 15 households) would temporarily move into a motel. Of all households who enroll in the Program (150 households) each week, about 60% (90 households) also request and receive rental or financial assistance.
- ii) Of the households participating in the program, it is estimated that approximately 82% will be residents of the City of San José. Residency is determined by the person's or family's home address.
- iii) Exhibit B summarizes the projected needs among residents of each jurisdiction by Program component from August 1 through December 31, 2020, which is approximately 22 weeks. The number of residents by jurisdiction is based on current Program utilization and a minimum of five – one per month – for each jurisdiction. For planning purposes, at least one resident from each jurisdiction would need a motel placement.
- iv) If the person or family is homeless, their residency is determined by the location of their last permanent address or the city where they spend most of their time.

b) **Cost Sharing:** Exhibit C summarizes the assumptions used to determine the Program's fixed costs, the costs of operating a motel room for one month, at-home support services and rental or financial assistance. These are intended to be estimates for budgeting purposes.

- i) **Fixed Costs:** Each jurisdiction would reimburse the County for a portion of the Program's fixed costs regardless of utilization by the jurisdiction's residents. Each jurisdiction's share of the fixed costs is proportional to its share of the countywide population (see Exhibit D). The services associated with these costs are necessary because they allow CICT, providers and residents to access the Program's services.
- ii) **Motel Costs:** Each jurisdiction will contribute to the cost of operating motels for isolation and quarantine based on the proportion of motel nights that its residents use. For example, in a given month, if a San Jose resident stayed in one room for 30 days and a Campbell resident stayed in another room for 30 days – and no other jurisdiction's residents stayed at the site – the costs for

operating that motel site, would be evenly split between the City of San Jose and the City of Campbell.

- iii) **At-Home Support Services:** Each jurisdiction will reimburse the County for the cost of supportive services provided directly to the jurisdiction's residents while they isolate or quarantine in their own homes.
- iv) **Rental and Financial Assistance.** Each jurisdiction will reimburse the County for the rental or financial assistance provided directly to the jurisdiction's residents.
- c) **Total Estimated Costs:** Exhibit E summarizes the total estimated cost by jurisdiction. These estimates form the basis for the maximum financial obligation during the term referenced in Section 2 of this Agreement. If the number of Milpitas residents participating in the Program exceeds 50% of the total estimated participation shown in Exhibit B, then the City agrees to confer with the County on adjustments to the maximum financial obligation.
- d) The County shall submit invoices for any eligible cost up to the maximum financial obligation. For example, the County may submit the cost of information and referral for all motel rooms located in the City as a strategy to leverage Federal Emergency Management Agency (FEMA) reimbursements. The County may submit invoices to the City even if FEMA has not made a determination on the County's request(s) for reimbursement under FEMA's Public Assistance program. Invoices submitted by the County will be supported by backup documentation provided with the invoice.

SECTION 4 ROLES AND RESPONSIBILITIES

County shall operate the Program as indicated in the Program Description attached as Exhibit "A."

SECTION 5 LEVERAGING AND USE OF FUNDS

- a) The City's funds may be used for any expenses that are necessary for successful operation of the Program, as described in this Agreement. This includes expenses that may be categorically ineligible for the FEMA Public Assistance program and the portion of expenses that is calculated to be the local match for the FEMA Public Assistance program.
- b) The County will work with City to leverage state and federal funds and to conserve local resources. However, since some funding sources have limitations the County may not be able to true-up costs for each city until well after the Program has ceased operations. Furthermore, based on determinations of the agencies like FEMA, the County may have to allocate certain funding to specific categories of expenses to maximize state and federal funds.
- c) The County will submit requests for reimbursement through the FEMA Public Assistance program. Reimbursements from this program require a 25% match, and not all funding sources can be used as match.

- d) The County intends to use approximately \$250,000 in Community Development Block Grant Coronavirus (CDBG-CV) funds to operate the program and to pay for a portion of costs associated with unincorporated Santa Clara County. The County would use these funds to offset the actual costs to the “Urban County” cities: Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill and Saratoga. The County, on behalf of these cities, receives CDBG funds and administers CDBG-eligible programs. Note that CDBG-CV funds cannot be used for hotel costs and can only be used to support households earning 80% or less of AMI.

SECTION 6 MUTUAL INDEMNIFICATION

County and City agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Parties under this Agreement.

SECTION 7 TERMINATION FOR CAUSE

Either party may terminate this Agreement at any time for cause upon providing notice and a reasonable opportunity to cure to the other party.

SECTION 8 ASSURANCE

Each Party represents and warrants that it has the authority to enter into this Agreement.

SECTION 9 RELATIONSHIP

Nothing contained in this Agreement shall be deemed or construed by the Parties or any third party to create the relationship of partners or joint ventures between the City and the County.

SECTION 10 ENTIRE AGREEMENT

This instrument contains the entire agreement between the Parties, and no statements, promises or inducements made by either Party or the designated agent of either Party that are not contained in this Agreement shall be valid or binding.

SECTION 11 MODIFICATION

This Agreement may not be enlarged, modified, or altered, except if it is evidenced in writing, signed by the Parties and endorsed to this Agreement.

SECTION 12 INSURANCE

Each Party shall, at its own expense, keep in force during the Term, Workers’ Compensation Insurance, insuring against and satisfying each Party’s obligations and liabilities under the workers’ compensation laws of the State of California, including employer’s liability insurance in the limits required by the laws of the State of California.

SECTION 13 SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in force without being impaired or invalidated in any way.

SECTION 14 NOTICES

Notices to the Parties in connection with this Agreement shall be given personally or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties as follows:

COUNTY OF SANTA CLARA

Office of Supportive Housing

Attn: Consuelo Hernandez

Phone: 408-278-6419

Address: 2310 North First St., Suite 201, San Jose, CA 95131

Email: Consuelo.Hernandez@hhs.sccgov.org

CITY OF MILPITAS

DEPARTMENT

Attn: Steven G. McHarris

Phone:408-586-3059

Address: 455 E. Calaveras Blvd, Milpitas, CA 95035

Email: smcharris@ci.milpitas.ca.gov

Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated on the date of delivery.

SECTION 15 AMENDMENTS

This Agreement may be amended only by a written instrument signed by the Parties.

SECTION 16 WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be provided, in writing, and shall apply to the specific instance expressly stated.

SECTION 17 GOVERNING LAW and VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the Santa Clara County.

SECTION 18 COUNTERPARTS

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

SECTION 19 THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

SECTION 20 CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into as of the day and year of execution of this Agreement.

COUNTY OF SANTA CLARA

CITY OF MILPITAS

Steven G. McHarris, City Manager

PRINTED NAME
TITLE

PRINTED NAME
TITLE

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

APPROVED AS TO FORM

Christopher Cheleden
Lead Deputy County Counsel

PRINTED NAME
City Attorney

Date: _____

Date: _____

EXHIBIT A

PROGRAM DESCRIPTION

The County shall provide the following services and program organization in operating the Program:

Program Coordination:

- **Support Request Line.** The County will provide staff or contractors to receive requests for assistance from cases, contacts, medical providers, cities' emergency operations centers, and Public Health unit and community-based organizations (CBOs) via telephone or email. The Program's "call center" would be available seven days a week from 8 am to 5 pm. Voice messages or emails received after hours would be responded to the following day.
- **Coordination.** The team and manager assigned to the Support Request Line would also be responsible for coordinating with the Public Health Special Investigations Group (SIG) and CITC to ensure that all teams are aware of and can take appropriate actions for each case and contact. Continuous coordination with SIU and CITC will be necessary because there may be a lag between the time when SIG or CITC become aware of a case or contact and the time when a case or contact or their medical provider reaches out for assistance. The manager of the team would also be responsible for data collection for reports to the County Administration and participating cities.
- **Resource Coordinators.** Coordinators would be assigned to the Support Request Line would assess cases and contacts for needs and arrange for the services described below.
- **Support at Home.** Even individuals or families who have adequate home settings may need additional assistance including:
 - Transportation to/from medically necessary appointments if the individual is not able to use a private vehicle;
 - Up to three meals per day and/or groceries;
 - Medical screening and connection to medical services; and
 - Weekly laundry services for linens and personal clothing; and, Light case management services to help individuals apply for benefits (e.g., unemployment insurance, CalFresh) and other services.
- **Motels.** Some individuals and/or family members may be placed at a motel to isolate or quarantine until they are cleared to return to their home or their congregate care setting. The Resource

Coordinators would coordinate placement at one or more motels for cases or contacts who cannot remain at home or do not have a home. In addition to typical motel management staff and services, the County would negotiate agreements with the motel(s), contract with a community-based organization to provide onsite coordinators and oversee security. In some cases, the individual may be placed in other non-congregate settings, such as a travel trailer. In these out-of-home settings, the program would also provide transportation, food, health and behavioral health screenings and services, laundry and light case management services, as needed.

- **Rental and Financial Assistance.** If there is a documented need, cases and contacts would be eligible for rental and financial assistance up to \$5,000. The rental and financial assistance is limited to households earning 80% or less of the Area Median Income (AMI) adjusted for household size. Rental and financial assistance would primarily be provided by Sacred Heart Community Service (SHCS) under contract with the County. The agreement with SHCS enables that organization to:
 - Issue rental assistance or financial assistance within 72 hours of verifying eligibility;
 - Connect cases and contacts to the broader network of homelessness prevention services (e.g., additional rental assistance) which is primarily implemented through the seven CBOs of the Emergency Assistance Network (EAN) and coordinated by SHCS; and,
 - Connect cases and contacts to other community resources.
- **Other Services.** Program resource coordinators would also be responsible for arranging access to other services including, but not limited to, childcare, elder care; in-home support services; and, emergency, urgent and/or ongoing healthcare services.
- **Department of Employment and Benefit Services (DEBS).** The Resource Coordinators would ensure that (eligible) cases or contacts would be able to access or sign up for General Assistance, CalWORKs, Medi-Cal, CalFresh, or other benefit programs administered by the County. The Resource Coordinators cannot authorize these benefits directly, but the County's DEBS has assigned an Eligibility Supervisor to:
 - Receive referrals directly from Resource Coordinators;
 - Immediately contact the case or contact to help them apply for the appropriate program; and
 - When appropriate, approve the applications for assistance.
- **COVID-19 Assistance Navigation Hotline (CAN-19 Hotline).** For workers who need additional assistance understanding or accessing resources provided through the California Employment Development Department (EDD), such as unemployment insurance, Resource Coordinators would make a connection to the County's CAN-19 Hotline. The CAN-19 Hotline assists in English, Spanish, Vietnamese and Mandarin.

Exhibit B – Projected Needs by Jurisdiction, August 1, 2020 through December 31, 2020

Projection reflects:

- Utilization June 17 through July 31, 2020
- A minimum of 5 households per jurisdiction and at least one motel placement
- 10% of enrollees will need a motel placement and 90% can isolate or quarantine at home
- 60% of all enrollees request rental assistance

	Imputed			60% of Enrollees
	Imputed	At-Home	Total Program	Request Rental
	<u>Motel</u>	<u>Support</u>	<u>Enrollments</u>	<u>Assistance</u>
CAMPBELL	2	22	24	14
CUPERTINO	1	4	5	3
GILROY	4	32	36	22
LOS ALTOS	1	4	5	3
LOS ALTOS HILLS	1	4	5	3
LOS GATOS	1	4	5	3
MILPITAS	2	22	24	14
MONTE SERENO	1	4	5	3
MORGAN HILL	4	32	36	22
MOUNTAIN VIEW	2	22	24	14
PALO ALTO	5	43	48	29
SAN JOSE	270	2430	2700	1620
SANTA CLARA	8	76	84	50
SARATOGA	1	4	5	3
SUNNYVALE	12	108	120	72
UNINCORPORATED	20	184	204	122
TOTAL	335	2995	3330	1997

Exhibit C – Estimate of Costs by Service Component

Activity	Est. Rate / Per Unit Cost	Fixed Costs per Month	Motel Room Cost per Month	At-Home Support Costs per HH	Financial Assistance Cost per HH
Resource Coordinators, Medical Screening, Program Coordination	7.0 FTE (~\$150K per FTE annually)	\$ 87,500	\$ -	\$ -	\$ -
Sacred Heart Staffing, Operations & Overhead	(28500/3) or \$9,500 per month	\$ 9,500	\$ -	\$ -	\$ -
Rental / Financial Assistance	Up to \$5,000 per HH / Avg. \$3,500 per HH	\$ -	\$ -	\$ -	\$ 3,500
Motel Room Rate & Tax	Average of \$107 per night	\$ -	\$ 3,255	\$ -	\$ -
Motel Site Management	\$25,000 per site per month	\$ -	\$ 424	\$ -	\$ -
Information & Referral Services	\$20,833 per site per month	\$ -	\$ 353	\$ -	\$ -
Motel Security	\$48,400 per site per month	\$ -	\$ 820	\$ -	\$ -
Meal Delivery	Three meals \$33 per person per day	\$ -	\$ 1,004	\$ -	\$ -
Groceries	\$50 per person per week, assume 4 ppl	\$ -	\$ -	\$ 400	\$ -
Transportation	Up to \$400 per incident (1.5/mo)	\$ -	\$ 600	\$ 400	\$ -
Laundry Services	\$40 per household per month	\$ -	\$ 40	\$ -	\$ -
Medical & Behavioral Health Services	3 FTE RN per site per month	\$ -	\$ 742	\$ -	\$ -
Administration	18%	\$ 17,460	\$ 1,303	\$ 144	\$ -
Total		\$ 114,460	\$ 8,540	\$ 944	\$ 3,500

DRAFT

Exhibit D – Estimate of Fixed Costs and Share by Jurisdiction

Jurisdictional Share of Monthly Fixed Costs

County Population: 1/1/2020

Source: <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/e-1/>

		FIXED COSTS		
		<u>% of Total</u>	<u>Monthly Fixed Costs</u>	<u>Aug. 1 thru Dec. 31, 2020</u>
Campbell	42,288	2.2%	\$ 2,467	\$ 12,335
Cupertino	59,549	3.0%	\$ 3,474	\$ 17,370
Gilroy	57,084	2.9%	\$ 3,330	\$ 16,651
Los Altos	30,876	1.6%	\$ 1,801	\$ 9,006
Los Altos Hills	8,413	0.4%	\$ 491	\$ 2,454
Los Gatos	31,439	1.6%	\$ 1,834	\$ 9,171
Milpitas	77,961	4.0%	\$ 4,548	\$ 22,741
Monte Sereno	3,594	0.2%	\$ 210	\$ 1,048
Morgan Hill	46,454	2.4%	\$ 2,710	\$ 13,550
Mountain View	82,272	4.2%	\$ 4,800	\$ 23,998
Palo Alto	69,226	3.5%	\$ 4,039	\$ 20,193
San Jose	1,049,187	53.5%	\$ 61,209	\$ 306,044
Santa Clara	129,104	6.6%	\$ 7,532	\$ 37,659
Saratoga	31,030	1.6%	\$ 1,810	\$ 9,051
Sunnyvale	156,503	8.0%	\$ 9,130	\$ 45,651
Unincorporated	86,989	4.4%	\$ 5,075	\$ 25,374
Total	1,961,969	100%	\$ 114,460	\$ 572,300

Exhibit E – Estimate of Total Costs by Program Component for Each Jurisdiction

For Services from August 1, 2020 through December 31, 2020

<u>Jurisdiction</u>	<u>Fixed Costs</u>	<u>Motel Costs</u>	<u>At-Home Support</u>	<u>Financial Assistance</u>	<u>Total by Jurisdiction</u>
Campbell	\$ 12,335	\$ 17,079	\$ 20,768	\$ 49,000	\$ 99,183
Cupertino	\$ 17,370	\$ 8,540	\$ 3,776	\$ 10,500	\$ 40,186
Gilroy	\$ 16,651	\$ 34,159	\$ 30,208	\$ 77,000	\$ 158,018
Los Altos	\$ 9,006	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,822
Los Altos Hills	\$ 2,454	\$ 8,540	\$ 3,776	\$ 10,500	\$ 25,270
Los Gatos	\$ 9,171	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,986
Milpitas	\$ 22,741	\$ 17,079	\$ 20,768	\$ 49,000	\$ 109,588
Monte Sereno	\$ 1,048	\$ 8,540	\$ 3,776	\$ 10,500	\$ 23,864
Morgan Hill	\$ 13,550	\$ 34,159	\$ 30,208	\$ 77,000	\$ 154,917
Mountain View	\$ 23,998	\$ 17,079	\$ 20,768	\$ 49,000	\$ 110,846
Palo Alto	\$ 20,193	\$ 42,698	\$ 40,592	\$ 101,500	\$ 204,983
San Jose	\$ 306,044	\$ 2,305,717	\$ 2,293,920	\$ 5,670,000	\$ 10,575,682
Santa Clara	\$ 37,659	\$ 68,318	\$ 71,744	\$ 175,000	\$ 352,721
Saratoga	\$ 9,051	\$ 8,540	\$ 3,776	\$ 10,500	\$ 31,867
Sunnyvale	\$ 45,651	\$ 102,476	\$ 101,952	\$ 252,000	\$ 502,080
Unincorporated	\$ 25,374	\$ 170,794	\$ 173,696	\$ 427,000	\$ 796,864
Total	\$ 572,300	\$ 2,860,797	\$ 2,827,280	\$ 6,989,500	\$ 13,249,877



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Adopt a City Social Media Policy
Category:	Leadership and Support Services
Meeting Date:	9/15/2020
Staff Contacts:	Ashwini Katak, 408-586-3053 Christopher J. Diaz, 408-586-3040
Recommendation:	Approve and adopt a City of Milpitas Social Media Policy.

Background:

Social media sites are interactive web and mobile application platforms that allow for the disintermediated exchange of information at scale. The City encourages the use of social media pages to facilitate communication and dialogue from the City and its departments, about its mission, meetings, activities, and current issues and events to members of the public. Since the COVID-19 pandemic started, the City's social media presence has taken on the additional role of being the primary venue for community members to catch up on the City's activities and current events.

The City currently does not have an updated social media policy that governs its online social media activities citywide. The Milpitas Police Department is the only Department with an existing social media policy. There is also a social media guidebook from 2014 that was developed to guide staff in the use of social media. In adopting a Citywide Social Media Policy, the City will be providing clear rules for all City representatives as to how to interact on social media, along with lessening the risk that representatives of the City act in a manner on social media that may subject the City to legal or other challenges. While the courts are still catching up with the technology, there have been published cases that have subjected local officials to open government and transparency laws for failing to distinguish between personal and official social media sites. (see *Davison v. Randall* (4th Cir. 2019) 912 F.3d 666.)

The purpose of the proposed citywide social media policy is to provide a framework for City personnel to use social media for public communications and engagement, create consistency across City platforms, and avoid misinterpretation of protocol. The proposed policy will supersede the previously developed social media guidebook and any other social media guidance that may be in use at the department level.

Analysis:

The proposed policy provides a comprehensive framework for City staff, City officials and any other individuals acting in an official capacity when conveying information to the public, including residents and community stakeholders. This policy was developed by researching social media best practices among public agencies, securing feedback from City staff, obtaining input from the Executive Leadership Team, consulting with labor unions, and receiving input from the City Attorney's Office.

The policy sets guidelines on the City's social media usage, including terms of use for the public. It highlights that the City does not intend to create a public forum or a designated public forum by which visitors may address or post on unrelated matters. The policy clarifies that while social media sites serve as valuable communication tools, the City's official website remains its primary online presence. Social media sites function as auxiliary channels to disseminate information to the public. The City also reserves the right to terminate any social media site at any time without notice.

The policy defines critical terms, including platforms that qualify as social media. This includes social networking sites (e.g. Facebook, Nextdoor), video and photo sites (e.g. Instagram, YouTube), Micro-blogging sites (e.g. Twitter), Ephemeral messaging applications (e.g. TikTok), and forums and discussion boards (e.g. Reddit). A “City Social Media Site” is defined as any of these types of sites created, authorized, and/or operated by the City of Milpitas.

Posting Guidelines and Limitations

Key aspects of posting guidelines applicable to City staff posting on City Social Media Sites include a limitation on the sharing of certain personal identifying information, use of City social media sites for official business only, and a prohibition on promoting or opposing policy positions or political positions. Access to City Social Media Sites is restricted to city-owned equipment. There are also best practices on posting, although given the breadth of content possibilities across social media sites, the judgment is left to the discretion of the City staff member posting content, with some supervision. The sharing of posts or information from other public entities shall be allowed if such sharing helps the City meet its goals or objectives, or if it has been determined by the Department Head to be beneficial to the community. The sharing of posts or information from private businesses shall be prohibited.

Approval and Administration of Social Media Sites

The policy also organizes the City’s process for approving new social media accounts, and departments administering their own accounts. New City social media sites are subject to the approval of the City Public Information Officer (PIO), allowing for a more coordinated strategy with respect to the City’s social media presence.

The policy defines who may post on behalf of the City, the responsibilities of City staff in maintaining account information, the ability to approve third-party social media management apps such as Hootsuite, and guidelines and best practices on posting and monitoring social media accounts. Approved administrators are provided authority to manage their respective departments’ social media sites, with the limited exception of duties that fall under the authority of the PIO. Social Media Administrators are designated by the respective Department Heads.

Records Retention and the Public Records Act

This policy also includes requirements for records retention and the Public Records Act, pursuant to state law. This proposed social media policy has been drafted to ensure compliance with the First Amendment of the Constitution. Specifically, to protect free speech and encourage social discourse, comments that are negative or critical of the City would remain on the site unless they violate the specific criteria set forth by this policy. Comments violating the City’s Social Media Policy can be removed.

Public Terms of Use

The proposed social media policy includes language that must be posted or linked to on all City Social Media Sites. These public terms of use describe certain content subject to removal, and repeat offenders may be blocked.

Content subject to removal includes:

- Comments not topically related to the particular post being commented upon;
- Comments in support of or opposition to political campaigns, candidates, or ballot measures;
- Profane or obscene language or content;
- Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation, or any other classes protected under federal, state or local law;
- Sexual content or language or links to sexual content;
- Disparaging, harassing or threatening content;
- Solicitations and/or promotions of commerce and/or businesses;
- Conduct and/or encouragement of illegal activity;

- Information that may tend to compromise the safety or security of the public or public systems;
- Content that violates a legal ownership interest of any other party or that violates any federal, state or local law; or
- Identical posts by the same user or multiple users.

There are additional terms outlined in the proposed social media policy, including that 'liking' a post or any other type of interaction on social media does not imply an official City endorsement. Other terms include the public comment process for City Council meetings and restricting the City account from being used as a campaign tool.

Personal Social Media Use by City Representatives

The policy provides guidance on City representatives' use of social media in their personal capacity. This includes limitations of posting non-public information, and the risk of having personal social media accounts subjected to the California Public Records Act or other state law if the content reasonably suggests City-controlled use. City representatives are not permitted to use their City emails to set up personal accounts, and the City is not responsible for the content or accuracy of any content posted on a personal page.

There is additional guidance pertinent to City officials who use social media in a personal capacity. This includes language to make clear those social media accounts are not managed by the City of Milpitas, and guidance on ensuring compliance with the Brown Act and on posting information during emergency situations.

Violations of the policy may result in disciplinary action, including revoked access to City social media sites, and potential dismissal from City employment. A key aspect of this policy is the required acknowledgement and signature of any City staff member operating a City Social Media Site. This allows for a verifiable document that demonstrates an understanding of the policy for all individuals entrusted with usage of the City's social media assets.

Fiscal Impact:

There is no cost associated with the adoption of this policy.

California Environmental Quality Act:

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

Recommendation:

Approve and adopt a City of Milpitas Social Media Policy.

Attachment:

Draft City Social Media Policy

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: SOCIAL MEDIA USE POLICY

I. PURPOSE

The purpose of this Social Media Use Policy (“Policy”) is to establish for the use of City of Milpitas (“City”) Social Media Sites, created, operated and managed by City staff, City officials and any individuals acting in an official capacity when conveying information to members of the public, including residents and community stakeholders.

The City encourages the use of social media sites to facilitate communication and dialogue from the City, and its Departments, about its mission, meetings, activities, and current issues to members of the public. By facilitating such communication and dialogue, however, the City does not intend to create a public forum or a designated public forum by which visitors may address unrelated matters or make comments unrelated to the social media post at issue.

The City has an overriding interest and expectation in protecting the integrity of the information posted on City Social Media Sites and the content that is attributed to the City and its officials and employees.

II. DEFINITIONS

- A. “City Social Media Sites” means social media sites created, authorized, and/or operated by the City of Milpitas.
- B. “City official” means any person elected or appointed to a legislative body, commission, or committee of the City.
- C. “City’s Website” means as any internet or intranet webpage which represents the City or any of its departments, commissions, or volunteers
- D. “Department” means any City Department or Office that provides essential municipal services to residents and businesses in the City. A list of City Departments and Offices is listed on City’s official website, accessible here:
<http://www.ci.milpitas.ca.gov/milpitas/departments/>.
- E. “Department Head” means an individual employee of the City that has been designated as the head of a City Department or Office, and is tasked with specific supervisory roles and responsibilities related to the management of that City Department or Office.
- F. “Public Information Officer” or “PIO” means the City employee under general direction who develops, implements, and directs the City’s strategic communications plans and proactive employee and community communications on City actions, events, programs, and projects. The Public Information Officer is responsible for the approval of social media sites, compliance with the terms of this Policy and other roles and responsibilities outlined in this Policy.

- G. “Social Media Administrator” means members of City staff granted all permission levels with respect to any City social media site.
- H. “Social media Site(s)” mean content created and shared by individuals, using accessible, expandable, and upgradable publishing technologies, through and on the Internet. Social media sites include, but are not limited to, the following types of platforms:
 - a. Social networking sites (e.g., Facebook, LinkedIn, Nextdoor);
 - b. Video and photo sites (e.g., Instagram, YouTube, Pinterest, Snapchat);
 - c. Micro-blogging sites (e.g., Twitter);
 - d. Ephemeral messaging applications (e.g. Instagram stories, TikTok); and
 - e. Forums and discussion boards (e.g., Reddit, Google groups).
- I. “Staff” or City staff” means all City employees, Department Heads, officers, volunteers, interns, and any consultants, providers, and contractors acting in an official capacity and when communicating with the public on behalf of the City on City Social Media Sites.

III. GENERAL POLICY

The City’s official website at www.ci.milpitas.ca.gov will remain the City's primary online presence. The City will use official City social media sites as communication tools to disseminate accurate, direct information about City government to the public and as marketing/promotional channels which increase the City's ability to broadcast its messages to the widest possible audience.

The City reserves the right to terminate any City social media site at any time without notice.

IV. CONTENT AND POSTING GUIDELINES AND LIMITATIONS

All City Departments shall adhere to the following content and posting guidelines and limitations listed below in managing City Social Media Sites:

1. Consider your audience when developing messaging, determining language, images and structuring content.
2. Exercise good judgment. Refrain from comments that can be interpreted as slurs, demeaning or inflammatory. As a representative the of the City, you have the responsibility to conduct yourself with decorum and present the City in a positive light. Information posted should be practical and appropriately documented.
3. Whenever possible, refer back to the City’s official website. The website is the primary source for detailed information. In general, social media can be an alternative point of contact but information should not be posted in lieu of posting on the City website.
4. Access to City Social Media Sites during work hours, on City-owned equipment, should be restricted to official business only.
5. No personal identifying information, except names and City-issued email addresses, of any City staff member, Councilmember, Commission member, or resident, should be included.
6. The City will produce no campaign advertising or promotional materials for political campaigns, candidates, or ballot questions on City social media sites. Moreover, lobbying on City social media sites in support of or against a particular policy or decision made by the City Council is not permitted.
7. Generally, no photos of identifiable individuals should be posted on City’s social media sites without a signed photo release or consent from that individual, unless the photo was taken at a public event, the individual had no reasonable expectation of privacy, or the photo is otherwise a public record under State or Federal law. If City intends to use photos from community events on

a City Social Media Site, the best practice would be to ensure there is posted notice regarding this planned use at that City event.

Sponsored Content:

1. The City may enter into contractual agreements with social media platforms to promote City posts related to City-sponsored events or services that are available to all members of the public.
2. The event or service to be promoted must reasonably relate to and/or advances City goals, objectives, and initiatives and may not be prohibited pursuant to any of the terms and restrictions set forth in this Policy.
3. The City may only enter into contractual agreements with social media platforms to promote its own content, originating on a City Social Media Site, and created by City staff. The City will not sponsor content by any third-party.
4. The City's PIO shall have the discretion to determine whether an event or service meets the requirements, above.
5. All records related to sponsored content will be maintained by the City pursuant to record retention principles and the California Public Records Act.

V. APPROVAL AND ADMINISTRATION OF CITY SOCIAL MEDIA SITES

Establishment of any City Social Media Site after the effective date of this Policy is subject to the approval of the City's PIO. The City's PIO:

1. Will maintain a list of social media applications which are approved for use by City Departments and City staff.
2. Will maintain a list of all City Social Media Sites, including login and password information.
3. Will approve any new City Social Media Sites requested by Social Media Administrators.
4. Will have access to all City Social Media Sites and be able to immediately edit or remove content from City Social Media Sites in line with this Policy.
5. Will have capabilities to add, change and remove approved social media systems such as Hootsuite, or any other applicable account or management tool in use by the City.

Each City staff member authorized to post on a Department-approved social media site will be responsible for posting new content and responding to and/or moderating comments on that social media site. Resources permitting, interactive social media sites are to be reviewed each business day. All City social media sites shall comply with any appropriate City policies, standards, and any applicable style guide, hereto or subsequently adopted. Any exceptions must be approved by the Public Information Officer.

VI. SOCIAL MEDIA ADMINISTRATORS

Department Heads must designate one or more persons from their group to serve as the Department's authorized Social Media Administrator. The Administrator will have complete authority and direction over the Department's City-approved social media sites, with the exception of duties that fall under the City PIO's authority, as set forth in this Policy. The Administrator's responsibilities include, but are not limited to:

1. Review and recommend pilot projects that expand the use of social media sites beyond outreach;
2. Monitor Department efforts and projects involving outreach using social media and evaluate the effectiveness of these efforts;

3. Ensure that the branding of the Departmental activity is consistent with the overall City effort;
4. Explore ways to incorporate outreach with existing systems in order to improve efficiency, reduce redundant entry and facilitate maintenance in this area; and
5. Post and refresh social media content.

VII. RECORD RETENTION AND THE PUBLIC RECORDS ACT

City Social Media Sites are subject to the California Public Records Act (“PRA”), and any relevant State law, or City ordinances related to open government and transparency. Any content maintained in a social media format that is related to City business, including but not limited to, a list of subscribers, posted communication and private messages sent from or received by a City Social Media Site may be considered a public record and subject to public disclosure.

The Department maintaining the City Social Media Site is responsible for responding completely and accurately to any Public Records Act requests for any social media content. Content related to City business shall be maintained in an accessible format so that it can be readily produced in response to a PRA request. Wherever possible, City Social Media Sites shall clearly indicate that any content posted or submitted for posting are subject to public disclosure. Users shall be notified that public disclosure requests must be directed to the relevant Department.

California law and any relevant City Record Retention schedules apply to all City social media content. Unless otherwise addressed in a specific, adopted schedule, the Department maintaining a City Social Media Site shall preserve records for the required retention period in a format that preserves the integrity of the original record, pursuant to State standards, and is easily accessible. All social media content must be retained for the minimum two years under Government Code section 34090.

VIII. PUBLIC TERMS OF USE

The following disclaimer and guidelines must be displayed to users or made available by hyperlink on all City Social Media Sites. Any content removed based on these guidelines must be retained pursuant to City’s record retention requirements, including the time, date and identity of the poster when available.

“This is an official [Account/Department Name (City; Milpitas Police Department; etc.)] Social Media Page. The City’s Social Media Policy in full is available on the City’s main website. The City’s official website (www.ci.milpitas.ca.gov) is and shall remain the City’s primary means of online communication with the public and should be accessed for forms, documents, online services and other information necessary to conduct business with the City whenever possible.

The City reserves the right to restrict or remove any content that is deemed in violation of this Social Media Policy. It is understood that social media is a 24/7 medium, however, the City’s moderation capabilities are not. The City may not see every inappropriate comment right away and is trusting in the maturity of the community to ignore inappropriate or harmful speech until it can be reviewed and/or removed. The City disclaims any and all responsibility for any content posted by third parties that cannot be removed in an expeditious and otherwise timely manner. It is understood that posting is neither private nor confidential and the City makes no representations regarding the social media provider’s data privacy.

Any of the following types of content shall be subject to removal, and repeat offenders may be blocked:

1. Comments not topically related to the particular post being commented upon;

2. Comments in support of or opposition to political campaigns, candidates, or ballot measures;
3. Profane or obscene language or content;
4. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation, or any other classes protected under federal, state or local law;
5. Sexual content or language or links to sexual content;
6. Disparaging, harassing or threatening content;
7. Solicitations and/or promotions of commerce and/or businesses;
8. Conduct and/or encouragement of illegal activity;
9. Information that may tend to compromise the safety or security of the public or public systems;
10. Content that violates a legal ownership interest of any other party or that violates any federal, state or local law; or
11. Identical posts by the same user or multiple users.”

IX. ADDITIONAL TERMS

1. The use of a “like” (or similar) feature between the City and a private person or entity does not indicate the City’s endorsement of that person or entity’s actions or comments. City’s interactions with members of the public on social media do not constitute an official endorsement of those comments or policies.
2. The City will approach the use of social media tools as consistently as possible, in accordance to an approved style guide.
3. There shall be no social media comments on live streaming of City Council meetings; the procedure for submitting electronic public comment for City Council meetings are handled separately from this Policy.
4. City Social Media Sites are not to be used as campaign tools. However, they may provide objective information about election procedures, ballot instructions, polling locations, candidate forums, and debates as a means of conveying information to members of the public regarding upcoming elections. State and federal campaign laws and City policies and ordinances governing elected officials’ activities shall be followed. No public funds will be used to support or oppose a local or statewide ballot measure, and, further, that no public funds will be used for any campaign for public office.
5. The sharing of posts or information from other public entities shall be allowed if such sharing helps the City meet its goals or objectives, or if it has been determined by the Department Head to be beneficial to the community. The sharing of posts or information from private businesses shall be prohibited.

X. PERSONAL SOCIAL MEDIA USE BY CITY REPRESENTATIVES

The City recognizes that City officials, City staff and any other City personnel (“City representatives”) have the right to express their personal views through private social media use. However, City representatives bound by this Policy must understand that non-public information (e.g., proprietary information; confidential personnel matters; and attorney-client privileged information; etc.) may not be conveyed through social media unless and until the release of such information becomes lawful and has been authorized by the City in accordance with federal or state law.

City representatives do not need to obtain permission from the City to participate in social media in their personal capacity. City representatives are encouraged to check with City management if they have any questions related to personal use of social media.

The City is not responsible for the contents or accuracy of material posted when a City representative is using social media in a personal capacity. Publication of such content on a personal social media site does not constitute an endorsement by the City. City representatives acting in a personal capacity should do everything reasonably practicable to make certain that it does not appear to other social media users or the public that they are speaking for the City.

City representatives shall not use official City email accounts when establishing, setting up, or using social media sites for personal or non-City/non-official activities.

When City representatives bound by this Policy, including City officials, use social media in their respective personal capacities, they acknowledge that posts related to City business may be deemed public records under the California Public Records Act. Further, City officials should avoid blocking third parties or deleting posts and/or comments on personal social media accounts as many public officials have been sued on this basis under First Amendment principles.

Additional Restrictions Specific to City officials:

1. City officials must keep their social media presence separate from that of the City, and from that of other City officials. City officials shall include the following language on their personal social media sites to prevent confusion and false public expectations that their sites are affiliated with the City: “This page is not operated by the City of Milpitas and is not a reflection of the City’s policies or opinions.” For City officials on the City Council, the language shall be as follows: “This page is not operated by the City of Milpitas and is not a reflection of the City’s policies or opinions or those of the City Council.”
2. City social media sites will be managed consistent with the Brown Act. City officials shall only comment, like, share, retweet, etc. any published City social media posting when doing so encourages public participation or otherwise disseminates information in a manner consistent with this Policy, but should be wary of sharing opinions on those postings to limit the risk of a Brown Act violation and should never share opinions on items before the City Council that require due process including but not limited to land use matters, and other matters involving life, liberty, or property interests. Officials shall not use electronic communications to engage in serial meetings in violation of the Brown Act.
 - i. For example, if Acme Housing Project has been approved by the Planning Commission, and will come before the City Council as a public hearing item for approval, City Councilmember A cannot post on social media his or her thoughts on Acme Housing Project before the time of that public hearing.
3. During an emergency, make sure to only share confirmed information on personal social media sites to avoid confusion and refer constituents to the official City of Milpitas website or City social media sites for up-to-date information.

The City is not responsible for the contents or accuracy of material posted on City officials’ personal social media sites, or for any comments made by City officials on City’s Social Media Sites posted independently and without the City’s consent or approval. Publication of such content does not constitute an endorsement by the City.

XI. VIOLATIONS

Violation of this Policy may result in disciplinary action up to and including revoked access to City Social Media Sites, and for City employees, dismissal from employment. Additionally, failure of City representatives to abide by this policy, following its adoption, may result in one or more of the following:

- a. Disciplinary action, up to and including termination (for City staff);
- b. Removal from office (for appointed City officials);
- c. Censure (for elected City officials);
- d. Breach of contract (for City consultants);
- e. Revocation of official electronic device privileges (for City staff); and
- f. Judicial enforcement against the City directly, by the requesting party.

ACKNOWLEDGEMENT OF SOCIAL MEDIA USE POLICY

I hereby acknowledge that I have received a copy of the City of Milpitas’s Social Media Policy and that I understand that I am to read and comply with its contents. I am aware that failure to comply with this Policy may lead to disciplinary action, up to and including termination. I further understand that if I have any questions about the Policy or its contents, I am to discuss them with my supervisor or the Human Resources Department.

In executing this acknowledgment, I understand that any violation of this policy may lead to disciplinary action against me.

Employee Name: _____

Employee Signature: _____

Department: _____

Date: _____

This form shall be retained in Human Resources Department files.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Request No.	Topic	Submitted by:	A, F, or CM	Date requested or Rec'd Form	STATUS and/or DATE scheduled on City Council meeting agenda:
2020					
6	Opportunity to share ideas for US census by end of Sept. & on City "sponsored" events	Dominguez	A	9/1/2020	9/15/2020
5	Discussion of MinuteMan as City's image, when City branding comes to City Council	Phan	A	8/18/2020	
4	Consider adding state certification NEC for electrical work done in the City (safety)	Dominguez	A	6/30/2020	
3	Establish a Day Worker Program	Montano	A	6/16/2020	
2	Form a Historical Commission	Montano	A	6/2/2020	
1	Consider satellite consular offices	Montano	A	6/2/2020	

2020	TOPICS SCHEDULED OR COMPLETED				
	(possible ban on vaping - no)				Ordinance pending. Discussed
	Restrict smoking in multi-unit bldgs - yes	Montano	A	1/7/2020	3/03/2020 Affirmed 6/02/2020
	Resolution on financial status of the City, steps to be taken	Nuñez	A	8/18/2020	Resolution adopted 9/01/2020
	Require implicit bias training for City Council, Commissioners & staff	Dominguez	A	6/16/2020	approved 8/18/2020
	Read "Code of Conduct" aloud prior to each City Council meeting	Montano	A	6/2/2020	approved 8/18/2020
	Discussion/staff report on Beautify Milpitas, graffiti abatement, resources	Montano	A	6/30/2020	8/18/20: Directed staff to develop a program requiring min. staff resources & bring back to Council
	Celebrate Mexican Independence Day annually on September 16	Montano	A	6/2/2020	approved on consent 8/18/2020
	Consider change in term limits for Mayor + Councilmembers	Montano	A	6/16/2020	8/4/2020. Voted 3 -2 to pursue

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

	Discussion of campaign finance reform and/or Open Government Ordinance	Phan	A	6/30/2020		withdrawn @8/4/2020 CC meeting
	Community Workforce Agreement	Nuñez	A	2/18/2020		8/4/2020: directed staff to draft agreement, find CIP projects to apply to, then work with Labor org.
	Responsible Construction Ordinance	Phan	A	2/4/2020		8/4/2020: City Atty shall return with draft Ord.
	List of city charges/costs that could be waived for small businesses	Dominguez	A	6/16/2020		6/30/2020 info memo
	Emergency item for next agenda: extend tenant eviction protections	Dominguez	A	6/16/2020		withdrawn, covered by other govt
	Discussion on possible tax measures	Tran, Phan	A	4/21/2020		5/15/2020
	Support for Laura's Law	Phan	A	2/4/2020		5/19/2020
	Resolution in support of elimination of discrimination v. women	Dominguez	A	1/7/2020		5/19/20 Reso. adopted. 8/04/20 CEDAW Ord. adopted
	Request for Dumpster Days	Tran	A	1/7/2020		5/12/2020 in FY 2020-21 budget
	Adopt Resolution similar to County's re: xenophobia, discrimination	Dominguez	A	4/21/2020		5/5/2020
	Support community distribution of masks	Dominguez	A	4/7/2020		4/21/2020
	Proclamation and support for face coverings	Montano	A	4/7/2020		4/21/2020. CC directed City Manager to issue regs
	Establish Milpitas coronavirus testing site	Phan	A	4/7/2020		done
	Consider Community Museum and Park on Main St.	Nuñez, Phan	F	8/20/2019	to Rules 8/23/2019	3/24 and 6/02/2020. Pending
	Discuss having 4th of July parade	Nuñez	A	2/18/2020		not under discussion
	Parade for MHS Trojans Football	Tran, City Manager	A	1/21/2020		1/28/2020
	Report on speed cameras like Fremont (radar displays) - no enforcement	Phan	A	1/7/2020		1/28/2020, 3/24/2020, 4/14/2020
	Street/traffic calming update	Nuñez	A	1/7/2020		3/3/2020
	Report on parking in The Pines	Nuñez	A	1/7/2020		2/18/2020
	Info. on new SB 50 (housing, transit bill)	Phan	A	1/7/2020		by memo to City Council

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

2019	TOPICS SCHEDULED OR COMPLETED				To Rules Subcom	
1	Establish Railroad quiet zone	Tran, Montano	F	9/17/2019	8/04/20, Council asked City Manager to work with Vice Mayor to agendize for Council discussion	
	Have "Dumpster Days"	Tran, Montano	F	9/17/2019	9/20/2019	5/12/2020 in FY 2020-21 budget
	Rename portion of Dixon Landing Rd. as Barack Obama Blvd	Nuñez, Phan	F	8/20/2019	8/23/2019	deferred indefinitely
	Maintain Dagupan, P.I. as a Sister City	Tran, Montano	F	9/17/2019	9/20/2019	12/17/2019
	Add Green Bike Lanes	Tran, Montano	F	9/17/2019	9/20/2019	done - in CIP
	Rename Augustine Park to include "Sunnyhills"	Tran, Montano	F	9/17/2019	9/20/2019	2/4/2020
	Community Theater, perhaps with MUSD	Nuñez, Phan	F	8/20/2019	8/23/2019	5/14/2020 @CIP Study Session
	policy for Proclamations and Commendations	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020
	policy for Social Media	Nuñez, Phan	F	8/20/2019	8/23/2019	withdrawn 6/02/2020

A: @Announcements
 F: on a Form
 CM: to/from City Manager

MEMORANDUM

City Manager's Office



DATE: September 9, 2020
TO: Mayor and Council
THROUGH: Steve McHarris, City Manager *Steve McHarris*
FROM: Ashwini Kantak, Assistant City Manager *Ashwini Kantak*
SUBJECT: **2020 Census Update**

This Information Memorandum is in response to a request initiated by Councilmember Dominguez and supported by the full Council at the September 1, 2020 Council meeting. It is intended to provide an update of 2020 Census outreach activities and several factors that impact overall participation including COVID-19 and the recent California Wildfires.

BACKGROUND

The 2020 Census goal is to count everyone once, only once, and in the right place. Each decade the Census takes a count of America's population. Census data provides vital information that helps determine political representation in every State and allocation of more than \$675 billion in federal funding that support creating jobs, providing housing, preparing for emergencies and building schools, roads and hospitals. The 2020 Census is considered to be the most accessible survey in census history. For the very first time, an internet self-response option makes it easier for anyone, anywhere to respond at any time.

The 2020 Census has been confronted with a number of setbacks that could lead to a significant undercount, which can translate to Congressional underrepresentation and reapportionment of California dollars. These challenges include increased government distrust with attempts to include a citizenship question, general concerns about data privacy and confidentiality, inadequate language accessibility, Presidential order to exclude undocumented immigrants in the apportionment process, limited federal budget for advertising and outreach, and the impact of COVID-19 and California Wildfires that threaten overall participation.

SIGNIFICANT IMPACT OF COVID-19 ON REACHING THE HARD-TO-COUNT

Due to the statewide shelter-in-place order, Census Bureau operations as well as state, county and local government outreach initiatives have been suspended because of restrictions on public gatherings. Most previously developed strategies to reach the hard-to-count were in-person meetings and events including access to public library computers to complete the form. Unfortunately, changes in tactics have greatly impacted effective outreach to historically undercounted and low-response groups such as individuals experiencing homelessness, immigrant populations and in-language dependent households, renters, students and children under the age of five.

CENSUS OUTREACH EFFORTS

City staff has conducted and will continue to implement and support the following activities through the remainder of the Census operation.

- Inclusion of information resources on the City Website;
- Inclusion of messaging around Census takers who will start knocking on doors for the month of September on the City Website and social media platforms;
- Partnership with the County of Santa Clara Complete Count Committee on Non-response Follow-Up outreach;
- Collaboration with United Way of the Bay Area and Homebase to help enumerate people experiencing homelessness (especially first-time homeless due to COVID-19 and California Wildfires);
- Outreach activities during scheduled food distribution City events.

UPDATED CENSUS DEADLINE

During the second quarter of 2020, the Census Bureau shared plans to extend the Census deadline to October 31 from July 31 to address operational delays brought forth by COVID-19. However, the Bureau provided an update regarding the end to all of its counting efforts on September 30, a month sooner than previously announced. This includes critical door-knocking efforts and response collection online, phone and mail. The latest move is part of the Bureau's efforts to accelerate the completion of data collection and apportionment counts by the statutory deadline of December 31, 2020, as required by law.

NON-RESPONSE FOLLOW-UP (NRFU)

Census takers have started visiting homes that have not responded to the Census on August 11. All Census takers are required to wear masks, regardless of state and local guidelines. They will knock on doors and immediately step back six feet to create appropriate space between themselves and the respondents. Census takers will be given additional masks to provide residents should they need one, as well as a hand sanitizer. They will be using an app to collect information, which means they will no longer pass paperwork back and forth with respondents.

CENSUS TIMELINE

Noted below are the schedule modifications across the various Census operational phases.

Activity	Original Schedule	Updated Schedule
Self-Response Phase	March 12 – July 31	March 12 – September 30
Mobile Census Questionnaire	March 30 – July 31	Started in July
Non-Response Follow-Up (NRFU): In-person enumeration by Census taker.	May 13 – July 31	August 11 – September 30
Service-Based Enumeration & Homeless/Displaced Count	March 30 – April 1	September 22 - 24
Deliver Apportionment Count to the President	December 31, 2020	December 31, 2020*
Deliver Redistricting Count to States	April 1, 2021	April 1, 2021*

*Pending Census Bureau confirmation

PUBLIC INFORMATION

The City will continue to share information on its [2020 Census webpage](#), which has been created to provide accurate reports on Census operations. Additionally, regular public updates will be provided through the City’s social media accounts on Facebook, Twitter, and Nextdoor.

MEMORANDUM

Office of the City Manager



DATE: September 10, 2020
TO: Mayor and Council
THROUGH: Steve McHarris, City Manager *Steve McHarris*
FROM: Ashwini Kantak, Assistant City Manager *Ashwini Kantak*
SUBJECT: City Council Sponsored Events

This Information Memorandum is in response to a request initiated by Councilmember Dominguez and supported by the full Council at the September 1, 2020 Council meeting, to agendize a discussion about City Council sponsored events at the September 15 Council meeting.

Background:

During the Fiscal Year 2019-2020 Budget development process, the City Council expressed an interest in individual Councilmembers having the ability and funding to host events that benefit the City and the Milpitas community, and to use City facilities for this purpose.

The use of City facilities is governed by the Milpitas Facility Use Manual and updates to this Manual needed to be brought forward for Council consideration to enable use of City facilities by individual Councilmembers.

A draft policy for Council sponsored events (a policy for City Council training was also part of the same agenda item) and related draft Facility Use Manual update were both brought forward for Council consideration on August 20, 2019. Both items were deferred multiple times and were finally discussed at the November 19, 2019 City Council meeting. Although no formal action was taken by Council, staff was directed to bring back both items at a later date. The discussion related to use of facilities by the City Council, the subsequent Facility Use Manual update to capture those uses, as well as the policy on City Council sponsored events has not occurred to date.

Analysis:

The draft Council policy for events, presented to Council in late 2019, was intended to establish City policy, guidelines and conditions for the use of funds appropriated to individual members of the City Council for hosting events, donating to intergovernmental agencies and non-profit organizations and for requesting fee waivers for events. These events were to support the City Council's priorities and not be related to campaigning or any other political advocacy efforts and shall generally serve a public purpose.

The Approved Fiscal Year 2020-2021 Budget includes funding in the amount of \$25,000 for the City Council (\$5,000 for each member of the Council) to make donations to intergovernmental agencies and non-profit organizations and to approve fee waivers for events and for individual Councilmembers to either host his/her own events or to donate to additional events and provide fee waivers, distinct from those submitted per the adopted policy – City Council Donations and Fee Waiver/Reduction Policy are regulated by Council policy 01-07.

Per this policy, all requests for events and fee waivers or donations for non-profit organizations shall continue to be brought forward for Council consideration. Based on historical information about Council donations and fee waivers, when this item was brought forward for Council discussion in 2019, staff had recommended setting aside a budget of \$10,000 for the full City Council and \$3,000 each for every individual member of the City Council.

The draft policy outlined general conditions as described below:

Any events hosted or sponsored by an individual Councilmember were intended to be for a wide-reaching public purpose serving the Milpitas community at-large, and supporting the priorities of the full Council. Events were to be open to the public and to any other Councilmembers who may wish to attend. Councilmember hosted events were not to be related to a campaign event. To ensure the integrity of the events, the draft policy stated that no hosted events would take place six months preceding a municipal election.

The draft policy provided guidance about type of staff support and number of staff hours. The draft policy also described the responsibilities of the City Councilmembers and the City Manager and outlines the procedures for reimbursement of expenses.

Key items that were noted for Council consideration and input included:

1. Allocation amounts from the total \$25,000 budget for the full City Council and individual Councilmembers.
2. Eligible expenditures for individual Councilmember funds.
3. Number of events hosted by individual Councilmembers.
4. Use of City facilities
5. Timeframe of events hosted by individual Councilmembers with respect to municipal elections.
6. Amount of staff support hours per event and cumulative number of hours for events hosted by each Councilmember.
7. Approval Process

As noted earlier, Council did not take action on the draft policy or the Facility Use Manual update but provided input on the item and asked staff to return at a future date.

Links to the prior Agenda Report, draft policy, and meeting minutes are included below for reference.

Links to documents:

- [November 19, 2019 Agenda Report and Draft Policies](#)
- [November 19, 2019 Agenda Report and Draft Facility Manual](#)
- [November 19, 2019 Council Meeting Minutes, Pages 6-8](#)

PREVIEW LIST OF AGENDA ITEMS

MILPITAS CITY COUNCIL AGENDA

OCTOBER 6, 2020

PRESENTATION

- Proclaim *Fire Prevention Week* October 4 -10, 2020

CONSENT CALENDAR

- 1) Receive City Council calendar for October 2020 (City Clerk)
- 2) Approve City Council meeting minutes of September 15, 2020 (City Clerk)
- 3) Accept 2019 State Homeland Security Grant; approve budget appropriation to Police Dept. FY 2020-21 operating budget; and Adopt a Resolution authorizing sole source purchase from Delta (John Torrez)
- 4) Adopt a Resolution accepting Office of Traffic Safety Grant (Jared Hernandez)
- 5) Adopt a Resolution accepting 260 S Main St. development (Kan Xu)
- 6) Adopt a Resolution Approving Plans and Specifications, Award Construction Contract for Enhanced Crosswalk Striping & Beacons/Radar Speed Feedback Signage, Projects No. 3454 and No. 3458 (Steve Chan)
- 7) Adopt a Resolution Granting Acceptance of the Milpitas Skate Park & Snack Shack/Restroom Building Replacement, Projects No. 5111, No. 3424, and No. 6133 (Steve Erickson)
- 8) Approve Budget appropriation of \$50,000 from Gas Tax to Trails and Bikeway Master Plan Update, Project No. 3448; and Authorize City Manager to Execute Amendment No. 2 to Agreement with Alta Planning and Design for \$50,000 for Consultant Services for the Trails and Bikeway Master Plan Update, Project No. 3448 (Steve Chan)
- 9) Approve Amendment No.1 to Agreement with Group4 Architecture for Space Planning (Tony Ndah)
- 10) Approve Payment of Invoice to Santa Clara County Sheriff for Cal-ID services (Frank Morales)

COMMUNITY SERVICES

- 11) Final Report on Energy Savings (Tony Ndah)
- 12) Interim Update on Parks and Recreation Master Plan and Cost Recovery Approach (Steve Erickson, Renee Lorentzen)

LEADERSHIP

- 13) 1st reading/Introduce Ordinance No. xxx to update Procurement Code in the municipal code (Walter Rossmann, Chris Diaz)
- 14) Consider 1st reading/Introduce new Ordinance regarding Responsible Construction (Chris Diaz)
- 15) Project Labor Agreement

REPORT

- 16) Preview list of Future Agenda Items Requested by City Councilmembers (Mayor/City Clerk)
- 17) Report following up on ideas given by Councilmembers on 9/15 on how to economically assist the community during the pandemic (requested by Vice Mayor Nunez on Sept. 1)

PREVIEW NEXT AGENDA

- 18) Preview list of items for October 20, 2020 (City Clerk)